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DEPARTMENT OF  
WATER RESOURCES

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**BEFORE THE DEPARTMENT OF WATER RESOURCES  
OF THE STATE OF IDAHO**

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

COMES NOW, Buckeye Farms, Inc. (“Buckeye”), by and through its undersigned attorneys of record, and hereby moves the Hearing Officer for an order granting intervention in the above-captioned proceedings. This motion is filed pursuant to Department Rules of Procedure 350 to 354 (IDAPA 37.01.01).

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”).

**INTRODUCTION**

Buckeye owns several water rights to Billingsley Creek (including water right 36-18), which is fed by tributary springs emanating into the Martin-Curren Tunnel, the source of water for Rangen’s water rights.

On December 13, 2011, Rangen, Inc. filed a *Petition for Delivery Call* with the Department, seeking priority administration of its senior surface water rights. During a status conference held on May 22, 2012, the parties discussed the need for review of ESPAM 2.0 prior to any hearing and recognized that aspects of ESPAM 2.0, including the application of any “trim line” to limit the scope of administration, would be at issue in these proceedings. The parties further represented that their expert reports, due on October 3, 2012, would likely discuss the application of ESPAM 2.0 to conjunctive administration, including the extent of any “trim line” that may be applied to the modeling results.

Recently, the Director issued his *Order re: Eastern Snake Plain Aquifer Model and the Rangen, Inc. Delivery Call* (July 27, 2012) (“*Model Order*”) where he clarified that the Department “will utilize ESPAM version 2.0.” In light of this order, any future conjunctive administration of Buckeye’s water rights will utilize ESPAM 2.0. Accordingly, Buckeye has a substantial interest in IDWR’s application of the model in this proceeding.

Since any decision regarding the application of ESPAM 2.0 in these proceedings will likely become precedent for future administrative proceedings throughout the Snake River Plain, Buckeye has an interest that warrants intervention. Buckeye seeks leave to intervene in these proceedings for the limited purpose of addressing the application of ESPAM 2.0 in conjunctive administration.

## **ARGUMENT**

Department Rules of Procedure 350 to 354 govern intervention in administrative proceedings. The Rules establish the following elements for intervention. In particular, the Petition must:

- State the name and address of the proposed intervenor (Rule 351);

- State the “direct and substantial interest of the potential intervenor” (Rule 351);
- Be timely, including that the Petition be filed at least 14 days prior to the hearing or by the date of the prehearing conference (Rule 352); and
- Not “unduly broaden the issue” (Rule 353); and
- No other party adequately represents the Petitioner’s interests (Rule 353).

As discussed below, Buckeye meets this standard and intervention should be granted.

**I. Name and Address of the Proposed Intervenor.**

Buckeye Farms, Inc.  
P.O. Box 370  
Ketchum, Idaho 83340

Any communications with Buckeye should be conducted through counsel, name and address identified above.

**II. Buckeye has a “Direct and Substantial Interest” in the Application of ESPAM 2.0 in Conjunctive Administration.**

IDWR has utilized the ESPAM in various conjunctive administration proceedings, including the Spring Users Call, the Surface Water Coalition Call, and most recently this proceeding. ESPAM 2.0 is the most current version of the model, and replaces all prior versions of the model. Future conjunctive administration involving Buckeye’s senior surface water rights will involve ESPAM 2.0. Accordingly, Buckeye has a “direct and substantial” interest in the use of the model.

The Rangen Call proceedings will address the application of ESPAM 2.0 in conjunctive administration. *See Model Order* at 1. The Director’s final decision as to the application of ESPAM 2.0 in the Rangen Call will establish a precedent for future administrative proceedings – including any proceedings involving Buckeye and its senior water rights. Therefore, Buckeye

should be permitted to intervene for the limited purpose of addressing the application of ESPAM 2.0 in conjunctive administration.

### **III. Buckeye's Petition is Timely.**

The Department's Rules of Procedure require a petition be filed at least 14 days before the hearing or "by the date of the pre-hearing conference," whichever is first. Rule 352. According to the June 12, 2012 *Scheduling Order*, the hearing in this matter is not set to begin until January 28, 2013. Pursuant to the August 2, 2012 *Corrected Amended Order Rescheduling Pre-Hearing Conference*, the pre-hearing conference is scheduled for August 15, 2012. Since Buckeye's petition is filed before August 15, 2012, the petition is timely under Rule 352.

### **IV. Intervention Will Not Unduly Broaden the Issues.**

Finally, Buckeye's involvement in these proceedings will not broaden the issues. To the contrary, Buckeye only seeks intervention to address an issue that the Hearing Officer and parties recognize is already pending in these proceedings – namely, the application of ESPAM 2.0 in conjunctive administration.

### **V. No Other Party Adequately Represents Buckeye's Interests.**

Buckeye's water rights are independent property right interests, including rights senior to Rangen's. Buckeye owns 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. Finally, the resolution of the Rangen delivery call may not necessarily address Buckeye's interests in this proceeding.

## **CONCLUSION**

Buckeye has a direct and substantial interest in the application of ESPAM 2.0 in future administrative proceedings. As such, since the motion is timely and Buckeye will not broaden

the issues before the Hearing Officer, Buckeye should be permitted to intervene in these proceedings.

DATED THIS 14<sup>th</sup> day of August, 2012.

**BARKER ROSHOLT & SIMPSON LLP**



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## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 14<sup>th</sup> day of August, 2012, the above and foregoing document was served on the following via email and first class mail, postage prepaid:

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