Intervention Now Carries Fee Risk in California Environmental Litigation

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Regulated businesses and trade associations often intervene in environmental litigation for practical reasons. They may have more at stake than the agency defendant, more technical knowledge than the public record reflects, and a stronger incentive to defend the approval, registration, permit, or regulatory decision under challenge.

A recent decision by the California Court of Appeal, First Appellate District, adds a direct financial consideration to that strategy.

In *Raptors Are the Solution v. CropLife America*, filed on April 29, 2026, the California Court of Appeal affirmed an approximately $857,000 attorney-fee award under Code of Civil Procedure section 1021.5 against the California Department of Pesticide Regulation (DPR), real parties in interest, and intervening trade associations, jointly and severally. The trade associations intervened to defend DPR decisions concerning anticoagulant rodenticides. After the environmental petitioner achieved significant success, the court held that the intervenors could qualify as "opposing parties" because they asserted direct pecuniary interests and actively litigated the case.

The decision does not make every intervenor liable for fees. It does, however, change the intervention analysis. A party can no longer evaluate intervention only as a merits-protection tool. It must also consider whether intervention creates a path into private attorney general fee liability.

Fee Framework

Section 1021.5 allows a court to award attorney's fees to a successful party against one or more opposing parties when litigation enforces an important public right, confers a significant public benefit, and satisfies the statute's financial-burden requirements.

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Environmental cases often fit that framework because petitioners usually seek public-law remedies rather than damages. They may seek California Environmental Quality Act (CEQA) compliance, agency reconsideration, reevaluation of a regulated product, permit changes, or prospective environmental protection. If the petitioner achieves its litigation objective, the fee motion may become the next major dispute.

The harder question in *Raptors* was whether the intervening trade associations qualified as opposing parties. They argued they did not make DPR's challenged decisions and therefore should not bear fee liability. The court rejected that position.

The holding matters beyond pesticide regulation. Many environmental cases involve private parties defending governmental decisions. Project proponents defend CEQA approvals. Permit holders defend agency authorizations. Product manufacturers defend registrations. Industry associations defend regulatory interpretations that affect member operations. After *Raptors*, those parties should assume that direct economic interest and active participation may bring them within the section 1021.5 framework if the petitioner prevails.

Intervention Papers Matter

The most important part of *Raptors* may be what the intervenors said when they sought to enter the case.

To intervene, the associations argued that they and their members had immediate, direct, substantial, pecuniary, and economic interests in the litigation. They explained that their members produced, sold, and distributed the affected products, had invested in registration and marketing, and could suffer commercial harm if the litigation impaired product renewals.

The same arguments that supported intervention later supported fee exposure.

The Court of Appeal rejected the intervenors' attempt to recast their role as limited or policy-based. The court treated the intervention record as evidence that the associations were not merely ideological participants. They entered the case to protect

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concrete commercial interests.

The drafting lesson is direct. Parties should not understate legitimate interests when seeking intervention. But they should draft intervention papers with the full litigation lifecycle in mind. A broad assertion of economic harm may help secure party status. It may also become the petitioner's best exhibit in a later fee motion.

Scope of Participation Matters

The California Court of Appeal did not rely on economic interest alone. It also considered how the intervenors litigated the case.

The associations participated in merits briefing, appellate briefing, argument, protective-order practice, and the fee dispute. The trial court found their participation went beyond a narrow issue. The Court of Appeal affirmed that finding.

The distinction should shape intervention strategy. A party may need full intervention when the agency's defense is uncertain, the technical record is complex, or the outcome threatens a permit, approval, registration, or market position. In other cases, a narrower role may protect the business interest while reducing financial exposure.

Amicus participation, coordinated defense, limited intervention, and full intervention each provide different levels of control and exposure. The more an intervenor acts like a full merits defendant, the easier it becomes for a successful petitioner to argue that the intervenor should share responsibility for fees.

Joint Liability Risk

The financial stakes in *Raptors* increased because the trial court imposed joint-and-several liability. The fee award totaled approximately $857,000 after the court reduced the requested lodestar, applied a 1.3 multiplier, and added costs.

The Court of Appeal affirmed the joint-and-several award. It rejected the intervenors' apportionment argument and accepted the concern that apportionment could force the successful petitioner to pursue multiple parties for fragments of the fee

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recovery.

The holding affects how businesses should structure defense arrangements. A party may view itself as a secondary participant, but joint-and-several liability can make any liable party responsible to the petitioner for the full award. Allocation then becomes a contribution issue among defendants, real parties, and intervenors.

Joint-defense agreements, trade association participation agreements, indemnity provisions, member funding arrangements, and settlement protocols should address fee exposure at the outset. Those agreements should identify who controls fee negotiations, who may settle, how any fee payment will be allocated, and whether a party that refuses to participate in settlement discussions bears any resulting incremental risk. Waiting until the fee motion arrives leaves parties to negotiate allocation after incentives have diverged.

What Businesses Should Do Now

Raptors should not discourage intervention in appropriate cases. Staying out can create greater risk if an agency settles, narrows its defense, declines to appeal, or fails to protect a regulated party's commercial interest.

But intervention now requires a disciplined front-end analysis. Before intervening, businesses and trade associations should determine whether party status is necessary, whether a narrower role can protect the key objective, how broadly to describe the economic interest, and how much merits participation they expect to undertake.

They should also allocate fee risk before the litigation matures. If an intervenor enters for a narrow purpose, it should maintain that discipline. If it expands into full merits participation, it should do so with a documented understanding of the financial consequences.

For questions about the *Raptors* decision, section 1021.5 fee exposure, intervention strategy, or related environmental litigation concerns, please contact the author or any attorney in the firm's Environmental Practice Group to receive guidance tailored to your

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specific circumstances.

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