

Apr 24, 2023

DEPARTMENT OF  
WATER RESOURCES

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**DEPARTMENT OF WATER RESOURCES**

**STATE OF IDAHO**

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

**MOTION FOR ORDER  
MOVING APPLICATIONS TO  
INFORMAL PROCEEDINGS**

Cat Creek Energy, LLC (“Cat Creek”) hereby submits this brief in explanation and support of the attached stipulation entered into between Cat Creek Energy, LLC (“Cat Creek”) and the following protestants in the above-entitled matter: Ballentyne Ditch Co., et al., United States Department of the Interior Bureau of Land Management, City of Meridian, Idaho Department of Fish and Game, Elmore County Board of County Commissioners, Idaho Conservation League, and Trout Unlimited. The stipulation requests that the Director of the Idaho Department of Water Resources (“Director”) issue an order moving the above-entitled matter to informal proceedings pursuant to rule 100.03 of the Rules of Procedure of the Idaho Department of Water Resources (IDAPA 37.01.01.100.03).

On March 15, 2023, Cat Creek sent the stipulation to all protestants for review. On April 3, 2023, after receiving signatures from some of the parties, Cat Creek sent a follow-up email to the remaining protestants asking them to review and sign the stipulation or inform Cat Creek affirmatively that they would not sign, by April 10, 2023.

While waiting for signatures and comments, Cat Creek reviewed the signature page and determined that two of the protestants were not necessary signatories to the stipulation: (i) the

Office of Energy and Mineral Resources, which did not protest any of the above-entitled applications for permit, but simply requested ongoing notice of the proceedings; and (ii) the United States of America Bureau of Reclamation, which initially protested the Cat Creek applications but later withdrew its protest on October 22, 2020. These non-protestants' signature blocks are redacted from the attached stipulation.

As of the filing of this brief and attached stipulation, only one protestant has notified Cat Creek that it would not sign the stipulation; however, this protestant also responded that it would not protest moving to informal proceedings. The following protestants have not responded: S Bar Ranch, LLC, City of Boise, The District at Parkcenter, LLC, the Boise Project Board of Control, Tree Top Ranches LP, Wildlands Defense, Veolia (formerly SUEZ Water Idaho, Inc.), Gwinn Rice Ranch LLC, Wendi Combs, and Allen R. Thompson.

Because all but one protester has either signed the stipulation or failed to affirmatively notify Cat Creek of their refusal to sign the stipulation, Cat Creek respectfully requests the Director enter an order moving the above-entitled applications to informal proceedings pursuant to rule 100.03 of the Rules of Procedure of the Idaho Department of Water Resources.

DATED this 21st day of April, 2023.

RACINE OLSON, PLLP

By:  \_\_\_\_\_

Thomas J. Budge

Elisheva M. Patterson

*Attorneys for Applicant Cat Creek Energy, LLC*

## CERTIFICATE OF MAILING

I certify that on this 24th day of April, 2023, the foregoing document was served on the following persons via the email address identified.



IDAHO DEPT. OF WATER RESOURCES Director Gary Spackman Garrick L. Baxter Mark Cecchini-Beaver Sarah Tschohl <a href="mailto:file@idwr.idaho.gov">file@idwr.idaho.gov</a> <a href="mailto:gary.spackman@idwr.idaho.gov">gary.spackman@idwr.idaho.gov</a> <a href="mailto:garrick.baxter@idwr.idaho.gov">garrick.baxter@idwr.idaho.gov</a> <a href="mailto:mark.cecchini-beaver@idwr.idaho.gov">mark.cecchini-beaver@idwr.idaho.gov</a> <a href="mailto:Sarah.tschohl@idwr.idaho.gov">Sarah.tschohl@idwr.idaho.gov</a>	<i>Ballentyne Ditch Co., et al.</i> SAWTOOTH LAW OFFICES PLLC Daniel B. Steenson S. Bryce Farris Andrew J. Waldera <a href="mailto:dan@sawtoothlaw.com">dan@sawtoothlaw.com</a> <a href="mailto:bryce@sawtoothlaw.com">bryce@sawtoothlaw.com</a> <a href="mailto:andy@sawtoothlaw.com">andy@sawtoothlaw.com</a>
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## DEPARTMENT OF WATER RESOURCES

### STATE OF IDAHO

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

### STIPULATION FOR ORDER MOVING APPLICATIONS TO INFORMAL PROCEEDINGS

This stipulation is entered into between Cat Creek Energy, LLC (“Cat Creek”) and the undersigned Protesters to the above-entitled applications for permits. Cat Creek and the signing Protesters hereby stipulate to an order moving the above-entitled applications from formal proceedings to informal proceedings pursuant to rule 100.03 of the Rules of Procedure of the Idaho Department of Water Resources (the “Department”).

Cat Creek filed Application for Permit 63-34403 on May 16, 2017, Application for Permit 63-34652 on April 1, 2019, Application for Permit 63-34897 on April 21, 2020, and Application for Permit 63-34900 on April 22, 2020 (collectively, the “Applications”). The Applications all involve a project to store water in Cat Creek Reservoir for hydropower and other beneficial uses. Each of the Protesters protested one or more of the Applications. On June 10, 2020, the Director of the Department issued an amended Order Consolidating Dockets which consolidated proceedings on Applications, and which recognized all parties to the consolidated contested case without additional procedure, protest, or intervention.

After the Applications were filed, the Rules of Procedure of the Department were changed on March 18, 2022, to provide a two-stage process for resolving contested water right applications.

The first stage is “informal proceedings”, and the second stage is “formal proceedings.” IDAPA 37.01.01.100. The rule further allows proceedings to move between the two informal and formal settings. *Id.*

On March 9, 2022 an informal settlement conference was conducted between Cat Creek and the Protesters at the Department’s offices in Boise, Idaho. After the settlement conference the Director conducted a continued prehearing conference on June 21, 2022. During the prehearing Cat Creek presented an update on obtaining needed permits, licenses, leases, and project approvals from varying governmental agencies, including the Federal Energy Regulatory Commission (“FERC”) and the United States Bureau of Reclamation (“BOR”). On July 6, 2022, Cat Creek filed with the Department a *Motion to Stay Proceedings*, which was uncontested. The Department issued an *Order Granting Request for Stay of Proceedings* on September 22, 2022, staying the applications proceedings and ordering Cat Creek to file a status report with the Department and a motion to extend the stay, if necessary. On February 17, 2023, Cat Creek filed with the Department its *Status Report and Motion to Extend Stay Proceedings*. No party has opposed Cat Creek’s motion.

Because FERC and BOR proceedings are still ongoing, the below signatory Protesters and Cat Creek hereby stipulate to move the Applications to informal proceedings and request the Department issue an order, pursuant to rule 100.03 of the Rules of Procedure of the Department. The Parties agree that this stipulation is not a waiver of any rights Protesters have to contest the Applications when the Department or parties elects to resume formal proceedings.

DATED: \_\_\_\_\_



Elisheva M. Patterson  
RACINE OLSON PLLP  
*Attorneys for Cat Creek Energy, LLC*

DATED: \_\_\_\_\_

Andrew J. Waldera/Daniel B. Steenson/S. Bryce Farris  
SAWTOOTH LAW OFFICES PLLC  
*Attorneys for Ballentyne Ditch Co., et al.*

DATED: \_\_\_\_\_

~~George Lynch~~

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DATED: \_\_\_\_\_

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Elisheva M. Patterson  
RACINE OLSON PLLP  
*Attorneys for Cat Creek Energy, LLC*

DATED: 3/22/23

\_\_\_\_\_  
Andrew J. Waldera/Daniel B. Steenson/S. Bryce Farris  
SAWTOOTH LAW OFFICES PLLC  
*Attorneys for Ballentyne Ditch Co., et al.*

DATED: \_\_\_\_\_

\_\_\_\_\_  
~~George Lynch~~

~~IDAHO GOVERNOR'S OFFICE OF ENERGY AND  
MINERAL RESOURCES~~

*Office of Energy and Mineral Resources*

DATED: 4/4/23

  
Ann N. Yribar

STATE OF IDAHO OFFICE OF THE ATTORNEY  
GENERAL

*Attorney for Idaho Department of Fish and Game*

DATED: \_\_\_\_\_

Albert P. Barker

BARKER ROSHOLT & SIMPSON LLP

*Attorney for Boise Project Board of Control & Riverside  
Irrigation District*

DATED: \_\_\_\_\_

Kurt J. Starman

MERIDIAN CITY ATTORNEY

*Attorney for City of Meridian*

DATED: \_\_\_\_\_

John K. Simpson

BARKER ROSHOLT & SIMPSON LLP

*Attorney for Idaho Power Company*

DATED: \_\_\_\_\_

Fredric W. Price

USDI BLM IDAHO STATE OFFICE

*USDI BLM*

DATED: \_\_\_\_\_

Michael P. Lawrence/Christopher H. Meyer/Charles  
Baser

GIVENS PURSLEY LLP

*Attorneys for Veolia*

DATED: \_\_\_\_\_

Dana L. Hofstetter/Richard F. Goodson

HAWLEY TROXELL ENNIS & HAWLEY



~~IDAHO GOVERNOR'S OFFICE OF ENERGY AND  
MINERAL RESOURCES~~

~~Office of Energy and Mineral Resources~~

DATED: \_\_\_\_\_

\_\_\_\_\_  
Ann Y. Vonde  
STATE OF IDAHO OFFICE OF THE ATTORNEY  
GENERAL  
*Attorney for Idaho Department of Fish and Game*

DATED: \_\_\_\_\_

\_\_\_\_\_  
Albert P. Barker  
BARKER ROSHOLT & SIMPSON LLP  
*Attorney for Boise Project Board of Control & Riverside  
Irrigation District*

DATED: \_\_\_\_\_

\_\_\_\_\_  
Kurt J. Starman  
MERIDIAN CITY ATTORNEY  
*Attorney for City of Meridian*

DATED: \_\_\_\_\_

\_\_\_\_\_  
John K. Simpson  
BARKER ROSHOLT & SIMPSON LLP  
*Attorney for Idaho Power Company*

DATED: 03/15/2023

  
\_\_\_\_\_  
Fredric W. Price  
USDI BLM IDAHO STATE OFFICE  
*USDI BLM*

DATED: \_\_\_\_\_

\_\_\_\_\_  
Michael P. Lawrence/Christopher H. Meyer/Charles  
Baser  
GIVENS PURSLEY LLP  
*Attorneys for Veolia*

DATED: \_\_\_\_\_

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Dana L. Hofstetter/Richard F. Goodson  
HAWLEY TROXELL ENNIS & HAWLEY

~~IDAHO GOVERNOR'S OFFICE OF ENERGY AND  
MINERAL RESOURCES~~

~~Office of Energy and Mineral Resources~~

DATED: \_\_\_\_\_

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Ann Y. Vonde  
STATE OF IDAHO OFFICE OF THE ATTORNEY  
GENERAL  
*Attorney for Idaho Department of Fish and Game*

DATED: \_\_\_\_\_

\_\_\_\_\_  
Albert P. Barker  
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Irrigation District*

DATED: March 16, 2023

/Kurt J. Starman

Kurt J. Starman  
MERIDIAN CITY ATTORNEY'S OFFICE  
*Attorney for City of Meridian*

DATED: \_\_\_\_\_

\_\_\_\_\_  
John K. Simpson  
BARKER ROSHOLT & SIMPSON LLP  
*Attorney for Idaho Power Company*

DATED: \_\_\_\_\_

\_\_\_\_\_  
Fredric W. Price  
USDI BLM IDAHO STATE OFFICE  
*USDI BLM*

DATED: \_\_\_\_\_

\_\_\_\_\_  
Michael P. Lawrence/Christopher H. Meyer/Charles  
Baser  
GIVENS PURSLEY LLP  
*Attorneys for Veolia*

DATED: \_\_\_\_\_

\_\_\_\_\_  
Dana L. Hofstetter/Richard F. Goodson  
HAWLEY TROXELL ENNIS & HAWLEY

*Attorneys for S Bar Ranch, LLC and The District at  
Parkcenter, LLC*

DATED: \_\_\_\_\_

~~E. Gail McGarry~~  
~~UNITED STATES OF AMERICA BUREAU OF REC-~~  
~~LAMATION~~  
~~United States of America Bureau of Reclamation~~

DATED: \_\_\_\_\_

Scott B. Muir/Mary R. Grant  
BOISE CITY ATTORNEY'S OFFICE  
*Attorneys for City of Boise*

DATED: \_\_\_\_\_

Marie Callaway Kellner  
*Idaho Conservation League*

DATED: \_\_\_\_\_

**Kira Finkler**  
Digitally signed by Kira Finkler  
DN: cn=Kira Finkler, o=Trout Unlimited,  
ou, email=kira.finkler@tu.org, c=US  
Date: 2023.04.07 16:47:45 -06'00'

Julisa Edwards  
*Trout Unlimited*

DATED: \_\_\_\_\_

William J. Mulder  
*Tree Top Ranches LP*

DATED: \_\_\_\_\_

Jim Rice  
*Gwinn Rice Ranch LLC*

DATED: \_\_\_\_\_

Katie Fite  
*Wildlands Defense*

DATED: \_\_\_\_\_

Allen R. Thompson  
*Allen R. Thompson*

DATED: \_\_\_\_\_

*Attorneys for S Bar Ranch, LLC and The District at  
Parkcenter, LLC*

DATED: \_\_\_\_\_

~~E. Gail McGarry~~

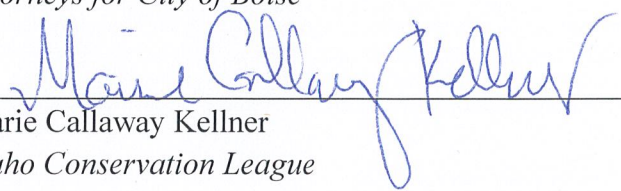
~~UNITED STATES OF AMERICA BUREAU OF REC-  
LAMATION~~

~~United States of America Bureau of Reclamation~~

DATED: \_\_\_\_\_

Scott B. Muir/Mary R. Grant  
BOISE CITY ATTORNEY'S OFFICE  
*Attorneys for City of Boise*

DATED: \_\_\_\_\_

  
Marie Callaway Kellner  
*Idaho Conservation League*

DATED: \_\_\_\_\_

Julisa Edwards  
*Trout Unlimited*

DATED: \_\_\_\_\_

William J. Mulder  
*Tree Top Ranches LP*

DATED: \_\_\_\_\_

Jim Rice  
*Gwinn Rice Ranch LLC*

DATED: \_\_\_\_\_

Katie Fite  
*Wildlands Defense*

DATED: \_\_\_\_\_

Allen R. Thompson  
*Allen R. Thompson*

DATED: \_\_\_\_\_

Wendi Combs  
*Wendi Combs*

DATED: March 22, 2023



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Dylan B. Lawrence  
VARIN WARDWELL LLC  
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