

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

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

**AMENDED ORDER
CONSOLIDATING DOCKETS AND
PARTIES¹; ORDER TO
REORGANIZE APPLICANT'S
RULE 40.05 INFORMATION;
ORDER ESTABLISHING
PROTECTIVE ORDER
PROCEDURE; ORDER
AUTHORIZING DISCOVERY;
NOTICE OF CONTINUED
PREHEARING CONFERENCE**

BACKGROUND

On February 25, 2020, the Director of the Idaho Department of Water Resources ("Department") held a continued prehearing conference in this matter. At that conference, the parties asked the Director to set a deadline for Cat Creek Energy, LLC ("Cat Creek") to submit to the Department and parties information required by Rule 40.05 of the Department's Water Appropriation Rules (IDAPA 37.03.08.40.05) ("Rule 40.05"). The Director declined to issue an order triggering Rule 40.05's 30-day deadline. Instead, the Director granted Cat Creek until the end of March (March 31, 2020) to establish an electronic portal and post the Rule 40.05 information on the portal node.

On March 31, 2020, Cat Creek submitted its *Notice of Additional Information, Rule 40.05*, in which it indicated "[a]dditional documents and information is available via [Cat Creek]'s online repository." However, the document repository was not functionally operative and available to the parties until April 13, 2020. As a result of this delay, as well as its position that the documents and information Cat Creek posted to the portal were deficient, on May 1, 2020, SBAR Ranch, LLC and The District at Park Center, LLC ("SBAR & Park Center") filed their *Motion for Rule 40.05.b. Order for Applicant to Submit Complete Rule 40.05 Information* ("Motion for Rule 40.05.b. Order"). On May 15, 2020, Cat Creek responded with its *Applicant's Response to Motion re Rule 40.05 Information* ("Cat Creek Response").

¹ The original *Order Consolidating Dockets and Parties; Order to Reorganize Applicant's Rule 40.05 Information; Order Establishing Protective Order Procedure; Order Authorizing Discovery; Notice of Continued Prehearing Conference*, issued in this matter on May 28, 2020, transposed two numbers in each reference to Application for Permit No. 63-34897 (as 63-34987). This amended order corrects the caption and other references to Application for Permit No. 63-34897. All other aspects of the original order, including deadlines, remain the same.

The Director and the parties² participated via teleconference at the scheduled prehearing conference on May 18, 2020. The Motion for Rule 40.05.b Order and the Cat Creek Response were presented to the Director at the prehearing conference and discussed, among other issues. As a result of the discussion, the Director determined the Rule 40.05 information was not adequately indexed and that the Rule 40.05.f. information submittal regarding financial resources was deficient. As a result of the May 18, 2020, prehearing conference, the Director stated he would issue an order:

- (1) Consolidating the two new, pending Cat Creek applications—Applications for Permit 63-34897 and 63-34900—into this docket and recognize all parties (whether protestant or intervenor) in the prior docket as parties to the resulting consolidated contested case;
- (2) Requiring Cat Creek to reorganize and re-index the information already submitted to coincide with the statutory application criteria of Idaho Code § 42-203A and Rule 40.05;
- (3) Requiring Cat Creek to file complete Rule 40.05.f information regarding financial resources with the Director and the parties or, in the alternative, file a motion for a protective order, along with the claimed protected or confidential information, for the Director's in camera review;
- (4) Authorizing discovery; and
- (5) Notifying the parties of an additional prehearing conference.

ORDER

IT IS HEREBY ORDERED Cat Creek's new, pending Applications for Permit 63-34897 and 63-34900 are consolidated into this, the above encaptioned docket. Applications for Permit 63-34403, 63-34652, 63-34897, and 63-34900 will now proceed as one consolidated contested case. All parties (whether protestant or intervenor) to this docket are recognized as parties to the consolidated contested case without additional procedure, protest, or intervention.

IT IS FURTHER ORDERED that, on or before June 17, 2020, Cat Creek shall reorganize and re-index its online informational portal to coincide with the statutory application criteria from Idaho Code § 42-203A and the Department's Water Appropriation Rules, IDAPA 37.03.08.

IT IS FURTHER ORDERED that, on or before June 17, 2020, Cat Creek shall file complete Rule 40.05.f. financial information with the Director and the parties or, in the alternative, file a motion for a protective order pursuant to IDAPA 37.01.01.532. The motion for protective order shall be accompanied by a comprehensive financial summary showing a reasonable probability that financing will be available to appropriate the water, including:

- (1) "[P]lans and specifications along with estimated construction costs." *See* Rule 40.05.f.ii. The submittal shall describe each component of the proposed project,

² All parties were represented at the May 18, 2020, prehearing conference except Gwinn Rice Ranch LLC, and Tree Top Ranches LP.

whether a physical component, or a nonphysical component related to design, consultation, right of way, contracts, permitting, etc. The submittal shall describe the timing of the completion of each component. The applicant shall estimate a monetary cost for each of these project components; and

(2) “[A] current financial statement certified to show the accuracy of the information contained therein . . . or a financial commitment letter” *See* Rule 40.05.f.i. The financial statement shall refer back to the Rule 40.05.f.ii cost of project analysis. The financial statement shall describe how each of the component costs will be financed and the timing of the financing.

The Director will initially presume all financial information submitted is available for public review and scrutiny unless confidential protection is justified by Cat Creek. Individual justification for protection must be submitted for each component cost and the financing for each component cost. Any and each claim of confidentiality must be accompanied by an attorney’s certificate that the material is protected by law from public disclosure and cite the specific legal authority to support said claim. The Director will review, in camera, each individual component cost of the project, each detailed component of financing, and the claimed protected or confidential information for each component. The Director will determine how any confidential information can be viewed by the parties without public disclosure.

IT IS FURTHER ORDERED that the parties are authorized to immediately conduct and engage in discovery pursuant to IDAPA 37.01.01.521.

NOTICE OF CONTINUED PREHEARING CONFERENCE

NOTICE IS HEREBY GIVEN that the Department will hold a continued prehearing conference to discuss the contested matters on **July 16, 2020 at 10:00 a.m. (MDT)**, in Conference Rooms 602C and 602D of the Department’s State Office, located at 322 E. Front Street, 6th Floor, Boise, Idaho.

All parties must be present at the prehearing conference in person or by telephone. If participating by telephone, please call (720) 279-0026, and when prompted, enter the assigned participation code number: 234278 followed by the ‘#’ key.

The continued prehearing conference will be held in accordance with the provisions of Chapters 38 and 17, Title 42 and Chapter 42, Title 67, Idaho Code, and the Department’s Rules of Procedure. IDAPA 37.01.01. A copy of the Rules of Procedure may be obtained from the Department upon request or at <https://adminrules.idaho.gov/rules/current/37/index.html>.

The conference will be conducted in a facility that meets the accessibility requirements of the Americans with Disabilities Act. If you require special accommodations in order to attend, participate in or understand the conference, please advise the Department no later than five (5) days prior to the conference. Inquiries for special accommodations should be directed to Kimberle English, Idaho Department of Water Resources, P.O. Box 83720, Boise, Idaho 83720-0098, telephone: (208) 287-4815.

DATED this 10th day of June, 2020.



GARY SPACKMAN
Director

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on this 10th day of June 2020, the above and foregoing was emailed and sent to the following by United States Postal Service:

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