

BEFORE THE IDAHO DEPARTMENT OF LANDS

In the Matter of the Application of Snake River Oil)
and Gas, LLC to Integrate the Spacing Unit)
Consisting of Section 24, Township 8 North,)
Range 5 West, Boise Meridian, Payette County,)
Idaho.)
Snake River Oil and Gas, LLC, Applicant.)

Docket No. CC-2023-OGR-01-001

**ORDER DENYING MOTION
TO DISQUALIFY
ADMINISTRATOR**

On January 23, 2023, Snake River Oil and Gas, LLC (“Snake River”) filed an application to integrate all uncommitted mineral interest owners in the 640-acre spacing unit consisting of Section 24, Township 8 North, Range 5 West, Boise Meridian, Payette County, Idaho. On January 31, 2023, the Administrator issued an *Order Vacating Hearing and Notice of Hearing to Determine “Just and Reasonable” Factors* (“January 31, 2023 Notice of Hearing”). The January 31, 2023 *Notice of Hearing* included briefing deadlines and set and noticed a March 14, 2023 hearing on the factors to consider in determining whether an integration order’s terms fulfill Idaho Code § 47-320(1)’s “just and reasonable” requirements in the above-captioned spacing unit. Snake River, the Idaho Department of Lands (“Department”), Jordan and Dana Gross and Little Buddy Farm (collectively “the Grosses”), Citizens Allied for Integrity and Accountability (“CAIA”), and Joey Ishida, Brenda Ishida, Juanita Lopez, Sarah Weatherspoon, David George, Jessica Ishida Sanchez, Juan Sanchez Jr, Gary Hale, Ryan Gentry, Mark Vidlak, and Mary Ann Miller (collectively “Certain Nonconsenting Owners”) filed opening briefs.

The Grosses then filed a March 6, 2023 *Response Brief and Motion to Disqualify the Hearing Officer*. They argued that the Administrator should be disqualified based on the allegation that he is a Department employee who administers state leases that the state has a pecuniary interest in. No party joined the Grosses motion or filed a similar motion within seven days of receiving the Grosses motion. *See* IDAPA 04.11.01.565.

On March 8, 2023, Snake River filed an *Opposition to Motion for Disqualification*. Snake River argued that the motion was untimely, that the Grosses provided no explanation of why navigable waters were relevant, the Administrator was not involved in oil and gas leasing, and that the Administrator was statutorily required to hear the matter under Idaho Code § 47-328(3)(d). No additional written responses were received prior to the hearing.

At the hearing, the Administrator allowed all parties an opportunity for oral argument on the motion to disqualify because the fourteen-day deadline to respond to the motion had not run at the time of hearing. The Grosses and Certain Nonconsenting Owners argued the motion to disqualify should be granted, while Snake River and the Department opposed the motion. No additional uncommitted owners offered argument. After considering the briefing and argument, the Administrator issued a verbal decision on the record, denying the motion, at the hearing. The parties were advised of the denial prior to the hearing on just and reasonable factors. Pursuant to Idaho Code § 67-5252(3), this Order Denying Motion to Disqualify Administrator is the written decision stating the facts and reasons for the determination.

Disqualification of hearing officers in contested cases is addressed by Idaho Code § 67-5252 and IDAPA 04.11.01.412. Idaho Code § 67-5252 provides, in part, as follows:

Except as provided in subsection (4) of this section, 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.

Idaho Code § 67-5252(1).

Here, the Grosses argue the Administrator should be disqualified *for cause*, asserting that navigable waterways are in the above-captioned spacing unit and alleging that the Administrator administers state leases that the state has a pecuniary interest in. To support these allegations, they state that the Administrator is a Division Administrator with the Department who manages the Minerals, Navigable Waterways, and the Oil and Gas Division. However, the Grosses' understanding of the Department's structure are incorrect, and therefore their statements are irrelevant to this contested case. The Administrator does not supervise or administer oil and gas leases or mineral leases for the Department of Lands, including oil and gas leases under navigable waterways. Another Bureau within the Department that has a different Division Administrator and supervisor performs this leasing function. Further, the Administrator has no knowledge of any referenced state lease or the particular terms of any such lease. The Grosses also do not allege any private pecuniary benefit or interest, and the Administrator does not have any such interest or receive any such benefit. Thus, the Grosses have not shown any facts, and the Administrator is not aware of any facts, that indicate or prove any bias, prejudice, interest, or substantial prior involvement in this matter other than as presiding officer.

The Certain Nonconsenting Owners further argued at hearing that the Administrator is the wrong decisionmaker because Idaho's Oil and Gas Conservation Act encourages development of the resource. However, the Administrator is, statutorily required to make decisions in integration hearings under Idaho Code § 47-328(3)(d). That subsection provides that:

The oil and gas administrator *shall hear the application and make a decision on the application's merits*. The oil and gas administrator shall set regular hearing dates . . . The oil and gas administrator may for good cause continue any hearing. The oil and gas administrator may appoint a hearing officer, who shall have the power and authority to conduct hearings. . . .

Idaho Code § 47-328(3)(d) (emphasis added). While the Administrator has the ability to hire a hearing officer, he is still statutorily tasked with making the final decision. And as explained above,

there is no evidence of any bias, prejudice, interest, or substantial prior involvement in the matter other than the Administrator fulfilling his statutory duties as presiding officer.

Second, the motion to disqualify is untimely. IDAPA 04.11.01.412. The Grosses cite Idaho Code § 67-5252(2)(b) as their basis for claiming a timely filing. That statute provides, in part, that:

(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.

Neither basis is established in this case. First, the Grosses did not file within fourteen days of their receipt of the January 31, 2023 *Notice of Hearing*. Additionally, the Administrator's employment and job title of "Division Administrator for Minerals, Navigable Waterways, Oil & Gas" was included on the January 31, 2023 *Notice of Hearing* received by the Grosses. Appearance by the Grosses' attorney, on February 17, 2023, does not change the notice to the Grosses.

At hearing the Grosses' counsel argued that making the supporting argument required "connecting of the dots" and he immediately notified the Administrator once he thought he had connected those dots. However, counsel did not disclose when he discovered the alleged *facts* establishing the grounds for disqualification. The facts the motion is based upon appear to be connected only to the Administrator's job title. and the Grosses do not provide what and when other facts that would establish grounds for disqualification, if any, were discovered.

ORDER

For the reasons above and those stated on the record during the March 14, 2023 hearing, the Grosses' Motion to Disqualify is DENIED.

Dated this 22 day of March 2023.

A handwritten signature in black ink that reads "Mick Thomas". The signature is written in a cursive style with a large, sweeping initial "M".

Richard "Mick" Thomas

Division Administrator
Minerals, Navigable Waterways, Oil & Gas
Idaho Department of Lands

CERTIFICATE OF MAILING

I hereby certify that on this 22 day of March 2023, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

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