

Sep 24, 2026

DEPARTMENT OF
WATER RESOURCES

Thomas J. Budge (ISB No. 7465)
RACINE OLSON, PLLP
201 E. Center St. / P. O. Box 1391
Pocatello, Idaho 83204-1391
Phone: (208) 232-6101
tj@racineolson.com

Attorney for Cat Creek Energy, LLC

**DEPARTMENT OF WATER RESOURCES
STATE OF IDAHO**

IN THE MATTER OF APPLICATIONS
FOR PERMIT NOS. 63-34403, 63-34652,
63-34897, 63-34900, AND 63-35522 IN
THE NAME OF CAT CREEK ENERGY,
LLC

**MOTION TO VACATE AND
RESET HEARING SCHEDULE AND
FOR STATUS CONFERENCE**

Cat Creek Energy, LLC (“CCE”) respectfully moves, pursuant to Rules 220, 510, and 514 of the Department’s Rules of Procedure, for an order vacating the current hearing schedule set forth in the Order Advancing Matter to Formal Proceedings and Adopting Scheduling Order entered May 15, 2026, and setting a status conference after January 30, 2027, to establish a revised schedule. This motion is supported by the Declaration of James T. Carkulis filed herewith.

Legal Standard

Procedural Rule 220 authorizes a party to request relief by written motion. Rule 510 authorizes the presiding officer to manage a contested case through prehearing procedures, including scheduling discovery, arranging the exchange of testimony and exhibits, scheduling hearings, and addressing other matters necessary for orderly disposition. Most directly, Rule 514 provides that a prehearing order controls the subsequent course of the proceeding “unless modified by the presiding officer for good cause.” IDAPA 37.01.01.220, .510, .514. The Director therefore may modify the May 15, 2026 scheduling order upon a showing of good cause. CCE does not ask the Department to return the Applications to informal proceedings or suspend their processing. It seeks only a case-management order vacating the current deadlines and hearing dates and setting a status conference to establish a revised schedule.

Background

This matter concerns CCE’s Applications for Permit Nos. 63-34403, 63-34652, 63-34897, 63-34900, and 63-35522, which support CCE’s development of an integrated renewable energy and pumped-storage hydropower project in Elmore County, Idaho. The project pairs renewable energy generation with a long-duration pumped-storage hydropower facility designed to provide multi-day energy storage and support regional energy reliability. The project is large, complex,

privately funded, and dependent on coordinated federal, state, and county approvals. (Carkulis Decl. ¶¶ 2, 11–12.)

The Applications remained in informal proceedings for several years while CCE performed engineering, obtained land-use permits, initiated FERC licensing, obtained a preliminary lease of power privilege from the Bureau of Reclamation, and secured financing to advance the project through those benchmarks. On August 9, 2024, the Director consolidated the Applications and ordered that they remain in informal proceedings until CCE or another party moved to return them to formal proceedings. On April 6, 2026, CCE reported that it was negotiating with multiple prospective financial and development partners to fund construction and requested that the Applications remain in informal proceedings while those efforts continued. At an April 7, 2026 status conference, the Boise Project Board of Control opposed that request.

On May 15, 2026, the Director entered the Order Advancing Matter to Formal Proceedings and Adopting Scheduling Order, which set the hearing for May 17–21, 2027. The schedule includes upcoming deadlines of September 25, 2026, for exchanging expert reports and stipulations of fact; October 30, 2026, for completing written discovery and exchanging rebuttal expert reports; and November 20, 2026, for filing dispositive motions.

After the Director advanced the matter to formal proceedings, CCE continued intensive negotiations to align the project with growing demand for hyperscale data center capacity. Those efforts produced a development and financing coalition comprising CCE; an experienced owner and operator of hyperscale data center campuses; several well-known technology companies expected to lease space; and a major United States design-build and construction-management company experienced in data center construction. Under the contemplated structure, the data center developer would provide the capital needed to construct the CCE water and energy project in conjunction with a data center campus. (Carkulis Decl. ¶¶ 5–6.)

CCE expected to document a commitment for that funding by August 31, 2026. In late August, however, CCE learned that Elmore County had adopted Resolution No. 952-26. The County declared that it is facing a “severe water crisis” and found that large-scale data center development may significantly affect “water resources, electrical infrastructure, transportation systems, emergency services, public safety resources, land use compatibility, agricultural lands, and the general welfare of Elmore County residents.” Elmore Cnty. Res. No. 952-26, at 1 (July 2, 2026). Because the financing and construction structure depends on the associated data center development, the resulting moratorium prevented the parties from formally proceeding on the anticipated timetable. This interruption is temporary. The participants remain engaged and continue working toward definitive arrangements that can be finalized after the moratorium expires. (Carkulis Decl. ¶¶ 7–10.)

Resetting the hearing schedule after January 30, 2027, is narrowly tailored to that circumstance. Resolution No. 952-26 directs County staff, the Planning and Zoning Commission, and legal counsel to evaluate data center impacts, review other jurisdictions’ approaches, analyze effects on water resources and infrastructure, consider amendments to the County’s planning and zoning enactments, and prepare recommendations for permanent regulations. Elmore Cnty. Res. No. 952-26, § 5, at 2 (July 2, 2026). Resetting the hearing schedule approximately 30 days after the moratorium’s anticipated expiration will allow sufficient time to account for that County process, formalize the coalition’s relationships, and present the Department with a reliable account of

project financing, ownership, development responsibilities, and permitting participation. Because the negotiations and identities of the participants involve sensitive commercial information, CCE cannot publicly identify them at this stage, but will provide further information as appropriate and subject to necessary confidentiality protections. (Carkulis Decl. ¶¶ 7, 10, 15.)

ARGUMENT

Good cause exists to modify the May 15 scheduling order for two related reasons. First, CCE’s financing efforts have matured into a development coalition capable of funding the project, materially changing the anticipated ownership, financing, design, construction, operation, and permitting structure relevant to discovery, expert analysis, and the hearing record. Second, the intervening Elmore County moratorium temporarily prevents the associated data center development from proceeding on the timetable anticipated when the coalition emerged. Vacating the current schedule and resetting it after the moratorium expires would allow the participants to formalize the project structure, avoid premature expert work, discovery, and dispositive-motion practice, prevent unnecessary expense, and promote an orderly record for a project now estimated to cost \$5 billion. (Carkulis Decl. ¶¶ 5–13, 15–16.)

A. The advancement of the data center partnership and the Elmore County moratorium establish good cause to modify the scheduling order.

On April 6, 2026, CCE advised the Department and the parties that it was engaged in confidential negotiations with multiple potential financial and development partners and requested that the matter remain in informal proceedings while those negotiations continued. Since then, the negotiations have progressed into the defined coalition described above.

The coalition’s formation after entry of the May 15 scheduling order is a material development. It includes an experienced hyperscale data center developer expected to provide construction capital, prospective technology-company tenants, and a national design-build and construction-management firm. The participants are negotiating definitive agreements to finance, construct, and use an integrated project estimated to cost \$5 billion. Although confidentiality obligations prevent CCE from publicly identifying the participants while negotiations remain ongoing, their continued involvement demonstrates concrete progress toward construction. The agreements will define the project configuration and the entities responsible for development and operation, which in turn will determine the evidence, witnesses, and documents relevant to the Applications. Requiring expert disclosures, discovery, dispositive motions, and hearing preparation before those responsibilities are fixed by definitive agreements would produce an incomplete record and require substantial amendment and supplementation. (Carkulis Decl. ¶¶ 5–7, 13.)

The data center moratorium compounds that problem. Elmore County—a protestant in this matter—adopted the moratorium on July 2, 2026, after CCE had disclosed that it is in negotiations with a data center developer. CCE does not assert that the County adopted the moratorium to interfere with its project. CCE recognizes that data center development—and its demands on water, energy, land use, and public infrastructure—has become a matter of substantial national interest and legitimate governmental concern.

The moratorium is an intervening governmental action outside CCE's control that temporarily prevents the associated data center development from advancing. CCE anticipated documenting a financing commitment tied to that development by August 31, 2026, but learned of the moratorium in late August. The moratorium disrupted the negotiations necessary to finalize the contractual commitments for financing and construction, materially altering the circumstances underlying the existing hearing schedule. CCE and the other participants remain engaged and expect to resume formal progress after the moratorium expires. Vacating the schedule is therefore warranted. (Carkulis Decl. ¶¶ 8–10.)

Resetting the hearing schedule after January 30, 2027, offers a practical, limited solution. It would give the participants approximately one month after the moratorium expires to complete definitive agreements allocating financing and development responsibilities and to report meaningfully to the Department concerning the project's financing, ownership, development responsibilities, and permitting participation. The Department could then establish a schedule tailored to the project's actual structure and the coordinated oversight of Elmore County, IDWR, and the Bureau of Reclamation. (Carkulis Decl. ¶ 15.)

B. Vacating and resetting the schedule will not prejudice other parties.

Vacating the current deadlines and hearing dates will not prejudice the other parties. The requested modification responds to both substantial progress toward a viable financing and development structure and an external governmental action that CCE neither caused nor controls. Maintaining the present schedule would instead require all parties to incur substantial expert, discovery, and motion-practice expenses before the project participants' roles and responsibilities are finalized and while the moratorium prevents the associated development from advancing. A status conference after January 30, 2027, will allow every party to address a revised schedule based on then-current facts. (Carkulis Decl. ¶¶ 13, 15–16.)

C. The requested modification is narrow and is not sought for speculation or delay.

CCE does not seek to delay these proceedings indefinitely or avoid review of the Applications. Nor does it seek reconsideration of the Director's decision to advance the matter to formal proceedings. CCE asks only that the Director exercise ordinary case-management authority to replace deadlines that no longer fit circumstances arising after entry of the scheduling order. The request is tied to concrete post-order progress, a known governmental restriction with a definite expiration date, identified categories of project participants, and a specific status conference at which a revised schedule can be established.

CCE's progress confirms that the requested relief is not speculative. CCE's principals, including the Faulkner family with longstanding Idaho agricultural roots, have invested \$42 million to advance the project. (Carkulis Decl. ¶ 3.) Reclamation has extended CCE's Preliminary Lease of Power Privilege through December 31, 2027. (Carkulis Decl. Ex. B.) Most significantly, CCE has developed a path by which an experienced hyperscale data center developer can finance construction of the CCE water and energy project, supported by prospective technology-company tenants and an experienced national design-build and construction-management firm. The integrated project's estimated cost is now \$5 billion. (Carkulis Decl. ¶¶ 4–7.) Developing that coalition

represents substantial effort and success in moving the CCE project toward reality, notwithstanding the temporary Elmore County moratorium.

D. Vacating and resetting the hearing schedule serve the public interest.

Vacating and resetting the hearing schedule also serve the public interest.

First, the need for additional storage is greater than ever. Population and economic growth continue to increase water demand in southwestern Idaho. Elmore County’s moratorium underscores that need by declaring a “severe water crisis” and finding that existing supplies and infrastructure are under stress. The Idaho Water Resource Board is positioned to meet part of that need through the Anderson Ranch Dam Raise, which would add approximately 29,000 acre-feet of storage. By comparison, the CCE project would add approximately 150,000 acre-feet—more than five times that amount—and is the only other identified project capable of providing substantial new storage in the Boise River system. (Carkulis Decl. ¶ 4.) That storage could serve municipalities, agriculture, flood management, system flexibility, drought resilience, and emerging economic-development needs. These water-supply concerns weigh in favor of preserving, rather than foreclosing, CCE’s opportunity to deliver the region’s only remaining source of substantial additional storage.

The Anderson Ranch Dam Raise also demonstrates why reasonable scheduling flexibility is warranted. Although it would add only approximately 29,000 acre-feet by raising an existing federal dam six feet, that publicly funded project has required years of study, design, environmental review, federal-state contracting, and funding. Reclamation and IWRB completed the Boise River Basin Feasibility Study after years of work; the Secretary of the Interior determined the recommended plan feasible in December 2020; IWRB and Reclamation executed a cost-share contract in November 2021; and recent public reporting indicates that construction completion has been pushed to 2031. If a publicly funded expansion of an existing Reclamation dam can require that extended timeline and still encounter additional delay, CCE’s privately financed, first-of-its-kind project—providing more than five times as much new storage while also furnishing pumped-storage hydropower—cannot fairly be treated as excessive merely because it has taken longer than a typical water-right application.

Second, growing reliance on digital services has increased demand for data center capacity. Large data centers are major undertakings that cannot be financed, designed, permitted, and constructed through isolated or sequential commitments; they require coordinated action by developers, technology tenants, infrastructure providers, experienced builders, and multiple regulators. Resetting the hearing schedule will preserve the Department’s ability to evaluate the Applications in the context of the actual integrated project and the capital structure capable of bringing it to fruition. (Carkulis Decl. ¶¶ 11–12.)

Lastly, reasonable scheduling flexibility is consistent with Idaho’s commitment to responsible economic development. Idaho Commerce describes the State as supporting “business without barriers” and promoting strategic growth through business-friendly policies, collaboration between businesses and state agencies, and flexible solutions responsive to changing business conditions. Those principles support a practical case-management accommodation where an Idaho company has assembled a sophisticated coalition prepared to invest \$5 billion in privately financed water

and energy infrastructure but requires a scheduling adjustment because of a temporary local moratorium. Resetting the hearing schedule would allow the Department to protect water resources while accommodating orderly consideration of a major economic-development project addressing the State's infrastructure needs.

Conclusion

For these reasons, CCE respectfully requests that the Director modify the May 15, 2026 scheduling order, vacate the current prehearing deadlines and May 17–21, 2027 hearing dates, and set a status conference after January 30, 2027, to establish a revised schedule. The requested relief is supported by two significant post-order developments: the emergence of a sophisticated data center coalition capable of financing and constructing the integrated project, now estimated to cost \$5 billion, and the temporary County moratorium that interrupted the participants' efforts to formalize that structure. Vacating and resetting the schedule will promote orderly case management, avoid unnecessary expense and prejudice, and permit the evidentiary record and hearing schedule to reflect the project's actual structure.

If any party opposes this motion, CCE requests oral argument; otherwise, CCE submits that oral argument is unnecessary.

DATED this 24th day of September 2026.

RACINE OLSON, PLLP

By: 
Thomas J. Budge
Attorney for Applicant Cat Creek Energy, LLC

CERTIFICATE OF MAILING

I certify that on this 24th day of September 2026, the foregoing document was served on the following persons via the email address identified.


THOMAS J. BUDGE

IDAHO DEPT. OF WATER RESOURCES Director Mathew Weaver Garrick L. Baxter Sarah Tschohl file@idwr.idaho.gov mathew.weaver@idwr.idaho.gov garrick.baxter@idwr.idaho.gov megan.jenkins@idwr.idaho.gov Sarah.tschohl@idwr.idaho.gov	<i>Ballentyne Ditch Co., et al.</i> SAWTOOTH LAW OFFICES PLLC Daniel B. Steenson S. Bryce Farris Andrew J. Waldera dan@sawtoothlaw.com bryce@sawtoothlaw.com andy@sawtoothlaw.com
<i>Cat Creek Energy, LLC</i> James Carkulis David R. Tuthill, Jr. Hal Anderson Gary D. Slette jtc@ccewsrps.net dave@idahowaterengineering.com hal@idahowaterengineering.com gslette@rsidaholaw.com	<i>Office of Energy and Mineral Resources</i> IDAHO GOVERNOR'S OFFICE OF ENERGY AND MINERAL RESOURCES Marissa Warren, Energy Program Manager marissa.warren@oer.idaho.gov
<i>S Bar Ranch, LLC</i> <i>The District at Parkcenter, LLC</i> HAWLEY TROXELL ENNIS & HAWLEY Richard F. Goodson Tyler Anderson rgoodson@hawleytroxell.com tanderson@hawleytroxell.com	<i>City of Boise</i> BOISE CITY ATTORNEY'S OFFICE Mary R. Grant, Deputy City Attorney Scott B. Muir, Deputy City Attorney mrgrant@cityofboise.org msteel@cityofboise.org BoiseCityAttorney@cityofboise.org
<i>Boise Project Board of Control & Riverside Irrigation District</i> MARTEN LAW LLP Albert P. Barker abarker@martenlaw.com	<i>City of Meridian</i> MERIDIAN CITY ATTORNEY Alexandra Breshears, Deputy City Attorney abreshears@meridiancity.org

<i>Trout Unlimited</i> Michael Gibson Michael.gibson@tu.org cc: Erin Plue Kira Finkler TROUT UNLIMITED INC. erin.plue@tu.org Kira.finkler@tu.org	<i>USDI BLM</i> UNITED STATES DEPARTMENT OF THE INTERIOR, OFFICE OF THE SOLICITOR Marc A. Shumaker marc.shumaker@sol.doi.gov USDI BLM IDAHO STATE OFFICE Fredric W. Price fwprice@blm.gov
<i>Idaho Power Company</i> John K. Simpson IdaH20, PLLC Jks@idahowaters.com Scott N. Pugrud IDAHO POWER COMPANY spugrud2@idahopower.com	<i>Idaho Department of Fish and Game</i> State Board of Land Commissioners STATE OF IDAHO OFFICE OF THE ATTORNEY GENERAL Ann N. Yribar, Deputy Attorney Michael C. Orr ann.yribar@ag.idaho.gov Michael.orr@ag.idaho.gov cc: Craig White Tom Bassista Bradley Dawson Casey Pozzanghera Brandon Flack IDAHO DEPT. OF FISH & GAME craig.white@idfg.idaho.gov thomas.bassista@idfg.idaho.gov bradley.dawson@idfg.idaho.gov brandon.flack@idfg.idaho.gov casey.pozzanghera@idfg.idaho.gov
<i>Idaho Department of Lands</i> J.J. Winters jwinters@idl.idaho.gov Michele Andersen mandersen@idl.idaho.gov	<i>United States of America Bureau of Reclamation</i> BUREAU OF RECLAMATION Ben Miller bjmiller@usbr.gov
<i>Veolia</i> GIVENS PURSLEY LLP Michael P. Lawrence Charlie S. Baser Christopher H. Meyer mpl@givenspursley.com charliebaser@givenspursley.com chrismeyer@givenspursley.com	<i>Elmore County, Bd. of Cty. Comm'rs</i> VARIN THOMAS LLC Dylan B. Lawrence dylan@varinthomas.com

<i>Tree Top Ranches LP</i> William J. Mulder wjmulder@treetopranches.com	<i>Wendi Combs</i> missterry52@yahoo.com
---	--