

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF DISTRIBUTION OF)	
WATER TO WATER RIGHT NOS. 36-02551)	CM-DC-2011-004
AND 36-07694)	
)	
(RANGEN, INC.))	ORDER DENYING BUCKEYE
)	FARMS, INC.'S PETITION FOR
)	LIMITED INTERVENTION
)	

Background

On August 16, 2012, the Director of the Idaho Department of Water Resources (“Director” or “Department”) received a *Petition for Limited Intervention* (“Petition”) filed by Buckeye Farms, Inc. (“Buckeye”). According to the Petition, “Buckeye seeks to intervene in these proceedings for the limited purpose of addressing the application of the Eastern Snake Plain Aquifer Model 2.0 (‘ESPAM 2.0’).” The Petition was filed pursuant to Department Rules of Procedure 350 to 354. IDAPA 37.01.01.350-354. Buckeye states it holds “a variety of water rights, including irrigation and fish propagation rights in the Hagerman area. No other party in this proceeding can adequately represent Buckeye’s positions and interests.” *Petition* at 4.

On August 21, 2012, the Idaho Ground Water Appropriators, Inc. (“IGWA”) filed a *Memo in Opposition to Buckeye’s Petition for Limited Intervention* (“IGWA Opposition”). According to IGWA, Buckeye should not be permitted to intervene because its interests are adequately represented by Rangen, Inc. (“Rangen”) and the Surface Water Coalition (“SWC”). “Buckeye itself admits that its water rights come from the same springs that supply Rangen’s water rights.” *IGWA Opposition* at 1.

On August 21, 2012, the City of Pocatello (“Pocatello”) filed a *Response to Buckeye Farms, Inc.’s Petition for Limited Intervention* (“Pocatello Opposition”). According to Pocatello, “Buckeye has no pending delivery call before the Director, but argues that any ‘future’ administration of Buckeye’s rights will involve ESPAM 2.0. *Petition* at 3. The scope of this proceeding should not be expanded to include questions about how ESPAM 2.0 will be used in hypothetical delivery call proceedings” *Pocatello Opposition* at 2.

Both Pocatello and IGWA assert Buckeye’s Petition is untimely and should be dismissed.

On August 24, 2012, Buckeye filed its *Reply in Support of Petition for Limited Intervention* (“Reply”). According to Buckeye, “Rangen and the SWC do not adequately represent Buckeye’s interests in this case. Buckeye is a distinct corporation that diverts water from various sources in the Hagerman Valley. Although Rangen and the SWC also hold senior

Buckeye . . .” *Reply* at 3. Buckeye also asserts its Petition is timely and should be considered. Alternatively, the question of timeliness should be considered moot because “the Director granted the SWC’s petition, despite the claimed late filing, and Buckeye’s petition was only filed a few weeks after the SWC’s.” *Id.* at 4.

Standard for Intervention

Rule of Procedure 352 provides that to be considered timely, a petition to intervene must be:

[F]iled at least fourteen (14) days before the date set for formal hearing, or by the date of the prehearing conference, whichever is earlier, unless a different time is provided by order or notice.

IDAPA 37.01.01.352.

However, that does not end the Director’s consideration of this matter if the petition is found to be untimely. Rule of Procedure 352 also provides:

The presiding officer may deny or conditionally grant petitions to intervene that are not timely filed for failure to state good cause for untimely filing, to prevent disruption, prejudice to existing parties or undue broadening of the issues, or for other reasons.

IDAPA 37.01.01.352.

The Director interprets this rule to allow for the conditional grant of a petition to intervene that is not timely filed so long as the intervenor shows a direct and substantial interest in any part of the subject matter of the proceeding and unless the applicant’s interest is adequately represented by existing parties.

Application

The date set for the formal hearing in this matter is January 28, 2013. The date of the prehearing conference was January 19, 2012, although it has been subsequently continued to track the progress of ESPAM 2.0. *Order Continuing Prehearing Conference* (February 1, 2012). Since Buckeye’s Petition was not submitted prior to January 19, 2012 (the earlier of the two dates), the Petition is not timely. However, as discussed above, the Director may still conditionally grant an untimely petition for intervention so long as the intervenor shows a direct and substantial interest in any part of the subject matter of the proceeding and unless the applicant’s interest is adequately represented by existing parties.

Direct and Substantial Interest

This matter is similar to a previous proceeding involving the Idaho Power Company (“Idaho Power”). In that proceeding, Idaho Power sought intervention into a conjunctive management delivery call proceeding, notwithstanding the fact that Idaho Power had no water

rights that were subject to the proceeding and it had “other forms of relief available, such as the filing of a separate delivery call.” *Order on Petitions to Intervene and Denying Motion for Summary Judgment* at 2 (April 6, 2005). Like Idaho Power, Buckeye holds water rights, but, unlike the SWC, has not initiated its own delivery call. Given this, the Director finds Buckeye does not have a direct and substantial interest in application of ESPAM 2.0 in this proceeding.

Applicant’s Interest and Whether Adequately Represented by Existing Parties

Buckeye holds surface water and spring water rights. The present delivery call was initiated by Rangen, which holds spring water rights for fish propagation purposes. Rangen’s water rights share a source with some of Buckeye’s water rights. Buckeye stated in its Petition that it too holds water rights for fish propagation purposes. The SWC, which holds surface water rights for irrigation purposes, has been granted limited intervention in this proceeding. Buckeye stated in its Petition that it too holds surface water rights for irrigation purposes. Based on these facts, Buckeye’s interests are adequately represented by Rangen and SWC.

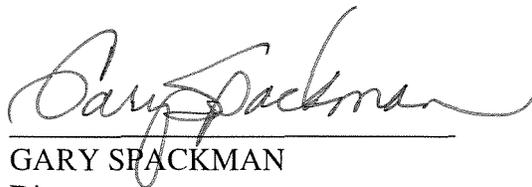
Conclusion

Buckeye’s Petition is untimely. Furthermore, Buckeye does not have a direct and substantial interest in the proceeding, and its interests are adequately represented by existing parties. Therefore, the Director should deny Buckeye’s Petition.

ORDER

Based on the foregoing, IT IS HEREBY ORDERED that Buckeye’s Petition is DENIED.

Dated this 11th day of September, 2012.



GARY SPACKMAN
Director

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 11th day of September, 2012, the above and foregoing, was served by the method indicated below, and addressed to the following:

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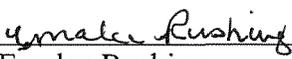
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