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Attorneys for the applicant, Cat Creek Energy, LLC

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

IN THE MATTER OF APPLICATIONS
FOR PERMIT NOS. 63-34403 AND 63-
34652 IN THE NAME OF CAT CREEK
ENERGY, LLC

**DECLARATION OF
THOMAS J. BUDGE**

Thomas J. Budge declares as follows:

1. I am a resident in Idaho, of legal age, competent to testify, and state the following based on my own personal knowledge.
2. I am an attorney representing Cat Creek Energy, LLC (“Cat Creek”) in this matter.
3. On June 29, 2020, I served upon legal counsel for SBar Ranch, LLC, and The District at Parkcenter, LLC (referred to collectively herein as “SBar”) *Cat Creek Energy, LLC’s First Set of Discovery Requests to SBar Ranch, LLC, and The District at Parkcenter, LLC*, a copy of which is attached hereto as ***Exhibit A***.
4. On July 29, 2020, counsel for SBar served *Sbar Ranch, LLC, and The District at Parkcenter, LLC’s Responses to Cat Creek Energy, LLC’s First Set of Discovery Requests*, a copy which is attached hereto as ***Exhibit B***.
5. On August 13, 2020, I sent to counsel for SBar the letter attached hereto as ***Exhibit C*** pointing out the inadequacy of its discovery responses and requesting full and complete responses.
6. On August 26, 2020, counsel for SBar sent me the letter attached hereto as ***Exhibit D***, refusing to supplement its discovery responses.
7. As of the date of the declaration, SBar has provided no additional information in response to Cat Creek’s discovery requests.

8. Attached hereto as *Exhibit E* is a map depicting the locations of the points of diversion of SBar Ranch, LLC's water right numbers 37-23062, 37-14284A, 37-14284B, 37-14284C, and 37-14282 relative to the planned location of Cat Creek Reservoir. I generated this map using ArcMap computer software and GIS data and water rights data publicly available on the official website of the Idaho Department of Water Resources: www.idaho.idaho.gov.

9. Attached hereto as *Exhibit F* is a Google Earth image depicting the distance and the elevation profile between the planned location of Cat Creek Reservoir and SBar Ranch, LLC's water right numbers 37-14284A, 37-14284B, and 37-14284C. I generated this map using Google Earth Desktop Pro software publicly available for download at <https://www.google.com/earth/versions/#download-pro/>. The distance and the elevation profile data was generated using the "Ruler" and "Elevation Profile" tools on Google Earth Pro.

10. Attached hereto as *Exhibit G* is a Google Earth image depicting the distance and the elevation profile between the planned location of Cat Creek Reservoir and SBar Ranch, LLC's water right numbers 37-23062 and 37-14282. I generated this map using the Google Earth Desktop Pro software publicly available for download at <https://www.google.com/earth/versions/#download-pro/>. The distance and the elevation profile data was generated using the "Ruler" and "Elevation Profile" tools on Google Earth Pro.

I declare under penalty of perjury pursuant to the law of the State of Idaho that the foregoing is true and correct.

DATED this 19th day of November, 2020.

By: 
THOMAS J. BUDGE

Exhibit A

Cat Creek Energy, LLC's First Set of Discovery Requests to SBar Ranch, LLC, and The District at Parkcenter, LLC

Randall C. Budge (ISB No. 1949)
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Attorneys for the Applicant, Cat Creek Energy, LLC

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

IN THE MATTER OF APPLICATIONS
FOR PERMIT NOS. 63-34403, 63-34652,
63-34897, AND 63-34900 IN THE NAME
OF CAT CREEK ENERGY, LLC

**CAT CREEK ENERGY, LLC'S
FIRST SET OF DISCOVERY
REQUESTS TO S BAR RANCH,
LLC, AND DISTRICT AT
PARKCENTER, LLC**

To: S Bar Ranch, LLC, District at Parkcenter, LLC, and their counsel of record.

Cat Creek Energy, LLC (“Cat Creek”), hereby requires S Bar Ranch, LLC, and District at Parkcenter, LLC, to answer, under oath, the following requests for admission, interrogatories, and requests for production pursuant to Rules 520 and 521 of the Rules of Procedure of the Idaho Department of Water Resources (the “Department”), the *Order Authorizing Discovery* issued May 28, 2020, and the Idaho Rules of Civil Procedure (I.R.C.P.). Responses to these requests are due within 30 days of service pursuant to I.R.C.P. 33(b)(2), 34(b)(2)(A), and 36(a)(4).

Instructions

1. When answering these discovery requests, you are required to furnish all information and documents known or available upon reasonable inquiry to you.
2. These discovery requests are deemed continuing, and your answers are to be supplemented as additional information become available or known to you.
3. If an interrogatory has subparts, answer each part separately. If an interrogatory cannot be answered in full, answer it to the fullest extent possible, state the reason for your inability to

answer the remainder, and state whatever information and knowledge you have regarding the unanswered portion.

4. If you are asked to identify a person, include his or her name and last-known residence address, residence telephone number, cellular telephone number, business address, and business telephone number.
5. If any requested document was at one time in existence but is no longer in existence, state: (a) the date it ceased to exist; (b) the circumstances under which it ceased to exist; (c) the identity of all persons having knowledge of the circumstances under which it ceased to exist; and (d) the identity of all persons having knowledge of its contents.
6. If any requested information is withheld due to a claim of privilege, state: (a) the request to which it is responsive; (b) its title and general subject matter; (c) its date; (d) the names and titles of its authors or preparers; (e) the names and titles of the persons for whom it was prepared and all persons to whom it was sent or shown; (f) the privilege claimed; and (g) sufficient description to enable Plaintiff to assess the applicability of the privilege as required by I.R.C.P. 26(b)(5)(A).
7. If any information you provide in response to these discovery requests pertain to less than all of the Applications, please identify which application the information pertains to.

Definitions

1. Application means, individually, Applications for Permit Nos. 63-34403, 63-34652, 63-34897, and 63-34900.
2. Applications means, collectively, Cat Creek's Applications for Permit Nos. 63-34403, 63-34652, 63-34897, and 63-34900.
3. Document means any tangible or electronic record, including but not limited to letters, emails, agreements, memoranda, notes, reports, minutes, books, ledgers, invoices, receipts, surveys, photographs, maps, drawings, diagrams, recordings, computer files or other form of data compilation, including duplicates, copies, substitutes, facsimiles, and summaries thereof.
4. Person means any person or legal entity and its agents or employees.
5. You and your means the person or entity answering these discovery requests and its principles, agents, employees, officers, representatives, consultants, experts, investigators, and any other person acting on its behalf.
6. Project means the Cat Creek hydropower and water right storage project in Elmore County, Idaho, to which the Applications pertain.

Requests for Admission

Request for Admission 1: Admit that the diversion of water under the Applications will not reduce the quantity of water under existing water rights that you own or control.

Request for Admission 2: Admit that the document that Cat Creek has produced as Bates ## CCE-A-00001 through 00003 is sufficient to satisfy Idaho Code 42-203A(5)(a).

Request for Admission 3: Admit that the documents that Cat Creek has produced as Bates # CCE-A-00001 through 00003 and CCE-B-00001 through 00343 are sufficient to satisfy Idaho Code 42-203A(5)(b).

Request for Admission 4: Admit that the documents that Cat Creek has produced as Bates ## CCE-C-00001 through 01545, together with the information contained in the *Declaration of James Carkulis*, the *Declaration of Lawrence Leib*, the *Second Declaration of James Carkulis*, and the *Declaration of John L. Faulkner* filed in this matter, are sufficient to satisfy Idaho Code 42-203A(5)(c).

Request for Admission 5: Admit that the documents that Cat Creek has produced as Bates ## CCE-D-00001 through 00035 are sufficient to satisfy Idaho Code 42-203A(5)(d).

Request for Admission 6: Admit that the documents that Cat Creek has produced as Bates ## CCE-E-00001 through 08022 are sufficient to satisfy Idaho Code 42-203A(5)(e).

Request for Admission 7: Admit that the Applications are not contrary to conservation of water resources within the State of Idaho as set forth in Idaho Code 42-203A(5)(f).

Request for Admission 8: Admit that the Applications will not adversely affect the local economy of the watershed or local area within which the source of water originates as set forth in Idaho Code 42-203A(5)(g).

Interrogatories

Interrogatory 1: If you denied any of the above requests for admission, explain in detail the reasons for your denial. If your denial applies to less than all of the Applications, identify which Applications it pertains to.

Interrogatory 2: Your Notice of Protest states that the Applications fail to conform to applicable legal requirements. With respect to each Application, identify each legal requirement that you contend the Application fails to meet, and explain why you contend the Application fails to meet the requirement.

Interrogatory 3: Your Notice of Protest states that the Applications will reduce the quantity of water under existing water rights. Identify the water right numbers that you contend will have a

reduced water supply, explain why you believe the Applications will reduce the quantity of water under such rights, and identify all information that you contend supports your position.

Interrogatory 4: Your Notice of Protest states that the water supply is insufficient for the purposes for which it is sought to be appropriated. With respect to each Application, explain the basis for this statement and identify all information that you contend supports this statement.

Interrogatory 5: Your Notice of Protest states that the Applications are made for speculative purposes. With respect to each Application, explain the basis for this statement and identify all information that you contend supports this statement.

Interrogatory 6: Your Notice of Protest states that the Applicant has insufficient financial resources with which to complete the work involved. Explain the basis for this statement and identify all information that you contend supports this statement.

Interrogatory 7: Your Notice of Protest states that the Applications will conflict with the local public interest. Explain the basis for this statement and identify all information that you contend supports this statement.

Interrogatory 8: Your Notice of Protest states that the Applications are contrary to the conservation of water within the State of Idaho. Explain the basis for this statement and identify all information that you contend supports this statement.

Interrogatory 8: Your Notice of Protest states that the Applications will adversely affect the local economy of the watershed or local area within which the source of water for the proposed use originates. Explain the basis for this statement and identify all information that you contend supports this statement.

Interrogatory 9: If you oppose any Applications for any reason that is not addressed in the foregoing interrogatories, identify the additional reasons and explain why you oppose the Applications for such reasons.

Interrogatory 10: Explain what, if anything, can be done to modify the Applications to enable you to withdraw your opposition.

Interrogatory 11: Identify each person you may call as a witness, both expert and non-expert, at the hearing in this matter, and briefly state the facts or opinions that you expect each witness will testify to.

Interrogatory 12: Identify each document that you may attempt to introduce into evidence at the hearing in this matter and explain its significance to your case.

Requests for Production of Documents

Request for Production 1: Produce true and correct copies of all documents referred to or relied upon in answering the interrogatories set forth above.

Request for Production 2: Produce all exhibits or documents you intend to offer into evidence in this matter.

Request for Production 3: Produce all statements of witnesses or possible witnesses in your possession concerning this matter.

DATED this 29th day of June, 2020.

RACINE OLSON, PLLP

By: 

Randall C. Budge

Thomas J. Budge

Attorneys for Applicant Cat Creek Energy, LLC

CERTIFICATE OF MAILING

I certify that on this 29th day of June, 2020, the foregoing document was served on the following persons in the manner indicated.



Signature of person mailing form

S Bar Ranch LLP
The District at Parkcenter LLC
HAWLEY TROXELL ENNIS & HAWLEY
c/o Dana L. Hofstetter
c/o Richard F. Goodson
877 MAIN ST STE 1000
PO BOX 1617
BOISE ID 83701-1617
dhofstetter@hawleytroxell.com
rgoodson@hawleytroxell.com

- U.S. Mail/Postage Prepaid
- Overnight Mail
- Hand Delivery
- E-mail

Exhibit B

**Sbar Ranch, LLC, and The District at Parkcenter, LLC's Responses to Cat Creek Energy,
LLC's First Set of Discovery Requests**

Dana L. Hofstetter, ISB No. 3867
HAWLEY TROXELL ENNIS & HAWLEY LLP
877 Main Street, Suite 1000
P.O. Box 1617
Boise, ID 83701-1617
Telephone: 208.344.6000
Facsimile: 208.954.5224
Email: dhofstetter@hawleytroxell.com

Attorneys for Protestors SBar Ranch, LLC and The
District at Parkcenter, LLC

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

IN THE MATTER OF APPLICATION FOR
PERMIT NOS. 63-34403, 63-34652, 63-34900
AND 63-34897, IN THE NAME OF CAT
CREEK ENERGY LLC

SBAR RANCH, LLC AND THE
DISTRICT AT PARKCENTER, LLC'S
RESPONSES TO CAT CREEK
ENERGY, LLC'S FIRST SET OF
DISCOVERY REQUESTS

TO: CAT CREEK ENERGY, LLC AND ITS COUNSEL OF RECORD

COME NOW SBar Ranch, LLC and The District at Parkcenter, LLC ("SBar and The District"), Protestors in the above-entitled action, by and through their counsel of record, Hawley Troxell Ennis & Hawley LLP, and, in accordance with the requirements of Rules of Procedure 520 and 521 of the Idaho Department of Water Resources ("IDWR") and Rules 33(b)(2), 34(b)(2)(A), and 36(a)(4) of the Idaho Rules of Civil Procedure, hereby serve their responses to Cat Creek Energy, LLC's First Set of Discovery Requests to S Bar Ranch, LLC, and District at Parkcenter, LLC.

SBAR RANCH, LLC AND THE DISTRICT AT PARKCENTER, LLC'S
RESPONSES TO CAT CREEK ENERGY, LLC'S FIRST SET OF
DISCOVERY REQUESTS - 1

REQUESTS FOR ADMISSION

Request for Admission 1: Admit that the diversion of water under the Applications will not reduce the quantity of water under existing water rights that you own or control.

RESPONSE TO REQUEST FOR ADMISSION NO. 1: Objection. Compound. Overbroad. Vague. Ambiguous. Requests legal conclusions. Premature. Requests privileged information and attorney work product. Without waiving these objections and reserving the right to reassert the same, SBar and The District respond as follows: Deny

Request for Admission 2: Admit that the document that Cat Creek has produced as Bates ## CCE-A-00001 through 00003 is sufficient to satisfy Idaho Code 42-203A(5)(a).

RESPONSE TO REQUEST FOR ADMISSION NO. 2: Deny

Request for Admission 3: Admit that the documents that Cat Creek has produced as Bates # CCE-A-00001 through 00003 and CCE-B-00001 through 00343 are sufficient to satisfy Idaho Code 42-203A(5)(b).

RESPONSE TO REQUEST FOR ADMISSION NO. 3: Deny

Request for Admission 4: Admit that the documents that Cat Creek has produced as Bates ## CCE-C-00001 through 01545, together with the information contained in the *Declaration of James Carkulis*, the *Declaration of Lawrence Leib*, the *Second Declaration of James Carkulis*, and the *Declaration of John L. Faulkner* filed in this matter, are sufficient to satisfy Idaho Code 42-203A(5)(c).

RESPONSE TO REQUEST FOR ADMISSION NO. 4: Deny.

Request for Admission 5: Admit that the documents that Cat Creek has produced as Bates ## CCE-D-00001 through 00035 are sufficient to satisfy Idaho Code 42-203A(5)(d).

RESPONSE TO REQUEST FOR ADMISSION NO. 5: Deny.

Request for Admission 6: Admit that the documents that Cat Creek has produced as Bates ## CCE-E-00001 through 08022 are sufficient to satisfy Idaho Code 42-203A(5)(e).

RESPONSE TO REQUEST FOR ADMISSION NO. 6: Deny.

Request for Admission 7: Admit that the Applications are not contrary to conservation of water resources within the State of Idaho as set forth in Idaho Code 42-203A(5)(f).

RESPONSE TO REQUEST FOR ADMISSION NO. 7: Objection. Compound.

Overbroad. Vague. Ambiguous. Requests legal conclusions. Premature. Requests privileged information and attorney work product. Without waiving these objections and reserving the right to reassert the same, SBar and The District respond as follows: Deny

Request for Admission 8: Admit that the Applications will not adversely affect the local economy of the watershed or local area within which the source of water originates as set forth in Idaho Code 42-203A(5)(g).

RESPONSE TO REQUEST FOR ADMISSION NO. 8: Objection. Compound.

Overbroad. Vague. Ambiguous. Requests legal conclusions. Premature. Requests privileged information and attorney work product. Without waiving these objections and reserving the right to reassert the same, SBar and The District respond as follows: Deny

INTERROGATORIES

Interrogatory 1: If you denied any of the above requests for admission, explain in detail the reasons for your denial. If your denial applies to less than all of the Applications, identify which Applications it pertains to.

RESPONSE TO INTERROGATORY NO. 1: Objection. Compound. Overbroad. Vague. Ambiguous. Requests legal conclusions. Premature. Requests privileged information and attorney work product. Without waiving these objections and reserving the right to reassert the same, SBar and The District respond as follows: *See* Exhibit A to SBar and The District's Response to CCE's Motion for Protective Order and Renewed Motion for Rule 40.05b Order filed in this case.

Interrogatory 2: Your Notice of Protest states that the Applications fail to conform to applicable legal requirements. With respect to each Application, identify each legal requirement that you contend the Application fails to meet, and explain why you contend the Application fails to meet the requirement.

RESPONSE TO INTERROGATORY NO. 2: Objection. Compound. Overbroad. Mischaracterizes Protests. Vague. Ambiguous. Requests legal conclusions. Premature. Requests privileged information and attorney work product. Without waiving these objections and reserving the right to reassert the same, SBar and The District respond as follows: Case investigation is in its early stages and the basis for each such contention has not yet been finalized. The Response to this Interrogatory will be supplemented as appropriate in accordance with applicable case deadlines.

Interrogatory 3: Your Notice of Protest states that the Applications will reduce the quantity of water under existing water rights. Identify the water right numbers that you contend will have a reduced water supply, explain why you believe the Applications will reduce the quantity of water under such rights, and identify all information that you contend supports your position.

RESPONSE TO INTERROGATORY NO. 3: Objection. Compound. Overbroad.

Mischaracterizes Protests. Vague. Ambiguous. Requests legal conclusions. Premature. Requests privileged information and attorney work product. Without waiving these objections and reserving the right to reassert the same, SBar and The District respond as follows: Water Right Nos. 37-23062, 37-14284A, 37-14284B, 37-14284C, and 37-14282, and South Boise Water Company water rights, among others, may be impacted by the proposed diversions and uses in the Applications. Possible impacts include, but are not limited to, reductions in surface water flows and ground water sources. Although, the Applications request the diversion and use of surface water, ground water sources and springs supplied by ground water also may be impacted by the large lined reservoir proposed as part of the Applications. Case investigation is in its early stages and the basis for each such contention has not yet been finalized. The Response to this Interrogatory will be supplemented as appropriate in accordance with applicable case deadlines.

Interrogatory 4: Your Notice of Protest states that the water supply is insufficient for the purposes for which it is sought to be appropriated. With respect to each Application, explain the basis for this statement and identify all information that you contend supports this statement.

RESPONSE TO INTERROGATORY NO. 4: Objection. Compound. Overbroad.

Mischaracterizes Protests. Vague. Ambiguous. Requests legal conclusions. Premature. Requests privileged information and attorney work product. Without waiving these objections and reserving the right to reassert the same, SBar and The District respond as follows: Case investigation is in its early stages and the basis for each such contention has not yet been finalized. The Response to this Interrogatory will be supplemented as appropriate in accordance with applicable case deadlines.

Interrogatory 5: Your Notice of Protest states that the Applications are made for speculative purposes. With respect to each Application, explain the basis for this statement and identify all information that you contend supports this statement.

RESPONSE TO INTERROGATORY NO. 5: Objection. Compound. Overbroad. Mischaracterizes Protests. Vague. Ambiguous. Requests legal conclusions. Premature. Requests privileged information and attorney work product. Without waiving these objections and reserving the right to reassert the same, SBar and The District respond as follows: Case investigation is in its early stages and the basis for each such contention has not yet been finalized. The Response to this Interrogatory will be supplemented as appropriate in accordance with applicable case deadlines.

Interrogatory 6: Your Notice of Protest states that the Applicant has insufficient financial resources with which to complete the work involved. Explain the basis for this statement and identify all information that you contend supports this statement.

RESPONSE TO INTERROGATORY NO. 6: Objection. Compound. Overbroad. Mischaracterizes Protests. Vague. Ambiguous. Requests legal conclusions. Premature. Requests privileged information and attorney work product. Without waiving these objections and reserving the right to reassert the same, SBar and The District respond as follows: Case investigation is in its early stages and the basis for each such contention has not yet been finalized. The Response to this Interrogatory will be supplemented as appropriate in accordance with applicable case deadlines.

Interrogatory 7: Your Notice of Protest states that the Applications will conflict with the local public interest. Explain the basis for this statement and identify all information that you contend supports this statement.

RESPONSE TO INTERROGATORY NO. 7: Objection. Compound. Overbroad. Mischaracterizes Protests. Vague. Ambiguous. Requests legal conclusions. Premature. Requests privileged information and attorney work product. Without waiving these objections and reserving the right to reassert the same, SBar and The District respond as follows: Case investigation is in its early stages and the basis for each such contention has not yet been finalized. The Response to this Interrogatory will be supplemented as appropriate in accordance with applicable case deadlines.

Interrogatory 8: Your Notice of Protest states that the Applications are contrary to the conservation of water within the State of Idaho. Explain the basis for this statement and identify all information that you contend supports this statement.

RESPONSE TO INTERROGATORY NO. 8: Objection. Compound. Overbroad. Mischaracterizes Protests. Vague. Ambiguous. Requests legal conclusions. Premature. Requests privileged information and attorney work product. Without waiving these objections and reserving the right to reassert the same, SBar and The District respond as follows: Case investigation is in its early stages and the basis for each such contention has not yet been finalized. The Response to this Interrogatory will be supplemented as appropriate in accordance with applicable case deadlines.

Interrogatory 8: Your Notice of Protest states that the Applications will adversely affect the local economy of the watershed or local area within which the source of water for the

proposed use originates. Explain the basis for this statement and identify all information that you contend supports this statement.

RESPONSE TO INTERROGATORY NO. 8: Objection. Compound. Overbroad. Mischaracterizes Protests. Vague. Ambiguous. Requests legal conclusions. Premature. Requests privileged information and attorney work product. Without waiving these objections and reserving the right to reassert the same, SBar and The District respond as follows: Case investigation is in its early stages and the basis for each such contention has not yet been finalized. The Response to this Interrogatory will be supplemented as appropriate in accordance with applicable case deadlines.

Interrogatory 9: If you oppose any Applications for any reason that is not addressed in the foregoing interrogatories, identify the additional reasons and explain why you oppose the Applications for such reasons.

RESPONSE TO INTERROGATORY NO. 9: Objection. Compound. Overbroad. Vague. Ambiguous. Requests legal conclusions. Premature. Requests privileged information and attorney work product. Without waiving these objections and reserving the right to reassert the same, SBar and The District respond as follows: Case investigation is in its early stages and the basis for each such contention has not yet been finalized. The Response to this Interrogatory will be supplemented as appropriate in accordance with applicable case deadlines.

Interrogatory 10: Explain what, if anything, can be done to modify the Applications to enable you to withdraw your opposition.

RESPONSE TO INTERROGATORY NO. 10: Objection. Premature. Overbroad. Compound. Ambiguous. Without waiving these objections and reserving the right to reassert the

same, SBar and The District respond as follows: Terms and conditions which may address impacts and available water quantities, include without limitation, withdrawal of some or all of the Applications; reduction or elimination of the lined reservoir limitations on water quantities based on available water; adequate monitoring of ground and surface water sources and upon the determination of impacts to water sources, the cessation of diversions and the removal of the lined reservoir pursuant to bonding. Case investigation is in its early stages and the Response to this Interrogatory will be supplemented as appropriate in accordance with applicable case deadlines.

Interrogatory 11: Identify each person you may call as a witness, both expert and non-expert, at the hearing in this matter, and briefly state the facts or opinions that you expect each witness will testify to.

RESPONSE TO INTERROGATORY NO. 11: Objection. Premature. Overbroad. Compound. Without waiving these objections and reserving the right to reassert the same, SBar and The District respond as follows: Chris Stephens who is familiar with the SBar Ranch and The District's properties and the water use of water thereon is expected to testify on these matters at hearing. Case investigation is in its early stages and all the fact and expert witnesses who may testify at hearing and the substance of their testimony have not yet been finalized. The Response to this Interrogatory will be supplemented as appropriate in accordance with applicable case deadlines.

Interrogatory 12: Identify each document that you may attempt to introduce into evidence at the hearing in this matter and explain its significance to your case.

RESPONSE TO INTERROGATORY NO. 12: Objection. Overbroad. Burdensome. Premature. Requests privileged information and attorney work product. Without waiving these objections and reserving the right to reassert the same, SBar and The District respond as follows: Case investigation is in its early stages and the documents that may be used as exhibits at hearing have not yet been determined. The Response to this Interrogatory will be supplemented as appropriate in accordance with applicable case deadlines.

REQUESTS FOR PRODUCTION OF DOCUMENTS

Request for Production 1: Produce true and correct copies of all documents referred to or relied upon in answering the interrogatories set forth above.

RESPONSE TO REQUEST FOR PRODUCTION NO. 1: Objection. Overbroad. Unduly burdensome. Premature. Requests privileged information and attorney work product. Information equally available to CCE. Without waiving these objections and reserving the right to reassert the same, SBar and The District respond as follows: Case investigation is in its early stages. The Response to this Request for Production will be supplemented as appropriate in accordance with applicable case deadlines. *See* SBAR-DISTRICT000001 – SBAR-DISTRICT000020 produced herewith.

Request for Production 2: Produce all exhibits or documents you intend to offer into evidence in this matter.

RESPONSE TO REQUEST FOR PRODUCTION NO. 2: Objection. Premature discovery. Ambiguous. Requests privileged information and attorney work product. Without waiving these objections and reserving the right to reassert the same, SBar and The District respond as follows: Case investigation is in its early stages. The Response to this Request for

Production will be supplemented as appropriate in accordance with applicable case deadlines.

See SBAR-DISTRICT000001 – SBAR-DISTRICT000020 produced herewith.

Request for Production 3: Produce all statements of witnesses or possible witnesses in your possession concerning this matter.

RESPONSE TO REQUEST FOR PRODUCTION NO. 3: Objection. Premature discovery. Ambiguous. Requests privileged information and attorney work product. Without waiving these objections and reserving the right to reassert the same, SBar and The District respond as follows: Case investigation is in its early stages. The Response to this Request for Production will be supplemented as appropriate in accordance with applicable case deadlines.

Dated: July 29, 2020

HAWLEY TROXELL ENNIS & HAWLEY LLP

By 
Dana L. Hofstetter, ISB No. 3867

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

Notice of Change in Water Right Ownership

1. List the numbers of all water rights and/or adjudication claim records to be changed. If you only acquired a portion of the water right or adjudication claim, check "Yes" in the "Split?" column. If the water right is leased to the Water Supply Bank, check "Yes". If you are not sure if the water right is leased to the Water Supply Bank, see #6 of the instructions.

Water Right/Claim No.	Split?	Leased to Water Supply Bank?	Water Right/Claim No.	Split?	Leased to Water Supply Bank?
37-23062	Yes <input type="checkbox"/>	Yes <input type="checkbox"/>		Yes <input type="checkbox"/>	Yes <input type="checkbox"/>
	Yes <input type="checkbox"/>	Yes <input type="checkbox"/>		Yes <input type="checkbox"/>	Yes <input type="checkbox"/>
	Yes <input type="checkbox"/>	Yes <input type="checkbox"/>		Yes <input type="checkbox"/>	Yes <input type="checkbox"/>
	Yes <input type="checkbox"/>	Yes <input type="checkbox"/>		Yes <input type="checkbox"/>	Yes <input type="checkbox"/>
	Yes <input type="checkbox"/>	Yes <input type="checkbox"/>		Yes <input type="checkbox"/>	Yes <input type="checkbox"/>

2. Previous Owner's Name: TREE TOP RANCHES, LP
Name of current water right holder/claimant

3. New Owner(s)/Claimant(s): S BAR RANCH, LLC
New owner(s) as listed on the conveyance document Name connector and or and/or

<u>P.O. BOX 1065</u>	<u>SUN VALLEY</u>	<u>ID</u>	<u>83353</u>
Mailing address	City	State	ZIP
<u>208-726-4300</u>	<u>crs@5bi.com</u>		
Telephone	Email		

4. If the water rights and/or adjudication claims were split, how did the division occur?
 The water rights or claims were divided as specifically identified in a deed, contract, or other conveyance document.
 The water rights or claims were divided proportionately based on the portion of their place(s) of use acquired by the new owner.

5. Date you acquired the water rights and/or claims listed above: OCTOBER 16, 2017

6. If the water right is leased to the Water Supply Bank changing ownership of a water right will reassign to the new owner any Water Supply Bank leases associated with the water right. Payment of revenue generated from any rental of a leased water right requires a completed IRS Form W-9 for payment to be issued to an owner. A new owner for a water right under lease shall supply a W-9. Water rights with multiple owners must specify a designated lessor, using a completed Lessor Designation form. Beginning in the calendar year following an acknowledged change in water right ownership, compensation for any rental will go to the new owner(s).

7. This form must be signed and submitted with the following **REQUIRED** items:
- A copy of the conveyance document – warranty deed, quitclaim deed, court decree, contract of sale, etc. The conveyance document must include a legal description of the property or description of the water right(s) if no land is conveyed.
 - Plat map, survey map or aerial photograph which clearly shows the place of use and point of diversion for each water right and/or claim listed above (if necessary to clarify division of water rights or complex property descriptions).
 - Filing fee (see instructions for further explanation):
 - \$25 per *undivided* water right.
 - \$100 per *split* water right.
 - No fee is required for pending adjudication claims.
 - If water right(s) are leased to the Water Supply Bank AND there are multiple owners, a Lessor Designation form is required.
 - If water right(s) are leased to the Water Supply Bank, the individual owner or designated lessor must complete, sign and submit an IRS Form W-9.

8. Signature:  PRESIDENT, S BAR RANCH, LLC 12-7-18
Signature of new owner/claimant Title, if applicable Date

Signature: _____ _____ _____
Signature of new owner/claimant Title, if applicable Date

For IDWR Office Use Only:

Received by _____ Date _____ Receipt No. _____ Receipt Amt. _____

Active in the Water Supply Bank? Yes No If yes, forward to the State Office for processing W-9 received? Yes No

Name on W-9 _____ Approved by _____ Processed by _____ Date _____

Instrument # 0000462540
ELMORE COUNTY, ID
02:11:50 PM Oct 16, 2017
For ALLIANCE TITLE - BOISE PRODUCT
No. of Pages: 2 Fee: \$15.00
BARBARA STEELE, Recorder
SE, Deputy
Electronically Recorded by Simplifile

WARRANTY DEED

Alliance Title & Escrow Corp. Order No.:371905

FOR VALUE RECEIVED

Tree Top Ranches, LP an Idaho limited partnership

the grantor(s), do(es) hereby grant, bargain, sell and convey unto

S Bar Ranch, LLC, an Idaho limited liability company

whose current address is

**PO Box 1065
Sun Valley, ID 83353**

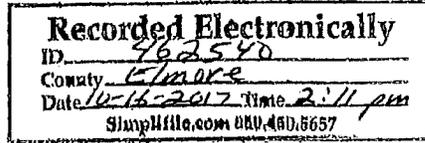
the grantee(s), the following described premises, in Elmore County, Idaho, TO WIT:

**Township 2 South, Range 10 East, Boise Meridian, Elmore County, Idaho
Section 12: West half of the Northeast Quarter; Northwest Quarter**

TO HAVE AND TO HOLD the said premises, with their appurtenances and any and all water and water rights and ditch and canal company rights unto the said Grantee, its successors and assigns forever. And the said Grantor does hereby covenant to and with the said Grantee, that it is the owner in fee simple of said premises; that they are free from all encumbrances Except: Current Year Taxes, conditions, covenants, restrictions, reservations, easements, rights and rights of way, apparent or of record.

And that it will warrant and defend the same from all lawful claims whatsoever.

Dated: OCT. 16, 2017



WARRANTY DEED

Alliance Title & Escrow Corp. Order No.:371905

FOR VALUE RECEIVED

Tree Top Ranches, LP an Idaho limited partnership

the grantor(s), do(es) hereby grant, bargain, sell and convey unto

S Bar Ranch, LLC, an Idaho limited liability company

whose current address is

**PO Box 1065
Sun Valley, ID 83353**

the grantee(s), the following described premises, in Elmore County, Idaho, TO WIT:

**Township 2 South, Range 10 East, Boise Meridian, Elmore County, Idaho
Section 12: West half of the Northeast Quarter; Northwest Quarter**

TO HAVE AND TO HOLD the said premises, with their appurtenances and any and all water and water rights and ditch and canal company rights unto the said Grantee, its successors and assigns forever. And the said Grantor does hereby covenant to and with the said Grantee, that it is the owner in fee simple of said premises; that they are free from all encumbrances Except: Current Year Taxes, conditions, covenants, restrictions, reservations, easements, rights and rights of way, apparent or of record.

And that it will warrant and defend the same from all lawful claims whatsoever.

Dated: Oct. 16, 2017

Tree Top Ranches, LP an Idaho limited partnership
By: LDW, Inc., its General Partner

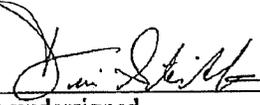


By: Larry D. Williams, President

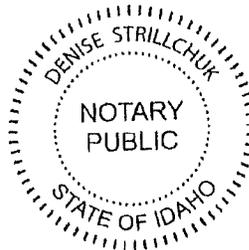
State of IDAHO } ss.
County of ADA }

On this 12 day of October, 2017, before me, the undersigned, a Notary Public in and for said state, personally appeared Larry D. Williams known or identified to me to be the partner(s) that executed the foregoing instrument, and acknowledged to me that he/she/they executed the same in said Partnership name.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.



the undersigned
Notary Public for the State of IDAHO
Residing at: MERIDIAN, ADA COUNTY
Commission Expires: JUNE 28, 2022



STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

Notice of Change in Water Right Ownership

1. List the numbers of all water rights and/or adjudication claim records to be changed. If you only acquired a portion of the water right or adjudication claim, check "Yes" in the "Split?" column. If the water right is leased to the Water Supply Bank, check "Yes". If you are not sure if the water right is leased to the Water Supply Bank, see #6 of the instructions.

Water Right/Claim No.	Split?	Leased to Water Supply Bank?	Water Right/Claim No.	Split?	Leased to Water Supply Bank?
37-14284A	Yes <input type="checkbox"/>	Yes <input type="checkbox"/>		Yes <input type="checkbox"/>	Yes <input type="checkbox"/>
37-14284B	Yes <input type="checkbox"/>	Yes <input type="checkbox"/>		Yes <input type="checkbox"/>	Yes <input type="checkbox"/>
37-14284C	Yes <input type="checkbox"/>	Yes <input type="checkbox"/>		Yes <input type="checkbox"/>	Yes <input type="checkbox"/>
37-14282	Yes <input type="checkbox"/>	Yes <input type="checkbox"/>		Yes <input type="checkbox"/>	Yes <input type="checkbox"/>
	Yes <input type="checkbox"/>	Yes <input type="checkbox"/>		Yes <input type="checkbox"/>	Yes <input type="checkbox"/>

2. Previous Owner's Name: BARBER CAVEN RANCHES

Name of current water right holder/claimant

3. New Owner(s)/Claimant(s): S BAR RANCH, LLC

New owner(s) as listed on the conveyance document Name connector and or and/or

<u>P.O. BOX 1065</u>	<u>SUN VALLEY</u>	<u>ID</u>	<u>83353</u>
Mailing address	City	State	ZIP
<u>208-726-4300</u>	<u>crs@5bi.com</u>		
Telephone	Email		

4. If the water rights and/or adjudication claims were split, how did the division occur?
- The water rights or claims were divided as specifically identified in a deed, contract, or other conveyance document.
 - The water rights or claims were divided proportionately based on the portion of their place(s) of use acquired by the new owner.

5. Date you acquired the water rights and/or claims listed above: JULY 31, 2015

6. If the water right is leased to the Water Supply Bank changing ownership of a water right will reassign to the new owner any Water Supply Bank leases associated with the water right. Payment of revenue generated from any rental of a leased water right requires a completed IRS Form W-9 for payment to be issued to an owner. A new owner for a water right under lease shall supply a W-9. Water rights with multiple owners must specify a designated lessor, using a completed Lessor Designation form. Beginning in the calendar year following an acknowledged change in water right ownership, compensation for any rental will go to the new owner(s).

7. This form must be signed and submitted with the following **REQUIRED** items:
- A copy of the conveyance document – warranty deed, quitclaim deed, court decree, contract of sale, etc. The conveyance document must include a legal description of the property or description of the water right(s) if no land is conveyed.
 - Plat map, survey map or aerial photograph which clearly shows the place of use and point of diversion for each water right and/or claim listed above (if necessary to clarify division of water rights or complex property descriptions).
 - Filing fee (see instructions for further explanation):
 - \$25 per *undivided* water right.
 - \$100 per *split* water right.
 - No fee is required for pending adjudication claims.
 - If water right(s) are leased to the Water Supply Bank AND there are multiple owners, a Lessor Designation form is required.
 - If water right(s) are leased to the Water Supply Bank, the individual owner or designated lessor must complete, sign and submit an IRS Form W-9.

8. Signature: PRESIDENT, S BAR RANCH, LLC 12-7-18
Signature of new owner/claimant Title, if applicable Date

Signature: _____ Title, if applicable Date

For IDWR Office Use Only:

Received by _____ Date _____ Receipt No. _____ Receipt Amt. _____

Active in the Water Supply Bank? Yes No If yes, forward to the State Office for processing W-9 received? Yes No

Name on W-9 _____ Approved by _____ Processed by _____ Date _____

ELECTRONICALLY RECORDED - DO NOT
REMOVE THE COUNTY STAMPED FIRST
PAGE AS IT IS NOW INCORPORATED AS
PART OF THE ORIGINAL DOCUMENT.

Instrument # 0000449059
ELMORE COUNTY, ID
03:39:29 PM Jul 31, 2015
For FIRST AMERICAN TITLE AND ESC
No. of Pages: 3 Fee: \$16.00
BARBARA STEELE, Recorder
DE, Deputy
Electronically Recorded by Simplifile

Recording Requested By and
When Recorded Return to:

Richard F. Goodson
HAWLEY TROXELL ENNIS & HAWLEY LLP
Post Office Box 1617
Boise, ID 83701-1617

SPACE ABOVE THIS LINE FOR RECORDER'S USE ONLY

WARRANTY DEED

This Warranty Deed is made this 31 day of July, 2015 between HALF MOON L.L.C., an Idaho limited liability company (which took title as Half Moon, LLC, an Idaho limited liability company) ("Grantor"), and S BAR RANCH, LLC, an Idaho limited liability company ("Grantee"), whose address is P. O. Box 1065, Sun Valley, ID, 83353.

Grantor, for good and valuable consideration, the receipt and sufficiency whereof are hereby acknowledged, does by these presents grant, bargain, sell, and convey unto Grantee and its successors and assigns forever, all of the following described real estate situated in Elmore County, Idaho:

See Exhibit "A" attached hereto, incorporated herein, and by these presents made a part hereof;

TOGETHER WITH all and singular the improvements, fixtures, tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, the rents, issues and profits thereof; the easements, rights, and appurtenances thereto, including without limitation, any oil, gas and mineral rights, water and water rights, including but not limited to IDWR Water Rights Nos. 37-4441 and 37-14283 and ditch and canal company rights appurtenant thereto, (collectively, the "Property").

TO HAVE AND TO HOLD, all and singular, the Property together with the appurtenances unto Grantee and its successors and assigns forever.

Grantor covenants with Grantee, its successors and assigns, that Grantee shall enjoy the quiet and peaceful possession of said Property; that Grantor is lawfully seized of said Property in fee simple; and Grantor warrants that the title to said Property is merchantable and free from all liens and encumbrances, except (i) those matters of record, (ii) those rights, if any, of third parties in the Property not shown by the public records, (iii) any building, zoning, subdivision and other land use laws, code, ordinances and regulations and any non-compliance therewith, and (iv) those

WARRANTY DEED - 1

07800.0180.7644827.2

SBAR-DISTRICT000006

EXHIBIT "A"

PARCEL 1:

Township 2 South, Range 10 East, of the Boise Meridian, Elmore County

Section 4: All that portion of the SW $\frac{1}{4}$ SE $\frac{1}{4}$ and S $\frac{1}{2}$ SW $\frac{1}{4}$ lying South of the centerline of the Malad River (also shown of record as Camas Creek)

Section 5: SW $\frac{1}{4}$ SW $\frac{1}{4}$

Section 6: SE $\frac{1}{4}$; E $\frac{1}{2}$ SW $\frac{1}{4}$

Section 7: E $\frac{1}{2}$

Section 8: All, EXCEPTING THEREFROM that portion lying North of the centerline of the Malad River (also shown of record as Camas Creek)

Section 9: All, EXCEPTING THEREFROM that portion lying North of the centerline of the Malad River (also shown of record as Camas Creek)

Section 10: W $\frac{1}{2}$ SE; SW $\frac{1}{4}$; S $\frac{1}{2}$ NW $\frac{1}{4}$

Section 15: Northwest Quarter of the Northeast Quarter; North Half of the Northwest Quarter

Section 17: North Half of the Northeast Quarter

PARCEL 2:

Township 2 South, Range 10 East, Boise Meridian, Elmore County, Idaho

Section 10: East Half Southeast Quarter

Section 11: Southwest Quarter and that portion of the Southwest Quarter of the Southeast Quarter and that portion of the Northwest Quarter of the Southeast Quarter lying West of the Hill City Road

Section 14: That portion of the Northwest Quarter Northeast Quarter and the North Half Northwest Quarter lying North and West of the Hill City Road

Section 15: Northeast Quarter Northeast Quarter

The Grantee herein have read and approved the following:

Title File No.: **WARRANTY DEED**

FOR VALUE RECEIVED

Barber Caven Ranches, an Idaho General Partnership

GRANTOR(s), does(do) hereby GRANT, BARGAIN, SELL and CONVEY unto: Half Moon L.L.C.

GRANTEES(s), whose current address is: 6874 Fairview Avenue, Boise, ID 83704
the following described real property in Elmore County, State of Idaho,
more particularly described as follows, to wit:

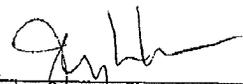
See Attached Exhibit "A" and Exhibit "B"

Instrument # 333492
Elmore County, Idaho
02:47pm Dec. 28, 2001
For: GINA THOMPSON
No. of Pages: 3 Fee: \$9.00
GAIL L. BEST, Recorder
Deputy: TR

TO HAVE AND TO HOLD the said premises, with their appurtenances unto the said Grantee(s), and Grantee(s) heirs and assigns forever. And the said Grantor(s) does(do) hereby covenant to and with the said Grantee(s), that Grantor(s) is/are the owner(s) in fee simple of said premises; that said premises are free from all encumbrances, EXCEPT those to which this conveyance is expressly made subject and those made, suffered or done by the Grantee(s); and subject to reservations, restrictions, dedications, easements, rights of way and agreements, (if any) of record, and general taxes and assessments, (including irrigation and utility assessments, if any) for the current year, which are not yet due and payable, and that Grantor(s) will warrant and defend the same from all lawful claims whatsoever.

Dated: November 9, 2001

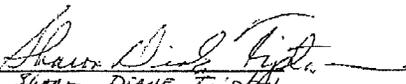
BARBER CAVEN RANCHES

BY: 
Jerry L. Caven, Chairman of Royal Fork Restaurant Corporation, Managing Partner

State of Idaho, County of Ada

on this 9th day of November in the year 2001, before me, the undersigned, a notary public in and for said State, personally appeared Jerry L. Caven, known or identified to me to be the Chairman of Royal Fork Restaurant Corporation who is the Managing Partner of Barber Caven Ranches and the partner who subscribed said Partnership's name to the foregoing instrument, and acknowledged to me that he executed the same in said partnership name.



Signature: 
Name: Sharon Diane Tripodi
Residing at: Boise, ID
My commission expires: 1/26/06

Transnation Title & Escrow, Inc.

11585626

Exhibit "A"

TOWNSHIP 2 SOUTH, RANGE 10 EAST, BOISE MERIDIAN, ELMORE COUNTY, IDAHO

SECTION 4: All that portion of the SW $\frac{1}{4}$ SE $\frac{1}{4}$ and S $\frac{1}{4}$ SW $\frac{1}{4}$ lying South of the centerline of the Malad River.

SECTION 9: ALL, SAVE AND EXCEPT therefrom that portion of the N $\frac{1}{4}$ NE $\frac{1}{4}$ and the NW $\frac{1}{4}$ NW $\frac{1}{4}$ lying North of the centerline of the Malad River

SECTION 10: W $\frac{1}{4}$ SE $\frac{1}{4}$, SW $\frac{1}{4}$, S $\frac{1}{4}$ NW $\frac{1}{4}$

SECTION 11: SE $\frac{1}{4}$ NE $\frac{1}{4}$

SECTION 12: W $\frac{1}{4}$ NE $\frac{1}{4}$, NW $\frac{1}{4}$

SECTION 15: NW $\frac{1}{4}$ NE $\frac{1}{4}$, N $\frac{1}{4}$ NW $\frac{1}{4}$

SAVE AND EXCEPT all interest in gas, oil, mineral and geothermal resources located in or under the lands above described that lie within the following townships, to-wit: Township 2 South, Range 9 East, Boise Meridian; Township 2 South, Range 10 East, Boise Meridian, Township 2 South, Range 11 East, Boise Meridian; it being understood that $\frac{1}{2}$ of said interest has been reserved in Theodore J. Stulz and Charlotte Stulz, husband and wife, pursuant to that certain Warranty Deed, Instrument No. 191601, records of Elmore County, Idaho.

Exhibit "B"

TOWNSHIP 2 SOUTH, RANGE 10 EAST, BOISE MERIDIAN, ELMORE COUNTY, IDAHO

SECTION 5: SW $\frac{1}{4}$ SW $\frac{1}{4}$

SECTION 6: SE $\frac{1}{4}$, E $\frac{1}{4}$ SW $\frac{1}{4}$

SECTION 7: E $\frac{1}{4}$

SECTION 8: ALL, SAVE AND EXCEPT therefrom, all that portion of the N $\frac{1}{4}$ NE $\frac{1}{4}$ and the NE $\frac{1}{4}$ NW $\frac{1}{4}$ lying North of the center line of the Malad River

SECTION 17: N $\frac{1}{4}$ NE $\frac{1}{4}$

SAVE AND EXCEPT all interest in gas, oil, mineral and geothermal resources located in or under the lands above described that lie within the following townships, to-wit: Township 2 South, Range 9 East, Boise Meridian; Township 2 South, Range 10 East, Boise Meridian, Township 2 South, Range 11 East, Boise Meridian; it being understood that $\frac{1}{2}$ of said interest has been reserved in Theodore J. Stulz and Charlotte Stulz, husband and wife, pursuant to that certain Warranty Deed, Instrument No. 191601, records of Elmore County, Idaho.

WARRANTY DEED

FOR VALUE RECEIVED

Juanita J. Steen, a single person

GRANTOR(S), does(do) hereby GRANT, BARGAIN, SELL and CONVEY unto
Half Moon, LLC.

GRANTEE(S), whose current address is: 6874 Fairview Ave. Boise, ID 83704
the following described real property in Elmore County, State of Idaho,
more particularly described as follows, to wit:

Township 2 South, Range 10 East, Boise Meridian, Elmore County, Idaho.

Section 10: E1/2 SE1/4.

Section 11: That portion of the S1/2 lying north and west of the
Hill City Road.

Section 14: That portion of the NW1/4 NE1/4 and the N1/2 NW1/4 lying
north and west of the Hill City Road.

Section 15: NE1/4 NE1/4.

TO HAVE AND TO HOLD the said premises, with their appurtenances unto the said Grantee(s), and
Grantee(s) heirs and assigns forever. And the said Grantor(s) does(do) hereby covenant to and with the said
Grantee(s), that Grantor(s) is/are the owner(s) in fee simple of said premises; that said premises are free from all
encumbrances, EXCEPT those to which this conveyance is expressly made subject and those made, suffered or done
by the Grantee(s); and subject to reservations, restrictions, dedications, easements, rights of way and agreements,
(if any) of record, and general taxes and assessments, (including irrigation and utility assessments, if any) for the
current year, which are not yet due and payable, and that Grantor(s) will warrant and defend the same from all
lawful claims whatsoever. , except those of record.

Dated: December 20, 2007

Juanita J. Steen

Juanita J. Steen

STATE OF Idaho, County of Elmore, ss.

On this 21st day of December
In the year of 2007, before me, the undersigned, a Notary
Public in and for said State, personally appeared
Juanita J. Steen

known or identified to me to be the person whose name
is she subscribed to the within instrument, and
that she executed the same.

Signature: *[Signature]*

Name: SHERYL A. EYMENT
(Type or print)

Residing at: Mountain Home

My commission expires: 2-27-11



Instrument # 394216
Elmore County, Idaho
04:15pm Dec. 21, 2007
For: GUARANTY TITLE INC
No. of Pages: 1 Fee: \$3.00
MARSA GRIMMETT, Recorder
Deputy: DLE

11585627

Summary of Documents Provided by Cat Creek Energy Pursuant to Rule 40.05

Rule 40.05	Subsection	Document(s)	Notes
40.05.	Additional Information Requirements.		
	c. The following information shall be submitted for applications to appropriate unappropriated water or trust water...		
	i. For applications appropriating springs or surface streams with five (5) or fewer existing users...	Unnumbered documents ^A	More than 5 water users on South Fork Boise River – CCE claims provision doesn't apply.
	ii. For applications appropriating groundwater, a plat shall be submitted locating the proposed well relative to all existing wells and springs and permitted wells within a one-half mile radius of the proposed well.		CCE claims provision does not apply. However, no information provided to establish that storage pond will not intercept or appropriate ground water.
	iii. Information shall be submitted concerning any design, construction, or operation techniques which will be employed to eliminate or reduce the impact on other water rights.	CCE-X-00001 - 00028, CCE-D-00003 - 00007 CCE-X-00001 - 00028	General documents on project concept. No design, construction, or operation specifics. Claims no impact on water rights without supporting information.
		Unnumbered documents ^A	Claim diversions only in high flows and that Water Master will ensure no injury but no information on how CCE Project will be designed, constructed, operated or administered on a real-time basis to protect other water rights.

Rule 40.05	Subsection	Document(s)	Notes
<p>d. Information relative to sufficiency of water supply</p> <p>i. Information shall be submitted on the water requirements of the proposed project, including, but not limited to, the required diversion rate during the peak use period and the average use period, the volume to be diverted per year, the period of year that water is required, and the volume of water that will be consumptively used per year.</p>		<p>CCE-E-00001 - 00171</p> <p>CCE-E-00191 – 00311 - CCE-E-00312</p> <p>Unnumbered documents^A</p>	<p>Report on municipal water use projections and future demands in the Treasure Valley/Boise area.</p> <p>Feasibility studies of additional storage by raising Arrowrock and Anderson Ranch Dams.</p> <p>Claims water not consumptively used for power generation, but may be consumptively used by the downstream users. Claims maximum diversion is 10,000 cfs, but that there is no diversion rate required for operation.</p> <p>Calculation of annual reservoir evaporation with hydro water right application.</p>
		<p>CCE-B-00001 - 00058</p> <p>Omitted</p>	<p>No analysis to determine timing and frequency of water availability, timing and amount of water needed for hydropower and timing and amounts of water needed and consumptively used by downstream users.</p>
		<p>Omitted</p>	<p>Inadequate documentation on seepage and other losses. No documentation on reservoir accounting and daily evaporation calculations.</p>

Rule 40.05	Subsection	Document(s)	Notes
	ii. Information shall be submitted on the quantity of water available from the source applied for, including, but not limited to, information concerning flow rates for surface water sources available during periods of peak and average project water demand, information concerning the properties of the aquifers that water is to be taken from for groundwater sources, and information on other sources of supply that may be used to supplement the applied for water source.	CCE-A-00001 - 00003	Analysis of in-priority water availability 2000-2019 (volume and number of days) (Hal Anderson report). No results on flow rates available and dates of water availability. No information on peak and average project water demand. No information about availability and ability to divert claimed rate (9,996 cfs). Does not consider effect of Elmore County Permit 63-34348 diversion from South Fork Boise River. Study spreadsheets not provided.
		CCE-E-00172 - 00185	Annual analysis of in-priority water availability 2000-2019 (volume, number of days, water in Anderson Ranch Reservoir, and snowpack percent of average).
		CCE-B-00207 - 00287	Proposed place of use legal descriptions for CCE water rights.
		CCE-B-00288 - 00306 - CCE-B-00307	Water availability for Anderson Ranch Reservoir and Boise Basin snowpack information
		CCE-B-00308 - 00342	IDWR Water Right Accounting Data – South Fork Boise River near Featherville.
		CCE-B-00343 ^b	Summary of static ground water levels for wells near CCE property. No location map, measurement dates, or units for the water levels.

Rule 40.05	Subsection	Document(s)	Notes
	<p>e. Information relative to good faith, delay, or speculative purposes of the applicant</p>		
	<p>i. The applicant shall submit copies of deeds, leases, easements or applications for rights-of-way from federal or state agencies documenting a possessory interest in the lands necessary for all project facilities and the place of use or if such interest can be obtained by eminent domain proceedings the applicant must show that appropriate actions are being taken to obtain the interest. Applicants for hydropower uses shall also submit information required to demonstrate compliance with Sections 42-205 and 42-206, Idaho Code.</p>	<p>CCE-C-00001 - 00012</p> <p>CCE-X-00001 - 00028</p> <p>CCE-B-00059 - 00140 - CCE-B-00183 - 00206</p> <p>Unnumbered documents^A</p> <p>Omitted</p>	<p>Memoranda of Energy Project Leases with Sawtooth Grazing Association and Wood Creek Ranch. Actual Leases not provided.</p> <p>Public land ownership map. Map does not show Sawtooth Grazing Association and Wood Creek Ranch lands.</p> <p>Copies of Memoranda of Understandings to sell water to downstream users. The amounts of water and timing are not specified in MOUs. No MOUs provided for the places of use listed in Application #4 (CCE-B-00183 - 00206).</p> <p>Conclusory statements regarding compliance with Idaho Code Sections 42-205 and 42-206.</p> <p>No information on ownership/authority to use lands west of the Proposed Cat Creek Reservoir and including parts of the Reservoir (Big Sky Farms Limited), as shown in Application #3 (CCE-B-00141 - 00182).</p> <p>No information on the authorization to use US Forest Service lands that are within the identified CCE Project area.</p>
	<p>ii. The applicant shall submit copies of applications for other needed permits, licenses and approvals, and must keep the department apprised of the status of the applications and any subsequent approvals or denials.</p>	<p>CCE-C-00013 - 00015 - CCE-C-01009 - 01109</p> <p>CCE-C-01110 - 01120 CCE-C-01213 - 01216</p> <p>CCE-C-01217 - 01219 - CCE-C-01491 - 01545</p> <p>CCE-C-01217 - 01218^B</p> <p>Omitted</p>	<p>County Conditional Use Permitting documents. CUPs are currently subject to Idaho Supreme Court Appeal.</p> <p>FERC documents (application for preliminary permit for power generation).</p> <p>BOR documents (preliminary lease of power privilege application).</p> <p>Letter requesting USDA Forest Service comments on CCE water rights applications.</p> <p>Information on other permits that may be needed (e.g., NPDES, CWA 404?).</p>

Rule 40.05	Subsection	Document(s)	Notes
f. Information Relative to Financial Resources			
i. The applicant shall submit a current financial statement certified to show the accuracy of the information contained therein, or a financial commitment letter along with the financial statement of the lender or other evidence to show that it is reasonably probable that financing will be available to appropriate the water and apply it to the beneficial use proposed.		CCE-D-00008 - 00012	Ballpark total cost figure provided without any itemization or supporting information. General assertion about project being financed "through both debt and equity" without any particulars. States "the Project's sales of energy and water will provide revenues for operations, debt amortization, taxes and returns to investors" without any further detail.
		CCE-D-00001 - 00002 - CCE-D-00003 - 00007 ^B	Preliminary and conceptual CCE Project drawings. No financial information provided.
		CCE-D-00013 - 00014 - CCE-D-00022 ^B	
		CCE-D-00025 - 00034 - CCE-D-00035 ^B	
		CCE-D-00023 - 00024 ^B	General financing sources and uses for the Cat Creek Energy Project.
		CCE-X-00039 - 00041 ^B	Permitting work milestones and timeline.
		Unnumbered documents ^{C,D}	Redacted declarations on financial resources from CCE (James Carkulis and John Faulkner).
		Omitted	No financial statement or commitment letter provided or other evidence that to show probable financing.
		Unnumbered documents ^C	Partially redacted construction plan.
		Omitted	No cost/return on investment analysis.
ii. The applicant shall submit plans and specifications along with estimated construction costs for the project works. The plans shall be definite enough to allow for determination of project impacts and implications.			

Rule 40.05	Subsection	Document(s)	Notes
	g. Information Relative to Conflict with the Local Public Interest, Section 42-203A(5)(e), Idaho Code, shall be submitted as follows: The applicant shall seek comment and shall submit all letters of comment on the effects of the construction and operation of the proposed project from the governing body of the city and/or county and tribal reservation within which the point of diversion and place of use are located, the Idaho Department of Fish and Game, the Idaho Department of Environmental Quality, and any irrigation district or canal company within which the proposed project is located and from other entities as determined by the Director.	Unnumbered documents ^A CCE-E-00001 - 00171 - CCE-E-00313 CCE-E-00190, CCE-E-00314 - CCE-E-00316 - 00324	CCE claims it met this requirement by statewide advertisement of water right permit applications and IDWR letters requesting comments from certain State and local entities. No comments in addition to Protests filed with IDWR provided. Documents on Treasure Valley water demands - not specific to CCE Project. Documents on renewable energy demands in the region. However, these documents are not relevant to the local public interest since CCE has stated that its hydro component will be independent from the wind and solar components of CCE's project and will use conventional power from the grid, resulting in net negative power production. Information on fish or biological impacts (journal articles, non-Project specific reports, studies for Anderson Ranch Reservoir) prepared by other parties for other purposes. Specific local public interest analysis for this project not provided.
	h. The following information Relative to the Public Interest Criteria of Section 42-203C(2), Idaho Code, shall be submitted by an applicant seeking reallocation of trust water for a project which the Director determines will reduce the flow of the Snake River by more than two (2) acre-feet per day. For filings proposing irrigation as a purpose of use, the additional information is required if more than two hundred (200) acres will be irrigated. The Director may request any or all of the following information for any filing seeking the reallocation of trust water.	CCE-E-00325 - CCE-E-07983 - 08022 Omitted Unnumbered documents ^A	CCE claims that this is not applicable since the application do not seek to appropriate trust water.

Notes:

- A. Reference to the following documents (documents not assigned bates numbers):
 - a. "Cat Creek Energy, LLC - Water Rules Compliance"
 - b. "Notice of Additional Information"
 - c. "Notice of Amended Rule 40.05 Disclosure"
- B. New documents provided in a June 16, 2020 Amended Rule 40.05 Disclosure including the following:
 - a. CCE-B-00343 "Surrounding Groundwater Wells "
 - b. CCE-C-01217 - 01218 "Ltr from USDA to ID Dept Water Resources re No Protest"
 - c. CCE-D-00015 "Cat Creek Reservoir Preliminary Design Modification SE"
 - d. CCE-D-00016 "Electrical System Single Line Consolidated - CCE-D-S001-1 Rev 0B (1)"
 - e. CCE-D-00020 "Powerhouse Substation - CCE-D-P003-1 (2)"
 - f. CCE-D-00021 "PSH Substation General Arrangement - SLS-D-P003-1 - Not For Construction"
 - g. CCE-D-00022 "PSH Switching Diagram - CCE-D-S001-6 Rev 0A (1) - Not For Construction"
 - h. CCE-D-00023 - 00024 "Sources & Uses - Cat Creek Energy"
 - i. CCE-D-00025 - 00034 "Transmission Pole - Single Circuit - 230 kV Exhibit Drawings - Not For Construction"
 - j. CCE-D-00035 "Transmission Structure Design - Parallel 230 kV & 115 kV - Exhibit Drawing - Not For Construction"
 - k. CCE-X-00039 - 00041 "Major Activities Timeline Breakdown - Cat Creek Energy"
- C. Redacted declaration from Mr. Carklus provided on June 16, 2020 ("20200616 Second Carklus Declaration (Redacted)"). The redacted letter contains a partially redacted construction budget with a brief narrative explanation of redacted items. The redacted declaration does not contain the following financial information attachments:
 - a. Construction Budget
 - b. Project Finance Process Narrative
- D. Redacted declaration from Mr. Faulkner provided on June 16, 2020 ("20200616 Faulkner Declaration (Redacted)"). The redacted declaration does not contain the following financial information attachments:
 - a. Itemized accounting of Cat Creek's investment (June 16, 2020)

SOUTH BOISE WATER COMPANY

Share Number: 7125
Service Address: 501 E. Parkcenter Blvd.

Number of Shares: 25
(Irrigation)

This certifies that The District at Parkcenter, LLC

is the registered owner(s) of **twenty-five** share(s) of capital stock.

Transferable only on the books of the Corporation by the holder hereof in person or by attorney upon surrender of this Certificate properly endorsed.

In Witness Whereof, the said Corporation has caused this Certificate to be signed by its duly authorized officers and its Corporate Seal to be hereunto affixed this 15th day of April 2015.


SBWC
PAR \$10.00 VALUE





Signature, President



Signature, Secretary

Date
4/15/15

Exhibit C

Letter from Budge to Hofstetter dated August 13, 2020

August 13, 2020

Dana L. Hofstetter
HAWLEY TROXELL ENNIS & HAWLEY
877 Main St., Ste. 1000
P.O. Box 1617
Boise, Idaho 83701-1617
dhofstetter@hawleytroxell.com

Sent Via Email & U.S. Mail

Re: Request to meet and confer under I.R.C.P. 37(a)(1)

Ms. Hofstetter,

This letter is a request under Rule 37(a)(1) of the Idaho Rules of Civil Procedure to meet and confer concerning the discovery responses submitted by SBar Ranch, LLC, and The District at Parckcenter, LLC (referred to herein collectively as “SBar”) on July 29, 2020, in answer to *Cat Creek Energy, LLC’s First Set of Discovery Requests to S Bar Ranch, LLC and District at Parkcenter, LLC*. As explained below, SBar’s responses are woefully inadequate. I kindly ask that you either submit complete responses by August 28, 2020, or contact my assistant, Tessa Sparrow, to schedule a phone call by that date to discuss the adequacy of SBar’s responses.

In an effort to resolve this matter cooperatively, let me briefly identify a few of the most egregious deficiencies in SBar’s responses. Before doing that, allow me to review the legal requirements for responding to discovery.

Rule 26(b)(1)(A) authorizes discovery of “any non-privileged matter that is relevant to any party’s claim or defense.” “The answering party may assert lack of knowledge or information as a reason for failing to admit or deny only if the party states that it has made reasonably inquiry and that the information it knows or can readily obtain is insufficient to enable it to admit or deny.” I.R.C.P. 36(a)(5); *Schwan’s Sales Enterprises, Inc. v. Idaho Transp. Dept.*, 142 Idaho 826, 835 (2006). If information is withheld due to a claim of privilege, the party must “describe the nature of the documents, communications, or tangible things not produced or disclosed.” I.R.C.P. 26(5)(A). Interrogatories must be “answered separately and fully in writing under oath.” I.R.C.P. 33(b)(3) (emphasis added). “[A]n evasive or incomplete disclosure, answer, or response must be treated as a failure to disclose, answer or respond.” I.R.C.P. 37(a)(4). By signing a discovery response, an attorney certifies that the response “is complete and correct as of the time that it is made” and is “not interposed for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation.” I.R.C.P. 26(f)(1).

“The principle purpose of interrogatories is to afford parties information in the possession of the other party regarding the issues in suit to enable the propounding party to prepare for trial and to

reduce the possibility of surprise in the trial.” *Lester v. Salvino*, 141 Idaho 937, 940 (Ct. App. 2005). Upon a violation of discovery rules, the court “must impose an appropriate sanction on the signer, the party on whose behalf the signer was acting, or both,” which “may include an order to pay the reasonable expenses, including attorney fees, caused by the violation.” I.R.C.P. 26(f)(3); I.R.C.P. 37(d). Sanctions may also include dismissal of defenses, *Southern Idaho Production Credit Ass’n v. Astorquia*, 113 Idaho 526, 531 (1987), and the exclusion of evidence that a party failed to properly disclose, I.R.C.P. 26(e)(3). Sanctions are warranted in response to an “unreasonable refusal to admit the truth of facts requested under Rule 36 and for [] other attempts to prevent [a party] from obtaining evidence.” *DesFosses v. DesFosses*, 122 Idaho 634, 639 (Ct.-App. Idaho 1992).

A failure to properly answer discovery requests is also subject to Rule 11. The filing of any pleading constitutes certification under Rule 11 that the signor has evidentiary support for the pleading. I.R.C.P. 11(b)(3). It requires attorneys “to perform a prefiling inquiry into both the facts and the law involved.” *Koehn v. Raggins*, 126 Idaho 1017, 1021 (1995). In addition, “Rule 11 imposes an affirmative duty upon parties to engage in pretrial discovery in a responsible manner that is consistent with the spirit and purposes of the discovery rules.” *Southern Idaho Prod. Credit Ass’n*, 113 Idaho at 531. Zealous advocacy of a client’s position is no excuse for a violation of Rule 11. *Lanvik v. Herbert*, 130 Idaho 54, 63-64 (Ct. App. 1997).

Turning to SBar’s responses, they are in our view almost entirely unresponsive and do nothing to assist Cat Creek Energy, LLC (“Cat Creek”) in understanding SBar’s position and what evidence SBar has to support its position. SBar’s failures to comply with the Idaho Rules of Civil Procedure include, but are not limited to:

1. Cat Creek’s first interrogatory asks SBar to explain in detail the reasons for SBar’s denial of any request for admission. SBar denied every request for admission yet did not explain the reason for its denials. Instead, SBar cited Cat Creek to Exhibit A of *SBar’s Response to Cat Creek’s Motion for Protective Order*. Exhibit A does not explain in detail the reason for each of SBar’s denial of each request for admission. Thus, SBar’s response is evasive and incomplete.
2. Cat Creek’s third interrogatory asks SBar to “explain why you believe that the Applications will reduce the quantity of water under such rights, and identify all information that you contend supports your position.” SBar’s response states that groundwater rights could be impacted by the lining of Cat Creek Reservoir but offers no explanation as to how SBar contends the impact would occur. Moreover, SBar claims injury to surface water right nos. 37-23062, 34-14284A, 37-14284B, 37-14284C, and 37-14282 but offers no explanation as to how these rights may be injured. Again, SBar’s response is incomplete.

3. SBar's response to every interrogatory and every request for production is followed by a boilerplate list of objections, with no explanation of the basis for any of the objections. The boilerplate objections are patently unfounded, in violation of Rules 11, 26 and 37.
4. Nine of the 12 interrogatories were answered with nothing more than the following statement: "Case investigation is in its early stages and the basis for each such contention has not yet been finalized." Most of these interrogatories simply asked SBar to explain the basis for its assertion in its Notice of Protest filed in this matter that the Applications to not satisfy a particular criterion of Idaho Code 42-203A(5). SBar's failure to answer this simple question can mean only one of two things: (i) SBar had no factual basis for filing the protest and still has no factual basis for maintaining the protest, or (ii) SBar is intentionally hiding from Cat Creek the reasoning behind SBar's protest. Both responses violate Rules 11, 26 and 37.

At this stage of the proceeding, with all of the information contained in the Applications (place of use, season of use, purpose of use, point of diversion, etc.) and all of the additional information that Cat Creek has produced to explain how it intends to construct and operate Cat Creek Reservoir, there is no reason that SBar cannot enunciate with high degree of clarity the reasons that it contends the Applications violate Idaho Code 42-203A(5). The fact that additional information may be developed is no basis for refusing to thoroughly explain SBar's position based on information currently available.

Should you agree that SBar's responses are incomplete, please provide complete responses no later than August 28, 2020. Cat Creek expects that interrogatories be answered "separately and fully" (I.R.C.P. 33(b)(3)) and the SBar's responses not contain "any evasive or incomplete disclosure" (I.R.C.P. 37(a)(4)). If you believe that SBar's responses filed July 29 already comply with the Idaho Rules of Civil Procedure then please contact Tessa to schedule a phone call so we can discuss this further.

If we receive no response by August 28 then I will assume you are unwilling to submit complete responses or to meet and confer concerning the matter. If you do not respond or if you again submit responses that are incomplete or evasive we will file a motion to compel along with a motion for sanctions.

Thank you,



T. J. BUDGE

Exhibit D

Letter from Hofstetter to Budge dated August 26, 2020

DANA L. HOFSTETTER
MAIL: DHOFSTETTER@HAWLEYTROXELL.COM
DIRECT DIAL: 208-388-4867
DIRECT FAX: 208-954-4867

August 26, 2020

T.J. Budge
Racine Olson
P.O. Box 1391
Pocatello, ID 83204

VIA E-MAIL AND U.S. MAIL
tj@racineolson.com

Re: *In the Matter of Applications for Permit Nos. 63-34403, 63-34652, 63-34897, and 63-34900 in the name of Cat Creek Energy, LLC-Request to Meet and Confer*

Dear Mr. Budge:

This letter responds to your August 13, 2020, letter regarding SBar Ranch, LLC and The District at ParkCenter, LLC's July 29, 2020, Responses to Cat Creek Energy, LLC's First Set of Discovery Requests (the "Discovery Responses"). In your letter you identify four (4) reasons for claiming the Discovery Responses are inadequate, asserting: (i) The Response to Interrogatory No. 1. is not adequate to explain the reasons for denial of the Requests for Admission; (ii) The Response to Interrogatory No. 3 is not adequate because it offers no explanation as to how impacts to SBar's rights would occur; (iii) Each of the Interrogatories and Requests for Productions have unexplained objections; and (iv) Nine of the twelve Interrogatories were answered with the comment "Case investigation is in its early stages and the basis for each such contention has not yet been finalized." I respond to each of these assertions below. If after reviewing this letter, you continue to desire an opportunity to meet and confer, please contact my assistant, Tina Shull, for an appointment for a telephone conference.

1. Response to Interrogatory No. 1

Interrogatory No. 1 asks for a "detailed" explanation of the bases for denial of any of the Requests for Admission. All 8 of the Requests for Admission ask for admissions that each of the ultimate application criteria in Idaho Code 42-203A(5) were satisfied, with most of these requests specifically asking whether certain documents Cat Creek disclosed pursuant to IDWR Water Appropriation Rule 40.05 were "sufficient to satisfy" each of the Idaho Code 42-203A(5)(a-g) criteria. For example, most of the Requests for Admission were like the following: "Request for Admission No. 2- Admit that the documents that Cat Creek has produced as Bates #CCE-A-00001-00003 and CCE-B-000001 through 00343 are sufficient to satisfy Idaho Code 42-203A(5)(b)."

In SBar and The District's Response to Interrogatory No.1, after several objections, including one for "premature," Spronk Water Engineers' Exhibit A (SBar-District #-) is referenced since it provides detail about all the Rule 40.05 information relating to the Idaho Code

42-203A(5)(a-g) criteria that Cat Creek has failed to provide. Thus, Exhibit A does explain in detail, as requested, that at this stage of the proceeding Cat Creek has not provided sufficient information on the Idaho Code 42-203A(5) criteria, to pass the initial Rule 40.05 threshold, much less meet its burden of proof necessary to obtain an unequivocal admission. Since Cat Creek is well aware that SBar and The District have a pending Renewed Motion for More Complete Rule 40.05 information, it should come as no surprise that SBar and The District do not believe Cat Creek has provided the required Rule 40.05 information on the Idaho Code 42-203A(5) criteria, much less proved its case at this point. As more information becomes available, SBar and The District can supplement their Response to Interrogatory No. 1. However, for now, it is entirely appropriate to reference Spronk Water Engineers' Exhibit A as a basis for denying these Requests for Admission essentially seeking admissions that Cat Creek has provided adequate information and proved its case.

2. Response to Interrogatory No. 3

Interrogatory No. 3 asks for information about “the water right numbers that you contend will have a reduced water supply, [and] explain why you believe the Applications will reduce the quantity of water under such rights...” You acknowledge that SBar and The District’s Response to Interrogatory No. 3 “states that ground water rights could be impacted by the lining of Cat Creek Reservoir” but yet you inconsistently also claim there is “no explanation as to how SBar contends the impact would occur” or how SBar’s rights may be injured. After reviewing the Response to Interrogatory No. 3 again, I do not see what further explanation about the possible interconnection of surface and ground water sources or the impact of a massive impermeably lined pond on ground water recharge would be necessary to explain this to someone who already should have an understanding of the conjunctive management of ground and surface water sources and the associated hydrogeologic principles:

RESPONSE TO INTERROGATORY NO. 1: Objection. Compound. Overbroad. Mischaracterizes Protests. Vague. Ambiguous. Requests legal conclusions. Premature. Requests privileged information and attorney work product. Without waiving these objections and reserving the right to reassert the same, SBar and The District respond as follows: Water Right Nos. 37-23062, 37-14284A, 37-14284B, 37-14284C, and 37-14282, and South Boise Water Company water rights, among others, may be impacted by the proposed diversions and uses in the Applications. Possible impacts include, but are not limited to, reductions in surface water flows and ground water sources. Although, the Applications request the diversion and use of surface water, ground water sources and springs supplied by ground water also may be impacted by the large lined reservoir proposed as part of the Applications. Case investigation is in its early stages and the basis for each such contention has not yet been finalized. The

Response to this Interrogatory will be supplemented as appropriate in accordance with applicable case deadlines.

If you could identify what further needs explanation in this Response about the claim that the applications' proposed diversions of water and impermeable lined reservoir could directly impact surface water sources and also the recharge of the head waters serving The District and SBar's water rights, please let me know. As you know, in this proceeding, it is your client, the applicant, who has both the burden of coming forward with the evidence and the burden of proving that the applications will not reduce the quantity of water under existing rights. Accordingly, at this time it would be more appropriate for SBar and The District to be serving Cat Creek an Interrogatory seeking proof that the applications will not reduce the quantities of water under their rights, rather than vice versa.

3. Unexplained Objections

You claim that the Responses to Interrogatories and Requests for Production have unexplained objections. The objections seem self-explanatory to me, but to clarify, I will provide definitions for the objections. If you need further explanation of the application of any objections to any specific Interrogatory or Request for Production, please call me to discuss.

“Compound” means that the Interrogatory or Request for Production asks more than one question or makes more than one request.

“Overbroad” means that the Interrogatory or Request for Production seeks information and/or materials that are privileged, protected, or beyond the scope of discovery, etc.

“Mischaracterizes Protests” means that the language of the Protests are misquoted or misstated in the Interrogatory or Request for Production.

“Vague” means that one or more terms in the Interrogatory or Request for Production are undefined or unclear.

“Ambiguous” means that one or more terms in the Interrogatory or Request for Production are susceptible to more than one interpretation and more specificity is needed.

“Requests legal Conclusions” means that the Interrogatory or Request for Production seeks legal analysis, rather than facts or the application of law to the facts.

“Premature” means that it is too early in the proceeding, applicable case schedule and the case investigation/discovery process to expect a complete answer to the Interrogatory or Request for Production.

“Requests privileged information and attorney work product” means that the Interrogatory or Request for Production covers information that is attorney-client privileged and/or attorney work product.

“Unduly Burdensome” means that the Interrogatory or Request for Production requests voluminous or unnecessarily extensive information.

4. Case Investigation is in its Early Stages

Here you claim that SBar and The District are either withholding information or have no factual basis for filing Protests, although both SBar and The District’s water rights have been identified and the potential impacts of the applications on those water rights described. There can be no question that SBar and The District have justifiable reasons for being “concerned” in the applications and for filing Protests under Idaho Code 42-203A. Again, it is your client, the applicant, who has the obligation to provide the Rule 40.05 information and the burden of proving that the applications will satisfy the Idaho Code 42-203A(5) criteria; yet you seek this information from SBar and The District. IDAPA 37.03.08.040.04(c). As you know, SBar and The District have engaged Spronk Water Engineers and Rocky Mountain Econometrics in this matter and any information developed during the course of further case investigation will be provided in accordance with applicable rules and case schedules. However, before our experts can begin their work, they would need complete Rule 40.05 information from Cat Creek

Conclusion

Your firm apparently is using the discovery process improperly to harass SBar and The District for taking an appropriate posture with respect to obtaining the required Rule 40.05 information. It is noted SBar and The District are the only ones among numerous protesters who you have selected to serve with discovery so far in this proceeding. Your August 13, 2020, letter ignores your client’s own Rule 40.05 information responsibility and its burden of coming forward with evidence and unjustifiably contends that SBar and The District need to satisfy your client’s information obligations. This approach, along with the prior repeated outrageous allegations of energy industry conspiracy, unfounded assertions that Hawley Troxell has unnamed clients interested in this proceeding, and frequent interruptions of SBar and The District’s counsel at pre-hearing conferences, are wanton efforts to misuse the process. It seems that your client would be better served by focusing on providing the complete Rule 40.05 that is required for your client’s applications to proceed.

Sincerely,

HAWLEY TROXELL ENNIS & HAWLEY LLP



Dana L. Hofstetter

SBar Water Rights

EXHIBIT - E

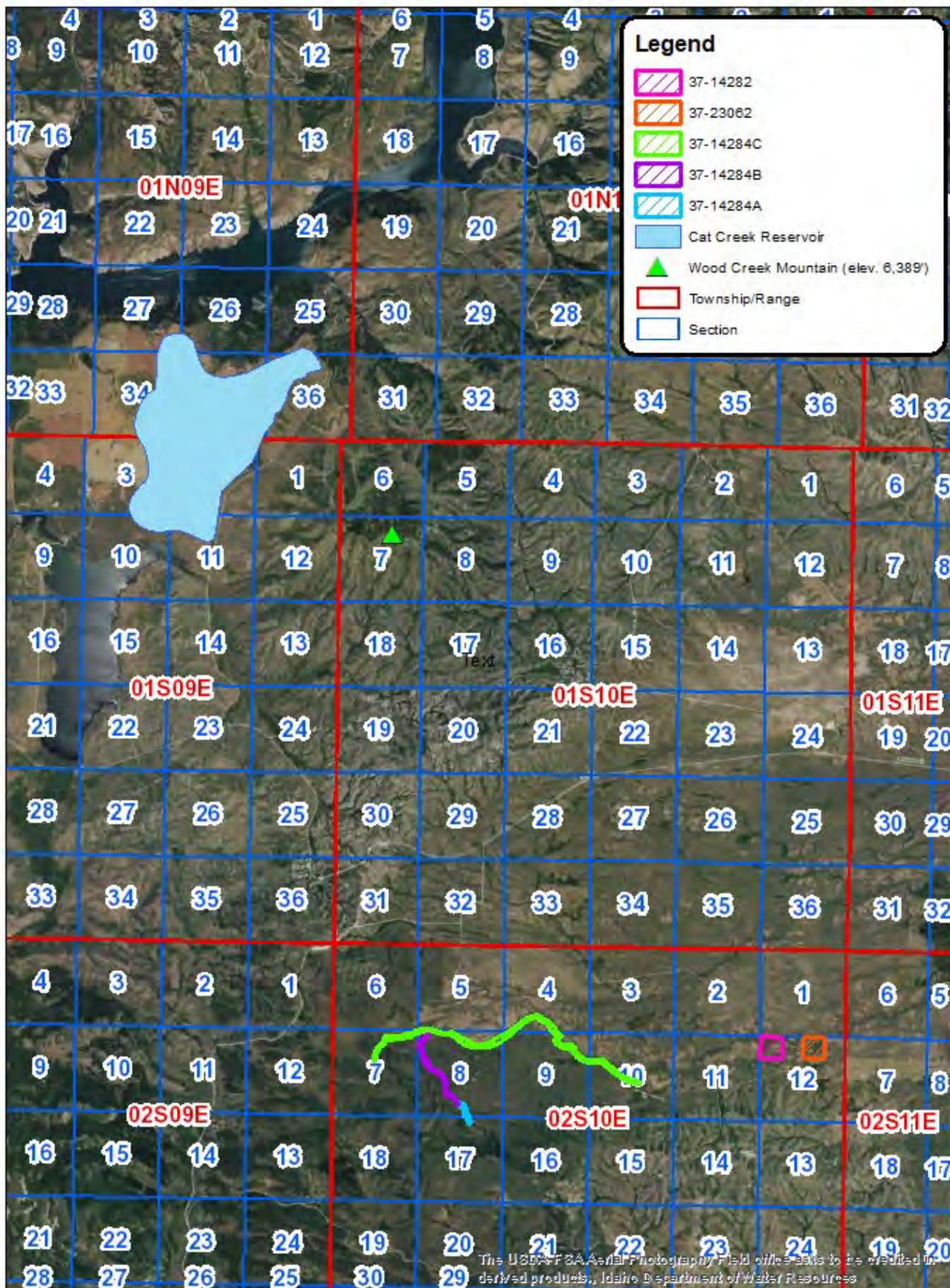


EXHIBIT - F

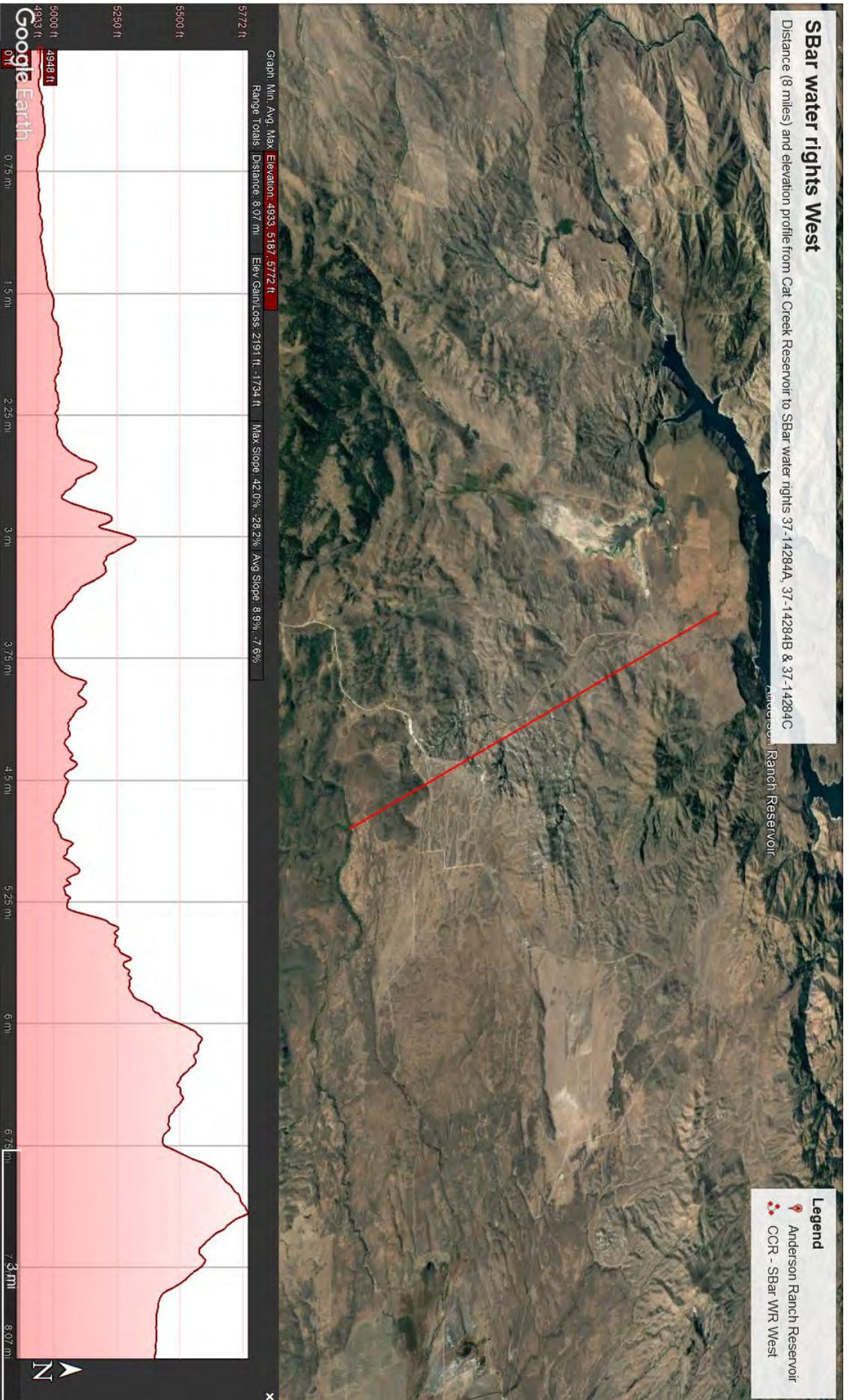


EXHIBIT - G

