

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION)
FOR PERMIT TO APPROPRIATE)
WATER NO. 63-33321 IN THE NAME)
OF ELK CREEK CORP.)
_____)

**ORDER DENYING MOTION
FOR ISSUANCE OF SUBPOENA**

On October 21, 2011, the Idaho Department of Water Resources ("Department") received a motion from the City of Idaho City ("City") requesting the issuance of subpoenas to employees of the Idaho Department of Environmental Quality ("DEQ"). Specifically, the motion states that "a representative of DEQ is necessary to address the regulatory response to the requested application and the likelihood that withdrawal from the city's water system would also result in withdrawal from the city's sewer system and, thus, fail to meet DEQ standards for the proposed project."

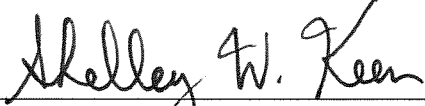
Generally, the Department is not inclined to approve a motion for the issuance of a subpoena to an employee of another governmental agency unless the motion clearly explains why the employee is critical to the case. The Department does not want parties in contested cases to use government employees as free expert witnesses, and oftentimes the proffered testimony is not relevant to the issues before the Department. A motion for the issuance of a subpoena will be granted only when it sets forth a clear explanation of the unique or first-hand knowledge of the governmental employee and it explains the relevancy of the anticipated testimony.

In this case, the Hearing Officer is not convinced that participation by DEQ employees in this proceeding is necessary or relevant. The nexus between an application for permit to appropriate water and the applicant's possible withdrawal from the city's sewer system is not clear. It may be that the City believes it should not provide sewage treatment services to the applicant if the applicant no longer receives its water from the City. Such an ultimatum would be the City's prerogative. However, it also would be the applicant's prerogative to withdraw from the city's sewer system and seek some other legal method for disposal of its sewage. Given this, the Hearing Officer sees no reason why a DEQ employee is needed to testify in this proceeding.

ORDER

IT IS, THEREFORE, HEREBY ORDERED that the City's Motion for Issuance of Subpoena is DENIED.

DATED this 28th day of October, 2011.



SHELLEY W. KEEN, Hearing Officer

CERTIFICATE OF SERVICE

I hereby certify that on October 31, 2011, a true and correct copy of the document described below was served by placing the same in the United States mail, postage prepaid and properly addressed to the following:

Document Served: Order Denying Motion for Issuance of Subpoena

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