

JUL 06 2020

DEPARTMENT OF
WATER RESOURCES

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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

**APPLICANT'S RESPONSE TO
 PETITION FOR CLARIFICATION**

Cat Creek Energy, LLC (“Cat Creek” or “Applicant”), through counsel, hereby responds to the Idaho Department of Fish and Game (“IDFG”) Petition for Clarification (“Petition”) of the *Amended Order Consolidated Dockets and Parties; Order to Reorganize Applicant’s Rule 40.05 Information; Order Establishing Protective Order Procedure; Order Authorizing Discovery; Notice of Continued Pre-Hearing Conference* (“Amended Order”) dated June 10, 2020.

The Amended Order consolidated Cat Creek’s four applications for permit to “proceed as one consolidated contested case.” (Amended Order, p. 2.) The Amended Order also recognized all parties to any of the applications as parties to the consolidated case without further intervention and authorized the parties to engage in discovery. *Id.*

IDFG correctly notes that discovery will be governed by the Idaho Rules of Civil Procedure unless otherwise ordered, with interrogatories limited to no more than 40 interrogatories including all discrete subparts, unless otherwise stipulated or ordered by the court for good cause. I.R.C.P. 33(1). IDFG’s Petition requests clarification as to whether “the parties will be limited to forty interrogatories *total* or whether they may serve forty interrogatories for *each separate application*.” (Petition, p. 2.)

Under the latter approach, each party could serve up to 160 interrogatories upon Cat Creek. With more than 20 protestants, this could place Cat Creek in the position of responding to more than a thousand interrogatories. Cat Creek is very opposed to this.

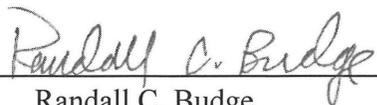
The modern trend of excessive discovery has strained the judicial process and caused litigation costs to swell. Federal and state courts have responded by clamping down on discovery. In 2015 the Federal Rules of Civil Procedure were amended to reduce discovery, placing new emphasis on the requirement of proportionality under rule 26 of the Federal Rules of Civil Procedure. The Idaho Supreme Court similarly responded by amending the Idaho Rules of Civil Procedure in 2016 to limit the extent of discovery.

Cat Creek disagrees that consolidation of the applications necessitates more than 40 interrogatories per party. The fact that the applications are interrelated, that they divert water from the same point of diversion and from the same source, and that water is stored in the same reservoir, means that Cat Creek's discovery responses will in most cases be identical for all four applications. Further, Cat Creek does not oppose IDFG or others submitting discovery requests that pertain to all four applications. For example, Cat Creek would not object to the following interrogatory: "Please identify all information that you may introduce into evidence to show that the Applications will not reduce the supply of water under existing water rights. If certain information applies to less than all of the Applications, identify which Applications it pertains to." Allowing discovery requests that pertain multiple applications avoids any prejudice from consolidating the cases, while also protecting Cat Creek from having to respond to hundreds of duplicative requests.

In light of the foregoing, Cat Creek respectfully requests that the Director enter an order clarifying that the Rule 33 requirement limitation of 40 interrogatories applies to the consolidated cases, with parties being permitted to make interrogatories that pertain to multiple applications counting as a single interrogatories.

Respectfully submitted this 1st day of July, 2020.

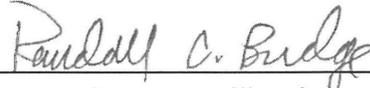
RACINE OLSON, PLLP

By: 

Randall C. Budge
Thomas J. Budge

CERTIFICATE OF MAILING

I certify that on this 1st day of July, 2020, the foregoing document was served on the following persons in the manner indicated.



Signature of person mailing form

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