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District at ParkCenter, LLC

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

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

SBAR RANCH, LLC AND THE
DISTRICT AT PARKCENTER, LLC'S
PETITION TO REVIEW OCTOBER 20,
2020, 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

COME NOW, Protestors SBar Ranch, LLC and The District at ParkCenter, LLC (hereinafter, "these Protestors"), and hereby respectfully submit this Petition for Review of the October 20, 2020, 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. The Second Declaration of Anthony M. Jones ("Jones Second Declaration") and Declaration of Heidi Welsh ("Welsh Declaration") are contemporaneously filed in support of this Petition and are incorporated herein as if set forth in full.

While these Protestors concur with many of the findings and requirements in the October 20, 2020, 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 (the "Order"), these Protestors request that the Director modifies the Order in the following respects:

1. The September 8, 2020, Primary Energy letter is not a "financial commitment letter" in that it is not an actual commitment to provide project financing. Thus, on this basis, Cat Creek Energy, LLC (the "Applicant" or "CCE") has not yet satisfied the financial resources information requirements of Rule 40.05(f)(i). Second Jones Declaration.
2. The Applicant has not submitted "the financial statement of the lender" required to accompany the financial commitment letter. Thus, also on this basis, the Applicant has not yet satisfied the financial resources information requirements of Rule 40.05(f)(i). Second Jones Declaration.
3. The PE Letter together with the other financial information CCE has posted to date on its repository actually support the conclusion that CCE's PSH project will not be financially viable as its costs will exceed revenue and, as a result, it is unlikely that CCE ultimately will be able to obtain the kind of private financing described in the PE Letter over the next 20 or more years. Second Jones Declaration. Thus, the Applicant has not submitted the Rule 40.05(f) required financial resources information showing that "it is reasonably probable that financing will be available." Since the necessary Rule 40(f) information was ordered to be provided during the May 18, 2020, Pre-Hearing Conference, as documented in the June 10, 2020, Amended Order Consolidating Dockets and Parties, Etc., and much more than thirty

(30) days have lapsed since, all four of CCE's Applications should be voided pursuant to Rule 40.05(b).

4. Pursuant to Rule 40.05(c), (d) and (e) and as described in the Welsh Declaration, the following additional information (underlined) relating to the effect on existing water rights, the sufficiency of the water supply and good faith, delay and speculative purposes is required and should be added to the Order, pp.12-13:

IDAPA 37.03.08.40.05.c – Effect on Existing Water Rights: “Cat Creek shall submit documents analyzing and discussing how daily water diversions, releases, storage retention, and losses will be measured at Cat Creek Reservoir and Anderson Ranch Reservoir. Cat Creek should also analyze and discuss how data will be gathered, downloaded, and transmitted, including the employment of telemetry (i.e., 15 minute data). 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. Documents shall contain backup data and spreadsheets used in all analyses. Cat Creek also shall establish whether its operations/storage pond will intercept or appropriate ground water, will interrupt natural historic aquifer recharge or will impact springs and other headwaters in the area, including those of the Big Wood River Drainage. If ground water and/or springs will be affected, further information about the impacts to water rights from these sources shall be provided, including identification of the water rights and the locations of these wells, springs and sources and any design, construction or operation techniques which will be employed to eliminate or reduce the impact on these other water rights.”

IDAPA 37.03.08.40.05.d – Sufficiency of Water Supply: “Cat Creek shall submit documents containing specific information about how much water will be daily pumped to the reservoir, lost to evaporation, and stored to generate power, and the timing of the pumping and subsequent releases of water for power generation. Cat Creek shall provide information on the daily release amounts, transportation losses and deliveries (volumes and rates) to the downstream water users. Cat Creek shall provide information on ground water data already collected and further ground water monitoring plans (location of wells, dates, static water levels, the properties of aquifers, modeling, along with other pertinent ground water information). Cat Creek shall consider other water rights (e.g., Elmore County Permit 63-34348) in its water availability analysis. Cat Creek shall provide information on other sources of supply that may be used to supplement the applied for water.”

IDAPA 37.03.08.40.05.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 and shall identify the beneficial uses on the respective lands, for the following purposes:

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

Cat Creek shall provide additional information on all rights of way, permits and other approvals that may be needed, not just to beneficially use the water, but also to convey and divert the water.”

CONCLUSION

For the foregoing reasons, these Protestors respectfully request that the Director issue an order voiding the subject four Applications and/or modify its October 20, 2020, Order requiring the Applicant’s compliance with Rule 40.05’s information requirements.

Dated: November 3, 2020

HAWLEY TROXELL ENNIS & HAWLEY LLP



By _____
Dana L. Hofstetter

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the date indicated below I caused to be served a true copy of the foregoing SBAR RANCH, LLC AND THE DISTRICT AT PARKCENTER, LLC'S PETITION TO REVIEW OCTOBER 20, 2020, 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 with any Exhibit(s) by email addressed to the following:

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Dated: November 3, 2020



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