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DEPARTMENT OF
WATER RESOURCES

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**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, 63-34900, AND 63-35522 IN THE
NAME OF CAT CREEK ENERGY, LLC

**BOISE PROJECT BOARD OF
CONTROL'S RESPONSE TO CAT
CREEK ENERGY, LLC'S MOTION
TO VACATE AND RESET HEARING
SCHEDULE AND FOR STATUS
CONFERENCE**

On September 24, 2026, Cat Creek Energy, LLC (Cat Creek) filed the instant motion to vacate and reset the hearing schedule one day before the first deadline set out in the previous scheduling order (May 15, 2026). That scheduling order for this proceeding also advanced the matter to formal proceedings and removed it from informal proceedings where Cat Creek had managed to park it for years. On April 7, 2026, the Director held a status conference at which concern was expressed by various parties over the slow process of this proceeding and the continued request by Cat Creek to keep the matter in informal proceedings. Notably, the original water right in this application involved in these proceedings was filed in 2017. In response to these concerns, on April 10, 2026, the Director issued an order giving Cat Creek a deadline to either move the case to formal proceedings or to dismiss and refile its application when it was

**BOISE PROJECT BOARD OF CONTROL'S RESPONSE TO CAT CREEK ENERGY,
LLC'S MOTION TO VACATE AND RESET HEARING SCHEDULE AND FOR STATUS
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ready to proceed. Thereafter, Cat Creek filed the request to move this matter to formal proceedings. However, Cat Creek wanted the formal proceedings to simply litigate a question of federal preemption under the Federal Power Act. Notably, there is no argument for federal preemption under the Federal Power Act for irrigation water rights, which is the bulk of the water rights sought in Cat Creek's application. Cat Creek requested that all other action in the proceeding be postponed pending a decision on Federal Power Act preemption.

The Director's Order of May 15, 2026, did not accept Cat Creek's invitation for a limited formal proceeding dealing only with preemption. Instead, the Order established a schedule for filing expert witness reports on the merits, exchanging stipulations of fact and expert reports, and listing expert witnesses. The Director also set deadlines for discovery, dispositive motions, and completion of deposition testimony. The Director also established a May 17, 2027, hearing on the applications.

Prior to the status conference, in Cat Creek's April 6, 2026, status report to the Director, Cat Creek advised that it is in "confidential negotiations with potential financial and development partners". Even in light of those unconsummated confidential negotiations, Cat Creek agreed to move the matter into formal proceedings and take this case to hearing. When the Director issued the hearing schedule on May 15, 2026, Cat Creek did not object and did not seek to change any of the deadlines. Instead, Cat Creek waited until the day before the first deadline in the scheduling order and then filed a motion to vacate the schedule. Rather than wait for a determination of whether or not its request to modify the schedule would be granted, Cat Creek took it upon itself to grant itself relief from the scheduling order requiring production of expert witness testimony and proposed stipulations of fact by simply not doing what the Order required. Having failed to abide by the Director's Order, Cat Creek now seeks retroactive relief and a

unilateral resetting of all of the deadlines. Cat Creek does not explain why it could not produce expert witness testimony concerning its project on the September 25, 2026, deadline.

The Director should not countenance a party to a formal proceeding before the Department unilaterally setting for itself when and if it will follow the orders of the Director. Having failed to comply with the Director's Order, Cat Creek's application should be dismissed on procedural grounds.

Equally troubling to Cat Creek's decision to refuse to follow the scheduling order is the purported reason. Now Cat Creek asserts that it intends to enter into an agreement with a developer of one or more data centers. The data centers will be located in Elmore County. Cat Creek proposes this as the beneficial use, even though Cat Creek admits that Elmore County has enacted a moratorium against development of data centers in Elmore County. The reason this is significant for this proceeding is that Cat Creek has now made another significant change in its proposed project. The Director will recall that originally Cat Creek intended to use its pump storage facility as a battery to offset the downtime for the wind and solar farms it intended to build in the vicinity of the pump storage project. Later, Cat Creek justified this project as divorced from the wind and solar projects as one that would be a regional battery to provide backup for the entire grid in the Pacific Northwest. At the same time, Cat Creek proposed to provide one hundred thousand acre-feet of storage for water users in the Boise Basin. Cat Creek even purported to enter into nonbinding memoranda of understanding with various Boise Basin water users that these water users would be interested in acquiring some right to use some of the water from Cat Creek's project if it ever got built. Cat Creek would also act as a facilitator for Elmore County to acquire means of transmitting Elmore County's water under its water right from Anderson Ranch Reservoir to Elmore County. Now Cat Creek announces a completely

different project. As Cat Creek puts it, the new project “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.” It is expected to cost five billion dollars. The unnamed developer will supposedly provide the financing. Everyone knows that data centers require water, sometimes vast amounts of water. Indeed, Cat Creek recognizes, in its own words, “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 applications that Cat Creek has filed all propose the use of water within Basin 63. Water right application for permit 63-34403 was for a pump storage facility using the Anderson Ranch Reservoir and the new proposed Cat Creek Reservoir. The other four applications 63-34652, 63-34897, 63-34900, and 63-35522 all seek the right to divert water to storage that would later be used downstream in Basin 63. These applications specifically stated that the application excluded use in Elmore County. In other words, the new proposal with a data center developer that Cat Creek is relying upon to salvage its project requires use of water in Elmore County that is not included in any of the applications currently on file with the Department. Therefore, if the plan that Cat Creek has just announced is to go forward, it will require one of two things, either withdrawal and refile of the applications to cover the new beneficial use proposed in Cat Creek’s latest request for delay, or a formal amendment to the applications under IDAPA 37.03.08.04.a (“ An applicant or the applicant’s agent must amend an application if the applicant intends to change the purpose of use, period of use, amount of diversion, point of diversion, place of use, or make other substantial changes.”) In either event, because Cat Creek acknowledges the significant public interest in the use of water by data centers, Cat Creek would

be, and ought to be, required to republish its notice of application for water right and allow the general public, and the governmental entities involved in approving data centers, to comment on or protest the new application for data center water use in Elmore County.

Moreover, as the Director previously noted this matter has languished for quite some time before the Department in informal proceedings. In addition, Cat Creek has stated in prior filings with the Department that its studies and ongoing Federal Energy Regulatory Commission (FERC) applications for permit from FERC all involve matters that will be important to bring to the Department under its standards of review for approval of water right applications. Yet in May of 2023, FERC paused all proceedings before FERC because Cat Creek had not provided the funding to the Bureau of Reclamation (BOR) for BOR to complete the studies required for its parallel approval of a Lease of Power Privileges for use of the Anderson Ranch Reservoir. As Cat Creek has stated, without those studies, little could be done either before FERC or before the Department. Yet nothing has taken place since 2023 in the FERC docket. None of the proposed studies have been conducted, and no funding has been provided to BOR to perform any studies that BOR needs, much less the studies that have been requested by the parties to the FERC proceeding. Cat Creek also has not entered into a new generation interconnection agreement with Idaho Power, which Cat Creek advised the Department it would execute in the first quarter of 2026 after the prior generation interconnection agreement had been declared void in the middle of 2025. In 2024, Cat Creek advised the Department that it had entered into agreements with the Nez Perce and Shoshone-Bannock tribes in order to develop the project. See March 29, 2024 Status Report and Motion to Continue Informal Proceedings and letter from Monte Grey, Shoshone-Bannock tribal attorney, to the Director May 31, 2024. Those agreements were apparently never actually executed and now the Tribes have all walked away from the Cat Creek

project. Currently Cat Creek is no longer touting an agreement with the Tribes to fund this project. Nor has Cat Creek advised that it has obtained any federal grants to build the project as it previously indicated to the Department and Director that they were seeking funding under the “One Big Beautiful Bill.” Since Cat Creek’s most recent filing states that it expects the data center developer to fund the project, presumably it is no longer relying on a potential deal with Lotus Infrastructure Global Operations, LLC, which Cat Creek previously disclosed as a possible equity partner in the project.

The Boise Project Board of Control requests that the Director deny Cat Creek’s motion to vacate and reset the hearing schedule. In addition, because Cat Creek has failed to comply with the May 15, 2026, hearing schedule, the Director should dismiss the application without prejudice and advise Cat Creek that it can refile once it is ready to proceed with a project that meets the requirements Idaho Code § 42-203A(5) and IDAPA 37.03.08.45.

DATED this 8th day of October, 2026.

MARTEN LAW LLP

/s/ Albert P. Barker

Albert P. Barker

Attorney for Boise Project Board of Control

CERTIFICATE OF SERVICE

I hereby certify that on this 8th day of October, 2026, I served the original of the foregoing **BOISE PROJECT BOARD OF CONTROL'S RESPONSE TO CAT CREEK ENERGY, LLC'S MOTION TO VACATE AND RESET HEARING SCHEDULE AND FOR STATUS CONFERENCE**, method as indicated below, addressed to the following:

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