

FILED

JUN - 8 2016

FRESNO COUNTY SUPERIOR COURT
By _____ DEPUTY

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

SUPERIOR COURT OF CALIFORNIA, COUNTY OF FRESNO

MONSANTO COMPANY,)	No. 16 CE CG 00183
)	
Petitioner/Plaintiff,)	Dept. 404
)	
vs.)	
)	
OFFICE OF ENVIRONMENTAL HEALTH)	ORDER AFTER HEARING
HAZARD ASSESSMENT, <i>et al.</i>)	
)	
Respondents/Defendants.)	
)	

On April 27, 2016 at 8:30 a.m., the parties appeared for the hearing in Department 404 of the Fresno Superior Court, Judge Lisa M.Gamoian presiding, on the motions of proposed interveners Center for Food Safety ("CFS") and the Sierra Club, Natural Resources Defense Council, Environmental Law Foundation and United Steel, Paper, Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO, CLC ("the Sierra Club Group") for leave to file their complaints-in-intervention. Trenton Norris and James Betts appeared on behalf of plaintiff/petitioner Monsanto Company. Laura Zuckerman appeared on behalf of defendant/respondent Office of Environmental Health Hazard Assessment. Selena Kyle and Joshua Purtle appeared on

1 behalf of proposed intervenor the Sierra Club Group. Adam Keats
2 and Sylvia Wu appeared on behalf of proposed intervener CFS.

3 After hearing oral argument, the court took the matter under
4 submission. The court now takes the matter out from under
5 submission and issues its order granting the motions to file the
6 complaints/answers-in-intervention of CFS and the Sierra Club
7 Group.

8 **Sierra Club Group's Motion**

9 The court finds that the Sierra Club Group has met the
10 requirements for mandatory intervention under Code of Civil
11 Procedure section 387, subdivision (b).

12 Under section 387, subdivision (b), "...if the person seeking
13 intervention claims an interest relating to the property or
14 transaction which is the subject of the action and that person is
15 so situated that the disposition of the action may as a practical
16 matter impair or impede that person's ability to protect that
17 interest, unless that person's interest is adequately represented
18 by existing parties, the court shall, upon timely application,
19 permit that person to intervene." (Code Civ. Proc., § 387, subd.
20 (b).)

21 "[C]ourts have recognized California Code of Civil Procedure
22 section 387 should be liberally construed in favor of
23 intervention." (*Lincoln National Life Ins. Co. v. State Bd. of*
24 *Equalization* (1994) 30 Cal.App.4th 1411, 1423, internal citation
25 omitted.) "The purposes of intervention are to protect the
26 interests of others who may be affected by the judgment and to
27 obviate delay and multiplicity of actions. Granting or denying
28 leave to intervene is in the discretion of the trial court."

1 (*People ex rel. Rominger v. County of Trinity* (1983) 147
2 Cal.App.3d 655, 660, internal citations omitted.)

3 "In determining whether an unconditional right to intervene
4 exists under section 387, subdivision (b), the threshold question
5 is whether the person seeking intervention has 'an interest
6 relating to the property or transaction which is the subject of
7 the action.'" (*Siena Court Homeowners Ass'n v. Green Valley Corp.*
8 (2008) 164 Cal.App.4th 1416, 1423-1424, internal citations
9 omitted.)

10 "In addition to demonstrating an interest in the property or
11 transaction that is the subject of the action, a person seeking
12 intervention must also show that he or she 'is so situated that
13 the disposition of the action may as a practical matter impair or
14 impede that person's ability to protect that interest.' Once this
15 showing is made, the court must permit the person to intervene
16 unless the 'person's interest is adequately represented by
17 existing parties.'" (*Ibid*, internal citations omitted.)

18 Also, since California's mandatory intervention statute is
19 effectively the same as Federal Rule of Civil Procedure 24(a),
20 California courts have followed federal case law regarding the
21 standards for mandatory intervention under section 387,
22 subdivision (b). (*Siena Court*, *supra*, at 1423.)

23 "Federal Rule of Civil Procedure 24(a) establishes four
24 requirements for intervention as of right: 'timeliness; an
25 interest relating to the subject of the action; practical
26 impairment of the party's ability to protect that interest; and
27 inadequate representation by the parties to the suit.' The rule is
28 construed broadly in favor of the applicants." (*Idaho Farm Bureau*

1 *Federation v. Babbitt* (9th Cir. 1995) 58 F.3d 1392, 1397, internal
2 citations omitted.)

3 Here, the Sierra Club has met all of the requirements for
4 mandatory intervention. Its application is timely, since it was
5 filed near the outset for the action. Indeed, Monsanto concedes
6 that the application is timely.

7 Also, the Sierra Club has an interest in the outcome of the
8 action, since it has vigorously advocated and litigated in favor
9 of the Labor Code listing mechanism that Monsanto now seeks to
10 challenge the present case. "A public interest group is entitled
11 as a matter of right to intervene in an action challenging the
12 legality of a measure it has supported." (*Idaho Farm Bureau*
13 *Federation v. Babbitt, supra*, 58 F.3d at 1397, internal citations
14 omitted.) Indeed, the Sierra Club was the lead plaintiff in a
15 prior action that resulted in a judgment compelling the OEHHA to
16 adopt the very listing mechanism that is now at issue in the
17 present case. Thus, the Sierra Club clearly has a direct interest
18 in the outcome of the litigation, since if Monsanto is successful
19 in its present claims, it will result in overturning the listing
20 mechanism. This will not only affect the listing of glyphosate,
21 but also potentially dozens of other chemicals and substances that
22 might otherwise be listed under the Labor Code mechanism.

23 Monsanto argues that California courts have not adopted the
24 federal approach of finding a party has a direct interest in a
25 case just because that party just because the party supported the
26 same statute in the past. However, California courts have closely
27 followed federal precedents regarding mandatory intervention.
28 (*Siena Court, supra*, at 1423.) The case relied upon by Monsanto,

1 Rominger, supra, 147 Cal.App.3d 655, dealt with the issue of
2 whether a putative intervener should be granted permissive, not
3 mandatory intervention, so that case is not relevant to the issue
4 of mandatory intervention here. (Id. at 662.) Since the Sierra
5 Club has advocated for the regulation that Monsanto seeks to
6 challenge here, and was indeed instrumental in the regulation's
7 adoption and enforcement, the Sierra Club clearly has a direct
8 interest in the outcome of the action seeking to overturn the
9 regulation as unconstitutional.

10 Likewise, the Sierra Club's ability to defend its interest
11 would be practically impaired if Monsanto prevails on its claims,
12 since the regulation would be overturned and would become
13 unenforceable. While Monsanto argues that the present case only
14 concerns the narrow issue of whether glyphosate is listed under
15 the Labor Code mechanism or not, this contention is somewhat
16 misleading. Clearly, if the court finds that the mechanism is
17 unconstitutional, it will not only prevent use of the regulation
18 to list glyphosate, but also any other substances that may be
19 listed by the IARC as potentially carcinogenic. Again, this would
20 undo all of the Sierra Club's efforts in the past to compel the
21 OEHHA to use the listing mechanism to list cancer-causing
22 substances under Proposition 65. Thus, the Sierra Club's ability
23 to protect its interest would be practically impaired if it is not
24 allowed to intervene.

25 Finally, it does not appear that the Sierra Club's interests
26 will be adequately represented by the OEHHA, and thus the Sierra
27 Club must be allowed to intervene. "[T]he requirement of
28 inadequacy of representation is satisfied if the applicant shows

1 that representation of its interests 'may be' inadequate and that
2 the burden of making this showing is minimal." (Sagebrush
3 Rebellion, Inc. v. Watt (9th Cir. 1983) 713 F.2d 525, 528,
4 internal citations omitted.)

5 Here, the Sierra Club may not be adequately represented by
6 the OEHHA, since they have been adversaries in past litigation
7 regarding the same regulation at issue here, and in fact the
8 Sierra Club had to sue the OEHHA to force it to use the listing
9 mechanism that Monsanto now seeks to challenge. While the OEHHA
10 now has agreed to enforce the listing mechanism, it may later
11 decide to settle the present action with Monsanto and allow the
12 listing mechanism to be declared unenforceable and
13 unconstitutional. The Sierra Club has shown that it has a history
14 of advocating vigorously for a broader interpretation of the
15 regulation and listings under Proposition 65, whereas the OEHHA
16 has not always advocated a broad interpretation of the
17 requirements of Proposition 65.

18 Therefore, the court finds that the Sierra Club is entitled
19 to intervene as a matter of right under section 387, subdivision
20 (b). Consequently, there is no need to rule on the Sierra Club's
21 motion for permissive intervention.

22 **Center for Food Safety's Motion**

23 CFS moves for permissive intervention under section 387,
24 subdivision (a). Since CFS has met all of the requirements for
25 permissive intervention, the court will allow it to intervene and
26 file its answer-in-intervention.

27 In ruling on a motion for permissive intervention, "First,
28 the intervener's interest in the outcome of the litigation must be

1 direct and immediate rather than consequential. Specifically, the
2 interest in the litigation 'must be ... of such a direct and
3 immediate character that the intervener will either gain or lose
4 by the direct legal operation and effect of the judgment.' An
5 interest is insufficient for intervention 'when the action in
6 which intervention is sought does not directly affect it although
7 the results of the action may indirectly benefit or harm its
8 owner.' Second, the interveners may not enlarge the issues so as
9 to litigate matters not raised by the original parties. Finally,
10 intervention must be denied if the reasons therefor 'are
11 outweighed by the rights of the original parties to conduct their
12 lawsuit on their own terms.'" (*People ex rel. Rominger v. County*
13 *of Trinity, supra*, 147 Cal.App.3d at 660-661, internal citations
14 omitted.)

15 "Assuming the proper procedures have been followed, the
16 threshold question under section 387, subdivision (a) is whether
17 the party seeking discretionary intervention has a direct and
18 immediate interest in the action. 'The requirement of a direct
19 and immediate interest means that the interest must be of such a
20 direct and immediate nature that the moving party "'will either
21 gain or lose by the direct legal operation and effect of the
22 judgment.'"' 'Conversely, "An interest is consequential and thus
23 insufficient for intervention when the action in which
24 intervention is sought does not directly affect it although the
25 results of the action may indirectly benefit or harm its owner.'"
26 (*Siena Court Homeowners Ass'n v. Green Valley Corp., supra*, 164
27 Cal.App.4th at 1428, internal citations omitted.)

28

1 Here, the OEHHA and Monsanto concede that CFS has a direct
2 and immediate interest in the outcome of the case, so this factor
3 is not at issue. (Monsanto's Opposition, pp. 8-9.) Also, there
4 is no question that CFS has filed its motion in a timely manner,
5 since CFS filed its motion within two months of the filing of the
6 petition and complaint. Therefore, CFS has followed the correct
7 procedure in bringing its motion.

8 However, Monsanto argues that allowing CFS to intervene will
9 expand the issues of the case and cause excessive burden on the
10 other parties and the court. (Code Civ. Proc. § 387, subd. (a).)
11 Monsanto points out that CFS has submitted declarations regarding
12 the possible environmental and health effects of glyphosate, which
13 is not the issue raised by the petition and complaint. Monsanto
14 also notes that CFS has made allegations in its proposed
15 complaint-in-intervention that are completely irrelevant to the
16 issue of whether the regulation in dispute is constitutional,
17 which is the only issue raised by Monsanto's petition. Thus,
18 Monsanto contends that CFS is impermissibly attempting to expand
19 the issues of the case beyond the issues actually raised by the
20 petition and complaint.

21 However, while CFS has presented declarations and made
22 allegations regarding the alleged health and environmental effects
23 of glyphosate, these declarations and allegations do not
24 necessarily show that CFS has attempted to expand the issues of
25 the case. CFS's proposed complaint/answer-in-intervention only
26 seeks to respond to the allegations of the petition and complaint,
27 not to add any new claims or issues. The initial allegations of
28 the complaint-in-intervention appear to be added simply to show

1 that CFS has an interest in the litigation, which is necessary to
2 show standing to intervene.

3 In *Rominger, supra*, 147 Cal.App.3d 655, the respondent made
4 similar arguments against allowing the Sierra Club to intervene in
5 the action, claiming that the Sierra Club's allegations regarding
6 the adverse effects of pesticides were an attempt to enlarge the
7 scope of the litigation. (*Id.* at 664.) However, the Court of
8 Appeal rejected this contention. (*Ibid.*) "The Sierra Club does
9 not make assertions as to the adverse effects of pesticides for
10 the purpose of introducing new issues for litigation, but only for
11 the purpose of establishing its interest in the litigation. In
12 its complaint in intervention, the Sierra Club raises no new legal
13 or factual issues to be decided by the trial court." (*Id.* at 664-
14 665.)

15 Likewise, here CFS has made allegations regarding the alleged
16 effects of glyphosate to show its interest in the litigation, not
17 to add new legal or factual issues to the action. Also, Monsanto
18 has made extensive allegations of its own regarding the alleged
19 lack of carcinogenic effects of glyphosate, so CFS has a right to
20 respond to these allegations. Therefore, the court finds that
21 these allegations and claims will not unduly expand the issues of
22 the case.

23 Monsanto also argues that CFS's request for attorney's fees
24 would unduly expand the scope of the litigation. However,
25 Monsanto's contention is without merit. First of all, both
26 Monsanto and the OEHHA have already requested an award of
27 attorney's fees in their pleadings, so this issue has been raised
28 by one of the parties already. Allowing CFS to seek attorney's

1 fees would not expand the issues in the case because the issue is
2 already pending before the court.

3 Also, merely adding a request for attorney's fees to the
4 complaint-in-intervention is not enough, by itself, to show that
5 the putative intervener is seeking to expand the issues of the
6 case. The mere fact that Monsanto may have to pay a fee award is
7 not the type of interest that would justify denying intervention.
8 (*Lindelli v. Town of San Anselmo* (2006) 139 Cal.App.4th 1499,
9 1512.) The issue of attorney's fees will not even be litigated
10 until the merits of the petition have been resolved, and perhaps
11 not even then. It would be premature for the court to find that
12 the mere fact that interveners are seeking fees in their
13 complaints means that they are expanding the issues of the case.

14 Finally, while Monsanto claims that CFS's interest in
15 intervening does not outweigh Monsanto's objections, Monsanto
16 offers no argument, authorities, or evidence to show that it would
17 suffer any prejudice from the intervention. Therefore, Monsanto
18 has waived this contention. (*People v. Bryant* (2014) 60 Cal.4th
19 335, 419.)

20 ///

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Disposition

The court hereby grants the motions to intervene of both CFS and the Sierra Club. However, the court notes that its order granting leave to intervene is not to be construed as permitting the interveners to expand the scope of the issues raised by the petition and complaint.

It is so ordered.

DATED this 8th day of June, 2016.



Hon. Lisa M. Gamoian
Judge of the Superior Court

SUPERIOR COURT OF CALIFORNIA - COUNTY OF FRESNO Civil Department, Central Division 1130 "O" Street Fresno, California 93724-0002 (559) 457-2000	<i>FOR COURT USE ONLY</i>
TITLE OF CASE: Monsanto Company vs. Office of Environmental Health Hazard Assessment	
CLERK'S CERTIFICATE OF MAILING	CASE NUMBER: 16CECG00183

I certify that I am not a party to this cause and that a true copy of the:

Order After Hearing

was placed in a sealed envelope and placed for collection and mailing on the date and at the place shown below following our ordinary business practice. I am readily familiar with this court's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service with postage fully prepaid.

Place of mailing: **Fresno, California 93724-0002**

On Date: **06/08/2016**

Clerk, by _____,



Deputy

A. Erevia

Trenton H Norris
 Arnold & Porter LLP
 Three Embarcadero Center, 10th Floor
 San Francisco, CA 94111

Adam Keats
 Center For Food Safety
 303 Sacramento Street
 2nd floor
 San Francisco, CA 94111

Selena Kyle
 Natural Resources Defense Council
 20 N. Wacker Drive
 Suite 1600
 Chicago, IL 60606

Stephen P. Berzon
 Altshuler Berzon, et al
 177 Post St. #300
 San Francisco, CA 94108

Laura J Zuckerman
 Deputy Attorney General
 1515 Clay Street, 20th Floor
 P.O. Box 70550
 Oakland, CA 94612

Clerk's Certificate of Mailing Additional Address Page Attached