

BEFORE THE DEPARTMENT OF WATER RESOURCES

FOR THE STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR)
AMENDMENT FOR WATER RIGHT NOS.)
75-7052 AND 75-7589 IN THE NAME OF)
WILLIAMS LAKE RECREATIONAL)
WATER & SEWER DISTRICT)
_____)

**ORDER GRANTING MOTION FOR
DISQUALIFICATION OF
HEARING OFFICER**

This matter came before the Idaho Department of Water Resources ("Department") as a result of protests filed against the referenced applications. Gary Spackman (Spackman) was appointed as the hearing officer for the contested case.

On October 10, 2006, the Director received a Motion for Disqualification of Hearing Officer from Milton A. Slavin, attorney for the applicant Williams Lake Recreational Water & Sewer District. An Affidavit for Disqualification of Hearing Officer asserted that previous order issued by Spackman demonstrates bias. Because the affidavit supported the applicant's Motion for Disqualification of Hearing Officer, the motion is deemed to seek disqualification for cause.

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

(1) . . . any party shall have the right to one (1) disqualification without cause of any person serving or designated to serve as presiding officer, and any party shall have a right to move to disqualify for bias, prejudice, interest, substantial prior involvement in the matter other than as a presiding officer, status as an employee of the agency hearing the contested case, lack of professional knowledge in the subject matter of the contested case, or any other cause provided in this chapter or any cause for which a judge is or may be disqualified.

(2) Any party may petition for the disqualification of a person serving or designated to serve as presiding officer:

(a) within fourteen (14) days after receipt of notice indicating that the person will preside at the contested case; or

(b) promptly upon discovering facts establishing grounds for disqualification; whichever is later.

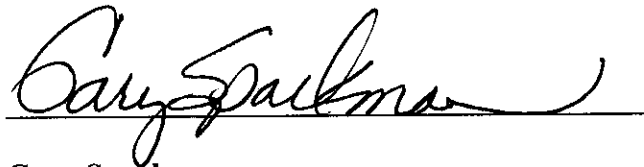
The applicant's affidavit asserts facts about Spackman's prior participation as a hearing officer during a contest of the original applications filed for permit nos. 75-7052 and 75-7589. The grounds for disqualification must be that the hearing officer had "substantial prior involvement in the matter other than as a presiding officer." Because Spackman's "prior involvement" was "as a presiding officer," the assertions by the applicant are not grounds for disqualification for cause. Furthermore, Slavin's motion for disqualification was not timely filed.

Nonetheless, the Department will assign another hearing officer to this matter. Slavin's motion to disqualify will be granted as the one disqualification that can be sought by a party as a matter of right without cause. The Williams Lake Sewer and Water District cannot seek to disqualify another hearing officer without cause.

ORDER

IT IS HEREBY ORDERED that hearing officer Gary Spackman is disqualified without cause.

Dated this 4th day of December, 2006.

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

Gary Spackman
Hearing Officer

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WATER & SEWER DISTRICT)
_____)

**ORDER APPOINTING
HEARING OFFICER**

IT IS HEREBY ORDERED that Allen Merritt is appointed to serve as hearing officer, and is authorized to hear this matter on behalf of the Idaho Department of Water Resources pursuant to IDAPA Rules 37.01.01.410-413 and the provisions of chapter 52, title 67, Idaho Code.

Dated this 4th day of December, 2006.



KARL J. DREHER
Director

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 5th day of December, 2006, a true and correct copy of the above and foregoing document described below was served by placing a copy of the same in the United States mail, postage prepaid and properly addressed to the following:

Document(s) Served: Order Granting Motion for Disqualification of Hearing Officer and Appointment of Hearing Officer

WILLIAMS LAKE RECREATIONAL
WATER & SEWER DISTRICT
C/O MILTON SLAVIN
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87 DAPPELGRAY LANE
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GARY C HAWKINS
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US DEPT OF INTERIOR
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ALLEN MERRITT
REGIONAL MANAGER
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Deborah J. Gibson
Administrative Assistant
Water Allocation Bureau