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Attorneys for Protestors SBar Ranch, LLC and The  
District at Park Center, LLC

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

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

DECLARATION OF DANA L.  
HOFSTETTER IN SUPPORT OF SBAR  
RANCH, LLC AND THE DISTRICT AT  
PARKCENTER, LLC'S RESPONSE TO  
CAT CREEK ENERGY, LLC'S MOTION  
TO COMPEL

I, DANA L. HOFSTETTER, make this declaration based upon my own personal knowledge and belief. I certify and declare under perjury pursuant to the laws of the State of Idaho, that the following is true and correct:

1. I am counsel of record for SBar Ranch, LLC and The District at ParkCenter, LLC in this proceeding.

2. On or about August 13, 2020, I received a letter dated August 13, 2020, from Cat Creek Energy, LLC's counsel ("CCE's counsel") claiming that my clients' Discovery Responses were inadequate in the following four respects: (i) the Response to Interrogatory No. 1 did not explain the reasons for denial of the Requests for Admission; (ii) the Response to Interrogatory

No. 3 offered no explanation as to how impacts to SBar's rights would occur; (iii) each of the Interrogatories and Requests for Productions had unexplained objections; and (iv) nine of the twelve Interrogatories were answered with the comment "Case investigation is in its early stages and the basis for each such contention has not yet been finalized." *See* Declaration of Thomas J. Budge, Exhibit C.

3. I responded to this August 13, 2020, letter by letter to CCE's counsel dated August 26, 2020, addressing each one of these four claimed deficiencies and stating, "If after reviewing this letter, you continue to desire an opportunity to meet and confer, please contact my assistant, Tina Shull, for an appointment for a telephone conference." A true and correct copy of my August 26, 2020, letter to CCE's counsel is attached hereto as Exhibit A.

4. Prior to filing its Motion to Compel, to my knowledge, CCE's counsel did not respond or try to pursue the offer to meet and confer in my August 26, 2020, letter and, thus, I believed that each of these four areas of concern identified by CCE's counsel had been adequately addressed by my August 26, 2020, letter. Thus, I was completely surprised by CCE's November 19, 2020, Motion to Compel.

I declare under penalty of perjury that the foregoing is true and correct and was executed within the United States on December 3, 2020.



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Dana L. Hofstetter

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I caused to be served a true copy of the foregoing DECLARATION OF DANA L. HOFSTETTER IN SUPPORT OF SBAR RANCH, LLC AND THE DISTRICT AT PARKCENTER, LLC'S RESPONSE TO CAT CREEK ENERGY, LLC'S MOTION TO COMPEL via e-mail addressed to each of the following on the date indicated below:

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Dated: December 3, 2020



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Dana L. Hofstetter

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August 26, 2020

T.J. Budge  
Racine Olson  
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VIA E-MAIL AND U.S. MAIL  
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Re: *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-Request to Meet and Confer*

Dear Mr. Budge:

This letter responds to your August 13, 2020, letter regarding SBar Ranch, LLC and The District at ParkCenter, LLC's July 29, 2020, Responses to Cat Creek Energy, LLC's First Set of Discovery Requests (the "Discovery Responses"). In your letter you identify four (4) reasons for claiming the Discovery Responses are inadequate, asserting: (i) The Response to Interrogatory No. 1. is not adequate to explain the reasons for denial of the Requests for Admission; (ii) The Response to Interrogatory No. 3 is not adequate because it offers no explanation as to how impacts to SBar's rights would occur; (iii) Each of the Interrogatories and Requests for Productions have unexplained objections; and (iv) Nine of the twelve Interrogatories were answered with the comment "Case investigation is in its early stages and the basis for each such contention has not yet been finalized." I respond to each of these assertions below. If after reviewing this letter, you continue to desire an opportunity to meet and confer, please contact my assistant, Tina Shull, for an appointment for a telephone conference.

1. Response to Interrogatory No. 1

Interrogatory No. 1 asks for a "detailed" explanation of the bases for denial of any of the Requests for Admission. All 8 of the Requests for Admission ask for admissions that each of the ultimate application criteria in Idaho Code 42-203A(5) were satisfied, with most of these requests specifically asking whether certain documents Cat Creek disclosed pursuant to IDWR Water Appropriation Rule 40.05 were "sufficient to satisfy" each of the Idaho Code 42-203A(5)(a-g) criteria. For example, most of the Requests for Admission were like the following: "Request for Admission No. 2- Admit that the documents that Cat Creek has produced as Bates #CCE-A-00001-00003 and CCE-B-000001 through 00343 are sufficient to satisfy Idaho Code 42-203A(5)(b)."

In SBar and The District's Response to Interrogatory No.1, after several objections, including one for "premature," Spronk Water Engineers' Exhibit A (SBar-District #-) is referenced since it provides detail about all the Rule 40.05 information relating to the Idaho Code

42-203A(5)(a-g) criteria that Cat Creek has failed to provide. Thus, Exhibit A does explain in detail, as requested, that at this stage of the proceeding Cat Creek has not provided sufficient information on the Idaho Code 42-203A(5) criteria, to pass the initial Rule 40.05 threshold, much less meet its burden of proof necessary to obtain an unequivocal admission. Since Cat Creek is well aware that SBar and The District have a pending Renewed Motion for More Complete Rule 40.05 information, it should come as no surprise that SBar and The District do not believe Cat Creek has provided the required Rule 40.05 information on the Idaho Code 42-203A(5) criteria, much less proved its case at this point. As more information becomes available, SBar and The District can supplement their Response to Interrogatory No. 1. However, for now, it is entirely appropriate to reference Spronk Water Engineers' Exhibit A as a basis for denying these Requests for Admission essentially seeking admissions that Cat Creek has provided adequate information and proved its case.

## 2. Response to Interrogatory No. 3

Interrogatory No. 3 asks for information about “the water right numbers that you contend will have a reduced water supply, [and] explain why you believe the Applications will reduce the quantity of water under such rights...” You acknowledge that SBar and The District’s Response to Interrogatory No. 3 “states that ground water rights could be impacted by the lining of Cat Creek Reservoir” but yet you inconsistently also claim there is “no explanation as to how SBar contends the impact would occur” or how SBar’s rights may be injured. After reviewing the Response to Interrogatory No. 3 again, I do not see what further explanation about the possible interconnection of surface and ground water sources or the impact of a massive impermeably lined pond on ground water recharge would be necessary to explain this to someone who already should have an understanding of the conjunctive management of ground and surface water sources and the associated hydrogeologic principles:

RESPONSE TO INTERROGATORY NO. 1: Objection. Compound. Overbroad. Mischaracterizes Protests. Vague. Ambiguous. Requests legal conclusions. Premature. Requests privileged information and attorney work product. Without waiving these objections and reserving the right to reassert the same, SBar and The District respond as follows: Water Right Nos. 37-23062, 37-14284A, 37-14284B, 37-14284C, and 37-14282, and South Boise Water Company water rights, among others, may be impacted by the proposed diversions and uses in the Applications. Possible impacts include, but are not limited to, reductions in surface water flows and ground water sources. Although, the Applications request the diversion and use of surface water, ground water sources and springs supplied by ground water also may be impacted by the large lined reservoir proposed as part of the Applications. Case investigation is in its early stages and the basis for each such contention has not yet been finalized. The

Response to this Interrogatory will be supplemented as appropriate in accordance with applicable case deadlines.

If you could identify what further needs explanation in this Response about the claim that the applications' proposed diversions of water and impermeable lined reservoir could directly impact surface water sources and also the recharge of the head waters serving The District and SBar's water rights, please let me know. As you know, in this proceeding, it is your client, the applicant, who has both the burden of coming forward with the evidence and the burden of proving that the applications will not reduce the quantity of water under existing rights. Accordingly, at this time it would be more appropriate for SBar and The District to be serving Cat Creek an Interrogatory seeking proof that the applications will not reduce the quantities of water under their rights, rather than vice versa.

### 3. Unexplained Objections

You claim that the Responses to Interrogatories and Requests for Production have unexplained objections. The objections seem self-explanatory to me, but to clarify, I will provide definitions for the objections. If you need further explanation of the application of any objections to any specific Interrogatory or Request for Production, please call me to discuss.

“Compound” means that the Interrogatory or Request for Production asks more than one question or makes more than one request.

“Overbroad” means that the Interrogatory or Request for Production seeks information and/or materials that are privileged, protected, or beyond the scope of discovery, etc.

“Mischaracterizes Protests” means that the language of the Protests are misquoted or misstated in the Interrogatory or Request for Production.

“Vague” means that one or more terms in the Interrogatory or Request for Production are undefined or unclear.

“Ambiguous” means that one or more terms in the Interrogatory or Request for Production are susceptible to more than one interpretation and more specificity is needed.

“Requests legal Conclusions” means that the Interrogatory or Request for Production seeks legal analysis, rather than facts or the application of law to the facts.

“Premature” means that it is too early in the proceeding, applicable case schedule and the case investigation/discovery process to expect a complete answer to the Interrogatory or Request for Production.

“Requests privileged information and attorney work product” means that the Interrogatory or Request for Production covers information that is attorney-client privileged and/or attorney work product.



“Unduly Burdensome” means that the Interrogatory or Request for Production requests voluminous or unnecessarily extensive information.

4. Case Investigation is in its Early Stages

Here you claim that SBar and The District are either withholding information or have no factual basis for filing Protests, although both SBar and The District’s water rights have been identified and the potential impacts of the applications on those water rights described. There can be no question that SBar and The District have justifiable reasons for being “concerned” in the applications and for filing Protests under Idaho Code 42-203A. Again, it is your client, the applicant, who has the obligation to provide the Rule 40.05 information and the burden of proving that the applications will satisfy the Idaho Code 42-203A(5) criteria; yet you seek this information from SBar and The District. IDAPA 37.03.08.040.04(c). As you know, SBar and The District have engaged Spronk Water Engineers and Rocky Mountain Econometrics in this matter and any information developed during the course of further case investigation will be provided in accordance with applicable rules and case schedules. However, before our experts can begin their work, they would need complete Rule 40.05 information from Cat Creek

Conclusion

Your firm apparently is using the discovery process improperly to harass SBar and The District for taking an appropriate posture with respect to obtaining the required Rule 40.05 information. It is noted SBar and The District are the only ones among numerous protesters who you have selected to serve with discovery so far in this proceeding. Your August 13, 2020, letter ignores your client’s own Rule 40.05 information responsibility and its burden of coming forward with evidence and unjustifiably contends that SBar and The District need to satisfy your client’s information obligations. This approach, along with the prior repeated outrageous allegations of energy industry conspiracy, unfounded assertions that Hawley Troxell has unnamed clients interested in this proceeding, and frequent interruptions of SBar and The District’s counsel at pre-hearing conferences, are wanton efforts to misuse the process. It seems that your client would be better served by focusing on providing the complete Rule 40.05 that is required for your client’s applications to proceed.

Sincerely,

HAWLEY TROXELL ENNIS & HAWLEY LLP



Dana L. Hofstetter

DLH:tas