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Nick Feinstein
Boston College Law School, nicholas.feinstein@bc.edu

THE QUESTION OF ADEQUATE REPRESENTATION IN THE *TYSON* COURT'S DENIAL OF INTERVENTION

Nick Feinstein*

Abstract: In 2005, the State of Oklahoma (State) brought a suit against Tyson Foods, Inc. for the improper disposal of poultry waste in the Illinois River Watershed (IRW). Approximately four years later, the Cherokee Nation (Nation) asserted its interests in the IRW and its right to intervene under Rule 24 of the Federal Rules of Civil Procedure. The district court found that the Nation had delayed too long and denied the motion as untimely. On appeal, this decision was upheld based on the fact that the Nation could never have reasonably believed that it was being adequately represented by the State. This Comment argues that the Nation's belief that it was adequately represented was in fact reasonable.

Introduction

In recent years, poultry consumption in the United States has grown steadily, surpassing pork and beef.[1] In 2006, Americans consumed eighty-seven pounds of chicken per capita.[2] To meet this demand, large-scale poultry producers have expanded the size of their operations, but not without increasing risk to the environment.[3] The large excesses of waste generated by poultry farms can leak phosphorous and other pollutants that threaten nearby streams and rivers.[4] Because poultry production is highly concentrated in specific geographic regions, the problem of waste is exacerbated in certain areas.[5]

One region of heavy poultry production is the Illinois River Watershed (IRW), an area that spans the border of Oklahoma and Arkansas.[6]

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[1] James M. MacDonald, U.S. Dep't of Agric., Econ. Research Serv., The Economic Organization of U.S. Broiler Production, at iii (2008), *available at* http://www.ers.usda.gov/publications/eib38/eib38.pdf.

[2] *Id.*

[3] *Id.*

[4] *See id.*

[5] *See id.*

[6] *See* U.S. Dep't of Agric., Nat'l Agric. Statistics Serv., 02-M171, Number of Broilers and Other Meat-Type Chickens Sold (2002), *available at* http://www.agcensus.

Large-scale farms in and around the IRW provide about two percent of poultry in the United States.[7] According to some, however, supplying the country's poultry needs comes at the expense of the local environment.[8] Environmentalists claim that the common practice of reusing poultry waste as fertilizer has transformed the IRW into a "murky, sludgy mess."[9] In 2005, the problem prompted the State of Oklahoma (State) to sue the largest poultry producers in the area, seeking damages and an injunction to stop further pollution of the IRW.[10]

On June 13, 2005, the State sued Tyson Foods, Inc. in the United States District Court for the Northern District of Oklahoma alleging "injury to the lands, waters, and biota of the IRW," as a result of improper disposal of poultry waste.[11] In July of 2009, however, the court dismissed the State's claims for monetary damages, finding that the Cherokee Nation (Nation) was a required party under Rule 19 of the Federal Rules of Civil Procedure.[12] In an attempt to restore damage claims to the case, the Nation filed a motion to intervene on September 2, 2009, only nineteen days before the trial's scheduled start date.[13] The district court denied the motion as untimely and the trial proceeded only on the State's claims for injunctive relief.[14]

In *Oklahoma ex rel. Edmondson v. Tyson Foods, Inc.* the United States Court of Appeals for the Tenth Circuit upheld the lower court's denial, finding that the Nation's failure to intervene in the four years since the initial complaint constituted an undue delay.[15] The court measured the length of the delay from the time that the Nation was aware of the litigation *and* on notice that its interests were not being adequately represented by the State.[16] The court decided that the Nation could not have believed that its interests were being represented because it was not

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usda.gov/Publications/2002/Ag_Atlas_Maps/Livestock_and_Animals/pdf/02-M171-RGBDot1-largetext.pdf.

[7] Justin Juozapavicius, *Okla. Fight over Poultry Waste Escalates*, Seattle Times, Mar. 3, 2008, http://seattletimes.nwsource.com/html/businesstechnology/2004255478_appoultrylitterfight.html.

[8] *See id.*

[9] *Id.*

[10] Oklahoma *ex rel.* Edmondson v. Tyson Foods, Inc., 619 F.3d 1223, 1226 (10th Cir. 2010).

[11] *Id.*

[12] *Id.* at 1229.

[13] *Id.* at 1229–30.

[14] *Id.* at 1231.

[15] *Id.* at 1232.

[16] *Tyson*, 619 F.3d at 1232.

mentioned in the State's complaint.[17] Therefore, there was no valid reason for the Nation to wait until just days before trial to file its motion to intervene.[18]

The dissenting opinion in *Tyson* espoused a broader view.[19] It argued that the State and Nation were both bringing CERCLA claims as trustees for the same natural resources and thus had the same ultimate objectives.[20] Thus, the Nation could have reasonably believed that the State was representing its interests until July 22, 2009, when the district court determined that the Nation was a required party.[21]

This Comment argues that the dissent's assertion is correct; the majority's exceedingly narrow approach ignores the common purpose for which the State and the Nation both sought damages: to restore and protect the natural resources of the IRW.[22] By disregarding the Nation's reasonable belief, the court deprived both parties of their most convenient opportunity to recover damages.[23] Although the decision's impact may not prove to be far reaching, it is a setback for the rehabilitation of the IRW.

I. Facts and Procedural History

The IRW, which covers approximately one million acres in Oklahoma and Arkansas, is host to a number of large-scale poultry producers, including Tyson and farmers with which it contracts to grow poultry.[24] Every year, thousands of tons of waste are generated by the poultry farming industry in the IRW.[25] Both the State and the Nation claim ownership in these lands.[26]

The State's initial complaint was filed in the United States District Court for the Northern District of Oklahoma on June 13, 2005 and included nine causes of action, including two claims under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) seeking recovery costs for past and future damages to the

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[17] *Id.* at 1233–34.

[18] *See id.* at 1235.

[19] *Id.* at 1240 (Tacha, J., dissenting).

[20] *See id.* at 1241.

[21] *Tyson*, 619 F.3d at 1241 (Tacha, J., dissenting).

[22] *Id.* at 1240.

[23] *See id.* at 1242.

[24] Oklahoma *ex rel.* Edmondson v. Tyson Foods, Inc., 619 F.3d 1223, 1225 (10th Cir. 2010).

[25] *Id.*

[26] *Id.*

IRW.[27] It also sought damages and injunctive relief for claims of nuisance, trespass, and unjust enrichment.[28] Finally, the complaint sought an injunction and civil penalties based on Oklahoma state law.[29]

The Nation was not named as a party in the lawsuit, but demonstrated its concern and awareness of the issue as early as March 2005, before the claim was filed.[30] Thus, the Nation maintained communication with the State and Tyson regarding the lawsuit but did not become officially involved.[31] Among other concerns, the Nation hoped to avoid testing the validity of its interests in land and natural resources in the IRW.[32]

Over two years into the litigation, the district court issued a scheduling order setting the trial for September of 2009.[33] On October 31, 2008, Tyson filed a Rule 19 motion to dismiss for failure to join a required party, based on documents revealed in discovery showing a potential conflict between the State's and Nation's interests in the IRW.[34] Tyson asserted that the Nation's ownership claims over the IRW made it a required party, and that the case should be dismissed to avoid subjecting Tyson to duplicative or inconsistent judgments.[35] While this motion was pending, the Nation entered into an agreement with the Attorney General of Oklahoma, authorizing the State to prosecute claims relating to the Tyson case on behalf of the Nation.[36]

On July 22, 2009, the district court granted Tyson's motion in part, dismissing all of the State's damages claims.[37] It found that the Nation was a required party and that the agreement was not valid; therefore it could not proceed with the State's damages claims without risking dou-

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[27] *Id.* at 1225–26.

[28] *Id.* at 1227.

[29] *Id.*

[30] *Tyson*, 619 F.3d at 1227.

[31] *Id.*

[32] *Id.* The Nation's Principal Chief stated that the Nation's water rights in the IRW predated the existence of the United States, but the Nation did not wish to test the extent of these rights in court. *See id.* at 1227–28.

[33] *Id.* at 1228. An order on November 15, 2007 set discovery to be completed on March 2, 2009 with trial to begin September of the same year; an order on April 24, 2009 set the specific trial date for September 21, 2009. *Id.*

[34] *Id.* at 1228; *see* FED. R. CIV. P. 19.

[35] *Tyson*, 619 F.3d at 1228; *see* FED. R. CIV. P. 19(a)(1) (defining a required party); FED. R. CIV. P. 19(b) (allowing dismissal when joining a required party is not feasible). The Nation could not be joined involuntarily due to tribal sovereign immunity. *Tyson*, 619 F.3d at 1228.

[36] *Tyson*, 619 F.3d at 1229.

[37] *Id.*

ble recovery or infringing on the Nation's own right to seek damages.[38] The court also decided that the State did not have standing to seek recovery for damages to the Nation's interests in the IRW.[39] The State's claims for injunctive relief survived the motion.[40]

On September 2, 2009, the Nation filed a motion to intervene, bringing claims under CERCLA and federal nuisance law.[41] The Nation sought damages and injunctive relief based on its own interests in the IRW.[42] Anticipating that its own damages claims could be revived, the State filed a motion to postpone the upcoming trial date for 120 days and a response in support of the Nation's intervention.[43] Tyson opposed the motion to intervene, claiming that it was untimely and that joining the Nation would cause excessive inconvenience by requiring additional discovery and litigation of a multitude of new issues.[44] The State and the Nation both asserted that before the court's Rule 19 decision, the Nation believed that its interests were being protected by the State, and the motion was therefore timely.[45]

The district court denied the motion to intervene, stating that permitting the Nation to join would prejudice the original parties, and that the Nation was free to raise claims against Tyson separately.[46] On appeal, the Court of Appeals affirmed the lower court's denial of the Nation's motion to intervene.[47]

II. Legal Background

Denial of a motion to intervene is "subject to immediate review if it prevents the applicant from becoming a party to an action."[48] The Court of Appeals thus had jurisdiction over the ruling on timeliness.[49] Normally, such rulings are reviewed under the abuse-of-discretion stan-

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[38] *Id.*
[39] *Id.*
[40] *See id.*
[41] *Id.* at 1229–30.
[42] *Tyson*, 619 F.3d at 1230.
[43] *Id.*
[44] *Id.*
[45] *Id.*
[46] *Id.* at 1231.
[47] *Id.* at 1226.
[48] Coal. of Ariz./N.M. Cntys. for Stable Econ. Growth v. Dep't of Interior, 100 F.3d 837, 839 (10th Cir. 1996).
[49] *See* 28 U.S.C. § 1291 (2006).

dard.[50] When a lower court has applied the law improperly, however, de novo review is required.[51]

Rule 19(a), which prompted the district court's dismissal of the State's damages claims, requires parties who claim interests related to an action be joined if the court could not properly resolve the dispute in their absence.[52] Rule 19 is closely related to Rule 24, which gives interested parties the right to intervene; a party that has the right to join under Rule 24 will also be considered a required party under Rule 19.[53]

Rule 24(a) provides that, "[o]n *timely* motion, the court must permit anyone to intervene who" claims an interest subject to the action.[54] Thus, timeliness is a required element for a motion to intervene.[55] The Tenth Circuit has identified a non-exhaustive list of factors in a timeliness determination, "including the length of time since the applicant knew of his interest in the case, prejudice to the existing parties, prejudice to the applicant, and the existence of any unusual circumstances."[56]

Determining the length of time that the Nation delayed before seeking to intervene proved the most contentious issue in *Tyson*. Several circuit courts have held that "[t]he date on which the party seeking intervention became aware of the litigation is by itself not always relevant."[57] Rather, the appropriate measure of the potential intervenor's delay begins only when it becomes aware that its interests are not being represented adequately by the current parties.[58] Thus courts commonly toll the length of the delay from the time when the movant no longer reasonably believed that its interests were being adequately represented.[59]

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[50] *Coalition*, 100 F.3d at 840.

[51] *See, e.g.*, Kretzinger v. First Bank of Waynoka, 103 F.3d 943, 946 (10th Cir. 1996).

[52] Fed. R. Civ. P. 19(a); Oklahoma *ex rel.* Edmondson v. Tyson Foods, Inc., 619 F.3d 1223, 1228 (10th Cir. 2010). Rule 19(b) allows the court to dismiss a case when a required party is not joined.

[53] *See* Fed. R. Civ. P. 24(a); Oneida Indian Nation v. Madison Cnty., 605 F.3d 149, 162 (2d Cir. 2010).

[54] Fed. R. Civ. P. 24(a) (emphasis added). Rule 24(a)(2) also precludes a party from intervening if that party's interests are already being adequately represented. *Id.*

[55] *See Coalition*, 100 F.3d at 840.

[56] Sanguine, Ltd. v. U.S. Dep't of Interior, 736 F.2d 1416, 1418 (10th Cir. 1984). The first factor is the primary focus of this comment.

[57] Legal Aid Soc'y of Alameda Co. v. Dunlop, 618 F.2d 48, 50 (9th Cir. 1980).

[58] *Tyson*, 619 F.3d at 1232 (adopting the test used by other circuits); *see, e.g.*, *Dunlop*, 618 F.2d at 50.

[59] *See, e.g.*, Reich v. ABC/York-Estes Corp., 64 F.3d 316, 322 (7th Cir. 1995) ("[W]e do not expect a party to petition for intervention in instances in which the potential intervenor has no reason to believe its interests are not being properly represented.").

The question of adequate representation under Rule 19 and Rule 24(a)(2) has been a matter of disagreement between circuit courts.[60] The 1966 Amendment Note states that, "[t]he representation whose adequacy comes into question under [Rule 24] is not confined to formal representation."[61] One such situation in which a party's interests are presumed to be protected adequately is when it shares the same final objectives with a party already in the lawsuit.[62]

Because adequate representation may prevent a party from intervening under Rule 24(a)(2), most of the precedent dealing with this congruence of objectives consists of cases in which such representation would preclude otherwise allowable intervention.[63] In *United States v. Hooker Chemicals & Plastics, Corp.*, for example, the Second Circuit Court of Appeals upheld a denial of intervention because the applicants were already adequately represented in the litigation.[64] That case involved environmental groups attempting to intervene in an action brought by the United States against a chemicals and plastics corporation for illegal waste disposal.[65] In reaching its decision, the court recognized a presumption of adequate representation when a potential intervenor shares the interest of a governmental party in litigation.[66]

In similar cases, however, courts have found slightly diverging interests, and therefore a right to intervene.[67] In *Coalition of Arizona/New Mexico Counties for Stable Economic Growth v. Department of Interior*, a wildlife photographer attempted to intervene in an action brought to challenge protection of the Mexican Spotted Owl.[68] The Tenth Circuit Court of Appeals observed that the Department of the Interior was necessarily obligated to serve the broad public interest, while the pho-

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[60] *See* Cindy Vreeland, Comment, *Public Interest Groups, Public Law Litigation, and Federal Rule 24(a)*, 57 U. Chi. L. Rev. 279, 291 (1990).

[61] Fed. R. Civ. P. 24 (1966 amendment note).

[62] Utah Ass'n of Cntys. v. Clinton, 255 F.3d 1246, 1255 (10th Cir. 2001); Bottoms v. Dresser Indus., Inc., 797 F.2d 869, 872 (10th Cir. 1986); *see* City of Stilwell v. Ozarks Rural Elec. Coop. Corp., 79 F.3d 1038, 1042 (10th Cir. 1996) (finding adequate representation when the movant and an existing party had the same objective, even though its "ultimate motivation" differed).

[63] *See, e.g.*, United States v. Hooker Chems. & Plastics Corp., 749 F.2d 968, 968 (2d Cir. 1984).

[64] *Id.*

[65] *Id.* at 969–70.

[66] *Id.* at 985.

[67] *See, e.g.*, *Coalition*, 100 F.3d at 846; Sierra Club v. Espy, 18 F.3d 1202, 1207 (5th Cir. 1994).

[68] 100 F.3d at 839.

tographer's purpose was limited in this instance to the protection of owls.[69] Thus the photographer had the right to intervene.[70]

The dissent in *Tyson* focused primarily on the claims brought by both the State and the Nation under CERCLA.[71] Thus, it is important to understand certain provisions of the statute upon which these claims were based. One purpose of CERCLA is to impose liability for the costs of repairing and preventing environmental harm caused by hazardous waste on the parties who benefit from its disposal.[72] Regarding such recovery, CERCLA states that parties will be liable to the United States or to any state or Indian tribe that controls the affected natural resources.[73] Further, "[t]he President, or the authorized representative of any State, shall act on behalf of the public as trustee of such natural resources to recover for such damages."[74] The same provision provides that damages recovered by a party acting as trustee may only be used "to restore, replace, or acquire the equivalent of such natural resources."[75]

In *United States v. Asarco Inc.*, the court interpreted this provision to mean that recovery under CERCLA "is not for the benefit of a given party, but goes to the trustee as the fiduciary to accomplish the stated goals."[76] In that case, the United States, the State of Idaho, and the Coeur D'Alene Tribe sued mining companies for environmental harms under CERCLA.[77] After Idaho and the Tribe settled with the defendants, the federal government proceeded, but the court stated that the amount of the settlement would be deducted from the damages ultimately awarded because all three parties were acting as trustees of the same natural resources.[78]

Under the interpretation in *Asarco*, an individual trustee can sue for the entire amount of the claim, and the apportionment of damages among co-trustees can be settled separately if necessary.[79] Therefore,

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[69] *Id.* at 845.

[70] *Id.* at 846.

[71] *Tyson*, 619 F.3d at 1240.

[72] OHM Remediation Servs. v. Evans Cooperage Co., 116 F.3d 1574, 1578 (5th Cir. 1997). *See generally* Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9607 (2006).

[73] 42 U.S.C. § 9607(f).

[74] *Id.*

[75] *Id.*

[76] United States v. Asarco Inc., 471 F. Supp. 2d 1063, 1068 (D. Idaho 2005). In this case, the judge reversed his own prior decision from Coeur D'Alene Tribe v. Asarco Inc., 280 F. Supp. 2d 1094 (D. Idaho 2003).

[77] *See Coeur D'Alene*, 280 F. Supp. 2d at 1102.

[78] *Asarco*, 471 F. Supp. 2d at 1069.

[79] *Id.* at 1068.

one trustee's right to recovery is not usurped if another files a claim.[80] The trustee system of recovery, according to the *Asarco* court, facilitates CERCLA's primary goal "to restore and make whole the environment for the protection of the public and guard against destruction and damages to our natural resources."[81]

III. Analysis

In deciding *Tyson,* the majority analyzed each of the timeliness factors to determine whether the district court had abused its discretion.[82] It reasoned that the Nation was aware of the case at the outset of litigation and should have known that its interests were not represented by the State, yet it had not taken action.[83] Further, the court concluded that the likely inconvenience of intervention would amount to significant prejudice to Tyson, but that potential prejudice to the Nation resulting from a denial was "more speculative than real."[84] Finding no unusual circumstances weighing against the district court's decision, the Tenth Circuit Court of Appeals affirmed.[85] The court's analysis of the first factor is the primary subject of this Comment.

The majority's ruling on the first factor hinged on the view that the Nation knew that its interests were not being adequately represented by the State.[86] In answering the adequate representation question, the court employed a narrow reading of the State's initial complaint.[87] It reasoned that because the State sought recovery in its complaint for its own past and future costs, but not for costs incurred by the Nation, there was "nothing in the record suggest[ing] that the Nation could have reasonably believed that [its] interests would be adequately protected."[88] Thus, the Nation could not have reasonably believed that its interest in monetary damages was being represented at any point in the litigation, and its lengthy delay was unjustified.[89]

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[80] *See id.*

[81] *Id.* at 1067.

[82] Oklahoma *ex rel.* Edmondson v. Tyson Foods, Inc., 619 F.3d 1223, 1232–35 (10th Cir. 2010).

[83] *Id.* at 1235.

[84] *Id.* at 1237–38.

[85] *Id.* at 1238–39.

[86] *Id.* at 1233.

[87] *See id.*

[88] *Tyson*, 619 F.3d. at 1234.

[89] *Id.* at 1235.

Stating that the district court applied the law improperly, the dissent in *Tyson* used a de novo standard of review.[90] In analyzing the first factor, the dissent disagreed with the majority's holding that the Nation could not have reasonably believed that its interests were being represented by the State.[91] The dissent argued that both the State and the Nation brought CERCLA claims motivated by the same objective; "they both sought to recover monetary damages from Tyson in order to compensate for and repair the damage it allegedly caused to the IRW."[92] In the dissent's view, the Nation's belief that it was being properly represented was justified by the common goal of recovering damages.[93]

The dissent therefore measured the Nation's delay from the date that the district court found the Nation to be a required party.[94] It suggested that the lower court's decision did not follow the interpretation in *Asarco,* and therefore was unexpected by the Nation.[95] Had the Nation relied on *Asarco,* it could have reasonably believed that the State would pursue monetary damages which could be distributed to the Nation later.[96] The Nation only became aware of the district court's view months before the expected trial date.[97]

The dissent did not attempt to answer whether the Nation actually was adequately represented by the State prior to the district court's Rule 19 decision.[98] This is indeed a difficult question due to the unclear status of the Nation's interests in the IRW.[99] The majority's decision, however, dismissed even the possibility that the Nation believed it had such representation.[100] Its determination is overly narrow, and fails to take into account the common benefit provided by environmental recovery under CERCLA.[101]

The majority based its decision on the fact that the Nation is not explicitly named as a beneficiary of damages in the State's com-

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[90] *Id.* at 1240 (Tacha, J., dissenting). The dissent's analysis of each factor came out in favor of the Nation. Only its opinion regarding the first factor is addressed in this comment.

[91] *Id.* at 1240.

[92] *Id.*

[93] *See id.* at 1240–41.

[94] *Tyson*, 619 F.3d. at 1241 (Tacha, J., dissenting).

[95] *See id.*

[96] *See id.* at 1240.

[97] *See id* at 1229 (majority opinion).

[98] *Id.* at 1241 n.2 (Tacha, J., dissenting).

[99] *See id.* at 1227–28 (majority opinion); *supra* text accompanying note 32.

[100] *See Tyson*, 619 F.3d at 1233.

[101] *See supra* text accompanying note 81.

plaint.[102] But this approach glosses over the necessary examination of both parties' interests, as demonstrated in cases like *Coalition* and *Hooker.*[103] In *Hooker,* for example, environmental groups were denied intervention when the initial complainants shared the common goal of protecting the Niagara River from hazardous contaminants.[104] Likewise in *Tyson*, the Nation and State both sought to protect the same natural resources from waste.[105] Following this reasoning, the Nation may have reasonably believed that its interest in protecting the IRW was being represented, regardless of its absence in the State's complaint.

In *Coalition,* however, the court found that an owl enthusiast's objectives were clearly distinguishable from the Interior's obligation to serve the public good, and therefore his interests were not adequately represented.[106] There was no such divergence between the interests of the State and the Nation in *Tyson.*[107] If viewed in light of *Asarco,* the belief that the Nation's interests were being adequately represented was even more plausible.[108]

Under the *Asarco* court's interpretation of CERCLA, damages awarded to either the State or the Nation would have been held in trust for benefit of the IRW's natural resources.[109] Thus, with regard to CERCLA damages, either party could be considered to represent the other's interests.

The protracted litigation and the combination of State, Tribal, and private parties created a highly unique fact pattern in *Tyson.* Indeed, it is unclear to what extent the precedent will affect future disputes. However, similar circumstances are not unforeseeable given the unsettled state of American Indian water rights.[110] In *Tyson,* the decision made it far more difficult for either the State or the Nation to obtain monetary damages even if Tyson's waste disposal violated CERCLA.[111] The requirement of timeliness is imposed to prevent undue delay; it should

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[102] *See supra* text accompanying note 81.

[103] *See* cases cited *supra* notes 63–69.

[104] United States v. Hooker Chems. & Plastics Corp., 749 F.2d 968, 970 (2d Cir. 1984).

[105] *See Tyson*, 619 F.3d at 1240 (Tacha, J., dissenting).

[106] Coal. of Ariz./N.M. Cntys. for Stable Econ. Growth v. Dep't of Interior, 100 F.3d 837, 845 (10th Cir. 1996).

[107] *See Tyson*, 619 F.3d at 1241 (Tacha, J., dissenting).

[108] *See id.*

[109] *See* United States v. Asarco Inc., 471 F. Supp. 2d 1063, 1068 (D. Idaho 2005).

[110] *See generally* Jana L. Walker & Susan M. Williams, *Indian Reserved Water Rights*, 5 Nat. Resources & Env't, 6, 6 (1990–91) (describing the "controversy over tribal water rights").

[111] *See Tyson*, 619 F.3d at 1242.

not, as in this case, prevent a required party from seeking damages based on the initial belief that it was being adequately represented.[112]

Conclusion

As of August, 2011, the State's surviving claims for injunctive relief against Tyson were still pending.[113] A favorable decision from the district court would be a significant step towards protecting the health of the IRW's natural resources from the local poultry industry's waste disposal.[114] However, even if the State's claims are successful, both the State and Nation will likely have to initiate another costly lawsuit if they wish to seek monetary damages.[115] Still, the Nation is not precluded from filing a subsequent suit against Tyson for damages, and it has not ruled out doing so.[116] *Tyson*'s precedential effect may ultimately be marginal; however, it serves as a warning to other parties content to sit on their right to intervene with the belief that they are being adequately represented.

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[112] *See* 7C Charles Alan Wright et al., Federal Practice and Procedure § 1916 (3d ed. 2007).

[113] Curtis Killman, *Ex-Attorney General Puzzled at Poultry Suit Ruling Delay*, Tulsa World, (Aug. 29, 2011, 7:52:17 AM), http://www.tulsaworld.com/news/article.aspx?subjectid=11&articleid=20110829_11_A1_CUTLIN991989.

[114] *See supra* notes 8–9 and accompanying text.

[115] *Tyson*, 619 F.3d at 1242.

[116] Robert J. Smith, *No Ruling Year After Poultry Trial; Lack of Decision No Surprise, Environmental Case Parties Agree*, Ark. Democrat-Gazette, Feb. 22, 2011, at 8 ("Cherokee Nation Attorney General Diane Hammons said in an e-mail last week that the tribe has been approached by lawyers who want to represent the tribe in a separate lawsuit against the companies.").