

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

IN THE MATTER OF APPLICATION)	ORDER GRANTING MOTION FOR
FOR TRANSFER NO. 75705 IN THE)	DISQUALIFICATION OF OFFICERS
NAME OF PRESTON-WHITNEY)	HEARING CONTESTED CASES AND
IRRIGATION CO.)	ORDER AUTHORIZING DISCOVERY
_____)	

On June 29, 2010, protestants Eldon Golightly, Grant Chadwick and Bert Wheatley, Wheatley Properties, LLC, through their attorney, Scott L. Campbell of Moffatt, Thomas, Barrett, Rock & Fields, Chartered, filed a Motion for Disqualification of Officers Hearing Contested Cases with the Idaho Department of Water Resources (IDWR or Department). The protestants asserted a blanket disqualification for cause of all employees of IDWR, except for the Director, pursuant to Idaho Code Section 67-5252 and IDAPA 37.01.01.412.

The applicant, through its attorney, Robert L. Harris of Holden, Kidwell, Hahn & Crapo, PLLC, filed a response in opposition to the motion on July 16, 2010. The applicant argues that the protestants have no right to assert a blanket disqualification of Department employees because the motion was not timely at this stage of the proceeding. The applicant further argues that the protestants have provided neither evidence of prior involvement nor evidence of bias or potential for bias by Department employees.

On July 16, 2010, protestants Eldon Golightly, Grant Chadwick and Bert Wheatley, Wheatley Properties, LLC, through their attorney, Scott L. Campbell and Andrew J. Waldera of Moffatt, Thomas, Barrett, Rock & Fields, Chartered, filed a Motion for Order Authorizing Discovery with IDWR.

Disqualification of Department Employees

Idaho Code Section 67-5252 states, in pertinent part:

Any party may assert a blanket disqualification for cause of all employees of the agency hearing the contested case, other than the agency head, without awaiting designation of a presiding officer.

The protestants' motion states that the basis for the request for blanket disqualification is the "...substantial prior involvement in the matter by numerous Department employees..." The protestants' motion argues that "...proceeding to a hearing before any of the employees of the

Department, except for the Director would be prejudicial to the interests of Petitioners, because of potential for bias and pre-decision by Department employees.” The Department acknowledges the protestants’ right to assert a blanket disqualification and accepts the explanation as cause for the request.

The applicant argues that the protestants’ motion for blanket disqualification is not timely because a hearing officer has already been designated. Although the statute provides for assertion of a blanket disqualification without awaiting designation of a presiding officer, it does not preclude assertion of a blanket disqualification after a presiding officer has been designated. The applicant makes a valid point that an untimely assertion of blanket disqualification could cause a delay in the proceedings. However, discovery has not begun and a hearing date has not been formally set in this case, so a delay is unlikely. The motion for blanket disqualification should be granted.

Discovery

Discovery by all parties should be allowed.

ORDER

IT IS HEREBY ORDERED that the Motion for Disqualification of Officers Hearing Contested Cases is GRANTED. Interim Director Gary Spackman will be the presiding officer.

IT IS FURTHER ORDERED that all parties may engage in discovery as follows:

1. General discovery can begin immediately.
2. The identity of all expert witnesses that will or may testify at the hearing must be disclosed to all other parties, in writing, by September 17, 2010.
3. Written discovery requests shall be served on or before September 25, 2010.
4. Answers to written discovery requests shall be served on or before November 12, 2010.
5. Written requests for discovery shall be either interrogatories or requests for documents (requests for admission are not allowed). No more than 10 interrogatories may be served by any party (or the attorney for several parties) on another party, and no more than 10 unanswered interrogatories served by any party (or the attorney for several parties) may be pending. Division of a single interrogatory into more than two sub-questions is not permissible.
6. All depositions shall be completed on or before December 10, 2010.

IT IS FURTHER ORDERED that the parties shall exchange exhibits and witness lists, and provide a copy of proposed exhibits to the hearing officer on or before January 10, 2011.

IT IS FURTHER ORDERED that the hearing for this contested case shall be held on January 19, 20, and 21, 2011. Formal notice of the hearing will be served on the parties at a later date.

Dated this 16th day of August, 2010.

A handwritten signature in cursive script, reading "Gary Spackman", written over a horizontal line.

GARY SPACKMAN
Interim Director

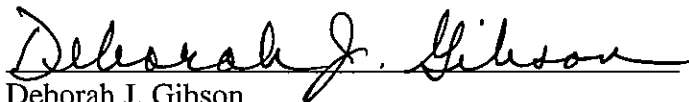
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 16th day of August, 2010, the above and foregoing document was served on the following by placing a copy of the same in the United States mail, postage prepaid and properly addressed to the following:

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Deborah J. Gibson
Administrative Assistant