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No. 29123-5-III

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON

IN THE COURT OF APPEALS, DIVISION III,
OF THE STATE OF WASHINGTON

PUBLIC UTILITY DISTRICT NO. 1 OF OKANOGAN COUNTY, a
municipal corporation, Respondent/Cross-Appellant,

v.

STATE OF WASHINGTON, PETER GOLDMARK, Commissioner of
Public Lands, and CONSERVATION NORTHWEST, a non-profit
corporation, Appellants/Cross-Respondents,

and

CHRISTINE DAVIS, a single person, TREVOR KELPMAN, a single
person, DAN GEBBERS and REBA GEBBERS, husband and wife, and
WILLIAM C. WEAVER, custodian for Christopher C. Weaver, a minor,
Respondents.

**REPLY BRIEF OF APPELLANT
PUBLIC UTILITY DISTRICT NO. 1 OF OKANOGAN COUNTY
ON INTERVENTION**

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TABLE OF CONTENTS

	Page
1. INTRODUCTION	1
2. REPLY ARGUMENT	3
2.1. Conservation Northwest Cannot Ignore The Eminent Domain Statutes That Govern This Proceeding.	3
2.1.1. Courts Consider The Context Of The Case.	3
2.1.2. Condemnation Actions Are “Special Proceedings” Governed By Statute.....	4
2.1.3. The Civil Rules Do Not Supersede The Eminent Domain Statutes Concerning The Proper Parties To Condemnation.....	5
2.2. Conservation Northwest Cites No Authority Allowing Intervention In A Condemnation Action By A Non- Property Owner.	8
2.3. The Interests Asserted By Conservation Northwest Are Irrelevant To Condemnation Proceedings.....	10
2.4. Conservation Northwest Has Not Satisfied The Basic Requirements Of Permissive Intervention.	12
2.5. Intervention Should Not Be Abused To Delay Public Projects.	15
3. CONCLUSION	17

TABLE OF AUTHORITIES

	Page(s)
CASES	
<i>Am. Discount Corp. v. Saratoga W., Inc.</i> , 81 Wn.2d 34, 499 P.2d 869 (1972).....	1, 3, 8, 12
<i>City of Puyallup v. Hogan</i> , No. 41017-6-II, ___ Wn. App. ___, 277 P.3d 49, 2012 WL 1715137 (Div. II, May 16, 2012).....	9
<i>City of Sunland Park v. Santa Teresa Servs. Co.</i> , 75 P.3d 843 (N.M. Ct. App.), cert. denied, 74 P.3d 1071 (N.M. 2003).....	7, 9, 14
<i>Gebbers v. Okanogan County PUD No. 1</i> , 144 Wn. App. 371, 183 P.3d 324, rev. denied, 165 Wn.2d 1004 (2008).....	2, 10, 16
<i>Grant County Fire Prot. Dist. No. 5 v. City of Moses Lake</i> , 150 Wn.2d 791, 83 P.3d 419 (2004).....	13
<i>In re Condemnation by the County of Berks</i> , 914 A.2d 962 (Pa. Commw. Ct. 2007).....	7
<i>Marino Prop. Co. v. Port of Seattle</i> , 88 Wn.2d 822, 567 P.2d 1125 (1977).....	10
<i>Mercer Island Sch. Dist. No. 400 v. Victor Scalzo, Inc.</i> , 54 Wn.2d 539, 342 P.2d 225 (1959).....	2
<i>Nw. Forest Res. Council v. Glickman</i> , 82 F.3d 825 (9th Cir. 1996).....	12
<i>Port of Grays Harbor v. Bankr. Estate of Roderick Timber Co.</i> , 73 Wn. App. 334, 869 P.2d 417 (1994).....	passim
<i>Prete v. Bradbury</i> , 438 F.3d 949 (9th Cir. 2006).....	15
<i>Pub. Util. Dist. No. 1 of Snohomish County v. Kottsick</i> , 86 Wn.2d 388, 545 P.2d 1 (1976).....	9, 10

<i>Sales v. Weyerhaeuser Co.</i> , 163 Wn.2d 14, 177 P.3d 1122 (2008).....	12
<i>State ex rel. Keeler v. Port of Peninsula</i> , 89 Wn.2d 764, 575 P.2d 713 (1978).....	15
<i>State ex rel. Nw. Elec. Co. v. Superior Ct. for Clark County</i> , 27 Wn.2d 694, 179 P.2d 510 (1947).....	4
<i>State ex rel. Wash. Water Power Co. v. Superior Ct. for Chelan County</i> , 41 Wn.2d 484, 250 P.2d 536 (1952).....	5
<i>State v. Higgins</i> , 75 Wn.2d 110, 449 P.2d 393 (1969).....	4
<i>United States v. 36.96 Acres of Land</i> , 754 F.2d 855 (7th Cir. 1985), cert. denied, 476 U.S. 1108 (1986)	11, 13, 14
<i>Wade v. Goldschmidt</i> , 673 F.2d 182 (7th Cir. 1982)	13, 14
<i>Westerman v. Cary</i> , 125 Wn.2d 277, 892 P.2d 1067 (1994).....	7, 11
<i>Zesbaugh, Inc. v. Gen. Steel Fabricating, Inc.</i> , 95 Wn.2d 600, 627 P.2d 1321 (1981).....	5

STATUTES

RCW 4.28.120	1
RCW 8.12.005	4
RCW 8.12.060	1, 4, 5
RCW 8.12.070	4
RCW 8.12.090	2, 4, 5
RCW 8.12.120	5, 6, 8

OTHER AUTHORITIES

Ark. R. Civ. P. 24 8

Civil Rule 24.....*passim*

Civil Rule 81..... 1, 4, 5, 6, 8

Colo. R. Civ. P. 24..... 8

Fed. R. Civ. P. 24..... 8, 12

Mass. R. Civ. P. 24..... 8

WAC 197-10-170 10

WAC 197-11-800 10

1. INTRODUCTION

The rule of intervention is not applied in a vacuum. Courts evaluate the interest requirement in “the context in which the claim is asserted.” *Am. Discount Corp. v. Saratoga W., Inc.*, 81 Wn.2d 34, 42, 499 P.2d 869 (1972). Conservation Northwest disregards the context of this case – a limited, *in rem* proceeding – and argues that the governing eminent domain statutes are irrelevant.¹ Washington law says otherwise. *See* CR 81(a) (civil rules do not govern where inconsistent with statutes applicable to special proceedings); *Port of Grays Harbor v. Bankr. Estate of Roderick Timber Co.*, 73 Wn. App. 334, 340-41, 869 P.2d 417 (1994) (CR 19 did not allow joinder of party in condemnation action where statutory requirements not satisfied).

Uniform authority holds that non-property owners have no standing to participate in eminent domain proceedings.² The only proper parties to a condemnation action are the condemning authority and the condemnees. *See* RCW 8.12.060, .070, .120; RCW 4.28.120 (specifying the proper participants in a condemnation proceeding). Conservation

¹ *See, e.g.*, Br. of Resp’t Conservation Northwest (“CNW Resp.”) at 25 (asking that the Court not look to eminent domain statutes to resolve questions arising under CR 24).

² *See* Br. of Appellant Pub. Util. Dist. No. 1 of Okanogan County on Intervention (“PUD Opening Br.”) at 11-17.

Northwest cites no authority permitting intervention in a condemnation action by a party without a legal or equitable interest in the property. Allowing such intervention would open the door for any party opposed to a public project to unnecessarily delay the project by objecting in every condemnation action.³ That is not the function of condemnation proceedings. Condemnations are expedited, *in rem* proceedings that solely address the questions of public use and necessity and just compensation to the property owner. RCW 8.12.090; see *Mercer Island Sch. Dist. No. 400 v. Victor Scalzo, Inc.*, 54 Wn.2d 539, 540, 342 P.2d 225 (1959). Conservation Northwest does not have the requisite interest to intervene in this action between the condemning authority and respondent property owner.

Conservation Northwest's permissive intervention in this case was likewise erroneous. Conservation Northwest did not, and cannot, identify any viable claim or defense which shares a common question of law or fact with the PUD's condemnation action. It therefore fails to satisfy the plain requirements of CR 24(b). By failing to apply clear law, the trial court erred. This Court should reverse the trial court's decision permitting intervention.

³ And worse, as here, even after the disputed issues have already been litigated. See *Gebbers v. Okanogan County PUD No. 1*, 144 Wn. App. 371, 183 P.3d 324, *rev. denied*, 165 Wn.2d 1004 (2008).

2. REPLY ARGUMENT

2.1. Conservation Northwest Cannot Ignore The Eminent Domain Statutes That Govern This Proceeding.

Courts evaluate intervention with specific reference to the nature of the underlying action. In eminent domain, a government authority is acquiring property rights from another. These are special proceedings governed by statute. Yet, Conservation Northwest asks this Court to apply court rules without any regard to the claim at issue. This approach is inconsistent with Washington law.

2.1.1. Courts Consider The Context Of The Case.

Even should the court rules be applied, courts consider context in evaluating the sufficiency of an alleged interest under CR 24(a)(2):

A proper determination of the sufficiency of the claimed “interest” of a particular intervenor **cannot be made in a vacuum, out of the context in which the claim is asserted.** Rather, it is for the court in each instance to analyze and balance the relative concerns, not only of the absentee in having his interest protected, but also of the parties to the main action in controlling their own lawsuit, and **of the public in the efficient resolution of controversies.**

Am. Discount Corp., 81 Wn.2d at 42 (emphasis supplied). In the present case, the context is the purchase of easement rights from an involuntary seller through condemnation.

Conservation Northwest asks the Court to ignore the nature and purpose of condemnation as an expedited, limited purpose proceeding. It

seeks intervention without any property interest at stake or actionable claim or defense against the existing parties. This is not only inconsistent with the statutes and the Supreme Court's direction to consider context, it undermines the Legislature's express mandate that courts resolve condemnation matters expeditiously. RCW 8.12.090; *see* PUD Opening Br. at 25-26.

2.1.2. Condemnation Actions Are "Special Proceedings" Governed By Statute.

CR 81 expressly provides that the civil rules do not govern "where inconsistent with rules or statutes applicable to special proceedings." CR 81(a). Eminent domain actions are "special proceedings" governed by statute. *See Port of Grays Harbor*, 73 Wn. App. at 337 (condemnation proceedings are governed by statute); *State ex rel. Nw. Elec. Co. v. Superior Ct. for Clark County*, 27 Wn.2d 694, 700-01, 179 P.2d 510 (1947) (condemnation is a special proceeding authorized by statute); *accord State v. Higgins*, 75 Wn.2d 110, 121, 449 P.2d 393 (1969) (concurring opinion) (condemnation is a special proceeding within the context of CR 81).

Accordingly, statutes dictate the procedure for condemnation actions, including notice requirements (RCW 8.12.005), the contents of the petition (RCW 8.12.060), and service of the summons (RCW 8.12.070,

.080).⁴ For example, unlike other civil actions governed by CR 7, an answer to a condemnation petition is not required. *E.g., State ex rel. Wash. Water Power Co. v. Superior Ct. for Chelan County*, 41 Wn.2d 484, 490, 250 P.2d 536 (1952) (eminent domain is a special proceeding not requiring an answer). Conservation Northwest’s argument that the eminent domain statutes are irrelevant to court procedure is baseless.

2.1.3. The Civil Rules Do Not Supersede The Eminent Domain Statutes Concerning The Proper Parties To Condemnation.

In addition to governing other matters of civil procedure, the eminent domain statutes specify the proper parties in a condemnation action, including how an “interested party may be brought in.” RCW 8.12.120; *see also* RCW 8.12.060 (directing who shall be named in a condemnation petition); *Port of Grays Harbor*, 73 Wn. App. at 340-41. Pursuant to RCW 8.12.120, an “interested person” is one “claiming an

⁴ If the eminent domain statutes do not address a particular procedural issue, *then* the civil rules may govern, as provided by statute. RCW 8.12.090. This is also true as a general matter for other special proceedings. Courts look at whether the statutes address the procedural issue before applying the civil rules to special proceedings. *See, e.g., Zesbaugh, Inc. v. Gen. Steel Fabricating, Inc.*, 95 Wn.2d 600, 603, 627 P.2d 1321 (1981). If there is an inconsistency, CR 81(a) mandates that the statutes control. *Id.* For example, in garnishment – a recognized special proceeding – there is no inconsistency because the garnishment statutes do not address intervention; therefore, the civil rules govern intervention. *Id.* at 601, 603-04 (allowing unverified complaint in intervention for party **with a property interest** in the proceeding where unverified complaint did not infringe on the policy or procedures of the garnishment statutes). Garnishment is distinguishable from the eminent domain statutes, which specifically address interested parties and the proper respondents to condemnation. *See infra* Section 2.1.3.

interest in any lot, parcel of land, or property which may be taken or damaged by such improvement.” To participate in the condemnation action, the interested person is first admitted as a party defendant by the court and then must “file a statement of his or her interest in and description of the lot, parcel of land, or other property in respect to which he or she claims compensation.”⁵ RCW 8.12.120. Of course, Conservation Northwest has no such interest.

The relationship between the eminent domain statutes and the civil rules is illustrated in *Port of Grays Harbor*.⁶ As the court explained, “[w]here the Legislature has established a specific requirement for joinder of parties, procedural court rules may not be used to alter those requirements.” *Port of Grays Harbor*, 73 Wn. App. at 340. The court then referenced the eminent domain statutes when considering whether the interest requirement was satisfied under CR 19(a)(2), which contains

⁵ The procedure outlined in RCW 8.12.120 for bringing in an interested party appears in conflict with the procedure for intervention under CR 24(c). This conflict, along with the statutes designating the proper respondents to an eminent domain action (*see* PUD Opening Br. at 11-12), suggest that CR 24, as a whole, is inapplicable to condemnation proceedings pursuant to CR 81(a). Even if the Court does not reach this question, it is nevertheless apparent that the eminent domain statutes define with specificity those with a requisite “interest” under CR 24(a)(2) for purposes of eminent domain actions.

⁶ For a more detailed discussion of *Port of Grays Harbor*, see the PUD’s Opening Brief at pp. 11-13.

interest language that is identical to CR 24(a)(2).⁷ *Id.* at 338-41. Finding the respondents had no interest in the property under the statutes, joinder was not permitted under the civil rules. *Id.* The civil rules “cannot supersede the statutes and their judicial interpretations so as to create a substantive interest in property undergoing condemnation.” *Id.* at 341.

As in *Port of Grays Harbor*, Conservation Northwest is not a “condemnee” under Washington law and has no legally recognized interest in this action under CR 24(a)(2). *See Westerman v. Cary*, 125 Wn.2d 277, 303, 892 P.2d 1067 (1994) (interest under CR 24(a) must be one “recognized by law”). The fact that Conservation Northwest is not seeking part of the condemnation award is irrelevant. In substance, Conservation Northwest is seeking to assert the rights of a condemnee by objecting to the condemnation. That right is held solely by the property owner – here, the State. *See, e.g., In re Condemnation by the County of Berks*, 914 A.2d 962, 964-66 (Pa. Commw. Ct. 2007) (“[I]t is axiomatic that to assert the rights of a condemnee, the party must be an owner of a property interest taken.”); *City of Sunland Park v. Santa Teresa Servs. Co.*, 75 P.3d 843, 853-56 (N.M. Ct. App.), *cert. denied*, 74 P.3d 1071 (N.M.

⁷ Conservation Northwest offers no valid reason to distinguish CR 19 for purposes of this analysis. Both rules address the proper parties to litigation, contain nearly identical “interest” language, and are recognized as overlapping rules. *See* PUD Opening Br. at 12 n.5.

2003) (only persons with an ownership interest capable of being taken or damaged can challenge the authority of the condemnor to proceed); *see also* PUD Opening Br. at 14-15. Conservation Northwest cannot rely on CR 24 to give it intervention rights that are inconsistent with the eminent domain statutes.⁸ *See* CR 81(a); *Port of Grays Harbor*, 73 Wn. App. at 340-41.

2.2. Conservation Northwest Cites No Authority Allowing Intervention In A Condemnation Action By A Non-Property Owner.

Conservation Northwest does not identify a single case where a non-property owner was permitted to intervene in a condemnation action or other *in rem* proceeding. In fact, none of its cited cases involve condemnation. This stands in sharp contrast to the consistent authority expressly rejecting intervention by non-property owners in condemnation proceedings.⁹ *See* PUD Opening Br. at 11-17.

⁸ Moreover, the application of the eminent domain statutes does not convert this case into a question of intervention under CR 24(a)(1), as Conservation Northwest alleges. *See* CNW Resp. at 17 n.8. Indeed, intervention would not be proper under CR 24(a)(1) either. The question here concerns Conservation Northwest's "interest" under CR 24(a)(2). Pursuant to the eminent domain statutes, Conservation Northwest does not have an "interest" in this condemnation action. *See, e.g.*, RCW 8.12.120 (defining "interested parties").

⁹ The requirements of CR 24 (and the concepts underlying eminent domain) are not unique to Washington. *See, e.g.*, Fed. R. Civ. P. 24; Ark. R. Civ. P. 24; Colo. R. Civ. P. 24; Mass. R. Civ. P. 24 (all containing language nearly identical to CR 24); *see also Am. Discount Corp.*, 81 Wn.2d at 37 (observing that courts may look to decisions and analysis of FRCP 24 for guidance). The PUD's citation to non-Washington decisions is proper as persuasive authority. Furthermore,

Conservation Northwest also misrepresents Washington Supreme Court authority. See CNW Resp. at 17-18. The *Kottsick* Court specifically addressed the propriety of intervention and affirmed the trial court's refusal to permit intervention for an inverse condemnation claim.¹⁰ *Pub. Util. Dist. No. 1 of Snohomish County v. Kottsick*, 86 Wn.2d 388, 390, 545 P.2d 1 (1976). Conservation Northwest's characterization of *Kottsick* is directly contrary to that case and subsequent courts' interpretation of the case. See *Port of Grays Harbor*, 73 Wn. App. at 339 (citing *Kottsick* for the rule that "adjacent property owners ha[ve] no standing to intervene"); *City of Sunland Park*, 75 P.3d at 855 (citing *Kottsick* for the rule that parties who are not "condemnees" have no standing to challenge condemnation). This Court should reject Conservation Northwest's efforts to disregard *Kottsick* and the overwhelming precedent refuting Conservation Northwest's position on intervention.

although *Port of Grays Harbor*, *Kottsick*, and the eminent domain statutes are instructive, there is no Washington decision that squarely addresses the issue presented here. It is therefore entirely appropriate for this Court to consider other authorities that have addressed the subject. See, e.g., *City of Puyallup v. Hogan*, No. 41017-6-II, ___ Wn. App. ___, 277 P.3d 49, 2012 WL 1715137, at *6-7 (Div. II, May 16, 2012) (considering decisions from several other states in addressing an issue of first impression regarding the duty to mitigate in condemnation cases).

¹⁰ The trial court also rejected the intervenors' attempts to allege violations of budget and local utility district statutes, although the Supreme Court did not directly address this issue.

2.3. The Interests Asserted By Conservation Northwest Are Irrelevant To Condemnation Proceedings.

Notably, even *Kottsick*'s approval of the adjacent property owners' SEPA challenge would not be permitted under current law. *Kottsick* was effectively decided before SEPA added a categorical exemption for property acquisition. See WAC 197-11-800(5)(a) (adopted 1984); accord former WAC 197-10-170(9)(a).¹¹ Condemnation proceedings are now categorically exempt from SEPA. WAC 197-11-800(5)(a); see *Marino Prop. Co. v. Port of Seattle*, 88 Wn.2d 822, 834, 567 P.2d 1125 (1977). Moreover, the *Kottsick* trial court threw out all of the non-SEPA grounds for intervention. 86 Wn.2d at 389. Today, even the adjacent property owners in *Kottsick* would have no basis to intervene. Likewise, it was error to permit Conservation Northwest's intervention in these condemnation proceedings. Its environmental objections, if at all, were within the zone of interests appropriately considered during the Project's SEPA review and subsequent litigation. See *Gebbers v. Okanogan County PUD No. 1*, 144 Wn. App. 371, 183 P.3d 324, rev. denied, 165 Wn.2d 1004 (2008).

¹¹ *Kottsick* was decided on January 22, 1976, affirming the trial court's June 28, 1974 decision. SEPA regulations, including the categorical exemption for property acquisition in former 197-10-170(9)(a) (identical to the current regulation in WAC 197-11-800), first became effective on January 16, 1976.

Applying the same controlling legal standards, the Seventh Circuit Court of Appeals denied intervention as of right to an environmental group who had helped develop the property and participated in lobbying efforts comparable here to those of Conservation Northwest. *United States v. 36.96 Acres of Land*, 754 F.2d 855, 857 (7th Cir. 1985), *cert. denied*, 476 U.S. 1108 (1986). As the court observed:

While the Council's aesthetic and environmental interest in Crescent Dune may indeed be legitimate and demonstrable, we cannot say that it is direct, substantial, or legally protectable. **Therefore, the Council's interest in "guaranteeing the preservation of [Crescent Dune's] natural beauty" for public use is not the type of interest which justifies intervention under Rule 24(a).**

Id. at 859 (internal citations omitted) (emphasis supplied).¹² While the environmental group in that case had played a "laudatory role" in developing the property, it was essentially a private citizen with no ownership interest for purposes of the condemnation action. *Id.* at 858 (citing the district court). Likewise here, regardless of Conservation Northwest's environmental efforts, it has no **property** interest in this *in rem* action concerned only with whether the Methow Transmission Project is for a public use and what price is paid for a limited easement.

¹² The "direct, substantial, and legally protectable" requirement cited by the Seventh Circuit is no different than Washington's standard that the interest be "direct," "immediate," and "recognized by law." *Westerman*, 125 Wn.2d at 303.

2.4. Conservation Northwest Has Not Satisfied The Basic Requirements Of Permissive Intervention.

Although permissive intervention decisions are reviewed for abuse of discretion, an error of law necessarily constitutes an abuse of discretion. *Sales v. Weyerhaeuser Co.*, 163 Wn.2d 14, 19, 177 P.3d 1122 (2008). Conservation Northwest asks this Court to rubber stamp the trial court's decision to grant permissive intervention without evaluating whether the rule's requirements have actually been satisfied. CR 24(b)(2) plainly requires that the applicant have a "claim or defense" to permissively intervene. This requirement is again stated in CR 24(c), which requires the proposed intervenor to file with its motion "a pleading setting forth the claim or defense for which intervention is sought."¹³ Conservation Northwest reads the claim or defense requirement out of the rule. Federal courts construing the identical language in FRCP 24(b)(2) have held that an intervenor must have an independent grounds for jurisdiction.¹⁴ *Nw. Forest Res. Council v. Glickman*, 82 F.3d 825, 839 (9th Cir. 1996).

Conservation Northwest has not identified any claim or defense that it (not the State) has which shares a common question of law or fact

¹³ Conservation Northwest did not follow this procedure.

¹⁴ Conservation Northwest cites no Washington case interpreting the plain language requirements of CR 24(b)(2) (except to say that the rule is discretionary, which is also true of the federal rule). Decisions interpreting the identical provisions of the federal rule may be considered by this Court. *See Am. Discount Corp.*, 81 Wn.2d at 37.

with this condemnation action.¹⁵ Nor does it explain any basis it has to assert the State's defense to condemnation. Washington recognizes the common law doctrine of standing, which prohibits a litigant from raising another's legal rights. *See, e.g., Grant County Fire Prot. Dist. No. 5 v. City of Moses Lake*, 150 Wn.2d 791, 802-04, 83 P3d 419 (2004) (fire district did not have personal or representational standing to challenge the petition method for annexation).

This general principle has been applied to deny intervention in other cases involving challenges to public projects. *See, e.g., 36.96 Acres of Land*, 754 F.2d at 859 (“[W]here a proposed intervenor in a federal condemnation suit seeks to assert a position on behalf of the government, intervention must also be denied; only the Congress or its delegate can assert the rights of the sovereign.”); *Wade v. Goldschmidt*, 673 F.2d 182, 185 (7th Cir. 1982) (denying intervention because the governmental bodies charged with compliance with the statutes could be the only defendants). The *Wade* case is instructive. In affirming the denial of permissive intervention, the court observed:

¹⁵ Although Conservation Northwest conclusively states that “[c]ommon questions of law and fact exist here” (CNW Resp. at 23 (emphasis in original)), it makes no attempt to identify what those common questions are. Moreover, the plain language of CR 24(b)(2) requires the operative question of law or fact to be part of a legally cognizable “claim or defense”; the existence of a common question of law or fact alone is not sufficient. Conservation Northwest has not articulated any claim or defense that is actionable by it in this case.

[T]he court below is not in a position to act on the questions raised by applicants involving basic value judgments as to the ultimate location of the proposed construction and the priority of the various interests that the governmental bodies are statutorily mandated to take into consideration. Thus, as it should be clear from our discussion of intervention of right it cannot be said that any of the applicants' claims or defenses and the present action have a question of law or fact in common as to satisfy the requirement for permissive intervention pursuant to Rule 24(b)(2).

673 F.2d at 187 (internal citations omitted). The court further noted serious concerns for delay and prejudice because all of the relevant issues sought to be raised by the applicants were already raised by the government defendants, and the applicants sought to raise other issues which were irrelevant to the legal issue confronting the district court. *Id.* at 187 n.11.

Similarly here, Conservation Northwest's environmental concerns and objections to the Project route have no bearing on the limited questions at issue in condemnation. The only relevant issue raised by Conservation Northwest – condemnation authority – is addressed by the State, who is the statutory condemnee and only proper party to challenge the condemnation. *See Port of Grays Harbor*, 73 Wn. App. at 338-39; *see also 36.96 Acres of Land*, 754 F.2d at 859; *City of Sunland Park*, 75 P.3d at 853-56; PUD Opening Br. at 14-17, 23. Conservation Northwest has no standing to assert the State's defenses and has no other claim or defense of

its own that it may properly allege in this proceeding. It has therefore failed to satisfy the basic requirements for permissive intervention.¹⁶

Moreover, permissive intervention is predicated on the principle of judicial economy: one court case with mostly similar issues is often better than two or more. *See State ex rel. Keeler v. Port of Peninsula*, 89 Wn.2d 764, 766, 575 P.2d 713 (1978); *see also Prete v. Bradbury*, 438 F.3d 949, 958 n.13 (9th Cir. 2006); PUD Opening Br. at 24. Here, where Conservation Northwest has no independent claim or defense to put before a court, there is no judicial economy to be had, and intervention is inappropriate.

The trial court's order allowing permissive intervention was an abuse of discretion and as a matter of law must be reversed by this Court.

2.5. Intervention Should Not Be Abused To Delay Public Projects.

Condemnation is about justly compensating property owners for the taking of land necessary for public uses and nothing else. Public project opponents have many other legal means at their disposal for challenging projects and their impacts, including (among many other laws) SEPA, NEPA, the Land Use Petition Act, and the Shoreline Management Act. The concerns of environmental groups in some cases may be

¹⁶ Delay and prejudice to the PUD by Conservation Northwest's unwarranted presence in this lawsuit is apparent and is discussed in the PUD's Opening Brief at pp. 24-25.

legitimate and deserve administrative and judicial attention, but not in the limited scope of eminent domain proceedings – particularly in cases where that attention has already been given, as here. *See Gebbers v. Okanogan County PUD No. 1*, 144 Wn. App. 371, 183 P.3d 324, *rev. denied*, 165 Wn.2d 1004 (2008).

Conservation Northwest's issue is with the environmental impacts of the PUD's project, not with who owns the land: "CNW urged DNR to reject the easement proposal because of the adverse impacts the project would have on critical environmental habitat in the Methow Valley." CNW Resp. at 3. Now, on behalf of its members, Conservation Northwest is trying to address its environmental concerns in yet another forum after three courts, including this one, have considered and rejected those concerns. *See Gebbers*, 144 Wn. App. 371.

Conservation Northwest's participation in this condemnation case is for the simple purpose of stopping the PUD's project by any means – not for addressing the issues of property ownership that constitute the limited realm of eminent domain. This is clear from Conservation Northwest's discontinuous parade of legal theories from DNR's easement process to superior court to this tribunal. *Compare* CP 592 (CNW letter to DNR recognizing DNR's fiduciary duty of undivided loyalty to the school trust) *with* CP 486-505 (summary judgment motion arguing lack of

statutory authority for condemnation) *with* CNW's Opening Brief on Condemnation (new public trust theory on appeal).

This case allows the Court to make a clear statement regarding condemnation proceedings in Washington state: the statutes and civil rules require expediency and judicial economy; and, participation in eminent domain actions is limited by statute to parties with a legal or equitable interest in the property (*i.e.*, "condemnees") because the only issues in condemnation are the public use of property and the just compensation due the condemnee. Ruling otherwise would encourage project opponents to abuse intervention and use condemnation to delay public projects, despite controlling law to the contrary.

3. CONCLUSION

Condemnation is an *in rem* proceeding concerned with fairly compensating property owners for government use of their land. The condemnation statutes create a framework intended to expedite property acquisition and prevent abuse of the eminent domain process. Intervention (along with joinder and class actions) is a tool designed to promote judicial economy, *i.e.*, allowing simultaneous resolution of legal claims in one case rather than two or more. Intervention has no application here in a condemnation action where parties are statutorily defined.

Conservation Northwest has no legal or equitable property interest in the land at issue. Conservation Northwest has no legally cognizable claim or defense against the PUD. Rather than promoting judicial economy, CR 24 was erroneously applied by the trial court to allow Conservation Northwest to intervene in (and to delay) the PUD's case and increase costs to the public. This Court must overturn the superior court's order granting intervention and properly limit the condemnation action to interested parties under the eminent domain statutes.

RESPECTFULLY SUBMITTED this 22nd day of June, 2012.

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No. 29123-5-III

IN THE COURT OF APPEALS, DIVISION III,
OF THE STATE OF WASHINGTON

PUBLIC UTILITY DISTRICT NO. 1 OF OKANOGAN COUNTY, a
municipal corporation, Respondent/Cross-Appellant,

v.

STATE OF WASHINGTON, PETER GOLDMARK, Commissioner of
Public Lands, and CONSERVATION NORTHWEST, a non-profit
corporation, Appellants/Cross-Respondents,

and

CHRISTINE DAVIS, a single person, TREVOR KELPMAN, a single
person, DAN GEBBERS and REBA GEBBERS, husband and wife, and
WILLIAM C. WEAVER, custodian for Christopher C. Weaver, a minor,
Respondents.

DECLARATION OF SERVICE

LAW OFFICE OF MICHAEL D. HOWE
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Attorneys for PUD No. 1 of Okanogan County

COPY

The undersigned declares that on June 22, 2012, I caused to be served:

1. Reply Brief Of Appellant Public Utility District No. 1 Of Okanogan County On Intervention; and this
2. Declaration of Service as follows:

<p>Jay A. Johnson Davis Arneil Law Firm 617 Washington P.O. Box 2136 Wenatchee, WA 98801 E-Mail: jay@dadkp.com</p>	<p><input type="checkbox"/> via hand delivery <input checked="" type="checkbox"/> via first class mail, postage prepaid <input type="checkbox"/> via facsimile <input checked="" type="checkbox"/> via e-mail <input type="checkbox"/> via FedEx</p>
<p>William Weaver 2850 Sunny Grove Avenue McKinleyville, CA 95519</p>	<p><input type="checkbox"/> via hand delivery <input checked="" type="checkbox"/> via first class mail, postage prepaid <input type="checkbox"/> via facsimile <input type="checkbox"/> via e-mail <input type="checkbox"/> via FedEx</p>
<p>Richard W. Pierson Williams & Williams PSC 18806 Bothell Way NE Bothell, WA 98011-1933 E-Mail: rwp@williamspsc.com</p>	<p><input type="checkbox"/> via hand delivery <input checked="" type="checkbox"/> via first class mail, postage prepaid <input type="checkbox"/> via facsimile <input checked="" type="checkbox"/> via e-mail <input type="checkbox"/> via FedEx</p>
<p>Michael T. Zoretic Ashbaugh Beal, LLP 701 Fifth Avenue, Suite 4400 Seattle, WA 98104 E-Mail: mzoretic@lawasresults.com</p>	<p><input type="checkbox"/> via hand delivery <input checked="" type="checkbox"/> via first class mail, postage prepaid <input type="checkbox"/> via facsimile <input checked="" type="checkbox"/> via e-mail <input type="checkbox"/> via FedEx</p>
<p>David S. Mann Gendler & Mann LLP 1424 4th Ave., Suite 715 Seattle, WA 98101-2217 E-Mail: mann@gendlermann.com</p>	<p><input checked="" type="checkbox"/> via hand delivery <input type="checkbox"/> via first class mail, postage prepaid <input type="checkbox"/> via facsimile <input checked="" type="checkbox"/> via e-mail <input type="checkbox"/> via FedEx</p>

Paul J. Lawrence Sarah C. Johnson Pacifica Law Group, LLP 1191 Second Ave., Suite 2100 Seattle, WA 98101	<input checked="" type="checkbox"/> via hand delivery <input type="checkbox"/> via first class mail, postage prepaid <input type="checkbox"/> via facsimile <input checked="" type="checkbox"/> via e-mail <input type="checkbox"/> via FedEx
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I declare under penalty of perjury under the laws of the State of Washington, that the foregoing is true and correct.

Executed in Seattle, Washington this 22nd day of June, 2012.


Elizabeth Whitney