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JUN 16 2020

DEPARTMENT OF
WATER RESOURCES

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

**MOTION FOR
PROTECTIVE ORDER**

Cat Creek Energy, LLC (“Cat Creek”) hereby moves the Director of the Idaho Department of Water Resources for a protective order pursuant to Rule 532 of the Department’s Rules of Procedure. This motion is supported by the *Second Declaration of James Carkulis* and the *Declaration of John L. Faulkner* filed herewith. Both declarations contain confidential information; therefore, redacted copies have been filed with the Department and served upon the parties, and unredacted copies have been filed under seal with the Director for review by the Director and his legal counsel only.

INTRODUCTION

Idaho Code 42-202 identifies certain information that must be included with every application to appropriate water. The Department may, but is not obligated to, require applicants to submit additional information specified in Rule 40.05 of the Water Appropriation Rules. The Department has broad discretion as to when such information is due—it may be provided “within thirty (30) days after notification by the Director, may be made a part of the record of the hearing held to consider the protest, or may be made available in accordance with any pre-hearing discovery procedures.” (Water Appropriation Rule 40.05.b.)

At a pre-hearing conference held February 25, 2020, the Director instructed Cat Creek to produce the information prescribed under Rule 40.05. Cat Creek subsequently produced most of the information. Cat Creek declined to produce financial information due to its proprietary and

confidential nature. Cat Creek agreed to disclose such information only pursuant to a protective order issued by the Department.

On May 28, 2020, the Director issued an Order Establishing Protective Order Procedure (the “Order”) instructing Cat Creek to “file complete Rule 40.05.f information regarding financial resources or, in the alternative, file a motion for protective order, along with the claimed protected or confidential information, for the Director’s in camera review.” The Order instructs that a 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,” “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.,” “shall describe the timing of the completion of each component,” and “shall estimate a monetary cost of each of these project components.” *Id.* The Order further instructs Cat Creek to “describe how each of the component costs will be financed and the timing of the financing.” *Id.* Finally, the Order states that “[i]ndividual justification for protection must be submitted for each component cost and the financing for each component cost,” and that “each claim of confidentiality must be accompanied by an attorney’s certificate that the material is protected by law from public disclosure.” *Id.*

ANALYSIS

As explained below, much of the information that the Order allows Cat Creek to submit confidentially has been disclosed publicly. Cat Creek has publicly disclosed via its Citrix ShareFile virtual data room (“ShareFile”) information concerning the timeline for completing the project, major milestones, construction documents, and a general explanation of how financing will be secured. This motion does not seek to protect such information.

Cat Creek does not intend to submit a comprehensive financial statement or a financial commitment letter; therefore, such information is beyond the scope of this motion.

This motion seeks to protect (i) its detailed construction budget, (ii) financing sources and uses, and (iii) Cat Creek’s investment in the project to date. This information is proprietary, highly confidential, and highly susceptible to misappropriation by the protestants or others. The Department can and must maintain the integrity of Department proceedings by preserving the confidentiality of such information.

A. The project schedule is not confidential.

This motion does not seek to protect information concerning the timeline for completing the project. Cat Creek did not previously upload a project schedule because neither Idaho Code 42-202 nor Rule 40.05 require it. Nevertheless, Cat Creek has produced its current project schedule in response to the Order’s request for such information. The ShareFile portal contains an Excel spreadsheet titled “Major Activities Timeline Breakdown for CCE” (Bates #CCE-X-00039-00041) which lists start and end dates for key milestones for project development. The schedule includes completion dates for completed tasks and estimated completion dates for future tasks. The schedule is dependent upon government approvals and other external factors

that affect the timing of the project; as such, it has changed periodically and will continue to change periodically.

Notably, for projects of this magnitude Idaho Code 42-204 does not require that the permit holder commence construction within one year after the permit is issued. In addition, it allows up to 17 years to complete construction. The statute requires that each water right permit issued by the Department be assigned an initial development period of five years, but entitles any permit authorizing the diversion of more than 25,000 acre-feet or the irrigation of more than 5,000 acres an extension of up to 12 years upon “a showing that additional time is needed on account of the time required for organizing, financing and constructing works of such large size.” The Idaho Legislature has obviously recognized that projects like Cat Creek’s may take many years to complete, and that the financing needed to complete construction may be secured years after a water right permit is issued.

B. General information concerning financing is not confidential.

This motion does not seek to protect general information explaining why it is reasonably probable that Cat Creek will obtain financing. Cat Creek has uploaded to the “Financial Resources” folder in ShareFile a document labelled “Project Finance Process Narrative” that explains how projects of this type are typically financed and why it is probable that Cat Creek can similarly obtain financing. This document is provided as “other evidence to show that it is reasonably probable that financing will be available to appropriate the water and to apply it to the beneficial use proposed.” (Water Appropriation Rule 40.05.f.i.)

C. Cat Creek does not intend to produce a comprehensive financial statement or a financial commitment letter.

Water Appropriation Rule 40.05.f.i requires “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.” (Emphasis added.) Cat Creek readily acknowledges that it does not have sufficient funds in the bank to finance construction of the project, nor does it have at this stage of the process a lender commitment to finance construction of the project.

Large-scale private power projects are not normally financed by the developer’s piggy bank or a traditional lender commitment letter. As explained in the General Project Financing memorandum they are typically financed with a combination of debt and equity financing. While Cat Creek has made substantial progress in this regard, Cat Creek has not yet reached the stage of development where complete financing is typically secured.

Therefore, Cat Creek intends to submit at the hearing “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.” The Idaho Supreme Court has ruled that this is all that is needed to satisfy Idaho Code 42-203A(5)(d):

The financial ability criterion of I.C. 42-203A should not be interpreted as requiring the applicant, at the time of the hearings on the protested application, to have enough cash available to immediately complete the project. The applicant must show that he can obtain the necessary financing to complete the project within five years. At the hearing, the applicant must prove that it is reasonably probable that he can obtain the necessary financing to complete the project within the time constraint of the permit and the Idaho Code.

Shokal v. Dunn, 109 Idaho 330 (1985). In keeping with this ruling, the Water Appropriation Rules provide that “[a]n applicant will be found to have sufficient financial resources upon a showing that it is reasonably probable that funding is or will be available for project construction.” Rule 40.45.f.i.

Cat Creek has produced a substantial amount of information to demonstrate a reasonable probability that financing will be available to appropriate the water, including (a) leases and ownership of the lands upon which the project will be constructed (Bates # CCE-C-00001-00012); (b) conditional use permits and a development agreement with Elmore County authorizing development of the project (Bates # CCE-C-00136-00264); (c) a Federal Energy Regulatory Commission (FERC) preliminary permit and order granting authority to Cat Creek to file a FERC license application (Bates # CCE-C-01110-01136); (d) a Preliminary Lease of Power Privilege issued by the United States Bureau of Reclamation (Bates # CCE-C-01469-01471); (e) a detailed project budget (submitted via *Second Declaration of James Carkulis*); (f) an accounting of Cat Creek’s investment in the project of more than \$18 million to date (submitted via the *Declaration of John L. Faulkner*); and (g) a narrative explanation of how financing is typically secured for projects of this type.

The foregoing documents individually and collectively constitute “other evidence to show that it is reasonably probable that financing will be available to appropriate the water and to apply it to the beneficial use proposed.” As further progress is made toward development, Cat Creek may produce additional information to further show that financing is reasonably probable. This is sufficient to satisfy Water Appropriation Rule 40.05.f.i, especially when considering that Idaho law allows Cat Creek up to 17 years *after* water right permits are issued to complete the financing and construction of the project. Idaho Code 42-204.

D. Certain project cost and financing information is proprietary, highly confidential, and must be protected from disclosure.

The motion seeks to protect proprietary and confidential information concerning the cost to construct the Cat Creek project, Cat Creek’s anticipated financing sources and uses, and Cat Creek’s investment in the project to date. As explained below, this information is confidential because Cat Creek has treated it as such. In addition, this information qualifies as a trade secret under the Idaho Trade Secrets Act. The Director is legally obligated to preserve the confidentiality of such information.

i. Redacted project cost and financing information is confidential.

The definition of “confidential” is “private, secret.” Merriam-Webster Dictionary, www.merriam-webster.com/dictionary/confidential (June 12, 2020). Thus, for information to be confidential, the holder thereof must intentionally keep it private. In other words, information becomes confidential by treating it as such.

Cat Creek is currently in direct competition with dozens of wind, solar and other renewable energy projects vying to secure critically important power purchase agreements with public utilities and financing agreements with investors, as explained in the *Declaration of James Carkulis* and the *Declaration of Lawrence Leib* filed previously in this matter. The information redacted from the *Second Declaration of James Carkulis* was developed at substantial cost, has independent economic value, and is highly susceptible to misappropriation by competitors. *Id.*

Consequently, Cat Creek has gone to great effort to keep such information confidential, including (a) intentionally keeping such information out of all publications involving its project; (b) limiting access to such information to Cat Creek personnel on a need-to-know basis and to consultants, attorneys, and third parties who have executed confidentiality agreements; and (c) investing in Citrix ShareFile software to help maintain strict control over access to its confidential information. Thus, the information redacted from the *Second Declaration of James Carkulis* and the *Declaration of John L. Faulkner* is confidential because Cat Creek has intentionally treated it as such.

ii. Redacted project cost and financing information qualifies as trade secrets under the Idaho Trade Secrets Act.

In addition, Cat Creek’s detailed construction cost and financing information qualifies as a trade secret under the Idaho Trade Secrets Act, Chapter 8, Title 48, Idaho Code, which defines “trade secret” as

Information ... that: (a) Derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and (b) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

As explained in the *Declaration of James Carkulis* and the *Declaration of Lawrence Leib* filed previously, the market for independent power generation projects is highly competitive, and the financial information upon which power purchase agreements are negotiated is highly confidential and economically valuable. Mr. Carkulis explained that “[t]he disclosure of any financial cost details, methods, opportunities, and means of the Project would provide competitors with economic value and advantage in developing competitive bids, diluting the Project’s ability to be creative in negotiations; in the end severely prejudicing and threatening viability of the Project.” (Carkulis Decl., ¶ 9.) Mr. Leib confirmed that “[t]he disclosure of financial cost details of the Cat Creek Project would provide competitors with economic value and advantage in developing competitive bids, severely prejudicing and threatening viability of the Project” (Decl. Leib, ¶ 8.) Because such information derives independent economic value from not

being generally known to the public or competitors of Cat Creek, it qualifies as trade secrets under the Idaho Trade Secrets Act.

Lest anyone doubt the highly proprietary nature of such information, and the significant risk of misappropriation, see *USA Power, LLC v. Pacificorp*, 372 P.3d 629 (Utah 2016). There, the developer of a power plant spent “two years, thousands of work hours, and close to \$1 million” to develop a power plant. *Id.* at 638. The developer’s economic and feasibility studies were not disclosed publicly but were provided confidentially to Pacificorp pursuant to a confidentiality and non-disclosure agreement (NDA). *Id.* at 639. Notwithstanding the NDA, Pacificorp developed a competing power plant based partly on the economic and technological feasibility studies of the developer. Pacificorp also hired an attorney who had worked for the developer. *Id.* at 642. The developer sued, and, after a five-week trial and two trips to the Utah Supreme Court spanning six years, obtained a \$133 million judgment against Pacificorp for misappropriation of trade secrets. *Id.* at 643. The court held that the developer’s protectable trade secrets include “(1) technical information about the size, location, configuration, economics, engineering, and assets of [the project]; (2) business strategies, goals, and plans, including proformas describing cost and profitability; and (3) [the developer’s] first-to-market advantage—i.e., the ability to obtain financing and get to market first and *block potential competitors*.” *Id.* at 650 (emphasis in original).

iii. The Idaho Trade Secrets Act requires the Department to preserve the confidentiality of Cat Creek’s trade secrets.

Under the Idaho Trade Secrets Act, “a court shall preserve the secrecy of an alleged trade secret by reasonable means, which may include granting protective orders in connection with discovery proceedings, holding in-camera hearings, sealing the records of the action, and ordering any person involved in the litigation not to disclose an alleged trade secret without prior court approval.” Idaho Code 48-804 (emphasis added). The Act provides that trade secrets “are subject to disclosure by a public agency according to chapter 1, title 74, Idaho Code” (the Idaho Public Records Act). Idaho Code 48-801(5)(b).

The Idaho Public Records Act generally requires that information presented to state agencies be made available for examination and copying by members of the public. Idaho Code 74-102. However, there are several exemptions, one of which is trade secrets. Idaho Code 74-107(1). State agencies are not to disclose information that is exempt from disclosure under the Idaho Public Records Act even if other provisions of law might otherwise provide for the disclosure of such information. *Gibson v. Ada County*, 138 Idaho 787, 790 (2003) (citing *Bolger v. Lance*, 137 Idaho 792, 796 (2002)).

Because the information redacted from the *Second Declaration of James Carkulis* and the *Declaration of John L. Faulkner* qualifies as trade secrets, the Department is legally obligated to preserve the confidentiality of such information. Idaho Code 48-804.

iv. The Director has express authority to issue a protective order to preserve confidentiality and protect trade secrets.

Rule 532 of the Department's Rules of Procedure authorizes the director to "issue protective orders limiting access to information generated during settlement negotiations, discovery, or hearing." The Department's Rules of Procedure do not establish a particular standard for protective orders; however, the Idaho Rules of Civil Procedure, which govern the discovery of information in Department proceedings (see Rule 520.02 of the Department's Rules of Procedure) provide guidance.

I.R.C.P. 26(c) provides that a protective order may be issued "to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense." Similarly, Idaho Rule of Evidence 403 allows courts to "exclude relevant evidence if its probative value is substantially outweighed by a danger of one or more of the following: unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence."

The United States Supreme Court has conferred "broad discretion on the trial court to decide when a protective order is appropriate and what degree of protection is required." *Seattle Times Co. v. Rhinehart*, 467 U.S. 20, 36 (1984). Under I.R.C.P. 26(c), this may include

- (A) forbidding the disclosure or discovery;
- (B) specifying terms, including time and place, for the disclosure or discovery;
- (C) prescribing a discovery method other than the one selected by the party seeking discovery;
- (D) forbidding inquiry into certain matters, or limiting the scope of disclosure or discovery to certain matters;
- (E) designating the persons who may be present while the discovery is conducted;
- (F) requiring that a deposition be sealed and opened only on court order;
- (G) requiring that a trade secret or other confidential research, development, or commercial information not be revealed or be revealed only in a specified way; and
- (H) requiring that the parties simultaneously file specified documents or information in sealed envelopes, to be opened as the court directs.

The standard for issuance of a protective order under I.R.C.P. 26(c) is simply "good cause." Idaho courts have not elaborated on what this requires, but federal courts have. In the case of trade secrets, the moving party "must first establish that the information sought is a trade secret and then demonstrate that its disclosure might be harmful." *Centurion Indus., Inc. v. Warren Steurer & Assocs.*, 665 F.2d 323, 325 (10th Cir. 1981). "If these requirements are met, the burden shifts to the party seeking discovery to establish that the disclosure of trade secrets is relevant and necessary to the action." *Id.*

If the court determines that a trade secret is relevant and necessary to the action, it must then determine what degree of protection to provide under I.R.C.P. 26(c). "In determining what protection to give trade secrets, the court must weigh the claim to privacy against the need for disclosure, considering such factors as the dangers of abuse, good faith, adequacy of protective measures, and the availability of other means of proof." *Order Protecting Trade Secrets and Confidential Information*, Handbk. Fed. Civ. Disc. & Discl. § 1.75 (4th Ed.). The scope of a

protective order should aim to “strike a proper balance between the philosophy of full disclosure of relevant information and the need for reasonable protection against harmful side effects, such as the risk that disclosure will result in competitive harm.” *Nutratch, Inc. v. Syntech (SSPF) International, Inc.*, 242 F.R.D. 552, 555 (C.D.Ca.2007) (internal quotes omitted; citing *Davis v. AT&T Corp.*, 1998 WL 912012, at 2 (W.D.N.Y.1998)).

Protective orders commonly limit access to confidential information to counsel and their experts (and not the opposing party). *Id.* (citing *Safe Flight Instrument Corp. v. Sundstrand Data Control, Inc.*, 682 F.Supp 20, 22 (D.Del.1988) and *Vesta Corset Co., Inc. v. Carmen Found., Inc.*, 1999 WL 13257, at *3 (S.D.N.Y.1999)). In some cases, however, neither the opposing party nor their attorney may be allowed to examine confidential information due to the risk of harm that may result. For example, in *Jen-Rath Co., Inc. v. KIT Mfg. Co.*, 137 Idaho 330 (2002), the district court refused to disclose a dealership agreement that KIT claimed was necessary to prove its case. *Id.* at 336. Although the agreement was relevant, it contained confidential information of a competitor of KIT, and, finding its probative value to be minimal, the district court elected to protect it from disclosure. *Id.* The Idaho Supreme Court upheld the decision, holding that “the district court had discretion to issue a protective order barring discovery of the confidential contract under I.R.C.P. 26(c),” and also that “the court had the discretion to rule that the evidence was excludable, even if relevant, under I.R.E. 403.” *Id.*

The issuance of a protective order is a discretionary decision: “This Court has held that the use of the permissive word ‘may’ denotes the exercise of discretion. Given the permissive language of the rule, the district court’s decision to grant a protective order is discretionary and will not be overturned absent an abuse of that discretion.” *Selkirk Seed Co. v. Forney*, 134 Idaho 98, 104 (2000) (citing *Walborn v. Walborn*, 120 Idaho 494, 501 (1991)).

v. The Director must maintain the integrity of Department proceedings by protecting Cat Creek’s proprietary and highly confidential information.

As explained above, Cat Creek is not required under Idaho Code 42-203A(5)(d) to provide a certified financial statement or lender commitment; it need only show “that it is reasonably probable that [it] can obtain the necessary financing to complete the project within the time constraint of the permit and the Idaho Code”—in this case, 17 years—keeping in mind that the state must be “willing to take a risk by providing individuals with the opportunity to put water to beneficial use.” *Shokal*, 109 Idaho 335, 336.

The role of project cost and financing information should be very limited. Indeed, this case should not be turned into a line item referendum of Cat Creek’s budget—particularly given the highly confidential nature of such information, and the substantial risk of misappropriation by SBar and others. All that is required is that Cat Creek demonstrate a reasonable probability of obtaining financing to complete the project.

Cat Creek contends that the information it has provided easily clears this hurdle, especially considering that Rule 40.05 is merely an initial disclosure standard. The fact that Cat Creek has invested over \$18 million to date speaks volumes. *Shokal*, 109 Idaho at 336 (“The extent of the applicant’s own investment is a strong factor to be considered”). Add to that Cat Creek’s success in securing ownership and leases of the land where the project will be constructed. Add to that

Cat Creek's success in securing conditional use permits and a development agreement with Elmore County. Add to that Cat Creek's success in securing a FERC preliminary permit and a BOR preliminary lease of power privilege. Add to that Cat Creek's obvious command and thorough explanation of how projects of this type are typically financed, Cat Creek's detailed construction budget, Cat Creek's detailed project timeline, and Cat Creek's anticipated financing sources and uses. All of this soundly and conclusively demonstrates a reasonable probability that Cat Creek will be able to secure financing after water right permits are issued. This information alone should be sufficient to satisfy Rule 40.05.

The unredacted construction budget and table of financing sources and uses that Cat Creek has filed under seal via the *Second Declaration of James Carkulis* are offered merely as assurance that Cat Creek's budget is well-grounded, and that Cat Creek is making progress on the path to complete financing. Given the information cited in the prior paragraph, it is not necessary that SBar Ranch, LLC, and the District at Park Center, LLC (collectively, "SBar") have access to highly sensitive financial details. The probative value of such information is low while the risk and consequences of misappropriation are extremely high.

This is precisely why Cat Creek is so concerned by the insistence of SBar Ranch, LLC, and the District at Park Center, LLC (collectively, "SBar") that they be given access to such information. Cat Creek is equally concerned that such information may be misappropriated by other clients of SBar's large law firm which likely include competitors of Cat Creek or landowners, suppliers, investors, or lenders working with competitors of Cat Creek.

CONCLUSION

For the foregoing reasons, Cat Creek respectfully requests an order that (i) Cat Creek has satisfied the disclosure required under Rule 40.05.f.i of the Water Appropriation Rules, and (ii) protects from disclosure the confidential information redacted from the *Second Declaration of James Carkulis* and the *Declaration of John L. Faulkner*.

Should the Director decline to protect such information from disclosure, then Cat Creek respectfully requests an order that (a) allows access to such information only by legal counsel and retained experts of parties, (b) conditions such access upon such person signing a protective agreement in a form substantially similar to that attached hereto as *Appendix A* or otherwise acceptable to Cat Creek, and (c) requires all persons desiring to examine such information appear in-person for visual inspection at the Department without any form of copying.

Should the Director decline to preserve the confidentiality of information redacted from the *Second Declaration of James Carkulis* or the *Declaration of John L. Faulkner*, and decline to impose the protective measures requested above, the unredacted copies of the declarations must be returned to Cat Creek so it can determine whether or to what extent Cat Creek may consider disclosing additional information or whether an interlocutory appeal is necessary.

Dated this 16th day of June, 2020.

RACINE OLSON, PLLP

By: Thomas J. Budge
Randall C. Budge
Thomas J. Budge

APPENDIX A
Protective Agreement

PROTECTIVE AGREEMENT

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

This Protective Agreement ("Agreement") is entered into by the undersigned participant ("Participant") in the above-identified matter pending before the Idaho Department of Water Resources ("Department") pursuant to the Protective Order issued _____, 2020.

WHEREAS, Cat Creek Energy, LLC ("Applicant") has filed applications for permit nos. 63-34403, 63-34652, 63-34897, and 63-34900 to appropriate water (the "Applications"); and

WHEREAS, Participant is participating in Department proceedings involving the Applications as a protestant, intervenor, Department staff member, or representative thereof; and

WHEREAS, Applicant has furnished to the Department certain confidential information related to the Applications pursuant to the Protective Order; and

WHEREAS, Participant desires to examine such information in accordance with the terms and conditions of the Protective Order and this Agreement;

THEREFORE, Participant hereby agrees as follows:

1. Confidential Information. All documents, data, information, studies and other materials furnished to the Department that are claimed to be of trade secret, proprietary, or confidential nature (collectively, "Confidential Information") shall be marked "Confidential." Access to and review of Confidential Information shall be strictly controlled by the Protective Order and the terms of this Agreement.

2. Persons Entitled to Review. Access to Confidential Information shall be limited to persons who (a) do not own, operate, work for, consult, represent, or otherwise have an interest in any entity that is directly or indirectly competitive with Applicant's energy project in Elmore County, Idaho; and (b) have executed and furnished the original of this Agreement to the Department with a signed copy to Applicant.

3. Review of Confidential Information. Review of Confidential Information shall occur in person, by appointment only, at the Idaho Department of Water Resources, 322 Front Street, Boise, Idaho. Confidential Information shall not be copied in any medium without first filing a motion and obtaining a Department order authorizing such copying.

4. Use of Confidential Information. All persons who review Confidential Information under this Agreement shall neither use nor disclose the Confidential Information for purposes of business or competition, or any purpose other than the evaluating the Applications under Idaho Code 42-203A, and shall keep the Confidential Information secure as trade secret in accordance with the purpose and intent of the Protective Order and this Agreement.

5. Non-Waiver of Objection to Admissibility. The furnishing of Confidential Information pursuant to the Protective Order shall in no way limit or waive the right of Applicant to object to its relevance or admissibility in any proceedings before the Department.

6. Use in Pleadings. Where reference to Confidential Information is required in pleadings or other documents submitted to the Department it shall be by citation to title or exhibit number or some other description that will not disclose substantive Confidential Information. Any use of or reference to substantive Confidential Information shall be placed in a separate section of the document and submitted under seal, marked as set forth in section 1, and served only on counsel of record who have executed and furnished this Agreement to the Department, who may, in turn, disclose such information only to other individuals who have executed and furnished this Agreement to the Department.

7. In Camera Hearing; Transcripts. Any Confidential Information that must be disclosed at a hearing shall be offered in-camera, attended only by persons authorized to have access to the information under this Agreement. Similarly, any transcript of examination or other reference to Confidential Information (or that portion of the record containing Confidential Information) shall be marked and treated as Confidential Information.

8. Return of Confidential Information. All Confidential Information held by the Department shall be returned to Applicant, and all notes kept by Participant which embody or reflect any Confidential Information shall be destroyed, within 30 days after the final Department order concerning the Applications becomes unappealable. Upon written request by Applicant, Participant shall certify that his or her notes have been destroyed in accordance herewith.

9. Summary of Record. If deemed necessary by the Department, Applicant shall prepare a written summary of the Confidential Information referred to in orders to be issued to the public and the parties.

[Signature Page Below]

I hereby certify that I have read and understand the Protective Order entered _____, 2020, 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; that I do not own, operate, work for, consult, represent, or have an interest in any entity that is directly or indirectly competitive with Applicant's energy project in Elmore County, Idaho; that I agree to be bound by the terms and conditions of the Protective Order and this Agreement; and that I understand that any violation of the Protective Order or this Agreement may expose me to civil and/or criminal liability.

Signature

Date

Printed Name

Title

Representing

Address

Phone #

Email

CERTIFICATE OF MAILING

I certify that on this 16th day of June, 2020, the foregoing document was served on the following persons in the manner indicated.



Signature of person mailing form

Director Gary Spackman Idaho Department of Water Resources PO Box 83720 Boise, Idaho 83720-0098 gary.spackman@idwr.idaho.gov	☐ U.S. Mail/Postage Prepaid ☒ Overnight Mail ☐ Hand Delivery ☒ E-mail
Idaho Department of Water Resources Western Region 2735 Airport Way Boise, Idaho 83705-5082 gary.spackman@idwr.idaho.gov Rosemary.DeMond@idwr.idaho.gov	☐ U.S. Mail/Postage Prepaid ☒ Overnight Mail ☐ Hand Delivery ☒ E-mail
James Carkulis CAT CREEK ENERGY, LLC 398 S. 9TH, SUITE 240 BOISE ID 83702 jtc@ccewsrps.net	☐ U.S. Mail/Postage Prepaid ☐ Overnight Mail ☐ Hand Delivery ☒ E-mail
David R. Tuthill, Jr. Hal Anderson IDAHO WATER ENGINEERING 2918 N. EL RANCHO PL BOISE ID 83704 dave@idahowaterengineering.com hal@idahowaterengineering.com	☐ U.S. Mail/Postage Prepaid ☐ Overnight Mail ☐ Hand Delivery ☒ E-mail

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<i>Ballentyne Ditch Co, et al.</i> SAWTOOTH LAW OFFICES PLLC c/o Daniel B. Steenson c/o S. Bryce Farris c/o Andrew J. Waldera 1101 W RIVER ST STE 110 PO BOX 7985 BOISE ID 83707 dan@sawtoothlaw.com bryce@sawtoothlaw.com andy@sawtoothlaw.com	☐ U.S. Mail/Postage Prepaid ☐ Overnight Mail ☐ Hand Delivery ☒ E-mail
<i>United States of America Bureau of Reclamation</i> UNITED STATES OF AMERICA BUREAU OF RECLAMATION c/o E. Gail McGarry 1150 N CURTIS RD STE 100 BOISE ID 83706-1234 EMcgarry@usbr.gov	☐ U.S. Mail/Postage Prepaid ☐ Overnight Mail ☐ Hand Delivery ☒ E-mail
<i>Idaho Conservation League</i> IDAHO CONSERVATION LEAGUE c/o Matt Nykiel PO BOX 2308 SANDPOINT ID 83864 mnykiel@idahoconservation.org IDAHO CONSERVATION LEAGUE c/o Marie Callaway Kellner PO BOX 844 BOISE ID 83701 mkellner@idahoconservation.org	☐ U.S. Mail/Postage Prepaid ☐ Overnight Mail ☐ Hand Delivery ☒ E-mail

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