

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

IN THE MATTER OF APPLICATIONS
FOR PERMIT NOS. 63-34403, 63-34652,
63-34897, 63-34900, AND 63-35522 IN
THE NAME OF CAT CREEK ENERGY,
LLC

**ORDER ADVANCING MATTER TO
FORMAL PROCEEDINGS AND
ADOPTING A SCHEDULING ORDER**

**NOTICE OF PREHEARING
CONFERENCE AND HEARING**

BACKGROUND

On August 9, 2024, the Director of the Idaho Department of Water Resources (“Department”) issued an *Order Consolidating Proceedings and Parties; Order Continuing Informal Proceedings; Notice of Status Conference* (“2024 Order”) in the above-captioned matter. In the 2024 Order, the Director: (1) consolidated Cat Creek Energy, LLC’s (“CCE”) applications for permits 63-34403, 63-34652, 63-34897, 63-34900, and 63-35522 to appropriate water (collectively, “Applications”) into a single proceeding, and recognized parties from the previously consolidated matter as parties in the newly consolidated matter; (2) ordered that the matter remain in informal proceedings until CCE or another party moves to return to formal proceedings; (3) permitted CCE or another party to request Department assistance to reach a resolution during informal proceedings; and (4) required CCE to file a status report regarding the Federal Energy Regulatory Commission and Bureau of Reclamation proceedings with the Department by February 1 of each year. 2024 Order, at 2–3.

On April 7, 2026, the Director held a status conference on this consolidated matter. Project updates were discussed during the conference and the Director shared in the concerns expressed by some of the parties over the project’s seemingly slow progress and the continued use of informal Department proceedings. The Boise Project Board of Control expressed concerns about the length of the proceedings and outlined potential paths forward. CCE requested additional time to evaluate those options and proposed submitting a written statement identifying the path it intends to pursue.

On April 10, 2026, the Director issued an *Order Setting Deadline; Notice of Status Conference* (“Order”), providing CCE with a deadline to select one of two different potential paths forward based on the discussions during the April 7 status conference. Order, at 2.

On April 27, 2026, CCE filed a *Motion to Advance Matter to Formal Proceedings and Proposed Preliminary Scheduling Order* (“Motion”). CCE asked to move to formal proceedings and adopt a summary judgment briefing schedule to discuss whether the “Director’s jurisdiction is preempted by the Federal Power Act.” Motion, at 1.

On May 11, 2026, Elmore County filed a Response to CCE’s Motion, arguing that CCE cannot bifurcate “the proceedings to first obtain a ruling regarding federal preemption of state water allocation laws before the Department’s required evaluation under Idaho Code Section

42-203A(5) and before FERC has even issued the relevant license.” *Response to Motion to Advance Matter to Formal Proceedings*, at 1.

On May 11, 2026, the Director held a status conference to give the parties an opportunity to discuss the pending *Motion*. During that conference, the parties expressed their opinions on whether the Director can or should make a preemption determination, whether traditional discovery is necessary, and proposed scheduling for the proceedings. Based on the parties’ concerns, the Director finds that CCE is not the only party entitled to file dispositive motions, so other parties may submit briefing on additional issues other than the Federal Power Act.

ORDER

IT IS HEREBY ORDERED that as of May 15, 2026, and pursuant to IDAPA 37.01.01.521, the parties are authorized to conduct and engage in the methods of discovery listed under IDAPA 37.01.01.520.01. Barring any conflicting discovery procedures or limitations set forth in the Department’s Rules of Procedure or an order of the presiding officer, discovery shall conform to Title V of the Idaho Rules of Civil Procedure.

IT IS FURTHER ORDERED that as of May 15, 2026, and pursuant to IDAPA 37.01.01.053.02–03, the Department and the parties are authorized to serve documents by email as an alternative to service by mail or personal service. The emails included in the certificate of service below are to be used as the official service emails, unless a notice instructing otherwise is filed with the Department and properly served on the parties.

IT IS FURTHER ORDERED that the following schedule is adopted:

Sep. 25, 2026 Deadline for the parties to file a list of expert witnesses they intend to rely upon at the hearing, including names, addresses, and updated curricula vitarum. However, a curricula vitarum is not required if the expert identified is an employee of the Department.

Deadline for the parties to exchange proposed stipulations of fact and expert reports.

Deadline for the parties to provide the parties with a copy of their proposed expert reports. Unless the expert identified is an employee of the Department, the expert needs to have authored a disclosed expert report.

Deadline for the parties to serve written discovery requests.

Oct. 30, 2026 Deadline for parties to respond to written discovery.

Deadline for parties to exchange rebuttal expert reports.

- Nov. 20, 2026** Deadline for parties to file dispositive motions, including motions for summary judgment. Any supporting documents or opening briefs must be filed concurrently with the dispositive motion. The moving party must indicate on the face of the motion whether oral argument is desired.
- Dec. 11, 2026** Deadline for parties to file response briefs to the dispositive motions.
- Dec. 18, 2026** Deadline for parties to file reply briefs.
- Feb. 19, 2027** Deadline for parties to complete all depositions.
- Apr. 23, 2027** Deadline for the parties to file an index of exhibits and a list of the names and addresses of all witnesses that they may call to testify at the hearing. A short summary of the scope of each witnesses' anticipated testimony shall be included and expert witnesses shall be identified as such. The parties shall use the following reserved exhibit numbers and reach out to the presiding officer if additional numbers are needed:

Exhibit Nos.	Assigned Party
1–99	Cat Creek Energy
100–199	SBar Ranch and The District at Parkcenter
200–299	Boise Project Board of Control
300–399	City of Boise
400–499	Idaho Conservation League
500–599	Idaho Department of Fish and Game
600–699	Elmore County Board of Commissioners
700–799	Ditch Entities
800–899	City of Meridian
900–999	Tree Top Ranches, LP
1000–1099	Idaho Department of Lands
1100–1199	Veolia Water Idaho, Inc.

- May 10, 2027** Deadline for the parties to exchange and submit to the Department an electronic copy (via e-file email, USB thumb drive, or disc(s)) of their pre-marked exhibits. Each exhibit must be an independent file, and all file text must be machine readable. Exhibits shall be pre-marked in the bottom right corner of every page and must include the name of the party proposing the exhibit, the exhibit number, and a page number (each exhibit must start with page 1).
- May 17, 2027** Prior to the start of the hearing, the parties shall submit to the Department three physical copies of their pre-marked exhibits. Exhibits shall be organized in binders that are labeled with the party's name and include dividers that identify each exhibit by its number.

NOTICE OF PREHEARING CONFERENCE

The Director hereby notifies the parties that a prehearing conference on these matters will be held on **May 6, 2027**, at **9:00 a.m. (MT)**, at the Department's State Office, located at 322 E. Front Street, 6th Floor, Conference Rooms 602C–D, Boise, Idaho. All parties to the consolidated proceedings must be represented at the prehearing conference in person or by video conferencing. The parties shall come prepared to discuss proposed issues for hearing, any proposed settlement, and any other matters that could aid in the fair and efficient resolution of this contested case.

To attend the conference via computer or smartphone, please click the following Webex link and follow the prompts:
<https://idahogov.webex.com/idahogov/j.php?MTID=mfa779ac31b01ed4e55997b0d2d5ded5c>.

To join the conference via telephone, please dial 1(415) 655-0001 (US Toll) and enter the following meeting access code when prompted: 2863 471 6937.

The prehearing conference will be held in accordance with the provisions of Chapter 17, Title 42, and Chapter 52, 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/37/370101.pdf>.

The conference will be conducted in a facility that meets the accessibility requirements of the Americans with Disabilities Act. If you require reasonable accommodation to attend, participate in, or understand the conference, please advise the Department no later than five (5) days before the conference. Inquiries for reasonable accommodations should be directed to Sarah Tschohl, Idaho Department of Water Resources, PO Box 83720, Boise, Idaho 83720-0098, telephone: (208) 287-4815, email sarah.tschohl@idwr.idaho.gov.

NOTICE OF HEARING

NOTICE IS GIVEN that Director Weaver will hold a hearing in this matter on **May 17–21, 2027**. Each hearing day will begin at **9:00 a.m. (MT)**. The hearing will take place at the Department's State Office, located at 322 E. Front Street, 6th Floor, Conference Rooms 602B–D, Boise, Idaho. All parties who wish to participate in the hearing and their witnesses shall be present in person.

The hearing will be held in accordance with the provisions of Chapter 17, Title 42, and Chapter 52, 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/37/370101.pdf>.

The hearing will be conducted in a facility that meets the accessibility requirements of the Americans with Disabilities Act. If you require reasonable accommodation to attend, participate in, or understand the hearing, please advise the Department no later than five (5) days before the hearing. Inquiries for reasonable accommodations should be directed to Sarah Tschohl, Idaho Department of Water Resources, PO Box 83720, Boise, Idaho 83720-0098, telephone (208) 287-4815, or email sarah.tschohl@idwr.idaho.gov.

DATED this 15th day of May 2026.



MATHEW WEAVER
Director

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 15th day of May 2026, the above and foregoing was served by the method indicated below, and addressed to the following:

<p>T.J. Budge RACINE OLSON PLLP PO Box 1391 Pocatello, ID 83204 tj@racineolson.com</p>	<input type="checkbox"/> <input checked="" type="checkbox"/>	<p>U.S. Mail, postage prepaid E-mail</p>
<p>cc: James Carkulis CAT CREEK ENERGY LLC jtc@ccewsrps.net</p> <p>David R Tuthill Jr. Hal Anderson IDAHO WATER ENGINEERING dave@idahowaterengineering.com hal@idahowaterengineering.com</p> <p>Gary D. Slette ROBERTSON & SLETTE, PLLC gslette@rsidaholaw.com</p> <p><i>Attorneys for Applicant Cat Creek Energy, LLC</i></p>	<input type="checkbox"/> <input checked="" type="checkbox"/> <input type="checkbox"/> <input checked="" type="checkbox"/> <input type="checkbox"/> <input checked="" type="checkbox"/>	<p>U.S. Mail, postage prepaid E-mail</p> <p>U.S. Mail, postage prepaid E-mail</p> <p>U.S. Mail, postage prepaid E-mail</p>
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<p>GWINN RICE RANCH, INC. c/o Jim Rice 2851 W. Balata Ct. Meridian, ID 83646 jimrice1965@gmail.com</p> <p><i>Protestant</i></p>	<input type="checkbox"/> <input checked="" type="checkbox"/>	<p>U.S. Mail, postage prepaid E-mail</p>

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 Sarah Tschohl
 Paralegal