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STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

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

**APPLICANT’S RESPONSE TO
MOTION RE RULE 40.05
INFORMATION**

Cat Creek Energy, LLC (“Applicant” or “Cat Creek”) hereby responds pursuant to Rule 565 of the Rules of Procedure of the Idaho Department of Water Resources (the “Department”) to the *S Bar Ranch, LLC and the District at Park Center, LLC’s Motion for Rule 40.05.b. Order for Applicant to Submit Complete Rule 40.05 Information* filed May 1, 2020 (the “Motion”). This response is supported by the declarations of James Carkulis and Larry Leib filed herewith.

Introduction

The Motion requests an order requiring Cat Creek to submit “all information required pursuant to Water Appropriation Rule 40.05 relating to Idaho Code 42-203A(5) criteria.” (Motion, p. 1.) As explained below, Cat Creek has in good faith complied with Rule 40.05, disclosing vast amounts of information about its project and setting up an online portal to make such information readily available to the Department and other parties. An itemized list of the documents that Cat Creek has produced to date is attached hereto as *Appendix A*. Additional information that may be responsive to Rule 40.05 will be posted as it is developed, with notice thereof automatically sent to parties who have requested updates.

SBar Ranch, LLC, and the District at Park Center, LLC (collectively, the “Protestants”) complain primarily about Cat Creek’s disclosure of financial information. Cat Creek is unable to disclose detailed financial information because it is proprietary and highly confidential and there is a high risk of it being used maliciously by the Protestants or by others to obtain an unfair advantage in securing competitive development, power purchase, and financing agreements.

Upon careful evaluation, Cat Creek has produced a redacted construction budget in connection with this response and disclosed its personal investment of more than \$10 million to date. Given the limited relevance of financial information under Idaho Code 42-203A(5), Cat Creek believes its disclosures satisfy Rule 40.05. Should the director disagree and require Cat Creek to disclose detailed financial information, a strict protective order must be issued to prevent the misuse of such information.

With respect to non-financial information, the Motion is premature for two reasons. First, because the Protestants have failed to confer with Cat Creek in an effort to cooperatively resolve whatever concerns they have with Cat Creek's disclosures. Second, because discovery has not been authorized and no prehearing disclosure dates have been set.

Argument

1. The Motion is premature with respect to all categories of Rule 40.05 information other than financial information.

The Protestants complain that Cat Creek's online portal was not fully functional until April 13, 2020—13 days after the deadline established at the prehearing conference held February 25. Cat Creek did in fact timely upload information to its online portal and file its *Notice of Additional Information – Rule 40.5* by the March 31 deadline; however, third party access to the portal was delayed due to technical difficulties. Cat Creek accepts the criticism, but notes that it has gone the extra mile to produce a vast amount of information about its project (more than 200 documents) in digital format, organized by category, using an online portal to make it readily accessible to the Department and other parties. The delay was due only to technical difficulties is making such information so readily accessible. Certainly no prejudice occurred given the early state of this case. *See Keller v. Magic Water Co.*, 92 Idaho 276, 280 (1968) (upholding the Department's issuance of a water right permit despite the applicant's omission of financial information because "no one was damaged by the omission").

Prior to filing the Motion, the Protestants notified Cat Creek of their desire for detailed financial information about the project, to which Cat Creek responded. By contrast, the Protestants did not notify Cat Creek of any alleged deficiencies in other categories of information provided under Rule 40.05. Not until reading the Motion did Cat Creek learn that the Protestants have concerns about the adequacy of non-financial disclosures made by Cat Creek. The Protestants' failure to make a good faith effort to cooperatively resolve such concerns before filing the Motion violates the Department's Rules of Procedure.

Rule 520.02 of the Department's Rules of Procedure provides that discovery is governed by the Idaho Rules of Civil Procedure. I.R.C.P. 37(a)(1) provides that a motion to compel "must include a certification that the movant has in good faith conferred or attempted to confer with the person or party failing to make disclosure or discovery in an effort to obtain it without court action." The disclosure of information under Rule 40.05 is a part of the discovery process and is subject to I.R.C.P. 37(a)(1).

The Motion does not contain an I.R.C.P. 37(a)(1) certification because the Protestants have not conferred with Cat Creek about categories other than financial information. Therefore,

the Motion should be denied with respect to all categories of information other than financial information for failure to comply with Rule 520.02 of the Department's Rules of Procedure.

2. Detailed financial information concerning the project is proprietary and highly confidential.

The Protestants contend that Rule 40.05 requires Cat Creek to disclose detailed financial information about its project, including “itemization of project costs by project components,” “identification of the specific kinds of debt and equity that are planned,” “identification of prospective investors,” and “identification of the sources of such capital or the respective amounts of each source of funds.” (Motion, p. 5.) Why the owners of a private hunting preserve (SBar Ranch) and a Boise apartment complex (District at Park Center)¹ are interested in such detailed financial information is curious, if not troubling.

With a project of this nature, the type of financial information that the Protestants demand is proprietary and highly confidential as there is a high risk of it being used maliciously by the Protestants and competitors of Cat Creek. (Decl. of Carkulis, ¶¶ 6-11; Decl. of Leib, ¶ 8.) Cat Creek is currently in direct competition with dozens of wind, solar and other renewable energy projects under development in the West vying to secure critically important power purchase agreements with utilities, as explained in the Declaration of James Carkulis filed herewith.

Cat Creek is concerned not only about the Protestants misuse of its confidential information, but also their large law firm which likely represents competitors of Cat Creek or landowners, suppliers, investors, or lenders working with competitors of Cat Creek. Lest anyone doubt the highly proprietary and competitive nature of projects of this type, and the significant risk of misappropriation of trade secrets, 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 made several public disclosures to regulatory bodies, including “the plant’s proposed location, technological specifications, fuel type, water use, and generating capacity.” *Id.* 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).

¹ Public records filed with the Idaho Secretary of State suggest common ownership as both SBar Ranch, LLC, and District at Park Center, LLC, are managed by 5B Investments, Inc.

3. Detailed financial information is not required to satisfy Idaho Code 42-203A(5)(d).

Detailed financial information is not required for evaluation of Cat Creek's applications under Idaho Code 42-203A. While the director must consider whether Cat Creek has "sufficient financial resources with which to complete the work involved therein," the scope of this analysis is much narrower than the Protestants would like.

The proper scope of the financial resources criterion was considered by the Idaho Supreme Court in *Shokal v. Dunn*, 109 Idaho 330 (1985). That case involved an application for a 100 cfs water right for a yet-to-be constructed trout farm near Hagerman. The estimated total cost was \$270,000. *Id.* at 335. The applicant had \$4,500 in the bank. *Id.* IDWR director Kenneth Dunn approved the application and issued a permit, ruling:

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.

Id.

This ruling was appealed. The district court reversed, holding that "an applicant was bound to show at the hearing that he then and there had the financial resources to complete the project within the time allotted." *Id.* That decision was then appealed to the Idaho Supreme Court which reversed the district court and upheld the original decision of the director. The Supreme Court deemed the district court ruling "far too restrictive," reasoning that it "may have an excessively chilling effect on water and land development in this state" since "opportunities for development of water resources of the state [would be] eliminated for those who may not have the cash in the bank, but may be able to secure sufficient resources during the five-year time limitation imposed by I.C. § 42-204 to put the water to beneficial use." *Id.* at 335-36. The Court further explained that the state must be "willing to take a risk by providing individuals with the opportunity to put water to beneficial use." *Id.* at 336. Therefore, in order to satisfy financial resources criterion of 42-203A(5), the applicant need show only "that it is reasonably probable he or she will obtain the necessary financing within five years." *Id.* In that analysis, "[t]he extent of the applicant's own investment is a strong factor to be considered." *Id.* This lower standard "serves the purpose of screening out undeserving projects without being destructive of growth and development in the state." *Id.* The Court noted that "[a]ny concern which may exist about tying up the water to the prejudice of a potential junior applicant is adequately satisfied by other statutory provisions requiring timely commencement, progress and completion of works." *Id.*

The Protestants complain that Cat Creek has not produced a current financial statement under Rule 40.05.f.i. (Motion, p. 5.) Cat Creek has not submitted a financial statement due to the highly proprietary nature of such information, and because such information is not essential to the director's evaluation of Idaho Code 42-203A(5)(d). Cat Creek's current financial statement does not answer the question of whether it is reasonably probable that Cat Creek will obtain the necessary financing within five years.

Consistent with *Shokal*, Water Appropriation Rule 45.d.i states 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.” Cat Creek’s ability to obtain necessary financing has little to do with its own financial statement and everything to do with the financial competitiveness of its project.

As explained in the declarations of James Carkulis and Larry Leib filed herewith, independent power generation projects are typically financed through power purchase agreements executed with electric utilities or large private consumers of electricity, with financing through a combination of equity and debt. The sale of power under the power purchase agreement along with ancillary revenue sources are used to repay debt and provide returns on equity. The likelihood of success is not dependent upon the financial statement of the developer but upon the financial competitiveness of the project—i.e. its ability to negotiate a power purchase agreement based on rates that exceed the cost of generating power.

The declarations provide examples of other power generation projects that have been financed, and how Cat Creek will similarly obtain financing, along with Cat Creek’s investment to date of more than \$10 million and six years of effort. This is sufficient to satisfy Idaho Code 42-203A(5)(d), and therefore sufficient to satisfy Rule 40.05.f.i.

The Protestants also complain that Cat Creek has not provided estimated construction costs for project works under Rule 40.05.f.ii. (Motion, p. 6.) In fact, Cat Creek has provided an estimate construction cost of \$2 billion. Cat Creek cannot disclose detailed construction costs without undermining the viability of the project by providing a competitive advantage to its competitors. As noted in *USA Power, LLC*, construction costs are a component of the protectible trade secrets that pertain to projects of this nature. The additional information provided by Cat Creek with this response includes a redacted copy of the construction budget attached to the Declaration of James Carkulis. Again, this information, together with the explanation of how Cat Creek can likely obtain the remaining financing, is sufficient to satisfy Idaho Code 42-203A(5)(d), and therefore sufficient to satisfy Rule 40.05.f.ii.

Cat Creek respectfully requests that the director find that the financial information disclosed by Cat Creek substantially complies with Rule 40.05, and deny the Motion.

4. Should the director require Cat Creek to disclosure detailed financial information, a protective order must be issued to protect against misuse of such information.

Should the director require the disclosure of detailed financial information, the Protestants argue that CCE must give up the confidentiality of such information, claiming that “by voluntarily filing these applications for water permits, Cat Creek has voluntarily waived any claim to privilege in connection with this information.” (Motion, p. 6-7.) This argument is absurd, and the Protestants cite no precedent to support it. It is also very telling of the Protestants’ true motivation for seeking such information.

State agencies sitting in an adjudicatory capacity may of course be called upon at times to consider confidential information of the persons and entities appearing before them. The fact that such proceedings are public (as are court proceedings) does not preclude the agency from protecting the disclosure of confidential information (as courts do). The director’s authority to protect confidential information is grounded in at least two bodies of law.

First, Rule 532 of the Department's Rules of Procedure states that the director "may issue protective orders limiting access to information generated during settlement negotiations, discovery, or hearing." This process is set forth in the Idaho Rules of Civil Procedure which govern the discovery of information before the Department. Under I.R.C.P. 26(b)(1)(C), the director may limit the scope of discovery when "the burden or expense of the proposed discovery outweighs its likely benefit, considering the needs of the case ... and the importance of the discovery in resolving the issues." I.R.C.P. 26(c) then provides, "A party or any person from whom discovery is sought may move for a protective order in the court where the action is pending," and the court "may, for good cause, issue an order to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense." 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)).

Second, the Idaho Public Records Act protects from disclosure all information that "derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertained by proper means by other persons who can obtain economic value from its disclosure or use." Idaho Code 74-107(1). Thus, the Protestants are not entitled to review such information under the Public Records Act.

The Protestants' admission that their purpose in filing the Motion is to obtain confidential financial information from Cat Creek is troubling. Such information is not needed to evaluate the impacts of Cat Creek's water use on the Protestants or any other water user. And given the enormous investment that Cat Creek has made in this project, it cannot reasonably be argued that Cat Creek is not financially able and committed and technically capable of obtaining the financing necessary to complete the project. From Cat Creek's perspective the Protestants' insistence on detailed financial information must be based entirely on ulterior motives. The department should not permit its water right permitting process to be misused in this manner, by deeming Cat Creek's financial disclosures to be compliant with Rule 40.05.

Should the director nevertheless require Cat Creek to produce detailed financial information, the director must issue a strict protective order that (a) requires no more detail than Cat Creek would disclose to an electric utility (under a confidentiality agreement) in negotiating a PPA; (b) requires all confidential information to be submitted under seal to the director only; (c) requires all persons desiring to examine such information appear in-person for visual inspection only at the Department without any form of copying; and (d) requires all persons examining such information to first execute a protective agreement in a form substantially similar to that attached hereto as *Appendix B*.

Conclusion

For the reasons set forth above, Cat Creek respectfully requests that the director deny the Motion. With respect to non-financial information the Motion should be denied because the Protestants have failed to comply with Rule 520.02 of the Department's Rules of Procedure.

With respect the financial information the Motion should be denied because Cat Creek has substantially complied with Rule 40.05 by providing sufficient information to demonstrate a substantial personal investment and reasonable probability that Cat Creek can obtain the remaining financing necessary to complete construction of the project.

In the event the director disagrees and requires Cat Creek to provide detailed financial information, Cat Creek requests that the director specify what specific additional information is needed and issue a strict protective order that prevents the Protestants, their legal counsel, and others from misusing such information.

DATED this 15th day of May, 2020.

RACINE OLSON, PLLP

By: 

Randall C. Budge

Thomas J. Budge

Attorneys for Applicant Cat Creek Energy, LLC

CERTIFICATE OF MAILING

I certify that on this 15th day of May, 2020, the foregoing document was served on the following persons in the manner indicated.



Signature of person mailing form

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APPENDIX A

Documents Produced Under Rule 40.05

Appendix A

Cat Creek Energy IDWR Information

0.0 How to Use Due Diligence Site

Introduction to Due Diligence Data Room

1. Cat Creek Energy Project General Information

a. Cat Creek Energy, LLC

Idaho Secretary of State Cat Creek Energy Filings
Memorandum - Sawtooth and Woodcreek

b. Project Brochures

Cat Creek Energy Presentation for Due Diligence
CCE Metrics & Merits Introduction
Oxygen and DO Levels Anderson Ranch Reservoir - Bull Trout

c. Pumped Hydro Battery Storage Modules

Cat Creek Reservoir Design
Cat Creek Reservoir- Not for construction - Static Copy
Project Plat Maps
Project Pumped Storage Hydro Design
CCE Powerhouse- Not for Construction - Preliminary Design - Static

2. IDWR Applications for Permit

a. Application 63-34403

63-34403 Application Through Advertising

b. Application 63-34652

63-34652 Application Through Advertising

c. Application #3

CCE 31 KAF Application and Attachments

d. Application #4

CCE 19 KAF Application as filed with Attachments A-C and maps April 22 2020
Attachment D - Final POU Legal Description

e. Hearings & Information

20190828 Notice Prehearing Conf
20200225 Non-Disclosure Agreement
20200226 Notice of Additional Information
Dept of Water Resources Notice of Continued Prehearing Conference

Cat Creek Energy, LLC - Water Rules Compliance

3. Water Supply

a. Needs assessment for water storage Boise Basin

20160808 - OFR Treasure Valley Water Demand 2015-2065
Boise Basin Fundamentals - Mountain Snow Water Equivalent
BoiseFAQ
Critical Major Water Infrastructure
USACE - 1- 16 IWRB Water Storage Committee Meeting Materials (1)
USACE Determines Economic Benefits Do Not Warrant Dam Raise Solutions
Water Storage on the Boise River

b. Protection of existing water rights

c. Impact on AAR operations and supplies

Cat Creek Energy Storage Water Availability Narrative

d. SF Boise River available supply

BOR - 2017 Prelim Hydro Study

Snow Water Equivalent in Boise Basin - NRCS

South Fork Boise River Near Featherville IDWR Water Right Accounting Data

4. Land Use

a. Leases

Memorandum - Sawtooth and Woodcreek

b. Right of Ways

5. State and Federal Permitting

a. State Permitting

7758 PH Notice Appeal

Cat Creek Energy Questions 2016 + comments on Mike McDonald Responses

CCE Comments on Concerns Expressed by the Idaho Department of Fish and Game or

CCE Comments on IDFG letter of 9142018 re proposed water right development

CCE Elmore County PZ responses CE - Final (17-Jun-15)

CCE Resposne to IDFG Request for Information of June 17, 2019

CCE Response to Power Engineers Review of Cat Creek WMP 06-01-16

CCE Resposnes to ABC Letter 20160426 to FWS for Elmore Co

CCE Responses to Aspen Engineers' Comments and Recommendations on the CUP Ap

CCE Responses to deficiencies and concerns letter from Alan Christy

CUP-2015-06 Wind Power

Development Agreement - FULLY EXECUTED

Elmore County Comprehensive Plan Objectives and Goals Compliance covering letter

Findings of Fact and Conclusions of Law (second reconsideration)

Findings of Fact and Conclusions of Law and Conditions of Approval - SIGNED

Findings of Fact and Conclusions of Law and Order - CUP Amendments

First Amendment to DA - FULLY EXECUTED

How CCE meets Comp Plan Goals

Memorandum Decision and Order on Petition for Judicial Review

Order on Cat Creek's Motion for Reconsideration

Ordinance No. 2018-01 - SIGNED

Preliminary Lease of Power Privilege - EXECUTED

Resolution NO. 652-18- SIGNED

Staff Report Board of County Commissioners PH 11-16-16

Staff Report Cat Creek Energy 6-8-2016

Supplemental Staff Report Appeal CCE (3)

b. FERC Permitting

4-18-2019 Cat Creek Successive Permit P-14655

20141211 FERC Preliminary Permit App

20150109 FERC List Tribes Districts Fed Agencies

20150724 FERC Deficiency Notice (1)

20150821 Response to FERC Deficiency Notice
20160429 GS FERC 6 MO Report (1)
20170430 GS FERC 6 Mo Report (1)
20171030 GS FERC 6 Mo Report (1)
20180430 GS FERG 6 Mo Report (1)
20180802 GS FERC Resposne to Filing (1)
20181029 GS FERC 6 Mo Report & Extension Req (1)
20181108 Prelim Permit App (1)
20181116 FERC AIR
20181116 GS FERC Response to AIR (1)
20190107 FERC AIR
20190109 GS FERC Resposne to AIR (1)
20190221 FERC AIR
20190307 GS FERC Resposne to AIR (1)
20190320 GS FERC Comments (1)
20200330 GS FERC 12 Mo Report

c. BOR Permitting

2019-05-20 CCE questions to Reclamation (CCE Exhibit D) - Response 1
2019-05-28 Agenda - CCE LOPP Prelim Lease Agreement
2019-07-26 Responses to 2019-07-19 CCE questions fisheries DV
2019-07-30 Agenda - FERC Reclamation CCE LOPP Joint Planning Outreach
2019-07-30 Agenda - FERC Reclamation CCE LOPP Joint Planning Outreach - Draft
2019-07-30 Notes - FERC Reclamation CCE LOPP Joint Planning Outreach - Draft v2
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2019-08-09 CCE LOPP Anticipated Data Input and Study Needs
2019-08-09 CCE questions to Reclamation (CCE Exhibit D) questions 6-37
2019-0828 BOR and FERC Processes Synced Flow Chart - Final
2019-08-28 CCE Agency Presentation Static Copy - Final
2020-02-06 Agenda - CCE LOPP Land Jurisdiction
2020-02-17 Update Ltr to CCE
20190408 Reclamation Responses to CCE questions 3-28-2019
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BOR Project Update as reported to FERC on Jul 16, 2019
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CCE and BOR Meeting Questions Final 3-28-2019
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CCE Presentation

CCE BOR Monitoring Questions 17May2019
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6. Economic Benefits

a. Renewable Energy Production

Idaho Power Generation Queue 04-Apr-20 - Large Generators
Power Generation Technology Life Expectancies

b. Boise Treasure Valley Water Needs

20160808 OFR Treasure Valley Water Demand 2015-2065
Boise FAQ

c. Capital Expenditures

d. Employment

Job Creation - DOE Models

7. Public Interest

a. Renewable Energy

Critical Major Water Infrastructure
Idaho Power Clean Energy Mandate
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b. Fish Impacts

Boise River Aquatics

Water - Aquatics

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c. Wildlife Impacts

Wildlife Impacts

8. Project Costs and Financing

Financial - Rule 40.05 for DD Site

APPENDIX B

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 – Subject to Protective Order.” 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 this Agreement to the Department. A copy of this Agreement signed by Participant shall be furnished to Applicant within three days after receipt by the Department.

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