

**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 parties¹ 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

¹ 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, 6th 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 28th day of May, 2020.


GARY SPACKMAN
Director

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on this 28th 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 9th 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



Kimberle English