

Jun 05, 2026

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DEPARTMENT OF
WATER RESOURCES

Attorneys for J.R. Simplot Co., LLC

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

IN THE MATTER OF WATER SUPPLY
BANK LEASE CONTRACT AND RENTAL
AGREEMENT FOR WATER RIGHT NO.
35-4189 IN THE NAME OF J.R. SIMPLOT
COMPANY, LLC

**MOTION TO DISQUALIFY
HEARING OFFICER AND APPOINT
INDEPENDENT HEARING OFFICER**

COMES NOW J.R. Simplot Company, LLC ("Simplot"), by and through its attorneys of record, McHugh Bromley PLLC, and pursuant to IDAPA 37.01.01.410, IDAPA 37.01.01.411, and I.C. § 67-5252, hereby moves the Idaho Department of Water Resources ("Department" or "IDWR") to disqualify Hearing Officer Phill Hummer and to appoint an independent hearing officer.

On May 27, 2026, the Director appointed Hearing Officer Hummer to preside over this matter.¹ That same day, Mr. Hummer disclosed his prior involvement in this proceeding, via email (attached herewith), to representatives of Simplot, to wit:

¹ Idaho Code § 67-5252(2) requires that parties move to disqualify a hearing officer: (a) "Within fourteen (14) days after receipt of notice;" or (b) "Promptly upon discovering facts establishing grounds for disqualification, whichever is later." Therefore, the filing of this *Motion* is timely, as it is filed fewer than fourteen (14) days after the Director appointed Hearing Officer Hummer, as well as promptly upon discovering facts establishing grounds for disqualification.

- Supervising the Department staff member, Aaron Olsen, who reviewed the *Water Supply Bank Lease Contract No. 2137* (“Lease”) and *Water Supply Bank Rental Agreement No. 997* (“Rental”) that are at issue in this proceeding;
- Answering questions from Mr. Olsen as to the Lease and Rental;
- Exchanging emails with Simplot representatives during the Department’s review of the Lease and Rental; and
- Requesting legal assistance from the Deputy Attorneys General, assigned to the Department regarding the Lease and Rental.

In addition, the Lease and Rental approvals, dated April 8, 2026, were executed by Mr. Hummer in his capacity as an employee of the Department.

Based on the aforementioned, Mr. Hummer has had substantial prior involvement in this proceeding by answering questions from Mr. Olsen, communicating directly with Simplot, requesting legal assistance from the Department’s attorneys as to the matter at hand, and executing the approvals that are directly at issue. Accordingly, and pursuant to IDAPA 37.01.01.411 and I.C. § 67-5252(2), Simplot hereby moves the Director to disqualify Mr. Hummer as the hearing officer in this proceeding, for cause, due to his “substantial prior involvement in the matter” I.C. § 67-5252(1). *See Hepworth Holzer, LLP v. Fourth Jud. Dist. of State*, 169 Idaho 387, 400, 496 P.3d 873, 886 (2021) (“In matters of judicial ethics, appearance and reality often converge as one. *Liteky v. United States*, 510 U.S. 540, 565, 114 S.Ct. 1147, 127 L.Ed.2d 474 (1994) (Kennedy, J., concurring) (citing *Offutt v. United States*, 348 U.S. 11, 14, 75 S.Ct. 11, 99 L.Ed. 11 (1954)) (‘[J]ustice must satisfy the appearance of justice’).”).

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If the Director disagrees with Simplot that Mr. Hummer cannot be disqualified for cause, then Simplot moves the Director to disqualify Mr. Hummer, “without cause.” I.C. § 67-5252(1).

Lastly, and pursuant to IDAPA 37.01.01.410, Simplot further moves the Director to appoint an “independent” hearing officer to serve as the hearing officer in this proceeding.

RESPECTFULLY SUBMITTED this 5th day of June, 2026.

MCHUGH BROMLEY, PLLC



CHRIS M. BROMLEY

Attorneys for J.R. Simplot Co., LLC

CERTIFICATE OF SERVICE

I certify that on this 5th day of June, 2026, I caused to be served a true and correct copy of the foregoing to be served upon the following persons by the method(s) indicated:

Idaho Department of Water Resources
322 East Front Street
PO Box 83720
Boise, ID 83720-0098
file@idwr.idaho.gov
Phill.Hummer@idwr.idaho.gov



CHRIS M. BROMLEY

From: [Buyer, Remington](#)
To: [Chris Bromley](#)
Cc: [Voss, Rebecca](#)
Subject: Fw: [EXTERNAL] Lease 35-4189 Hearing
Date: Wednesday, June 3, 2026 9:26:51 PM

From: Hummer, Phill <Phill.Hummer@idwr.idaho.gov>
Sent: Wednesday, May 27, 2026 1:03:00 PM
To: Buyer, Remington <Remington.Buyer@simplot.com>; Voss, Rebecca <rebecca.voss@simplot.com>
Subject: RE: [EXTERNAL] Lease 35-4189 Hearing

Remington and Rebecca,

I made a mistake in my earlier email by not including Rebecca Voss in my request for availability. The hearing and scheduling it is a formal proceeding, therefore Simplot needs to be represented by an attorney (Rule 201.02 IDAPA 37.01.01) and they should have been included.

My understanding is that when the Director decides who to appoint as hearing officer the threshold for experience with the matter is "substantial prior involvement" and in this situation my role in the review of Aaron's recommendation was not considered to exceed the threshold. I also know that hearing officers are often assigned for their experience and expertise on the subject matter and for the water supply bank it is logical that I would be designated. Although I did answer questions from Aaron during the initial review, exchanged emails with you, and requested help from IDWR's legal team about the application, I am confident in my ability to hear and decide this matter based on the facts presented during the hearing without bias. However, if J.R. Simplot Company is uncomfortable with my appointment there are a couple of options. Here are the ones that come to mind:

1. I can schedule an informal meeting for myself and representatives for Simplot to meet and discuss the applications, initial decision, my involvement, the hearing process, and anything else related. The discussion during the meeting would drive the next step, which would likely be either an official prehearing meeting to schedule the hearing or a disqualification request
2. I can issue a notice of pre-hearing meeting (using provided availability) to schedule the hearing with myself as presiding officer

3. Simplot can file a motion to disqualify and IDWR would assign a new hearing officer (see Rule 411 of IDAPA 37.01.01 and IC 67-5252)

I have a narrow window of availability in the next month or two if you want to schedule an informal meeting or initial pre-hearing as described in option 1 or 2. Just email me your availability for the last two weeks of June and I will take the necessary steps to schedule the meeting. I can answer any questions about disqualification and re-appointments or you can reach out to James Cefalo (James.Cefalo@idwr.idaho.gov), or just file the motion by mail or efile at file@idwr.idaho.gov if you want to go with option 3.

Let me know if you have any questions. Email is generally the best way to communicate with me but I do try to answer my phone and return missed calls timely.

-Phill

From: Buyer, Remington <Remington.Buyer@simplot.com>

Sent: Tuesday, May 26, 2026 1:20 PM

To: Hummer, Phill <Phill.Hummer@idwr.idaho.gov>

Subject: Re: [EXTERNAL] Lease 35-4189 Hearing

CAUTION: This email originated outside the State of Idaho network. Verify links and attachments BEFORE you click or open, even if you recognize and/or trust the sender. Contact your agency service desk with any concerns.

Phill,

Was it not you who supervised and approved Aaron Olsen's review of the lease and rental of water right 35-4189? How can you also be the hearing officer?

-Remington

From: Hummer, Phill <Phill.Hummer@idwr.idaho.gov>

Sent: Tuesday, May 26, 2026 12:59 PM

To: Buyer, Remington <remington.buyer@simplot.com>

Subject: [EXTERNAL] Lease 35-4189 Hearing

[Warning: External Email]

In preparation for my appointment as hearing officer for the lease and rental of right 35-4189 im looking at availability for the prehearing conference. By rule the notice needs to be 14 days ahead of the meeting so the likeliest timeframe would be the week of June 15th or week of June 22.

I can make just about any time of those days work but earlier in the day is better for me. Let me know what day and time works best for you and if I need to include anyone else from Simplot.

-Phill

Hersley, Jean

From: Chris Bromley <cbromley@mchughbromley.com>
Sent: Friday, June 5, 2026 8:29 AM
To: IDWR File
Cc: Hummer, Phill
Subject: Motion to Disqualify Hearing Officer, Water Right No. 35-4189
Attachments: 202060605 Motion to DQ Hearing Officer.pdf

CAUTION: This email originated outside the State of Idaho network. Verify links and attachments BEFORE you click or open, even if you recognize and/or trust the sender. Contact your agency service desk with any concerns.

Hello,

Please find attached for filing a *Motion to Disqualify Hearing Officer and Appoint Independent Hearing Officer*.

Thank you,

Chris M. Bromley
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