

**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 DENYING SBAR RANCH,  
LLC AND THE DISTRICT AT  
PARKCENTER, LLC'S PETITION TO  
REVIEW ORDER ON RENEWED  
MOTION FOR RULE 40.05.B; ORDER  
ON CAT CREEK ENERGY LLC'S  
SUPPLEMENTAL RULE 40.05  
DISCLOSURE**

**BACKGROUND**

On May 1, 2020, SBar Ranch, LLC and The District at ParkCenter, LLC (collectively hereafter "SBar") filed a *Motion for Rule 40.05.b<sup>1</sup> Order for Applicant to Submit Complete Rule 40.05 Information*. On May 15, 2020, Cat Creek Energy, LLC ("Applicant" or "Cat Creek") filed the *Applicant's Response to Motion Re Rule 40.05 Information*.

On June 10, 2020, the Director issued the *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* ("First Rule 40.05 Order").

On June 30, 2020, SBar filed a *Response to Motion for Protective Order and Renewed Motion for Rule 40.05.b Order for Applicant to Submit Complete Rule 40.05 Information* ("SBar's Renewed Rule 40.05 Motion").

On October 20, 2020, the Director issued the *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* ("Second Rule 40.05 Order"). The Second Rule 40.05 Order ruled on the sufficiency of all submittals Cat Creek had made to that point pursuant to Rule 40.05, including specific requirements from the First Rule 40.05 Order.

On November 3, 2020, Petitioners filed *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 the Rule 40.05.B Order for Applicant to Submit Complete Rule 40.05 Information* ("SBar's Petition for Review of Second Rule 40.05.b Order"), along with the *Second Declaration of Anthony M. Jones*, and the *Declaration of Heidi Welsh*.

On November 19, 2020, Cat Creek filed the *Cat Creek Energy, LLC's Notice of Supplemental Rule 40.05 Disclosure* ("Cat Creek's Supplemental Rule 40.05 Disclosure") pursuant to the Second Rule 40.05 Order.

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<sup>1</sup> Rule 40.05 refers to IDAPA 37.03.08.40.05.

On November 19, 2020, Cat Creek also filed *Cat Creek Energy, LLC's Response to SBar Ranch, LLC and the District at Parkcenter, LLC's Petition for Review* ("Cat Creek's Response to Petition for Review").

This Order addresses two pending matters: (1) SBar's Petition for Review of the Second Rule 40.05 Order; and (2) the sufficiency of the information submitted by Cat Creek in Cat Creek's Supplemental Rule 40.05 Disclosure.

## ANALYSIS

### **1. Cat Creek's Financial Disclosures Pursuant to Rule 40.05.f. Are Sufficient.<sup>2</sup>**

In the Second Rule 40.05 Order, the Director concluded the September 8, 2020, letter from Primary Energy to Cat Creek ("Primary Energy Letter") "is a financial commitment letter required by Rule 40.05.f.i." *Second Rule 40.05 Order* at 6. The Director concluded there was also sufficient "other evidence" in the record to show that it is reasonably probable financing will be available for Cat Creek's project pursuant to Rule 40.05.f.i. *Id.*

SBar asks the Director to review these decisions. SBar argues Cat Creek has not satisfied Rule 40.05.f.i because the Primary Energy Letter is not a "financial commitment letter" because it is not an actual commitment to provide financing and was not accompanied by a "financial statement of the lender." *SBar's Petition for Review of Second Rule 40.05.b Order* at 2.

Cat Creek's Response to the Petition for Review argues the Primary Energy Letter plainly states: "this letter confirms the commitment of Primary Energy Recycling Corp . . . to provide the necessary credit support, investment, and participation to finance construction of the Cat Creek Energy, LLC . . . projects for water and energy infrastructure in the state of Idaho . . . ." *Cat Creek's Response to the Petition for Review* at 2 (emphasis in original). Cat Creek asserts the Primary Energy Letter is a financial commitment to finance construction of the project and meets the initial disclosure requirements of Rule 40.05.f.i. *Id.* Cat Creek argues other evidence in the record shows a reasonable probability that financing will be available, and, therefore, a Primary Energy financial statement is unnecessary. *Id.* at 3.

The Director is unpersuaded by SBar's arguments and will not alter the relevant analysis and conclusions in the Second Rule 40.05 Order. *See Second Rule 40.05 Order* at 4-6. The Primary Energy Letter is a financial commitment letter sufficient for purposes of compliance with Rule 40.05.f.i. The Primary Energy Letter confirms "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 is a commitment by Primary Energy to finance construction of the project.

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<sup>2</sup> For the Director's full analysis of the requirements of Idaho Code § 42-203A(5)(d) and IDAPA 37.03.08.40.05.f.i and ii, *see Second Rule 40.05.b Order* at pages 3-6.

There was no need for Primary Energy to submit a financial statement. SBar ignores the plain language of Rule 40.05.f.i. The rule allows submission of a financial statement “or other evidence” showing a reasonable probability financing will be available for the project. IDAPA 37.03.08.40.05.f.i. (emphasis added). There is sufficient other evidence in the record to satisfy Rule 40.05.f.i in lieu of a financial statement from Primary Energy. *See Second Rule 40.05 Order* at 5-6.

**a. Cat Creek Has Shown a Reasonable Probability of Project Financing.**

SBar asks the Director to review the Director’s conclusion that it is reasonably probable financing will be available for the project. *SBar’s Petition for Review of Second Rule 40.05.b Order* at 2. SBar asserts Cat Creek’s project is not “financially viable” based on SBar’s expert forecasts that project costs will exceed future revenue. *Id.* As a result, SBar asserts it is unlikely Cat Creek will be able to obtain the type of financing described in the Primary Energy Letter. *Id.*<sup>3</sup>

Here again, the Director is unpersuaded by SBar’s arguments. Rule 40.05.f.i does not require Cat Creek to show that its proposed project is “financially viable.” Neither does Rule 40.05.f.i require the Director to determine whether the proposed project is “financially viable.” Rule 40.05.f.i. requires an applicant to submit evidence to show it is “*reasonably probable* that financing will be available to appropriate the water and apply it to the beneficial use proposed.” IDAPA 37.03.08.40.05.f.i.

To show it is reasonably probable financing will be available for the proposed project, Cat Creek has procured and submitted: (a) a financial commitment letter from Primary Energy; (b) construction, engineering, permitting, and legal work product over a period of several years; (c) leases and agreements to purchase some of the land needed for the project; (d) Elmore County’s authorization and development support of the project; (e) a FERC preliminary permit and authorization to file a FERC license application; (f) a Preliminary Lease of Power Privilege from the United States Bureau of Reclamation; (g) budget documentation; (h) a summary of its financing strategy; and (i) expenditures of \$18 million dollars. This evidence shows Cat Creek is reasonably pursuing financing and evidences a reasonable probability financing will be available for the proposed project.

Cat Creek has shown it is reasonably probable that financing will be available for the proposed project within the relevant time constraints of a future permit. The Director continues to encourage Cat Creek to update and submit to the Director relevant financial information and analysis during the pendency of the contested case. Additionally, SBar can obtain additional

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<sup>3</sup> In its response, Cat Creek argues SBar’s assertions about the financial viability of the project, and its belief Cat Creek will be unable to obtain financing, means Petitioners are, in effect, moving for summary judgment under Idaho Code § 42-203A(5). *Cat Creek’s Response to the Petition for Review* at 3. Cat Creek argues that if SBar desires a ruling on the merits of whether “the applicant has not sufficient financial resources with which to complete the work involved therein” (Idaho Code 42-203A(5)(d)), it should file a motion for summary judgment. *Id.* at 4. As no summary judgment motion is before the Director, this portion of Cat Creek’s argument is irrelevant to the Director’s decisions in this order.

information related to Cat Creek's financial resources through discovery and through Cat Creek's efforts for approval of the project.

**2. Cat Creek's Water Right Impact Disclosures Pursuant to Rule 40.05.c Are Sufficient.**

The Second Rule 40.05 Order required Cat Creek submit additional information about the impact of the proposed project on other water rights under Idaho Code 42-203A(5)(a) and Rule 40.05.c. *Second Rule 40.05 Order* at 6-7.

SBar argues the following underlined text should be added to the Director's language in the Second Rule 40.05 Order:

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.'

*SBar's Petition for Review of Second Rule 40.05.b Order* at 3.

In response, Cat Creek argues SBar asks the Director to "write into Rule 40.05 requirements that Cat Creek develop and produce . . . very detailed technical information, including the telemetric reporting of water measurement data in 15 minute increments, backup data used in all analyses, further information about impacts to springs and groundwater rights . . . ." *Cat Creek Response to Petition for Review* at 4. As it relates to disclosure of water right impact information under Rule 40.05.c, Cat Creek asserts: (a) the Cat Creek Reservoir will not intercept groundwater; (b) there is no shallow groundwater in the relevant vicinity; (c) the reservoir will be impervious to exfiltration; and (d) well analysis has already been uploaded to the ShareFile site. *Id.* Otherwise, Cat Creek argues the technical information SBar seeks exceeds the scope of Rule 40.05 or can be obtained through discovery. *Id.*

The Second Rule 40.05 Order will not be amended to include SBar's proposed additions. Cat Creek submitted a sufficient response in Appendix A to Cat Creek's Supplemental Rule

40.05 Disclosure. *Cat Creek's Supplemental Rule 40.05 Disclosure* at Appendix A, 1-2. Appendix A analyzes and discusses how measurement of daily water diversions, releases, storage retention, and losses will occur. *Id.* Cat Creek further states that its project: (1) will not intercept groundwater; and (2) will not affect shallow groundwater because there is no shallow groundwater in the project area. *Cat Creek's Response to Petition for Review* at 4. The information posted on Cat Creek's ShareFile site, coupled with the supplemental information in Appendix A is sufficient to satisfy the information disclosure requirements of Rule 40.05.c.

**3. Cat Creek's Sufficiency of Water Supply Disclosures Pursuant to Rule 40.05.d Are Sufficient.**

The Second Rule 40.05 Order required Cat Creek to submit additional information about the impact of the proposed project on the sufficiency of the water supply under Idaho Code 42-203A(5)(b) and Rule 40.05(d). *Second Rule 40.05 Order* at 7.

SBar argues the following underlined text should be added to the Director's language in the Second Rule 40.05 Order:

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.'

*SBar's Petition for Review of Second Rule 40.05.b Order* at 3.

In response, Cat Creek again argues Petitioners are asking for detailed technical information not required by Rule 40.05. *Cat Creek Response to Petition for Review* at 4. Cat Creek argues the information requested is impossible to produce at this time in the permitting process. *Id.* For example, daily water releases of storage water "will be dependent upon water supply conditions and water demands of spaceholders." *Id.* Otherwise, Cat Creek reiterates its project: (1) will not intercept groundwater; and (2) will not affect shallow groundwater because there is no shallow groundwater in the project area. *Id.* Cat Creek further explains it has already submitted analysis of groundwater wells in the area on the ShareFile site (bates nos. CCE-B-343). *Id.* It further asserts "[e]vaporative losses will either (a) be replaced by diversions of natural flow when available in priority under CCE's water rights, (b) be replaced with storage water rented from the Water District 63 Rental Pool or through a private lease, or (c) temporarily deplete water stored in Cat Creek Reservoir." *Cat Creek's Notice of Supplemental Disclosure* at Appendix A, 2.



Cat Creek states the project will primarily store water to function as a “battery” under a Lease of Power Privilege with BOR. *Cat Creek’s Notice of Supplemental Disclosure* at Appendix A, 2. The amount of water “will be dependent upon (a) the volume of storage water available to generate power . . . and (b) energy demand.” *Id.* Therefore, Cat Creek “cannot prospectively document the volume and timing of water that will be daily pumped and released to generate power because this is dependent on power prices and contract obligation, and can vary from hour to hour and day to day.” *Id.* Cat Creek continues to assert this does not change the fact its operation will not impact other water rights in the Boise River basin as it depends on moving storage water between its own reservoir and Anderson Ranch. *Id.* Maximum diversion from Anderson Ranch Reservoir will be up to 9,996 cfs for power storage. *Id.* at 3. Finally, Idaho Water Engineering performed an analysis of water right accounting which showed that, if the next 20 year period is similar to the previous 20 years, Cat Creek “could expect that water would be available to fill [its reservoir] between 40 and 50 percent of years and some amount of water would be able to be diverted between 60 and 70 percent of years.” *Id.*

The Second Rule 40.05 Order will not be amended to include Petitioners’ underlined additions related to Rule 40.05.d. The information posted on Cat Creek’s ShareFile site, coupled with the explanatory Appendix A, is sufficient to satisfy the disclosure requirements of Rule 40.05.d.

**4. Cat Creek’s Good Faith Disclosures Pursuant to Rule 40.05.e Are Not Sufficient.**

The Second Rule 40.05 Order required Cat Creek to submit additional information showing the application was made in good faith, and not for delay, or for speculative purposes under Idaho Code 42-203A(5)(c) and Rule 40.05.e. *Second Rule 40.05 Order* at 7-10.

Rule 40.05.e requires, in pertinent part:

- e. Information relative to good faith, delay, or speculative purposes of the applicant, Section 42-203(A)(5)(c), Idaho Code, shall be submitted as follows:
  - i. The applicant shall submit copies of deeds, leases, easements or applications for rights-of-way from federal or state agencies documenting a possessory interest in the lands necessary for all project facilities and the place of use or if such interest can be obtain by eminent domain proceedings the applicant must show that appropriate actions are being taken to obtain the interest.

IDAPA 37.03.08.40.05.e.i.

The Director’s Second Rule 40.05 Order concluded Cat Creek’s Application for Permit No. 63-34900 was deficient because it listed proposed beneficial uses without agreements showing the water could be used on the end place of use. The Director ordered:

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.

As an initial matter, SBar argues the following underlined text should be added to the Director's language in the Second Rule 40.05 Order:

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.’

*SBar's Petition for Review of Second Rule 40.05.b Order* at 4. The Director declines to require the additional information suggested by SBar's proposed language as Cat Creek. Cat Creek stated plainly in its Response, as discussed in more detail below, that, in relation to Application No. 63-34900, it simply does not have the information requested by the Director, and is not required to have or submit said information at this time. *Cat Creek's Supplemental Rule 40.05 Disclosure* at 4.

Moving now to Cat Creek's specific responses to the Director's request under Rule 40.05.e. Cat Creek first asserts the Rule 40.05.e information has already been submitted for Application Nos. 63-34403, 63-34652, and 63-34897. *Cat Creek's Supplemental Rule 40.05 Disclosure* at 4. The Director agrees that Cat Creek has disclosed sufficient Rule 40.05.e information for the places of use described in these three applications. The remaining issue is whether Cat Creek has submitted sufficient additional Rule 40.05.e information for Application No. 63-34900.

Cat Creek admits:

[It] has not entered into contracts with spaceholders for the end-use of water stored under permit 63-34900 . . . [and it] does not presently own or have contracts with owners of land where storage water release from Cat Creek Reservoir under permit 63-34900 will subsequently be used.

*Id.* Cat Creek argues it has nevertheless complied with Rule 40.05.e because ownership or control of the end place of use “is not required” for Application No. 63-34900. *Id.*

First, Cat Creek argues “contracts with the landowners where the end beneficial use will occur is not a prerequisite for permitting of water rights appropriated for sale, rental, or distribution under Section 1, Article 15, Idaho Constitution.” *Id.* at 5-6. Therefore, Cat Creek argues its identification of all of Basin 63 as the place of use for the storage water is sufficient. *Id.* The Director disagrees.

Cat Creek argues because Section 1, Article 15 of the Idaho Constitution does not require the description of a place of use and evidence of permission of said place of use, Cat Creek need not provide that information. Section 1, Article 15 of the Idaho Constitution states:

The use of all water now appropriated, or that may hereafter be appropriated for sale, rental or distribution; also of all water originally appropriated for private use, but which after such appropriation has heretofore been, or may hereafter be sold, rented, or distributed, is hereby declared to be a public use, and subject to the regulations and control of the state in the manner prescribed by law.

This section of the Idaho’s Constitution declares the use of water in Idaho to be a public use. It does not address the specific ways in which use will be regulated or controlled, only that said use is “subject to the regulations and control of the state in the manner prescribed by law.” Rule 40.05.e is part of the regulatory regime prescribed by law to implement the constitutional public use mandate. Simply because the Idaho Constitution does not specifically include regulatory elements governing the public use of water in Idaho does not mean the Director may not require what is specifically laid out in legislatively enacted statutes and agency-made rules.

Cat Creek next argues its project is akin to a canal company, irrigation district, or other large-scale storage project, all of which do not own the end place of use or have consent from the owners of said end places of use when permits are applied for. *Id.* As a result, Cat Creek argues it is not necessary to identify at the outset the discrete parcels of land to which storage water may be released for beneficial use, or have contracts in place with downstream landowners for Application No. 63-34900. *Id.* Instead, Cat Creek argues it should be allowed to “acquire a permit and then enter into spaceholder contracts with downstream landowners” during project development. *Id.* at 5.

The Director is unpersuaded by Cat Creek’s arguments related to the necessity of compliance with Rule 40.05.e, and, therefore, must limit the proposed place(s) of use for Application No. 63-34900.

Place of use is an element of all Idaho water rights. *Olson v. Idaho Dept. of Water Resources*, 105 Idaho 98, 101, 666 P.2d 188, 191 (1983)(“A water right is defined, not in terms of metes and bounds as in other real property, but in terms of the priority, amount, season of use, purpose of use, point of diversion, and place of use.”). For an application to be acceptable for filing in the first instance, the Water Appropriation Rules, under IDAPA 37.03.08.035.03.a.iii, require the following information in relation to the place of use:



[iii.] The legal description of the point of diversion and place of use shall be listed. The location of the point(s) of diversion and the place of use shall be described to the nearest forty (40) acre subdivision or U.S. Government Lot of the Public Land Survey System. The location of springs shall be described to the nearest ten (10) acre tract. Subdivision names, lot and block numbers and any name in local common usage for the point of diversion, or place of use shall be included in the comments section of the application form. If irrigation is listed as a purpose of use, the number of acres in each forty (40) acre subdivision of the place of use shall be listed.

IDAPA 37.03.08.035.03.a.iii.

Cat Creek, in Application No. 63-34900, proposes as the place of use:

[T]he places of use of water users and water distribution entities that hold contracts for storage in the Arrowrock Division of Reclamation's Boise Project; areas of regulatory or management concern within Basins 63 such as moratorium areas, Critical Ground Water Areas, and Ground Water Management Areas; areas within Basins 63 of potential use of storage water under mitigation plans or exchange agreements; and other areas of interest in additional storage water from Anderson Ranch Reservoir has been expressed.

Irrigation from storage use would mostly occur on lands within the service area boundaries of the irrigation districts, canal companies, ditch companies, and other irrigation water distribution entities that already hold contracts for storage in Arrowrock, Anderson Ranch, and Lucky Peak reservoirs.

*Application for Permit No. 63-34900* at Attachment A, p. 4. Cat Creek also intends to include areas of ground water recharge in the Treasure Valley and surrounding areas, as well as within various municipalities as well as for future commercial and industrial purposes. *Id.* at 4-5.

Cat Creek asserts:

[I]t is not possible to identify places of use with any greater specificity than described above. Once the user contracts are complete, CCE will amend the application to more specifically identify the places of use within Ada and Canyon counties, including acreages, as applicable.

*Id.* at 5. Cat Creek asserts it should be treated like other appropriators of water rights "where the end use of water will be accomplished by third parties." *Id.* at 6.

The Director is unaware of any exception to the requirement that Cat Creek comply with Rule 40.05.e and is unpersuaded by Cat Creek's arguments to the contrary. A description of the place of use for any Idaho water right application, accompanied by evidence showing that place may *actually* be used, is elemental to the applied-for right. Cat Creek may not acquire a permit

or right to use Idaho water without more specificity as to the element of place of use, pursuant to Rule 40.05.e.

As a result, the Director now concludes the place(s) of use related to Application No. 63-34900 must be limited to the place(s) of use, and related beneficial uses, sufficiently described in Application for Permit Nos. 63-34403, 63-34652, and 63-34897. The 19,000 acre feet of storage capacity proposed under Application for Permit No. 63-34900 will be limited to:

1. *Irrigation* under the agreement with Wood Creek Ranch;
2. *Irrigation from storage* under the agreements with Wood Creek Ranch, Black Canyon Irrigation District, and Pioneer Irrigation District; and
3. *Municipal from storage* under the agreements with Suez Water Idaho Inc., the City of Meridian, and the City of Nampa.

Cat Creek has not provided any relevant information or evidence related to the other places of use and related beneficial uses in Application for Permit No. 63-34900. Therefore, those other proposed places of use and related proposed beneficial uses are now denied.

**5. Cat Creek's Actions Pursuant to Rule 40.05.g Local Public Interest Analysis are Sufficient.**

The Second Rule 40.05 Order required Cat Creek to seek comments on the construction and operation of the proposed project from relevant cities and counties, including local, state, and federal entities, tribal reservations, 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. *Cat Creek's Supplemental Disclosure* at 6.

On October 30, 2020, Cat Creek sent a letter seeking comment on the effects of the construction and operation of the proposed project, which "to the best of [its] knowledge, information and belief, each city, county and tribal reservation within which the point of diversion and place of use are located, together with the Idaho Department of Fish and Game, the Idaho Department of Environmental Quality, and all irrigation districts or canal companies within the proposed project, excepting those who are already parties to this proceeding." *Id.* at Appendix B. The October 30, 2020, letter satisfies Rule 40.05.g.

## **CONCLUSION**

For the reasons stated above, *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 the Rule 40.05.B Order for Applicant to Submit Complete Rule 40.05 Information* is denied.

Cat Creek's Rule 40.05.c, .d, e., .f, and .g, disclosures are sufficient to the move Application for Permit Nos. 63-34403, 63-34652, and 63-34897 forward in the contested case process.

While Application for Permit No. 63-34900 is sufficient in terms of Rule 40.05.c, d., f., and g., it is insufficient under Rule 40.05.e. Cat Creek's Rule 40.05.e. information disclosures are insufficient as to the place(s) of use and related beneficial uses listed. As a result, this order limits the place of use under Application for Permit No. 63-34900 to those places of use already governed by agreements in the record.

### ORDER

IT IS HEREBY ORDERED *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 the Rule 40.05.B Order for Applicant to Submit Complete Rule 40.05 Information* is **denied**.

IT IS FURTHER ORDERED the additional informational disclosures required under Application For Permit Nos. 63-34403, 63-34652, and 63-34897, pursuant to Rule 40.05.c, .d, e, .f, and .g, have been satisfied.

IT IS FURTHER ORDERED the additional informational disclosures required under Application For Permit No. 63-34900, pursuant to Rule 40.05.c, .d, .f, and .g, have been satisfied. However, Cat Creek Energy, LLC's disclosure pursuant to Rule 40.05.e and Idaho Code 42-203A(5)(c), as it relates to Application for Permit No. 63-34900, is insufficient under Rule 40.05.e. As a result, the place of use under Application for Permit No. 63-34900 has been limited, as described herein.

DATED this 17<sup>th</sup> day of February, 2021.

  
GARY SPACKMAN  
Director

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on this 17<sup>th</sup> day of February, 2021, the above and foregoing was emailed and mailed to the following by United States Postal Service:

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