

**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 63-34987 IN THE NAME OF CAT  
CREEK ENERGY LLC

**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**

**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").

The Director and the parties<sup>1</sup> 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

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<sup>1</sup> All parties were represented at the May 18, 2020, prehearing conference except Gwinn Rice Ranch LLC, and Tree Top Ranches LP.

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 63-34900 and 63-34987—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 63-34900 and 63-34987 are consolidated into this, the above encaptioned docket. Applications for Permit 63-34403, 63-34652, 63-34900, and 63-34987 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, 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, 6<sup>th</sup> 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 28<sup>th</sup> day of May, 2020.

  
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GARY SPACKMAN  
Director

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on this 28<sup>th</sup> day of May 2020, the above and foregoing was emailed and sent to the following by United States Postal Service:

Cat Creek Energy LLC  
398 S 9<sup>th</sup> St  
Suite 240  
Boise ID 83701

Idaho Water Engineering  
ATTN David R Tuthill Jr  
2918 N El Rancho Pl  
Boise ID 83704

Racine Olson PLLP  
Randall C Budge  
PO Box 1391  
Pocatello ID 83204

Wendi Combs  
704 Lindenwood Dr  
Nampa ID 83638

Allen Thompson  
406 N. Thompson Rd  
King Hill ID 83633

Gwinn Rice Ranch LLC  
ATTN Jim Rice  
2851 W. Balata Ct  
Meridian ID 83646

Barker Rosholt & Simpson  
ATTN John Simpson  
ATTN Albert P Barker  
1010 W. Jefferson ST.  
Suite 102  
PO Box 2139  
Boise, ID 83701 - 2139

Hawley Troxell Ennis & Hawley  
ATTN Dana Hofstetter  
ATTN Richard Goodson  
877 Main St.  
Suite 1000PO Box 1617  
Boise ID 83701 - 1617

Boise City Attorney's Office  
ATTN Abigail Germaine  
150 N. Capitol Blvd  
PO Box 500  
Boise ID 83701

Honsinger Law PLLC  
ATTN Charles Honsinger  
PO Box 517  
Boise, ID 83701

US Dept. of Interior  
Bureau of Land Management  
ATTN Fredric Price  
1387 S Vinnell Way  
Boise, ID 83709

Idaho Conservation League  
ATTN: Matt Nykiel  
PO Box 2308  
Sandpoint ID 83864

Idaho Conservation League  
ATTN Marie Callaway Kellner  
PO Box 844  
Boise, ID 83701



Idaho Dept. of Fish and Game  
Craig White  
Magic Valley Region  
324 S 417 E  
Suite 1  
Jerome ID 83338

Givens Pursley LLP  
ATTN Michael Lawrence  
ATTN Christopher Meyer  
ATTN Charles Baser  
601 W Bannock St  
PO Box 2720  
Boise ID 83701-2720

Tree Top Ranches LP  
ATTN Bill Mulder  
101 S Capitol Blvd  
Suite 1801  
Boise ID 83702

Wildlands Defense  
ATTN Katie Fite  
PO Box 125  
Boise ID 83701

State of Idaho  
Office of Attorney General  
ATTN Ann Vonde  
ATTN Michael C Orr  
PO Box 83720  
Boise ID 83720-0010


Idaho Dept. of Lands  
ATTN Michele Anderson  
3284 W Industrial Loop  
Coeur d'Alene ID 83815

Sawtooth Law Offices PLLC  
ATTN Daniel Steenson  
ATTN Bryce Farris  
ATTN Andrea Waldera  
1101 W. River Street  
Suite 110  
PO Box 7985  
Boise 83707

US Department of Interior  
Bureau of Reclamation  
ATTN E Gail McGarry  
1150 N Curtis Rd  
Suite 100  
Boise ID 83706

US Department of Interior  
Office of the Solicitor  
ATTN Lisa Lance  
960 S Broadway Ave  
Suite 400  
Boise ID 83706

Trout Unlimited  
ATTN Peter Anderson  
910 W Main St  
Suite 342  
Boise, ID 83702

  
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Kimberle English