

**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 63-34897 IN THE NAME OF CAT  
CREEK ENERGY LLC

**ORDER RE: SBAR RANCH, LLC  
AND THE DISTRICT AT  
PARKCENTER, LLC'S RENEWED  
MOTION FOR RULE 40.05.b; ORDER  
FOR APPLICANT TO SUBMIT  
COMPLETE RULE 40.05  
INFORMATION**

**BACKGROUND**

On June 10, 2020, the Director of the Department of Water Resources (“Department”) issued an order requiring Cat Creek Energy, LLC (“Cat Creek”) to file complete Rule 40.05.f financial resources information with the Director and parties or, in the alternative, file a motion for a protective order, accompanied by the alleged protected or confidential information, for the Director's in camera review. *Amended 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* (“Order Consolidating Parties”) at 2.

In response, on June 16, 2020, Cat Creek submitted the following financial information: (1) *Motion for Protective Order* with attached “Appendix A: Protective Agreement”; (2) *Second Declaration of James Carkulis (Redacted)* with attached “Appendix A: Partially Redacted Construction Budget” and “Appendix B: Redacted Project Finance Process Narrative”; (3) *Declaration of John L. Faulkner (Redacted)* with attached “Appendix A: Redacted Itemized Accounting of Cat Creek's Investments”; (4) *Notice of Amended Rule 40.05 Disclosure* with attached spreadsheet reflecting the ShareFile reorganization with folders to correspond with Idaho Code 42-203A(5)(a) – (g) reflecting documents identified by name and Bates stamp numbers; and (5) *Attorney's Certificate Claim of Confidentiality Relating to Motion for Protective Order*.

On June 16, 2020, Cat Creek also submitted the *Second Declaration of James Carkulis (Unredacted)*, with unredacted versions of “Appendix A: Construction Budget” and “Appendix B: Project Finance Process Narrative,” and the *Declaration of John L. Faulkner (Unredacted)*, with an unredacted version of “Appendix A: Itemized Accounting of Cat Creek's Investment,” under seal to the Director.<sup>1</sup>

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<sup>1</sup> The Director analyzed Cat Creek's financial information submissions in camera and initially concluded that nothing Cat Creek provided was confidential or a trade secret. *Order on Motion for Protective Order* at 3-4. On July 23, 2020, Cat Creek filed its *Petition to Review Order on Motion for Protective Order* (“Petition to Review”) which asked the Director to review and amend the *Order on Motion for Protective Order*, specifically as it related to **ORDER RE: SBAR RANCH, LLC AND THE DISTRICT AT PARKCENTER, LLC'S RENEWED MOTION FOR RULE 40.05.b. ORDER FOR APPLICANT TO SUBMIT COMPLETE RULE 40.05 INFORMATION** – Page 1

On June 30, 2020, SBar Ranch, LLC, and The District at ParkCenter, LLC, (“Protestants”) jointly filed the *Declaration of Anthony M Jones in Support of Sbar Ranch, LLC and The District at ParkCenter, LLC's Response to Motion/or Protective Order and Renewed Motion/or Rule 40.05.b Order for Applicant to Submit Complete Rule 40.05 Information* (“Renewed Rule 40.05 Motion”). On July 13, 2020, Cat Creek filed *Cat Creek's Reply Brief in Support of Motion for Protective Order* (“Cat Creek Reply Brief”).<sup>2</sup>

### THE RENEWED RULE 40.05 MOTION

The Renewed Rule 40.05 Motion<sup>3</sup> argued Cat Creek’s Rule 40.05 disclosures remain deficient. *Renewed Rule 40.05 Motion* at 4-5. Protestant’s “Exhibit A: Summary of Documents Provided by Cat Creek Energy Pursuant to Rule 40.05” to Protestant’s *Renewed Rule 40.05 Motion* (“Exhibit A to Renewed Rule 40.05 Motion”), made specific claims of deficiency for each Rule 40.05 informational category. *Id.* at 4-5 and pages 1-7 of Exhibit A attached thereto.

The Renewed Rule 40.05 Motion included the declaration of energy economist Anthony M. Jones (“Jones Declaration”). Jones argued “[Cat Creek] needs to be able to establish that it will be able to cost effectively participate in this competitive energy marketplace. If there is no assurance that its project will be economically viable, there can be no reason to expect that it is reasonably probable financing will be secured.” *Jones Declaration* at 3-4.

On July 13, 2020, Cat Creek filed its *Reply Brief in Support of Motion for Protective Order* (“Motion for Protective Order Reply”).<sup>4</sup> Cat Creek argued Protestants “misapprehend[ed] the scope of Idaho Code 42-203A(5) and Rule 40.05.” *Motion for Protective Order Reply* at 1. Cat Creek argued

by producing extensive engineering, planning, permitting and other work undertaken over several years; leases and an agreement to purchase the lands upon which the project will be constructed; conditional use permits and a development agreement with Elmore County authorizing development of the project; a FERC preliminary permit and order granting authority to Cat Creek to file a FERC license application; a Preliminary Lease of Power Privilege issued by the United States

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the disclosure of Cat Creek’s unredacted “detailed construction budget.” *Petition to Review* at 3-4. The Director will issue his *Order re: Cat Creek Energy, LLC's Petition to Review Order on Motion for Protective Order* contemporaneously with this order.

<sup>2</sup> As stated in the July 14, 2020, *Order on Motion for Protective Order*, Cat Creek’s July 13, 2020 Reply Brief will be analyzed here as a response to Protestor’s Renewed Rule 40.05 Motion as the Department’s procedural rules do not allow for the filing of a reply to a response to a motion. See IDAPA 37.01.01.270.

<sup>3</sup> The portion of the Renewed Rule 40.05 Motion related to Protestant’s response to Cat Creek’s *Motion for Protective Order*, became moot as a result of the Director’s denial of Cat Creek’s proposed protective order in his *Order on Motion for Protective Order* and the *Order re: Cat Creek Energy, LLC's Petition to Review Order on Motion for Protective Order*.

<sup>4</sup> The Director will consider Cat Creek’s Motion for Protective Order Reply in this order. See *Order on Motion for Protective Order* at 2.

Bureau of Reclamation; a detailed project budget; a narrative explanation of Cat Creek's financing strategy; and an accounting of Cat Creek's investment in the project of more than \$18 million to date. This is more than enough to demonstrate a legitimate project with a reasonable probability that financing will be available.

*Cat Creek Reply* at 3.

Cat Creek concluded: (1) It has not secured financing, but if financing is secured prior to hearing, it will be disclosed as "necessary and permissible"; (2) The Department should not have to undertake a comparative market analysis of the economics of Cat Creek's power project and other proposed power projects as it is too complex, unnecessary, and the Department would not understand it; (3) Simply because Idaho Power may not be seeking proposals related to pumped storage hydropower resources, does not mean other utilities are not, and there are currently 24 proposed pumped storage hydropower projects in various application stages; (4) The Department cannot be expected to evaluate current and future energy demand, market prices, and dozens of other factors in order to divine economically viable projects over the 17-year development window allowed under Idaho Code § 42-204; (5) The financial resources requirement, while added to weed out fraudulent scams related to water project developments, does not mean all projects must be risk free, rather Idaho must be willing to take some risk in allowing individuals to put water to beneficial use; and (6) it is not IDWR's role to decide what level of risk is acceptable to an applicant, only whether an applicant has demonstrated a legitimate project, including analysis of the applicant's own investment. *Cat Creek Reply* at 1-4.

Finally, Cat Creek argued the other information Protestant's cited to in Exhibit A to the Renewed Rule 40.05 Motion: (1) does not exist; (2) is not relevant; (3) pertains to defenses of Protestants that have not been articulated to Cat Creek; or (4) has already been produced." *Id.* at 5. Cat Creek argued Protestants would require

*[b]efore* conducting discovery—to divine every defense that may be raised, to develop all information needed to rebut unknown defenses, and to prove its case before the proceeding even starts. This impossible standard is not required by Rule 40.05. Rule 40.05 simply requires that CCE submit all of the information in its possession concerning each subject addressed in the rule. It is akin to the initial disclosure requirement under the Federal Rules of Civil Procedure.

*Id.* at 5-6 (emphasis in original).

On September 15, 2020, Cat Creek supplemented its financial disclosure with a letter to the Department related to the pledged credit support of Primary Energy Recycling Corp. ("Primary Energy") for Cat Creek Energy's Idaho water right applications. *Primary Energy Credit Support for Cat Creek Energy's Idaho Water Right Applications Letter* (Sept. 15, 2020) ("Primary Energy Letter").

## ANALYSIS

The purpose of the information submittals required by Rule 40.05 of the Water Appropriation Rules (IDAPA 37.03.08) is to establish a foundation for the Department's analysis and, in a contested case, establish a baseline for discovery and hearing preparation. Rule 40.05.b. authorizes the Director to order submittal of additional information requirements within 30 days, or applications may be voided. IDAPA 37.03.08.40.05.b.

The Director will first discuss Cat Creek's responsibility to submit financial information. A discussion of the sufficiency of information submitted to satisfy other criteria will follow.

**1. Rule 40.05 Additional Information Requirements.**

**a. *Financial Resources***

Idaho Code § 42-203A(5)(d) requires,

In all applications whether protested or not protested, where the proposed use is such: [ . . . ] (d) that the applicant has not sufficient financial resources with which to complete the work involved therein . . . [the Director] may reject such application and refuse issuance of a permit therefor, or may partially approve and grant a permit for a smaller quantity of water than applied for, or may grant a permit upon conditions.

Therefore, an applicant must have sufficient financial resources with which to complete the work to accomplish the proposed use.

Rule 45.01.d. includes the "[c]riteria for determining whether the applicant has sufficient financial resources to complete the project." IDAPA 37.03.08.045.01.d. "An 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 or upon a financial commitment letter acceptable to the Director." IDAPA 37.03.08.045.01.d.i.

Rule 40.05.f.i and ii of the Department's Water Appropriation Rules (IDAPA 37.03.08.40.05) state additional financial resources information submittal requirements the Director may require.

First, Rule 40.05.f.ii states, in pertinent part:

**f. Information Relative to Financial Resources . . . shall be submitted as follows:**

- ii. The applicant shall submit plans and specifications along with estimated construction costs for the project works. The plans shall be definite enough to allow for determination of project impacts and implications.

The Director's *Order re: Cat Creek Energy, LLC's Petition to Review Order on Motion For Protective Order* concluded Cat Creek's redacted Construction Budget ("Appendix A: Partially Redacted Construction Budget" to the *Second Declaration of James Carkulis (Redacted)*) is sufficient to show estimated construction costs pursuant to IDAPA 37.03.08.40.05.f.ii. The redacted Construction Budget coupled with the plans Cat Creek has uploaded to its ShareFile site are sufficient to satisfy the additional information requirements of Rule 40.05.f.ii.

Second, Rule 40.05.f.i. states, in pertinent part:

**f. Information Relative to Financial Resources . . . shall be submitted as follows:**

- i. The applicant shall submit 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.

The Director previously allowed Cat Creek to file a motion for protective order alongside its financial Rule 40.05 financial disclosures, and required the motion

be accompanied by a comprehensive financial summary showing a reasonable probability that financing will be available to appropriate the water, including: [ . . . ]

(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.

*Order Consolidating Parties* at 2-3 (emphasis added).

On September 15, 2020, Cat Creek submitted to IDWR and the parties the Primary Energy Letter. The Primary Energy Letter confirmed "the commitment of [Primary Energy] to provide the necessary credit support, investment, and participation to finance construction of the Cat Creek Energy, LLC ("Cat Creek") projects for water and energy infrastructure in the state of Idaho with an overall estimated cost of \$2.4 billion." *Primary Energy Letter* at 1.

The Primary Energy Letter described:

- 1) Primary Energy's investors, including:

- a) Fortistar, LLC (a privately-owned investment firm which has led financings raising over \$3.5 billion in capital for the energy, transportation and industrial sectors);<sup>5</sup>
  - b) Prudential Capital Group (now known as PGIM Private Capital with \$96.5 billion in assets under management);<sup>6</sup>
  - c) John Hancock Life Insurance Company (owned by Manulife, a publicly traded entity with a market cap of \$28.18 billion);<sup>7</sup> and
  - d) Ares Capital Corporation (a publicly traded entity that provides project financing for power generation projects and energy efficiency projects).<sup>8</sup>
- 2) An estimate of the approximate percentages of debt and equity to finance the Cat Creek Project; and
  - 3) A brief history of Primary Energy's business ventures in energy production.

The Director determines the Primary Energy Letter is a financial commitment letter required by Rule 40.05.f.i.

The Director further determines the redacted Construction Budget, coupled with the financial commitment letter, is strengthened by Cat Creek's submission of sufficient "other evidence to show that it is reasonably probable that financing will be available . . . ." IDAPA 37.03.08.40.05.f.i. Submittal of the project budget, construction costs (which are within the parameters of financing committed to by Primary Energy), the narrative description(s) of financing, and an accounting of Cat Creek's investment in the project of approximately \$18 million to date, bolster the reasonable probability of Cat Creek securing sufficient financial resources to complete the project. The Director encourages Cat Creek, as this matter progresses to hearing, to continue to supplement the record with additional relevant financing information.

**b. *Impact on Other Water Rights***

Rule 40.05.c states, in pertinent part:

**Information relative to the effect on existing water rights, Section 42-203A(5)(a), Idaho Code, shall be submitted as follows:**

- iii. Information shall be submitted concerning any design, construction, or operation techniques which will be employed to eliminate or reduce the impact on other water rights.

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<sup>5</sup> See <https://www.fortistar.com/about-fortistar/>.

<sup>6</sup> See <https://www.pgim.com>.

<sup>7</sup> See <https://www.johnhancock.com/index.html>.

<sup>8</sup> See <https://www.arescapitalcorp.com/about-ares-capital-corporation>.



Cat Creek states it will only divert when its water rights are in priority and it will rely on the Boise River watermaster and the Department's accounting program to distribute water to Cat Creek. *Notice of Amended Rule 40.05 Disclosure* at 2-3. The only document in the ShareFile repository under this topic contains an explanation of watermaster duties and a discussion of the Department's computerized water right accounting. See H. Anderson, *CCE Water Availability* (November 6, 2019).

Cat Creek proposes diversion of water from the Anderson Ranch Pool at a remote location. Therefore, Cat Creek should discuss how water diversions, releases, storage retention, and losses will be measured. Cat Creek should also discuss how data will be gathered, downloaded, and transmitted, including the employment of telemetry. Finally, Cat Creek should evaluate the possibility of remote control over pumps, gates, release valves, and the like, to ensure the watermaster can control and regulate diversion and release of water.

A simple statement that Cat Creek will rely on the watermaster to control its diversions is not enough to satisfy the requirement that the applicant submit "construction, or operation techniques which will be employed to eliminate or reduce the impact on other water rights." IDAPA 37.03.08.40.05.c.iii. Cat Creek's submittal does not establish that its operation will eliminate or reduce its impacts on other water rights.

**c. *Sufficiency of Water Supply***

Rule 40.05.d. of IDWR's Water Appropriation Rules states:

**Information relative to sufficiency of water supply, Section 42-203A(5)(b), Idaho Code, shall be submitted as follows:**

i. Information shall be submitted on the water requirements of the proposed project, including, but not limited to, the required diversion rate during the peak use period and the average use period, the volume to be diverted per year, the period of year that water is required, and the volume of water that will be consumptively used per year.

Cat Creek generally states it will divert available (in-priority) water into storage, and that water is required year-round for the storage and from-storage uses for power. *Notice of Amended Rule 40.05 Disclosure* at 2-3. Cat Creek has offered no specific information about how much water will be pumped daily to the reservoir and stored to generate power, and the timing of the pumping and subsequent releases of water for power generation.

**d. *Good Faith, Delay, or Speculative Purposes***

Rule 40.05.e. of IDWR's Water Appropriation Rules states:

**Information relative to good faith, delay, or speculative purposes of the applicant, Section 42-203A(5)(c), Idaho Code, shall be submitted as follows:**

The applicant shall submit copies of deeds, leases, easements . . . necessary for project facilities and the place of use . . . Applicants for hydropower uses shall

also submit information required to demonstrate compliance with Sections 42-205 and 42-206, Idaho Code.

Application Nos. 63-34403, 63-34652, 63-34897, and 63-34900 propose the following beneficial uses:

**63-34403**

Diversion to Storage  
Power Storage  
Power from Storage

**63-34652**

Diversion to Storage  
Irrigation Storage  
Irrigation from Storage (Irrigation within Pioneer Irrigation District Boundaries)  
Municipal Storage  
Municipal from Storage (Municipal Use within Suez Water Idaho Inc. and City of Meridian Boundaries)  
Mitigation by Delivery Storage  
Mitigation by Delivery from Storage (Description of Lands in Ada & Elmore Counties)

**63-34897**

Irrigation (Irrigation of lands owned by Wood Creek Ranch, Elmore County)  
Diversion to Storage  
Irrigation Storage  
Irrigation from Storage (Irrigation of lands owned by Wood Creek Ranch in Elmore County and within Black Canyon Irrigation District Boundaries)  
Municipal Storage  
Municipal from Storage (Municipal Use within City of Nampa Boundaries)  
Mitigation by Delivery Storage  
Mitigation by Delivery from Storage (Description of Lands in Ada & Elmore Counties)

**63-34900**

Diversion to Storage  
Irrigation Storage  
Irrigation from Storage (Entire Boise River Basin)  
Municipal Storage  
Municipal from Storage (All municipal provider service areas within the Boise River Basin)  
Mitigation by Delivery Storage



Mitigation by Delivery from Storage (All lands presently identified as a place of use by a water right within the Boise River Basin)

Industrial Storage

Industrial from Storage (All lands within the Boise River Basin)

Commercial Storage

Commercial from Storage (All lands within the Boise River Basin)

Wildlife Storage

Water Quality Improvement Storage

Water Quality Improvement from Storage (All lands within the Boise River Basin)

Ground Water Recharge Storage

Ground Water Recharge from Storage (All lands within the Boise River Basin)

Domestic Storage

Domestic from Storage (All lands within the Boise River Basin)

Recreation Storage

Fish Habitat Storage

Streamflow Maintenance Storage

Streamflow Maintenance from Storage

Cat Creek has executed nonbinding memoranda of understanding for delivery of water to the following entities:

*Irrigation* – Wood Creek Ranch;

*Irrigation from Storage* – Wood Creek Ranch, Black Canyon Irrigation District, and Pioneer Irrigation District; and

*Municipal from Storage* – Suez Water Idaho Inc, City of Meridian, and City of Nampa.

The places of use for the municipal providers are identified generally within the boundary of the service area of the municipal provider. The places of use for irrigation within an irrigation district are identified generally within the boundary of the district and are limited by a total number of acres irrigated. Water rights for municipal providers and irrigation districts (for irrigation use) are not required to identify specific public land survey locations.

Cat Creek identified specific public land survey locations for irrigation of the place of use for the Wood Creek Ranch.

However, Application No. 63-34900 lists many additional proposed beneficial uses on lands for which there is no agreement water can be used. The following is a summary of uses proposed on unauthorized lands:

*Irrigation from Storage* – No agreement for use of water for irrigation except Pioneer Irrigation District, Black Canyon Irrigation District, and Wood Creek Ranch;

*Municipal from Storage* – No agreement for use of water by any municipal provider except Suez Water Idaho Inc, City of Meridian, and City of Nampa;

*Domestic from Storage* – No agreement for domestic use on any lands;

*Mitigation by Delivery from Storage* – No agreement for use on lands for mitigation;

*Industrial from Storage* – No agreement for use on lands for industrial;

*Commercial from Storage* – No agreement for use on lands for commercial; and

*Ground Water Recharge from Storage* – No agreement for use on lands for ground water recharge.

In addition, there are other uses listed – Water Quality Improvement from Storage, Recreation from Storage, Fish Habitat from Storage, and Streamflow Maintenance from Storage – which appear to either be instream uses without any diversion or in-reservoir uses.

Cat Creek should submit documentation that it either: (1) owns the proposed generally identified lands where water will be beneficially used; or (2) has consent from the owners of specific parcels of property to apply the storage water for beneficial use on the generally identified lands; or (3) has the consent of a municipal provider or irrigation district that is authorized to deliver water to the generally identified lands. Failure to submit the required information will result in a reduction in the place of use description, elimination of a proposed beneficial use, or both.

**e. *Conflict With the Local Public Interest***

Rule 40.05.g. of IDWR's Water Appropriation Rules states:

**Information relative to Conflict with the Local Public Interest, Section 42-203A(5)(e), Idaho Code, shall be submitted as follows:** The applicant shall seek comment and shall submit all letters of comment on the effects of the construction and operation of the proposed project from the governing body of the city and/or county and tribal reservation within which the point of diversion and place of use are located, the Idaho Department of Fish and Game, the Idaho Department of Environmental Quality, and any irrigation district or canal company within which the proposed project is located and from other entities as determined by the Director.

Cat Creek argues because the Department's Western Regional Office notified a variety of potentially interested entities,<sup>9</sup> including the Watermaster of Water District 63, the Idaho Department of Fish and Game, and certain irrigation districts and canal companies within the

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<sup>9</sup> See e.g. Neely, Rachel. *Letter to Interested Parties re: Application for Permit No. 63-34403*, August 30, 2018, **ORDER RE: SBAR RANCH, LLC AND THE DISTRICT AT PARKCENTER, LLC's RENEWED MOTION FOR RULE 40.05.b. ORDER FOR APPLICANT TO SUBMIT COMPLETE RULE 40.05 INFORMATION** – Page 10

Treasure Valley, the “spirit and letter” of Rule 40.05.g. was fulfilled. *Notice of Amended Rule 40.05 Disclosure* at 6.

The Director concludes the onus of Rule 40.05.g. is on Cat Creek, not the Department. While the Department notified a variety of potentially interested parties of publication of notice of Cat Creek’s applications, including the opportunity to protest, it did not solicit comments “on the effects of the construction and operation of the proposed project.” IDAPA 37.03.08.40.05.g.

Therefore, Cat Creek must seek from governing bodies of cities and counties, including implicated local, state, and federal entities, tribal reservations within which the point of diversion and place of use are located, the Idaho Department of Fish and Game, the Idaho Department of Environmental Quality, and from any irrigation district or canal company within which the proposed project is located, commentary on the effects of the construction and operation of Cat Creek’s proposed project. Commentary from those entities already party or protestant to this pending consolidated contested case need not be sought.

## **2. Conclusion**

To assist the Parties the Director will summarize the conclusions above. The Director concludes the adequacy of Cat Creek additional information submittals is as follows:

### Rule 40.05.c Effect on Existing Water Rights

Cat Creek’s submittals do not satisfy the requirements of the rule. Details of the deficiencies and requirements to satisfy the rule are contained in the discussion above and in the order below.

### Rule 40.05.d Sufficiency of Water Supply

Cat Creek’s submittals do not satisfy the requirements of the rule. Details of the deficiencies and requirements to satisfy the rule are contained in the discussion above and in the order below.

### Rule 40.05.e Good Faith, Delay, or Speculation

Cat Creek’s submittals do not satisfy the requirements of the rule. Details of the deficiencies and requirements to satisfy the rule are contained in the discussion above and in the order below.

### Rule 40.05.f Financial Resources

Cat Creek submitted sufficient documentation to satisfy the financial information disclosure requirements of Rule 40.05.f. of the Water Appropriation Rules.

#### Rule 40.05.g Local Public Interest

Cat Creek's submittals do not satisfy the requirements of the rule. Details of the deficiencies and requirements to satisfy the rule are contained in the discussion above and in the order below.

To avoid additional expense related to discovery and hearing preparation, per Rule 40.05.b., and to avoid the penalties set forth in Rule 40.05.b, Cat Creek has 30 days to submit evidence it believes to be sufficient to satisfy the additional information disclosures requirements of Rule 40.05. IDAPA 37.03.08.40.05.b.<sup>10</sup>

### **ORDER**

IT IS HEREBY ORDERED that, within thirty (30) days of the date of execution of this order, Cat Creek Energy shall submit information required by Rule 40.05.c, d, and e of the Department's Water Appropriation Rules as follows:

#### Rule 40.05.c Effect on Existing Water Rights

Cat Creek shall submit documents analyzing and discussing how water diversions, releases, storage retention, and losses will be measured. Cat Creek should also analyze and discuss how data will be gathered, downloaded, and transmitted, including the employment of telemetry. Finally, Cat Creek should evaluate the possibility of remote control over pumps, gates, release valves, and the like, in order to ensure the watermaster can control and regulate diversion and release of water in real time.

#### Rule 40.05.d Sufficiency of Water Supply

Cat Creek shall submit documents containing specific information about how much water will be daily pumped to the reservoir and stored to generate power, and the timing of the pumping and subsequent releases of water for power generation.

#### Rule 40.05.e Good Faith, Delay, or Speculation

Cat Creek shall submit documentation that it either: (1) owns the proposed generally identified lands where water will be beneficially used; or (2) has consent from the owners of specific parcels of property to apply the storage water for beneficial use on the generally identified lands; or (3) has the consent of a municipal provider or irrigation district that is authorized to deliver water to the generally identified lands, for the following purposes:

- Irrigation from Storage;
- Municipal from Storage;
- Domestic from Storage;

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<sup>10</sup> "For protested applications . . . the information required [by the rule] may be requested by the Director to be submitted within thirty (30) days after notification by the Director . . ." IDAPA 37.03.08.40.05.b.

- Mitigation by Delivery from Storage;
- Industrial from Storage;
- Commercial from Storage; and
- Ground Water Recharge from Storage.

Rule 40.05.g Local Public Interest

Cat Creek must seek from governing bodies of cities and counties, including implicated local, state, and federal entities, tribal reservations within which the point of diversion and place of use are located, the Idaho Department of Fish and Game, the Idaho Department of Environmental Quality, and from any irrigation district or canal company within which the proposed project is located, commentary on the effects of the construction and operation of Cat Creek's proposed project. Commentary from those entities already party or protestant to this pending consolidated contested case need not be sought.

DATED this 20<sup>th</sup> day of October, 2020.



GARY SPACKMAN  
Director

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on this 20<sup>th</sup> day of October, 2020, the above and foregoing was emailed and sent to the following by United States Postal Service:

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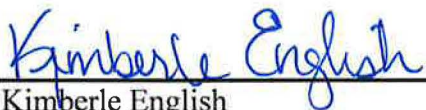
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