

MAR 18 2024

WATER RESOURCES  
WESTERN REGION

March 14, 2024

Via US mail

Idaho Department of Water Resources  
Western Region  
2735 Airport Way  
Boise, ID 83705

RE: In re Application for Permit Nos. 63-34403, 63-34652, 63-34897, and 63-34900,  
In the name of Cat Creek Energy LLC

Dear IDWR:

Our firm represents Big Sky Farms Limited Partnership (“Big Sky Farms”) with regards to the real property it owns in Elmore County, Idaho near and adjacent to the location for the proposed creation of the new Cat Creek Reservoir that is subject to above-referenced administrative actions and applications involving Cat Creek Energy, LLC (“CCE”).

In our review of various marketing and planning materials put out by CCE regarding the Cat Creek Reservoir proposal we note that such documentation contains depictions of the proposed reservoir that show substantial portions (estimated to be approximately 500 acres) of such reservoir covering real property owned by Big Sky Farms. Similarly, materials put out by CCE also show other infrastructure, including the reservoir spillway, access roads, and utility transmission lines located on real property owned by Big Sky Farms. For ease of illustration, enclosed herewith is an arial view highlighting the portion of the apparent footprint of Cat Creek Reservoir that overlays Big Sky Farms’ property. Please note that the real property west of the outlined area is also owned by Big Sky Farms. Our presumption is that the recent requests by CCE to increase the size of such reservoir would only lead to a further incursion onto Big Sky Farms’ property.

Please be aware that Big Sky Farms has no agreements whatsoever with CCE—whether relating to a sale, lease, easement, license, right of way, etc.—whereby CCE has the right to use real property of Big Sky Farms in connection with the Cat Creek Reservoir proposal. Given the scope, complexity, and public interest in the proposal, we wanted to bring this matter to IDWR’s attention so that IDWR has full disclosure of potential issues and concerns with the ambitious project CCE is pursuing. In conjunction herewith, also enclosed is a letter from G. Erick Powell

of Brockway Engineering P.L.L.C. addressing related issues with the proposed project and requested expansion, including a depiction of the proposed places of use for CCE's water right applications that are located on property owned by Big Sky Farms.

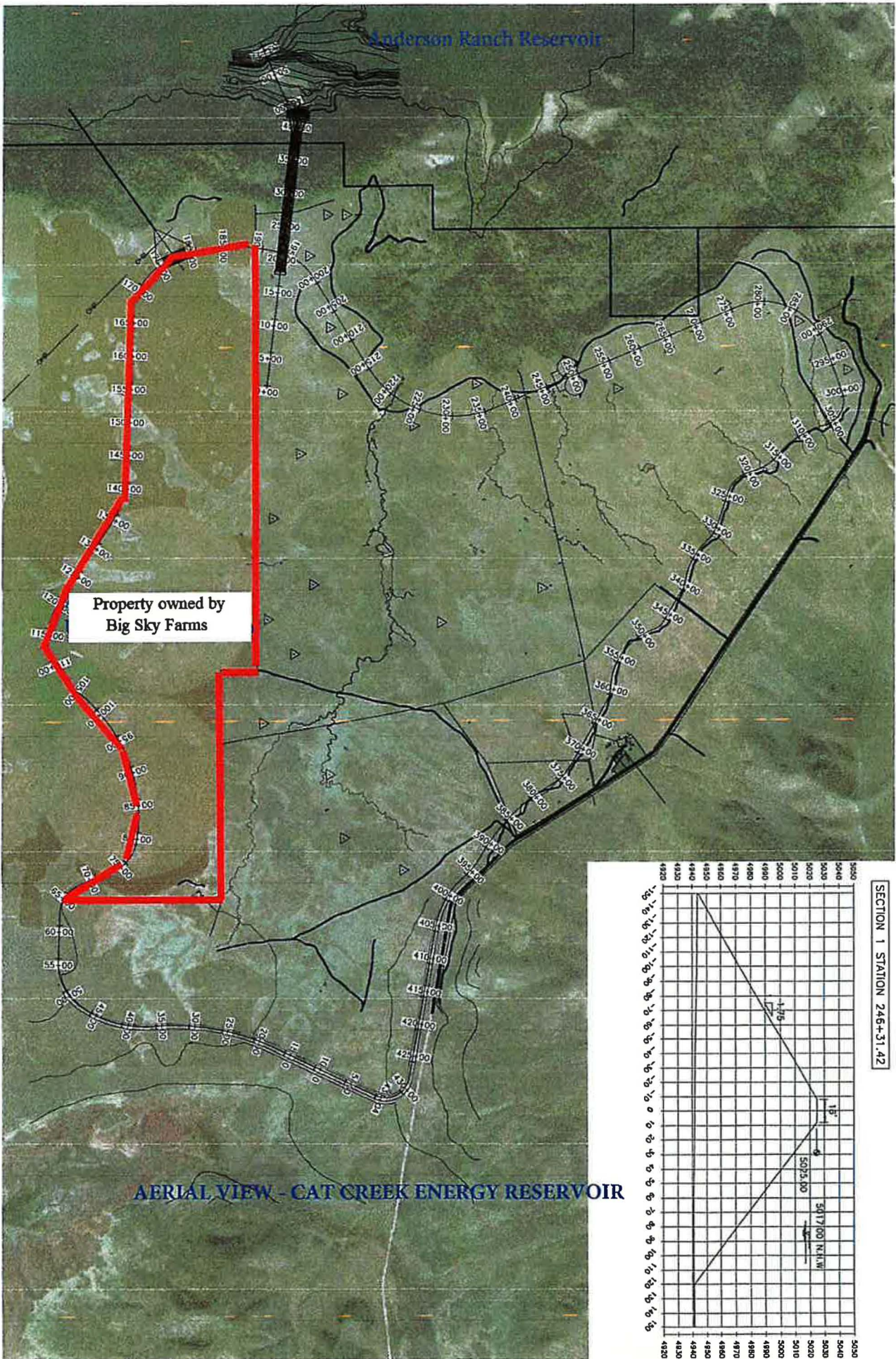
Thank you for your attention to this matter. Please let us know if there are any questions, or if we can provide any further information.

Sincerely,

A handwritten signature in blue ink, appearing to read 'B. Berrett', with a long horizontal flourish extending to the right.

Brandon T. Berrett

Enclosures (2)





**BROCKWAY**  
ENGINEERING  
P.L.L.C.

Hydraulics

Hydrology

Water Resources

February 15, 2024

Elmore County Board of County Commissioners  
520 East 2<sup>nd</sup> South Street  
Mountain Home, Idaho 83647

RE: Cat Creek Energy Water Rights

Dear County Commissioners,

On your February 16<sup>th</sup> agenda is the action item to make a decision regarding the Cat Creek Energy Development Agreement Second Amendment. The Cat Creek Energy developer proposes amending the development agreement in three main areas, (1) extending the validity of the CUPs within the development agreement, (2) increase the water storage capacity of the new Cat Creek Reservoir from 100,00 acre-feet to 140,000 acre-feet, and (3) amend the terms of the development agreement in connection with the water diversion and water delivery to Elmore County. I have been asked by Mr. Don McFarland, managing partner of Big Sky Farms, LLC, to briefly review the water right permit applications, as it relates to Big Sky Farms, LLC.

**Brief Summary of Water Right Applications**

County staff correctly points out that Cat Creek Energy does not have water right(s) or water right permit(s) that allows impoundment of water for 100,000 acre-feet, let alone the amended 140,000 acre-feet. Over the past few years, Cat Creek Energy has applied for several water rights, which have been advertised and protested, as shown in Table 1.

Table 1: Water right applications filed by Cat Creek Energy.

Water Right Permit No.	Application Date	Div. Rate (cfs)	Source	Protest Deadline	Status
63-34403	5/16/2017	9996	South Fork Boise River	9/24/2018	Protested
63-34652	4/26/2019	3000	South Fork Boise River	6/24/2019	Protested
63-34897	4/21/2020	2000	South Fork Boise River	6/8/2020	Protested
63-34900	4/22/020	2000	South Fork Boise River	6/8/2020	Protested

It appears that IDWR may have consolidated the water right permit applications into water right application no. 63-34900. The protests have not

CHARLES E.  
BROCKWAY,  
PH.D., P.E.

CHARLES G.  
BROCKWAY,  
PH.D., P.E.

2016 NORTH  
WASHINGTON  
STREET • SUITE 4

TWIN FALLS,  
IDAHO 83301

208•736•8543

FAX: 736•8506

been withdrawn and no water right hearing has been scheduled. As of today, there are no water rights or water right permits that authorize Cat Creek Energy to divert any water into a reservoir for any purpose. Because these applications have been protested, IDWR will schedule a hearing to collect all information and then rule on the validity of the application and/or protests. IDWR may approved, modify, or deny the applications.

### **Contested Applications**

One aspect of the water right application that will be evaluated during a hearing is vested interest of the property at the point of diversion and place of use. Water right applications must include ownership the identified point of diversion and the place of use and show vested interest in the property. The point of diversion from the South Fork of the Boise River is identified as owned by the Federal Government and I could not find a trespass agreement or special use permit that authorizes Cat Creek Energy to construct the diversion infrastructure necessary to divert 9996 cfs.

Water right application no. 63-34403 proposes the place of use of the reservoir to be on property owned by Wood Creek Ranch, LLC. I could not find any agreement that authorizes the applicant to construct a reservoir on Wood Creek Ranch property. Additional applications increased the size of the reservoir to include property owned by Big Sky Farms, LLC as shown in Figure 1. Mr. Don McFarland is the managing member of Big Sky Farms and has not granted authorization to Cat Creek Energy to construct a reservoir. Given the information provided, Cat Creek Energy does not have vested interest in either the points of diversion or places of use. IDWR has routinely denied applications that do not have vested interest in the proposed properties.

### **Opinion**

It is my opinion that it is premature for Cat Creek Energy to request Elmore County to amend the development agreement to increase the proposed reservoir storage capacity to 140,000 acre-feet, when the original water right applications for 100,000 acre-feet storage still have pending protests and not been decided in a public hearing.

Based on the information I have reviewed; it does not appear that Cat Creek Energy has vested interest in the proposed property that will be used as the points of diversion or the reservoir places of use. During a water right hearing,

it is probable that IDWR would modify the application to ensure vested interest or deny the application.

In addition, the most recent reservoir size of 100,000 acre-feet current encroaches onto property owned by Big Sky Farms, who has not granted permission to Cat Creek Energy to construct any infrastructure on their property. The proposed amendment increases the capacity of the reservoir by 40% to 140,000 acre-feet. If the volume of the reservoir increases, the size of the reservoir will have to increase, and potentially encroaching onto property owned by Big Sky Farms, more than the current 100,000 acre-feet reservoir. Big Sky Farms has not granted permission to such a proposal.

Sincerely,



G. Erick Powell, Ph.D., P.E.

Path: F:\Projects\McFarland, Don\GIS\Overview.mxd



1 inch = 3,000 feet

**CAT CREEK ENERGY**  
WATER RIGHT APPLICATION PLACE OF USE  
BIG SKY FARMS

- Legend**
- BIG SKY FARMS
  - POU FOR STORAGE
  - POU FOR POWER STORAGE



BROCKWAY ENGINEERING, PLLC.  
EMP - Date: 2/15/2024

NAIP 2021 AERIAL

The USDA, FSA, Aerial Photography Field Office assets to be credited in derived products.