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Subject: RE: Docket No. CC-2023-OGR-01-001
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Attachments: [20230607.Applicant's Response to Motion for Disqualification.pdf](#)

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Ms. Romine:

Please file in the record of this case the attached **Response of Applicant Snake River Oil and Gas, LLC to Disqualify Hearing Officer**, which is hereby being served upon the parties who have appeared in this matter to date.

Thank you.

If you would like to send me secured documents, please click on the SendSafely link provided below:

<https://hpklaw.sendsafely.com/u/amy@hpk.law>

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BEFORE THE IDAHO DEPARTMENT OF LANDS

**In the Matter of 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)**

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

**RESPONSE OF APPLICANT SNAKE
RIVER OIL AND GAS, LLC TO
MOTION TO DISQUALIFY
HEARING OFFICER**

**SNAKE RIVER OIL AND GAS, LLC,)
Applicant.)**

Most of the bases for the Objecting Owners’ May 26, 2023 *Motion to Disqualify Hearing Officer* were already addressed in the Administrator’s March 22, 2023 *Order Denying Motion to Disqualify Administrator*, addressing a similar motion previously made by Jordan and Dana Gross and Little Buddy Farms, LLC. The substantive reasoning in that Order may be applied to the Objecting Owners’ motion, and it should be denied for the same reasons.

The mere fact that the State of Idaho owns and leases minerals in the subject unit does not establish any conflict on the part of the Administrator. Summarized, the Objecting Owners’ position appears to be that that mere fact of State ownership of minerals in the unit requires, in every instance, recusal of all state employees from any participation in an administrative proceeding in an application involving the unit. This is a radical position not supported by authority.

The Idaho Supreme Court recognized the dual nature of the Attorney General’s duties – participating on the Idaho State Land Board in its capacity as a property owner while also acting as the “State’s attorney” – in *Wasden v. State Bd. of Land Comm’rs*, 153 Idaho 190, 280 P.3d 693 (2012). Nothing about this matter is unusual. Attorneys within the Office of the Attorney General

represent agencies across state government, and also represent the State in its capacity as a property owner. The changing role of one Deputy Attorney General provides no indication at all of any bias on the part of the Administrator.

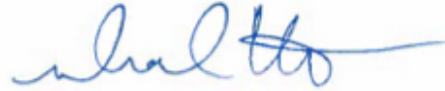
Miller v. Ririe Joint School District, 132 Idaho 385 (1999), involved the denial of an award of attorney's fees, and is not applicable. In *Miller*, the attorney advising the school district also directly advised the school district board and its individual members both prior to and after the initiation of discharge proceedings. The school district attorney represented the board at court proceedings initiated by the plaintiff alleging bias by the board, and represented the school district in the discharge proceedings, after representing the board in the bias proceedings. This is a vastly different set of facts than present here.

Withrow v. Larkin, 421 U.S. 35 (1975), does not compel a different result here. See *Eastop v. Bennion*, Case No. 1:18-cv-00342-BLW (D. Idaho 2019) (“Policy makers with decision-making power, such as the Board in this case, enjoy a presumption of honesty and integrity. . . Mere prior involvement in or familiarity with the events involving a contested decision is insufficient to overcome this presumption "in the absence of a showing that [the decisionmaker] is 'not capable of judging a particular controversy fairly on the basis of its own circumstances. . . . To overcome an administrative board's presumption of honesty, a plaintiff must demonstrate that the tribunal was actually biased, or that there was an impermissible appearance of bias.”) (citing *Withrow*). A combination of investigative fact gathering and adjudicatory functions, without more, does not result in unconstitutional bias. *Withrow*, 421 U.S. at 47. The Objecting Owners have presented no evidence of even an “appearance” of bias, let alone any evidence of actual bias.

Based on the reasoning the Administrator previously set out, and the lack of evidence of any actual bias or an improper appearance of bias, the current motion to disqualify him and the Attorney General's office should be denied.

DATED this 7th day of June, 2023.

HARDEE, PIÑOL & KRACKE, PLLC



MICHAEL CHRISTIAN
Attorney for Applicant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 7th day of June, 2023, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed as follows:

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