

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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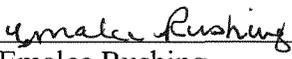
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