

**BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE 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

**ORDER GRANTING MOTION TO
MOVE APPLICATIONS TO
INFORMAL PROCEEDINGS**

BACKGROUND

On May 16, 2017, Cat Creek Energy LLC (“CCE”) filed an application for permit to appropriate water with the Idaho Department of Water Resources (“Department”), assigned Permit No. 63-34403. Between 2019 and 2020, CCE filed three additional separate, related applications for permits to appropriate water with the Department—Permit Nos. 63-34652, 63-34987, and 63-34900. All four applications to appropriate water were protested by multiple parties. On June 10, 2020, the Department issued an amended order consolidating the dockets and parties under this one proceeding.

On June 21, 2022, the Director conducted a continued prehearing conference. During the prehearing CCE presented an update on obtaining needed project permits, licenses, leases, and approvals from other government agencies. At that time, CCE stated that coordinating all the project approvals would require additional time and stated a desire to coordinate with the parties informally and verbally requested a stay of proceedings in accordance with IDAPA 37.03.08.040.01.d.

On July 7, 2022, CCE filed with the Department a *Motion to Stay Proceedings*, requesting a six-month stay based on Rule 101.03 of the Department’s Rules of Procedure (IDAPA 37.01.01) and Rule 40.01.d of the Water Appropriation Rules (IDAPA 37.03.08). On September 22, 2022, the Director issued an order granting the stay under Water Appropriation Rule 40.01.d. That order also directed CCE to file a status report and, if necessary, a motion to modify or extend the stay by February 17, 2023.

On February 17, 2023, CCE filed a *Status Report and Motion to Extend Stay Proceedings* (“Motion to Extend Stay”). Similar to its earlier representations, CCE’s status report noted a continuing need to coordinate with other agencies and secure other necessary approvals for the project. Accordingly, CCE requested an order extending the stay and delaying the processing of CCE’s permit applications for an additional six months. CCE made these requests under Rule of Procedure 101.03 and Water Appropriation Rule 40.01.d. No party filed an objection to CCE’s request to extend the stay.

On April 24, 2023, CCE filed a *Motion for Order Moving Applications to Informal Proceedings* (“Motion for Informal Proceedings”). CCE requested the consolidated matter be moved to informal proceedings under Rules of Procedure 100.03. The Motion for Informal Proceedings includes an attached, corresponding stipulation signed by 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. CCE noted that while several protestants failed to respond to the stipulation request, only one refused to sign the stipulation but stated that they would not oppose moving the applications to informal proceedings. *Motion for Informal Proceedings* at 2. No party filed an objection to CCE's Motion for Informal Proceedings.

APPLICABLE LAW

IDAPA 37.01.01.100.03 states in pertinent part:

If, after the agency has commenced a formal proceeding, the parties to a contested case settle or resolve the issues of the case, the case may return to an informal proceeding. The agency may also utilize informal proceedings, such as settlement conferences, any time after commencement of a formal proceeding.

ANALYSIS AND CONCLUSIONS OF LAW

CCE states that related proceedings before the Federal Energy Regulatory Commission and the Bureau of Reclamation are ongoing and that studies and determinations in those proceedings "will address issues that may be considered by the Department under Idaho Code § 42-203A(5)" and "at a minimum will provide the Department with information relevant to its analyses under Idaho Code § 42-203A(5)." *Motion to Extend Stay* at 2–3. Upon consideration of CCE's representations and noting the lack of objections to CCE's Motion for Informal Proceedings, the Director concludes it is appropriate to use informal proceedings until further notice to provide time for CCE and the parties to the related proceedings to develop and conduct necessary studies. The Director will not appoint a contact person from the Department to assist in the informal proceedings at this time, given that the proceedings before the Federal Energy Regulatory Commission and the Bureau of Reclamation are ongoing and it might be some time until a point of contact is needed.

ORDER

IT IS HEREBY ORDERED that the above-captioned contested matter shall continue through informal proceedings until Cat Creek Energy LLC, or any other party, establishes cause for returning to formal proceedings.

IT IS FURTHER ORDERED that when Cat Creek Energy LLC, or any other party, believe that Department participation in informal proceeding would be helpful, they may contact the Department and request the Department appoint a contact person to assist in informal proceedings.

IT IS FURTHER ORDERED that six months from the date of this order and every six months after, until the matter returns to formal proceedings, Cat Creek Energy LLC shall file a status report with the Department on the related Federal Energy Regulatory Commission and Bureau of Reclamation proceedings.

DATED this 31st day of August 2023.


GARY SPACKMAN
Director

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 31st day of August 2023, I caused to be served a true and correct copy of the foregoing *Order Granting Motion to Move Applications to Informal Proceedings*, by the method indicated below, upon the following:

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