Juliana v United States of America

Court Proceedings

January 13th, 2016

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UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

EUGENE DIVISION

KELSEY CASCADE ROSE JULIANA, et al., Plaintiffs, v. THE UNITED STATES OF AMERICA, et al., Defendants.) No.6:15-CV-1517-TC

REPORTER'S TRANSCRIPT OF PROCEEDINGS

BEFORE THE HONORABLE JUDGE COFFIN

January 13th, 2016

Wednesday

2:00 P.M.

-:-

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(Appearing by phone)

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MR. QUIN M. SORENSON

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(Appearing by phone)

PROCEEDINGS

Wednesday, January 13th, 2016

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THE CLERK: Now is the time set for civil case No. 15-1517, Juliana, et al., versus United States America, et al., for oral argument on motion to intervene.

THE COURT: All right. This is Judge Coffin. Good afternoon, everyone. We have reviewed all of the briefings that have been filed in this matter, the motion to intervene and the opposition to it filed by the plaintiffs, and the reply by the intervenors.

The government -- Mr. Duffy, the government did not file any opposition or take a position in it. Does the government have a position that it wishes to express here this afternoon or are you just basically listening in?

MR. DUFFY: This Sean Duffy. We're just going to be listening in today. The government takes no position in the motion.

THE COURT: Okay. Thank you. All right. Then on behalf of the NAM and the AFPM and the API, I'll hear from counsel on their motion to intervene if they wish to add orally to their

submission.

MR. SORENSON: Thank you. I would. This is Quin Sorenson for the proposed intervenors.

I would like to start by just inquiring whether I should at the start -- if you prefer that I reserve time for rebuttal or just continue and make our argument case at the start.

THE COURT: Well, I'll hear from you in rebuttal so -- you know, we're not that formal here. It's not like before the Court of Appeals here where I'm just going to have a stopwatch on you. So you can make your presentation, and then if there's anything that the plaintiffs say that you wish to respond to, you'll be given an opportunity.

MR. SORENSON: Perfect. Thank you very much, Your Honor. I will continue then.

This case is before, as you indicated, the Court on a motion to intervene from three national associations, the NAM, AFPM, and API, which together represent nearly all of the leading companies who are engaged in the exploration, extraction, production, and transport of conventional fossil fuels in this country and that, as part of their core business, emit greenhouse gases as a result either of manufacturing processes

or combustion of fuel.

The associations move to intervene this Court of federal defendants --

THE COURT: You may have to slow down a little bit because the court reporter is trying to get this into the record. So just slow down a little bit in terms of your presentation.

MR. SORENSON: I certainly can do that. I will be cognizant of that in the future. Thank you.

Also under 24(b) by permission in light of the direct and substantial impact that these claims would have on the associations' members, its business and related interests.

Those claims are extraordinary as both a legal and a practical matter. They allege that the federal government's historic and continuing actions in authorizing, permitting, and incentivizing fossil fuel production as well as the government's asserted failure to limit and phase out carbon dioxide emissions in the United States has violated the plaintiff's rights under our constitutional provisions and the so-called public trust doctrine.

As a remedy the plaintiffs ask for

orders declaring that the federal government is liable to the plaintiffs for these actions and enjoining the federal government to develop and to implement a national remedial plan subject to Court approval and supervision that would, according to the complaint, mandate that the government, quote, keep permitting, authorizing, and subsidizing fossil fuels and, quote, move to swiftly phase out carbon dioxide emissions in the country by reducing emissions by at least 6 percent per year starting immediately, and also taking other actions necessary to ensure that atmospheric carbon dioxide levels are lowered to below 350 parts per million by the year 2100.

Intervention is clearly appropriate in our view in light of the sweeping nature of these claims and relief requested and given that precisely the same claims were held to give rise to a right of intervention by the association in the case of Alec L. versus Jackson in the District of Columbia District Court two years ago. I'll address intervention of rights first and then turn briefly to permissive intervention and to plaintiffs' proposed limitations on intervention if it were to be granted.

Addressing intervention of rights, Rule 24(a) sets forth what has been described by the Ninth Circuit as a liberal standard for intervention requiring proof that the application is timely, that the intervenors have a protectable interest which as a practical matter may be impaired by disposition of the action, and that the intervenor's interest is not or may not be adequately represented by the existing party. Timeliness has not been challenged in this case, so I'll focus on the other two elements at this point.

As to protectable interest, disposition of the claims in this case would directly and significantly impact the associations' core interests, and the clearest indication of that is that if these claims are upheld and the release as requested is granted, many of the associations' members may be required not only to significantly modify their business models but to close their businesses entirely.

Again, this complaint challenges the government permitting of all fossil fuel production and all regulation of greenhouse gas emissions, referring specifically to permitting and regulations in the oil and gas industry, the energy and refinery

sector, and the manufacturing sector. And the complaint requests an order that mandates the government cease all permitting of fossil fuels and phase out all carbon dioxide emissions.

Far from some tangential or speculative impacts, this order would directly prevent the associations' members from obtaining the permits and other authorizations required to operate effectively shutting them down and invalidating thousands of leases and other contracts they hold. Even for businesses that might be able to continue to operate, the new greenhouse gas restrictions would require massive new investments in equipment and infrastructure as set forth in the parties' declaration for the motion to intervene.

These businesses' interests in protecting their investments and operations which are authorized and approved under current law are clearly protectable under Ninth Circuit precedent, and would, in fact, be directly impaired by disposition of this action.

This is precisely the type of interest and impairment that the Ninth Circuit has held to justify intervention under Rule 24(a). In Southwest Center for Biological Diversity v. Berg, for

example, the Ninth Circuit granted leave to intervene to contractors and trade associations in a case challenging a course planned for the regulation of land versus the Endangered Species Act because if this plan was adopted, it could impact construction projects and other operations in which the intervenors had investment-backed business interests.

THE COURT: Let me ask you a question if I can. If the Court were to allow you to intervene in this case, you have three clients -- NAM -- I guess it's called AFPM -- and API -- and they each have their own membership group. So how many are we talking about? Would this be a unified intervention with essentially one client speaking in unified form for all of them or would there be three or would there be more than three?

MR. SORENSON: Well, there would be three intervenors, but they would be speaking with one voice. I and other counsel for the proposed intervenors represent them all, and we would be submitting joint submissions in all circumstances in this case operating essentially as one intervenor.

THE COURT: And how do you foresee participation by the parties proceeding in terms of

discovery and that sort of thing?

MR. SORENSON: Discovery could operate as it would in any other case, Your Honor, as it would assuming it gets to that stage. And at that point, it could be considered whether other limitations, restrictions, procedures should be adopted in light of the intervenor's participation. But at this point and at this stage of the case, I don't see that the case would change markedly in terms of the procedures going forward if the intervenor's were granted participatory rights. This would simply mean that along with the federal defendants another party would be filing in coordination with them.

THE COURT: Okay. But sure, in reading your briefing, it -- you literally have thousands of members of these organizations. Correct?

MR. SORENSON: Correct. Yes. And that is entirely correct, and that is why having the associations participate as associations in this litigation effectively represents those interests without a multiplicity of disparate viewpoints and voices. Rather, in fact, they have joined to speak with one voice through this intervention motion.

THE COURT: Okay. So you envision speaking with one voice for all your members and these three organizations?

MR. SORENSON: Yes. We do indeed, Your Honor. We would not be submitting multiple declarations, multiple motions, multiple anything. We would speak with one voice, and there would be only one intervenor essentially.

THE COURT: Okay. All right. Thank you. You can proceed.

MR. SORENSON: Thank you, Your Honor.

As I was indicating, this case really does present a circumstance in which the members you just described, the associations and their members are directly impacted, not only directly but seriously impacted, their various businesses put at risk by the relief requested in the complaint. And this is precisely the circumstance in which Southwest Center for Biological Diversity and other Ninth Circuit cases have held that intervention is warranted.

In fact, there can really be no question that these interests are protectable. And the only reasons that the plaintiffs give for discounting the interests that would be not only

implicated but incredibly impaired in this case are that they are, quote, economic in nature. However, both the Ninth Circuit and this Court has held that economic concerns certainly qualify as valid interests for purposes of Rule 24(a) so long as they are nonspeculative and protectable as the business interests are here. Again, Southwest Center for Biological Diversity is one example.

There are many others cited in the briefs, including Fresno County versus Andrus in which farmers associations were allowed to intervene in the case based on their economic interests, and also National Wildlife Federation versus Army Corps of Engineers in which this case granted intervention rights to businesses that may be affected by a dam closure or change in operations.

The plaintiffs also suggest that the impact on these associations from the requested relief should not be considered in this case because an injunction has not issued and will not issue until the so-called remedial stage. However, again, this is contrary to Ninth Circuit law in which cases have admonished, including in Donnelly v. Glickman, which is cited in the plaintiffs' brief, that an intervenor's interest in an action should be

assessed not in relation to the particular issue before the Court at the time of the motion or at only one particular stage of the case, but rather must be assessed in relation to the action as a whole, including the relief requested.

Here that relief would undoubtedly and dramatically affect the interest of the associations and their members. This definitively establishes in our view that a protectable interest is involved and related to the public matter of this action and would be impaired by disposition of the action in the intervenor's absence.

The only remaining element that must be satisfied under Rule 24(a) is the one of inadequate representation. And we believe in this case it is clear that the federal government may not adequately represent the interests of the associations in this case because their interests clearly diverge. And it should be noted at the outset, contrary to plaintiffs' representations that no presumption of adequate representation can apply in this case, such a presumption may apply, for instance, when the parties share the same ultimate objective.

For while the association and the

United States are aligned at the current posture of the litigation and, of course, share a current interim goal of dismissal of the complaint, their ultimate objectives differ dramatically.

The government has, in fact, promoted and pressed regulations restricting greenhouse gas emissions and limiting fossil fuel production that have been and are being actively opposed in separate litigation against the United States by the associations.

This alone is sufficient to show and does show that the defendants' may and almost certainly will have significantly different views than the associations regarding any injunction that may be entered in this case regarding the limits to be placed on greenhouse gas emissions or other restrictions.

Likewise, contrary to plaintiffs' representations, again, the mere fact that the defendant is the government does not provide any basis for presumption of adequate representation. That presumption applies only when the government is representing the narrow interests, the actual interests of the proposed intervenor.

In this case, the government is

representing the public generally. It is not representing the interests of the oil and gas, petrochemical, and manufacturing associations that are now moving to intervene. And indeed, as I previously discussed, the interests of the associations differ dramatically from the government in that particular regard.

Finally, this divergence really can be seen even at this stage of the case. The motions to dismiss filed by the associations argue that plaintiffs' claims should be dismissed, for instance, because they are not -- they are inconsistent with the political question doctrine and also because they do not satisfy the traditional element of a public trust claim even under state law. Neither of these grounds for dismissal is raised in the federal defendant's motion to dismiss, potentially for reasons relating to the administration and its views of those arguments.

This confirms, yet again, that no presumption of adequate representation can apply here because the parties have raised different arguments and intervenors are raising different ones, and that even if such a presumption arose, it would be definitively rebutted.

These elements -- timeliness, protectable interests, lack of adequate representation -- establish clearly that intervention of rights is appropriate under Rule 24(a), just as the District Court found in Alec L. v. Jackson explaining in a statement that applies with equal force here. In our view, if the applicants do not have an opportunity to participate in this proceeding, they will as a practical matter be foreclosed from being heard on these issues and other factual matters for which they have a unique point of view, unique experience, and expertise.

Moving on to then permissive intervention --

THE COURT: You don't need to go there at this time.

Let me hear -- before you move on, I want to hear from the plaintiffs in terms of their issue -- their position on the intervention as a right issue. And bear in mind that we've read the briefings, so we're familiar with the background and the arguments. So let me hear from the plaintiff.

MR. GREGORY: Thank you, Your Honor.

This is Philip Gregory appearing on the behalf of the plaintiffs. And initially I

wanted to thank the Court for allowing me to appear pro hoc and to make this argument.

THE COURT: Certainly.

MR. GREGORY: In a case these three applicants just cited, the Donnelly v. Glickman case, the Ninth Circuit said that in determining whether intervention is appropriate, this Court should be guided primarily by practical and equitable consideration. So I wanted to use this time to consider the practical case management issues if these three applicants and their thousands and thousands of members are allowed to intervene.

In Donnelly, the Ninth Circuit reviewed intervention as of right by first looking at the liability phase of the plaintiffs' action there and then the remedial phase, and I'd like to follow the same analysis.

Now, at the liability phase these three applicants admit that they want to intervene to challenge, quote, the validity of the plaintiffs' claims, closed quote, against the federal defendants. That's in their reply at page 2.

But given the central issues of this case, particularly at the liability phase, applicants have no significantly protectable

interest in plaintiffs' constitutional rights, and the federal defendants can more than adequately represent any protectable interests these trade associations may have. For the central issue in this case is whether the federal defendants have committed constitutional and public trust violations as to these plaintiffs. And resolving those issues at the liability stage will primarily involve matters of law.

These three applicants apparently agree with this assessment. The only part of the case where they have said they can offer -- I'll call it something new or something in addition -- is, for example, in this motion to dismiss. Now, the motion raises three issues: Standing, failure to allege a viable cause of action, and political question.

As a practical matter, the initial concern is obviously duplication. This course, court and plaintiffs would be faced with duplication as the federal defendants also move to dismiss on standing and also move to dismiss on the failure to allege a viable claim. In fact, at page 13 of their reply, these three applicants advocate strongly for the ability to duplicate arguments made by the

federal defendants.

THE COURT: Well, if I can interrupt you for a second and interject something here. The ruling on the motion to dismiss that has been filed by the government and the motion to dismiss that the intervenors wish to file is not going to involve any case management issues on discovery, et cetera, because there's not going to be any discovery taken, unless I'm missing something, in connection with any hearing on the motion to dismiss, whether it's the motion to dismiss solely by the government or whether it's a motion to dismiss that the Court allows the intervenor to file as well.

And, in fact, it seems to me that even if I don't grant the motion to intervene, they could still participate as amicus and file a brief advocating the government's position that the case be dismissed. So I don't see really anything that's going to be added to having them participate as intervenors as opposed to amicus on that issue, the motion to dismiss. And it's only if the motion to dismiss is denied then that we have a case management issue raised, and a discovery issue raised, and an issue raised on the liability phase as opposed to the remedy phase.

So assuming for the sake of argument that the motion to dismiss is not allowed, then you're talking about a liability phase that you don't want the intervenors to participate in, and you want them basically just allowed to participate, if at all, in the remedial phase. Is that correct.

MR. GREGORY: Yes, Your Honor.

THE COURT: And it's your position that they have nothing to add to the government's position that they would take in the remedy phase? They have no standing to raise any issues at that phase of the case or no -- no dog in the fight, so to speak, at that stage?

MR. GREGORY: Well, Your Honor, I haven't got to the remedy phase, but I'm happy to jump there --

THE COURT: No. On the liability phase. You're saying they have no dog in the fight at that stage?

MR. GREGORY: Well, Your Honor, because it's the plaintiffs' constitutional and public trust rights vis-a-vis these federal defendants --

THE COURT: Well, isn't there more at stake that affects the proposed intervenors? For

example, the injury to the plaintiffs, that would be an issue in the liability phase, would it not? How their interests are affected by what the intervenors are actually doing and that you want --

MR. GREGORY: Well, your Honor, our case is not what the intervenors are doing -- or proposed intervenors are doing. Our case is what the federal government is doing.

THE COURT: Well, except what your case, if I understand it correctly, is raising is the issue of whether the government is not doing enough to cut back on the emissions that the intervenors are producing. Is that not part of your case?

MR. GREGORY: Your Honor, that is a part of our case, but it's more directed to that the government is not doing what the government should be doing to cut back the government's emissions.

THE COURT: Okay.

MR. GREGORY: So it's directed more to the acts of the government in -- so, for example, the government is certainly enabling the members of the proposed intervenor to mine on federal lands. And if we get to the remedy phase and it's determined by the federal defendants that they

should ratchet up the pricing of leasing rights on federal lands, certainly these intervenors would have an interest at the remedy phase. But whether or not the government's act in allowing the lease is something that affects these plaintiffs is not something that the applicants have an interest in. It's the government's act of leasing that these plaintiffs are attacking.

THE COURT: All right.

MR. GREGORY: And I -- I also think Your Honor -- and again -- and I don't want to get too far beyond the motion to dismiss to just make one further point -- the only thing these three applicants assert they're adding on top of the standing and failure to state a claim is the political question issue.

And as the Court, I'm sure, is aware the political question is a Rule 12(b)1 issue that the federal defendants may have chosen strategically to raise later in the case, and as a result, the pending motion to intervene attaches a proposed motion to dismiss, and that proposed motion to dismiss does not offer anything in addition to the motion to dismiss that's been fully briefed by the plaintiffs as to the federal defendants.

That's why when I was going through the duplication point, I was saying essentially for many of the same points, we're going to be filing the same brief. And so I don't see either in their moving papers or in their reply at the liability phase what these applicants are suggesting they would offer that would be in addition to the federal government's briefing on these same points.

And again, as the Court also brought out in questioning, when we get to the discovery phase that there's going to be substantial duplication about these plaintiffs when we're in liability as opposed to remedy, that they will have to respond to discovery from these intervenors, and because many of the points the applicants make are points of law, then they could, as the Court suggested, appear through amicus briefing.

Another issue, from a case management perspective, that the Sierra Club decision focused in on was whether or not these three applicants will interject new and unrelated issues into this litigation, and it's obvious by the tenor of their briefing that they would.

They're interested in protecting their members' interests. In fact, they specifically just

argued to the Court that their members' interests are different than the government's interest in representing the public generally. So what these three applicants are going to be doing is they're going to be working this case to, in essence, focus discovery in part on matters that effect their members, and legally that because this case is against the federal government and the government can properly represent the public generally, including these three associations, there's no reason to allow them in at the discovery stage.

When we get to the remedy stage, the applicant's participation at that stage is one that they focus their reply brief on. In particular, their reply brief details on page 4, Your Honor, about what plaintiffs seek that the applicants object to. And there are four points raised there: Elimination of use of conventional fossil fuels, near-term cap on greenhouse gas emissions, continuing and significant reductions in greenhouse gas emissions, and requiring the submittal of a plan that would reduce greenhouse gas emissions. All of those go to the remedy phase of the case.

As the Ninth Circuit has said, we have to look at whether or not these applicants'

interests are divergent from the federal defendants, and they're not. As we put forth in our briefing, they're relying on many matters and, in fact, their interests are so aligned that perhaps that's a reason why we're here today --

THE COURT: Well, in essence what you seem to be advocating -- and correct me if I'm wrong -- is that if this case moves past the motion to dismiss phase and into a trial on the merits of the claims, you would want to bifurcate the trial at that stage into a liability phase, and then after that's concluded, a remedy phase, not let the intervenors participate at the first stage, but allow them to participate at the second stage.

And the context of this is since you are seeking equitable relief, this would be a Court trial. There would be no jury. So I'm wondering what you view as the benefit of a bifurcation of the case. Would not the two phases sort of blend together or am I missing something?

MR. GREGORY: Certainly, Your Honor. And I appreciate that question. And yes, we believe that it's -- it would be appropriate to bifurcate into a liability and a remedies phase, and we agree with the Court that this would be a court trial or a

bench trial because we are seeking equitable relief.

The issue then becomes whether or not in the initial phase of this case -- whether the applicants would offer any necessary elements to the proceeding that the other parties would neglect. And that's the Northwest Forest Resources Council case. And the applicants haven't suggested anything at the liability stage, any additional arguments, any additional facts they would introduce about the federal defendants and the federal defendants relationship with these plaintiffs that the federal defendants are not capable of making.

The only differences they appear to offer are that there would be differences in strategy. But again, in the Northwest Forest Resources Council case as well as the U.S. versus City of Los Angeles case, the Ninth Circuit said that differences in strategy are not enough to justify intervention as a matter of right.

The defendants -- I'm sorry -- the applicants in their argument just said that they -- they're not aligned on how an injunction would proceed nor are they aligned on regulations, and they suggested that the federal defendants may not adequately represent them. But none of those

points, none of those differences overcome the presumption that the federal defendants will adequately represent the interest of applicants as it will represent the interests of the public.

In fact, if these applicants come in by way of intervenors, it's very possible other entities will suggest they should be before this court as well. And that was -- and that's a huge concern from a case management standpoint.

THE COURT: Well, I'm familiar with case management issues. In a lot of ways this particular case before me now reminds of an analogous case that was filed back in the year 2001 that I did a lot of work on, and that case was -- the lead plaintiff was Stephen Kandra, K-a-n-d-r-a. The defendant was as here, the United States of America, the Secretary of the Interior.

The complaint was filed on behalf of the plaintiff who is a farmer in the Klamath Basin as well as some irrigation districts in that area and the Klamath Water Users Association against the government because of its management of the Klamath water project which allocated water use among quite a few different stakeholders -- agriculture, Native American who fished the Klamath, other fisheries in

the Klamath, many irrigation districts, and counties who were dependent upon agriculture for a lot of their revenue.

And so after that case was filed there were numerous intervenors that were allowed to come into the case at the very beginning stage of the case, and the case -- it was complicated to manage, but we managed it. And there were a lot of different stakeholders, each of whom wanted to be heard in terms of the case.

And similarly to here, some of those stakeholders did not feel that the government adequately represented their interests because to the extent that water was used for the fisheries, it wasn't used by agriculture, and vice versa. And the government was the one that was managing the water. So here it seems to me that to the extent that the government were to agree with the plaintiffs that emissions had to be curtailed, that's a position that the intervenors would not agree with. And so to that extent the intervenors are saying, it seems to me accurately enough, that the government wouldn't represent their interests under that scenario.

And while that may take place at the

remedy phase that you're seeking to bifurcate this case into the two phases, the liability and the remedy, there may also be the same situation presented in the liability phase regarding the science involved in these emissions, and to what extent they do harm, what's the extent of that harm. And the government may not be aligned with the intervenors on that issue as well, and that's at the liability phase.

Do you disagree with that?

MR. GREGORY: Your Honor, I disagree with the idea that the intervenors at the liability -- I'll call it the last part of what the Court suggested, that the intervenors have a protectable interest in making -- the Court determines that the -- is considering the issue of whether or not the plaintiffs' constitutional and public trust rights have been violated by the federal defendants, that the intervenors have an interest in determining whether or not that violation has occurred.

That would be in my mind the liability phase. Once the Court has determined that violation, then how do we remedy it would be the second phase of the case. And that's where, I

think, for example, this Court's example of its decision -- the case was -- I'm going to call it -- that case presents the case management issues about how to affect the water or the -- for purposes of the injunction --

THE COURT: Well, I don't want to get ahead of myself or anything, but I have questions that are popping up in my mind when I listen to your argument.

I haven't been living in a cave in the last ten years, and so I'm aware that there are people out there that deny that climate change is happening. And so I assume that at the liability phase of the case, assuming that you get past the motion to dismiss, is that that sort of science would come into play and there would be evidence produced about what the effect is of these growing CO2 emissions.

And so when you say that they have no -- the intervenors have no difference in terms of what the government's position would be and so have no stake in that part of the case as to whether your clients' rights were being violated by the government, I'm just wondering, well, if there is no climate change taking place, if that's their

position, isn't that something that is addressed to whether your clients' rights are being violated?

And so when you say that they should not be heard on that, if the government is not aligned with their interests, I would think they would want to be heard on that issue. And I also am having trouble seeing what the advantage would be about a bifurcated case in terms of a court trial where you're asking for equitable relief.

So maybe it would be best to have all the interested parties being able to be heard in a court of law on these issues and produce their evidence in a trial form.

Would you agree or not?

MR. GREGORY: Well, Your Honor, I think -- and I agree with Your Honor that if the Court didn't bifurcate this case and was hearing both the liability and the remedy phase, then the Court would want to hear from entities such as the the intervenors, because if the Court's going to entertain everything all at once on a -- we'll call it a motion for preliminary injunction against the United States as the -- as was done in the Canber (phonetic) case, for example, then candidly, I would agree with Your Honor, that we would -- you would

want entities such as these intervenors before the Court in one trial.

THE COURT: Okay.

MR. GREGORY: But if the Court is going to bifurcate and entertain plaintiffs' case in a liability versus -- Stage 1 and remedy at Stage 2, then I think the -- the proposed intervenors haven't offered this Court anything, in their briefing at least, that they would offer at the liability phase, that their focus is on the remedy phase.

THE COURT: All right. Okay. Thank you for your presentation. I think I've, you know, heard your presentation adequately, along with the briefing.

So, Mr. Sorenson, do you have anything else to add?

MR. SORENSON: I do. Thank you very much, Your Honor.

I heard from Mr. Gregory's presentation, I believe, that the Rule 24(a) requirements have in fact been satisfied as to the entire action in this case, that is, if you consider the complaint, interests involved of the intervenors, and the impact and the representation of the government, Rule 24 has been satisfied and,

therefore, intervention should be allowed as of right under that rule.

What I've heard from him, I believe as was also indicated in his papers, was that the demarcation between the liability and remedy phases of the case is somehow so significant here and somehow so distinguishes the interests and impact involved that intervention should be denied even though it is permitted as of the rule and under Ninth Circuit law at the liability stage or perhaps just at the motion to dismiss stage, and I believe that argument is really resting on an illusion.

As Your Honor's question suggested, the unique position, the unique spiritence (phonetic) of the intervenors is -- not only provides them with a different point of view than the government but different interests fundamentally. They are subject to the regulations that plaintiff's seek.

The government has been promulgating the regulations to which the intervenors are exposed and, therefore, it goes without saying, I should think, that the government and the intervenors have different viewpoints including at the liability stage and, that is, with respect to whether

greenhouse gas emissions should be regulated to the extent the government thinks or whether they should go farther and be regulated to the extraordinary amounts that the plaintiffs would have it.

And I would remind the Court as well, as it knows already, that the question here is not whether the representation will be different at each stage or necessarily will produce divergent viewpoints at each stage, but whether it may be different and whether the interest of the intervenors may be affected.

And it strikes me that a liability determination in this case will not only -- not only may affect the intervenors' interests directly, but in fact will affect those interests. And I say that for two reasons, one, as framed in the complaint, the finding of liability in this case will necessarily lead to a remedy of the sort that has been proposed by the plaintiffs, and that is how this case must be assessed at this stage for intervention purposes, that is, if this Court were to find that the plaintiffs' claims were sufficient to state a claim and then go further and find that relief should be warranted, then in that circumstance, they would be entitled to some form of

relief that would necessarily impact the associations and their members and, therefore, the liability phase impacts as much as the remedy phase in certain aspects.

And also, the liability determination would have direct effects otherwise on the organizations and their members in the sense that a finding that the United States was liable to plaintiffs would mean -- would necessarily implicate a holding that the United States had acted improperly in permitting the members for their greenhouse gas emissions and fossil fuel production, thereby exposing all of the permits that have been granted to the associations' members potentially to challenge.

And it would actually preclude these associations from challenging that determination potentially in future litigation and indeed even in this very case. So if a liability determination was made without the intervenors at a later stage, they would be precluded potentially from raising the same arguments they would like to make now and which may not be raised by the United States due to its very different interests.

THE COURT: Okay.

MR. SORENSON: I would note also -- oh, sorry. Go ahead.

THE COURT: No. Okay. Thank you. I think I'm -- I've heard adequately from both parties.

I'm going to allow the motion to intervene. I see no judicial economy in bifurcating these proceedings into a liability phase and a remedies phase, and I think that the intervenors have demonstrated a sufficient interest in being parties in the case, so I'm going to grant the motion to intervene.

And we will follow this up with a written order, but I just wanted to give you the benefit of what my ruling is, so that we can plan going forward.

So we need to set a schedule then. The plaintiffs need to file a response to the intervenor's motion to dismiss. I think that's due by February the 2nd. Do you need a extension on that or can you file your response by then? You don't need to duplicate --

MR. GREGORY: We can file a response by then, Your Honor.

THE COURT: Yeah. And I wanted to

say, you don't need to duplicate your arguments that you made in your response to the government's motion. I think there's only one argument that the intervenors make that the government didn't, and that's the political question argument. So as far as the other issues, you can just incorporate by reference your response to the government's motion to dismiss.

So then we have a reply due after that in the normal course. And we can set -- I think the oral argument on the motion to dismiss should not be by telephone but in person. So if you have your calendars, the proposed date for that -- my courtroom deputy gave me a date of March the 9th, at 10:00 a.m. Will that work for everyone?

MR. GREGORY: Your Honor, this is Philip Gregory for the plaintiff. Is it possible to move it to the following week?

THE COURT: We'll take a look.

MR. SORENSON: Your Honor, this is Quin Sorenson. That, I believe, works for us, the intervenors at least.

MS. OLSON: Your Honor, this is Julia Olson. So we just got word that a couple of the plaintiffs are unavailable that following week, so

perhaps the 9th is better if it works for your calendar.

MR. GREGORY: Works for mine. Works great.

THE COURT: The 9th works for the Court.

MS. OLSON: Okay. The plaintiffs can do March 9th.

THE COURT: And the intervenors can do March 9th?

MS. ECKERT: Yes, Your Honor, both local and outside counsel, that date works, the March 9th at 10:00 a.m.

THE COURT: And the government?

MR. DUFFY: Yes. That works for us as well.

THE COURT: All right. We'll see you March 9th at 10:00 a.m. That's Courtroom 4 here at the federal courthouse in Eugene.

Thank you for your submissions.

MR. GREGORY: Thank you, Your Honor.

MS. ECKERT: Thank you.

THE COURT: It's very interesting.

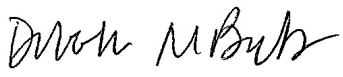
MR. SORENSON: Thank you.

(The proceedings were concluded at 2:51 p.m.)

STATE OF OREGON)
) ss.
County of Lane)

I, Deborah M. Bonds, CSR-RPR, a Certified Shorthand Reporter for the State of Oregon, do hereby certify that at the time and place set forth in the caption, I reported all testimony and other oral proceedings in the foregoing matter; that the foregoing transcript consisting of 38 pages contains a full, true and correct transcript of the proceedings reported by me to the best of my ability on said date.

IN WITNESS WHEREOF, I have set my hand and CSR seal this 18th day of January 2016, in the City of Eugene, County of Lane, State of Oregon.



Deborah M. Bonds, CSR-RPR
CSR No. 01-0374
Expires March 31, 2015