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Attorneys for Protestant Elmore County, Board of County Commissioners

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION )  
FOR PERMIT NOS. 63-34403, 63-34652,) )  
6334897, AND 63-34900 )

In the name of Cat Creek Energy, LLC )  
)  
)  
)  
)

**WRITTEN STATEMENT IN LIEU  
OF LIVE PARTICIPATION AT  
STATUS CONFERENCE**

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On May 22, 2024, the Director issued a Notice of Status Conference. That Notice unilaterally schedules a status conference to take place 22 days later, at 1:30 p.m. on June 13, 2024, without having first solicited availability of counsel for the parties. While the Notice purports to require attendance in person or by video conference, that mandate is unreasonable under the circumstances, and counsel for the Board of Commissioners for Elmore County is not available at that time. Therefore, in lieu of live participation, counsel for Elmore County

hereby provides this written statement to address the items enumerated in the Notice:

Item 1 (consolidation): Yes, Cat Creek’s application for permit 63-35522 should be consolidated with these proceedings. Aside from some initial discovery and related motion practice between Cat Creek and SBar Ranch, virtually nothing has happened in these water right proceedings since Cat Creek filed its first permit application more than seven years ago on May 16, 2017. Therefore, there is no prejudice to any of the parties by consolidating them, and consolidation is more efficient because all of Cat Creek’s permit applications will deal with the same issues.

Item 2 (petitions to intervene): Yes, IDFG’s and Veolia’s petitions to intervene should be granted. In light of the Director’s Order of June 10, 2020, those petitions were likely unnecessary in the first place and filed by those parties out of an abundance of caution.

Item 3(a) (status of Elmore County proceedings): By way of background, Elmore County issued five Conditional Use Permits (CUPs) to Cat Creek on February 10, 2017—one for transmission lines, one for the hydropower portion of the project, one for the solar portion of the project, one for the wind portion of the project, and one for a substation. Initially, the CUPs expired on February 10, 2021, subject to the ability to request an extension until February 10, 2023 if Cat Creek demonstrated “significant progress” in obtaining federal permits.

On May 17, 2024, the Board of Commissioners approved Cat Creek’s request to extend the validity of the five CUPs until June 14, 2027, with the ability to request a two-year extension if Cat Creek has demonstrated “significant progress toward construction and it is likely [Cat Creek] will be in a position to commence regular operations within the two-year extension period.” A copy of that decision document is attached hereto as Exhibit A.

However, it is also important to note that there is a more immediate deadline that is specific to the hydropower CUP and, therefore, that is directly relevant to the proceedings pending before IDWR. Elmore County’s Planning & Zoning Commission initially denied all five of Cat Creek’s applications for CUPs. The Board of Commissioners reversed those denials and approved the CUPs on the basis that some of the water stored by Cat Creek—which originates in Elmore County—would be retained within the County to help address the significant and well-documented groundwater deficit within the County. True and correct copies of relevant portions of the CUPs are attached hereto as Exhibit B, with relevant language highlighted.

Based on that finding, Cat Creek and the County agreed that the CUP for the hydropower portion of the project is contingent on coming to an earlier agreement regarding how Cat Creek will provide water to the “arid portions” of the County referenced in the CUPs. Attached hereto as Exhibit C is a true and correct copy of relevant portions of the 2018 Development Agreement, Section

2.2 of which further documents the water delivery agreement requirement initially adopted in the CUPs.

While the initial version of Section 2.2 required a water delivery agreement by December 31, 2018, the parties subsequently extended that deadline to June 30, 2019. As Exhibit A reflects, when the Board of Commissioners approved Cat Creek's extension request on May 17, 2024, it also reaffirmed its prior conclusion that after accounting for delays caused by the SBar Ranch appeal of the CUPs to the judicial system, the hydropower CUP will lapse if such an agreement is not in place by July 28, 2024. While Cat Creek has scheduled time to discuss Section 2.2 with the Board of Commissioners on June 21, as of the date of this filing, no such agreement is in place.

Please note, the history and documentation related to the CUPs and Development agreement are extensive. For the sake of brevity, this written statement and its exhibits do not attempt to be comprehensive, instead focusing only on key developments relevant to the hydropower CUP and the related water right proceedings. Additional detail and documents can be provided upon request.

Item 3(b) (status of FERC proceedings): As of May 19, 2023, Cat Creek's FERC proceedings remain in abeyance. In this regard, the May 31, 2024 letter from the ShoBan Tribe seems misleading. It states that Cat Creek "asked [FERC] for an abeyance," and suggests the reason for the abeyance is to allow



the Tribe “time to settle its due diligence on CCE’s invitation to partner on the project.”

Attached hereto as Exhibit D is the FERC notification placing the Cat Creek licensing process in abeyance. It clearly states that the abeyance is in response to FERC’s learning that the Bureau of Reclamation (BOR) had stopped work on the Cat Creek project “due to insufficient funding.” It says nothing about providing the Tribe with time to conduct due diligence.


Item 3(c) (status of BOR proceedings): Elmore County does not have firsthand knowledge of the status of Cat Creek’s BOR proceedings, aside from the fact that the FERC proceedings remain in abeyance as a result of the lack of progress in the BOR proceedings.

Item 4 (informal proceedings): Elmore County expresses no opinion regarding whether informal proceedings before IDWR should continue. At this point in time, the County’s primary focus is ensuring that representations made by Cat Creek are consistent among its various permitting processes and that all of the agencies with jurisdiction over the Cat Creek project have access to the same information. That is the purpose of this filing and the County’s response document filed April 10, 2024.

*[Signature page follows]*

DATED THIS 7th day of June, 2024.

Varin Thomas LLC

By: 

Dylan B. Lawrence

Attorneys for Elmore County, Board of County Commissioners

## CERTIFICATE OF SERVICE

I hereby certify that on this 7th day of June, 2024, I caused to be filed with the Department and served a true and correct copy of the foregoing by email, addressed to the following:

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Dylan B. Lawrence

# Exhibit A



# Elmore County Board of County Commissioners

## Findings of Fact, Conclusions of Law, and Order

Request for Reconsideration of Board's Decision regarding Second Amendment to Cat Creek Energy LLC's Development Agreement

Hearing Date: April 19, 2024; May 3, 2024

### BEFORE THE ELMORE COUNTY BOARD OF COUNTY COMMISSIONERS

|  |   |                     |
|--|---|---------------------|
| In the matter of Request for Reconsideration | ) |                     |
| of Board's Decision regarding Second         | ) |                     |
| Amendment to Cat Creek Energy LLC's          | ) | FINDINGS OF FACT,   |
| Development Agreement originally executed    | ) | CONCLUSIONS OF LAW, |
| on February 9, 2018 and Amended on           | ) | AND ORDER           |
| December 31, 2028.                           | ) |                     |
|  | ) |                     |
|  | ) |                     |

**In Re:** Request for reconsideration of the Elmore County Board of County Commissioners' (the "Board") decision regarding a Second Amendment ("DA-2024-01") to the Cat Creek Energy LLC's ("CCE") Development Agreement ("Development Agreement") for CUP-2015-03, CUP-2015-04, CUP-2015-05, CUP-2015-06, and CUP-2015-07 ("CUPs"). This matter having come before the Board on April 19, 2024, for a public hearing conducted pursuant to public notice as required by law was held to reconsider the Board's decision following the hearing on February 9, 2024, to consider a proposed second amendment to the CCE Development Agreement. CCE filed for reconsideration of the Board's February 9, 2024, decision pursuant to Elmore County Code 7-13-12 and Idaho Code § 67-6535(2)(b). Following the hearing on reconsideration on April 19, 2024, the Board left the public hearing open and continued the public hearing until May 3, 2024, to consider additional information requested of the Elmore County Land Use and Building Department ("Department") staff ("Department Staff"). The Board heard the matter at the continued public hearing on May 3, 2024. The Board closed the public hearing, deliberated on the information, and found the following:

### FINDINGS OF FACT

If any of these Findings of Fact are deemed to be conclusions of law, they are incorporated into the Conclusions of Law section. The following findings shall be based upon the facts, the analysis, and the information in the Elmore County Land Use and Building Department ("Department") record, and the testimony and evidence provided at the April 19, and May 3, 2024, hearings, all of which is incorporated herein as if set forth in full.



**1. The Board finds that the record is comprised of:**

- a. The request for extension application filed by CCE January 12, 2022.
- b. The Staff Report and accompanying documents from the February 4, 2022, hearing on the request for extension by CCE.
- c. The Findings of Facts, Conclusions of Law, and Order from the February 4, 2022, hearing.
- d. The December 1, 2023, application for Second Amendment to the Development Agreement, DA-2024-01, and accompanying documents.
- e. The Staff Report for the February 9, 2024, public hearing on the request for Second Amendment to the Development Agreement and accompanying documents.
- f. All documents and testimony received at the February 9, 2024, and February 16, 2024, public hearings.
- g. Board's Findings of Facts and Conclusions of Law, Order from February 16, 2024, and accompanying documents.
- h. Timeline of Events prepared at the request of the Board.
- i. Request for Reconsideration by CCE filed on February 27, 2024, and accompanying documents.
- j. Staff Report for April 19, 2024, hearing and accompanying documents and May 3, 2024, Supplemental Staff Report and accompanying documents.
- k. All documents and testimony received at the April 19, 2024, and May 3, 2024, public hearings on the Request for Reconsideration.

**2. The Board Finds the Appellant is:**

Cat Creek Energy, LLC  
398 S 9<sup>th</sup> Steet #240  
Boise, Idaho 83702

**3. The Board finds the following procedural facts pertaining to this matter:**

- a. The Development Agreement was a condition of approval for the CUPs and has been deemed amended CUPs by the courts.
- b. On December 1, 2023, CCE filed an application for a Second Amendment to the Development Agreement (DA-2024-01) and submitted the required fee.
- c. The matter was set for public hearing before the Board on February 9, 2024.
- d. Notice of the public hearing and site posting occurred as required by Elmore County Code.



- e. The public hearing took place on February 9, 2024, and the Board received testimony from the Appellant (then Applicant), Department Staff, and the public.
- f. The Board continued the public hearing until February 16, 2024, and requested additional information from staff including a detailed timeline of deadlines pursuant to the Development Agreement and CUPs, and associated litigation delays.
- g. The Board issued Findings of Facts, Conclusions of Law, and Order on February 16, 2024.
- h. On February 27, 2024, CCE filed a request for reconsideration of the Board's decision on February 16, 2024.
- i. The Board considered the request for reconsideration on April 5, 2024, and granted a reconsideration hearing on April 19, 2024, at 1:30 p.m.
- j. Notice of the reconsideration public hearing and site posting occurred as required by Elmore County Code.
- k. The public hearing on reconsideration occurred on April 19, 2024, and the Board received testimony from the Appellant, Staff, and the public. The Board kept the public hearing open and continued the public hearing until a date certain of May 3, 2024, and requested additional information from Department Staff.
- l. The Board continued the public hearing on reconsideration on May 3, 2024, received additional information, and closed the public hearing.
- m. Following the public hearing on the reconsideration, the Board GRANTED IN PART and DENIED IN PART the Request for Reconsideration and the Board instructed Staff to prepare Findings of Facts and Conclusions of Law, and Order consistent with their findings and decision on the matter.

**4. The Board finds the following related to Section 1.1 of the Development Agreement:**

- a. The Board finds that its decision of February 16, 2024, amending Section 1.1 of the Development Agreement to provide that the CUPs shall be valid until October 17, 2026, was appropriate and provided a greater extension than CCE was entitled to.
- b. The Board finds it is undisputed that the CUPs were issued on February 10, 2017. Pursuant to the Development Agreement, Section 1.1, the CUPs were valid for a period of five years from February 10, 2017. This meant the CUPs, under the terms of the Development Agreement were valid until February 10, 2022, unless otherwise extended. On February 4, 2022, the Board provided a one-time, two-year extension of the CUPs. With this two-year extension in 2022, the CUPs' new deadline was February 10, 2024. The two-year extension was contingent on CCE making progress in its FERC licensing proceedings.
- c. The Board finds, on May 17, 2019, the District Court issued an Order Granting Intervenor Cat Creek Energy, LLC's Motion to Stay Proceedings ("Stay"). This Stay expressly related only to Section 2.2 of the Development Agreement related to CUP-2015-04. Therefore, by the plain language of the Stay, the Stay only applied to



Section 2.2 and did not otherwise provide for an extension of Section 1.1 or the CUPs. Therefore, CCE was only entitled to an extension of the CUPs until February 10, 2024.

- d. The Board finds that the Board's decision on February 16, 2024, to extend the deadline of Section 1.1 of the Development Agreement to October 17, 2026, was above and beyond what was necessary or required, and was done so in a showing of good faith to accommodate CCE's development delays specifically related to the SBar Ranch appeal, since that was the express basis of CCE's request.
- e. The Board finds CCE has failed to articulate any evidence which supports how the Board erred in providing an extension until October 17, 2026, and not June 14, 2027. CCE requests that it be provided a five (5) year extension from the date the litigation ended which was June 14, 2022. CCE provides no basis or evidence for why CCE should be entitled to a five (5) year extension from the end of the litigation, when the CUPs were issued in February 10, 2017. CCE attempts to argue that the practical effect of the litigation is that it was somehow "robbed" of its entire five (5) year development period, but CCE does not articulate any basis for why the Court only stayed Section 2.2, nor does CCE provide another legal basis for such entitlement to five (5) years. Even if the Board were to agree that the Stay was applicable to Section 1.1 and the CUPs, which it does not, the Stay does not provide for a five (5) year extension from the end of litigation, but instead stays the deadlines and timelines only for the duration for which the Stay is in effect (May 17, 2018 – June 14, 2022).
- f. However, the Board further finds that the difference between the deadline of October 17, 2026, and June 14, 2027, equates to roughly 8 months and would not unduly burden Elmore County in providing such extension. The Board finds agreeing to the extension of the CUPs until June 14, 2027, will provide a clear, easily ascertainable date for the validity of the CUPs as provided for in Section 1.1

**5. The Board finds the following related to the February 2022 extension:**

- a. The Board finds the evidence in the record supports that the extension request by CCE in February 2022, was granted pursuant to Section 1.1 of the Development Agreement, and was provided as CCE's one-time, two-year extension per the Development Agreement.
- b. The Board finds that the Findings of Fact, Conclusions of Law, and Order for the February 4th, 2022, hearing where the Board considered CCE's request for a two-year extension clearly establishes that the request was provided to CCE pursuant to the terms of Section 1.1 of the Development Agreement.



- c. The Board finds CCE's application for extension in January 2022 did not request an extension pursuant to Section 1.1 of the Development Agreement, but instead requested an extension based on the delays of litigation related to the project.
- d. The Board finds the audio recording from the February 4<sup>th</sup>, 2022, public hearing makes clear that the Board believed its authority to grant an extension was found in Section 1.1 of the Development Agreement.
- e. The Board finds that the Findings of Facts, Conclusions of Law, and Order from the February 4, 2022, hearing clearly establishes that:
  - i. Finding No. 3 expressly states, "[a] one (1) time two-year time extension is envisioned for the conditional use permits in the Development Agreement between CCE and the Board."
  - ii. Condition No. 3 states "Based on the foregoing facts and conclusions, the Board concludes that the applicant and/or owner have adequately justified the need for a time extension per Section 7-3-17 of the Zoning Ordinance and the **Development Agreement**." (emphasis added)
  - iii. The Order itself states, the Board "APPROVES an extension for CUP-2015-03, CUP-2015-04, CUP-2015-05, CUP-2015-06, and CUP-2015-07 **as provided for in the Development Agreement**, subject to the Court's Orders regarding a stay of proceedings, and/or by other legal function of the Court's Orders."
- f. The Board finds that the audio recording at approximately 58:15, shows Commissioner Corbus reading Section 1.1 into the record and making a motion to provide a two-year extension pursuant to Section 1.1 of the Development Agreement.
- g. The Board finds that the audio recording goes on to demonstrate that the Board clarified that should the courts determine that a judicial stay applied to all five (CUPs) and Section 1.1, then such order by the courts would render the Board's two-year extension moot and therefore would not count against CCE as its one-time, two-year extension.
- h. The Board finds the record is clear that at no point in the judicial proceedings did any court formally stay the provisions of Section 1.1 or issue a ruling that the judicial stay was applicable to all CUPs or Section 1.1
- i. The Board finds that at 19:15 in the audio recording of the February 4, 2022, hearing, CCE states at the conclusion of the litigation CCE would file a motion to the district court related to the stay and the ability for CCE to proceed. CCE never took this action and therefore the condition that would have mooted the extension pursuant to Section 1.1 never took place.



- j. Furthermore, the Board finds that the granting of a two-year extension pursuant to Section 1.1 is in the “discretion” of the Board, and is premised on the requirement that CCE has demonstrated “significant progress in obtaining federal permits...” and “it is likely that the Applicant will be in a position to commence regular operations within the two-year period.”
- k. The Board finds that CCE will not be prohibited from seeking an additional two-year extension if upon the expiration of the deadline June 14, 2027, the project is not complete. Such an extension will be in the sole discretion of the Board and will not be granted unless CCE can demonstrate significant progress in the construction of the project and that the CCE will commence regular operations within the requested two-year extension period.

**6. The Board finds the following related to Section 2.2 of the Development Agreement.**

- a. The Board finds that CCE, in its request from December 1, 2023, never requested an extension of the deadline contained in Section 2.2 and therefore the Board cannot reconsider a new deadline of June 14, 2027, as now requested by CCE.
- b. The Board finds the record demonstrates that CCE instead attempted to satisfy the requirements of Section 2.2 of the Development Agreement by insufficient means and never request an extension of Section 2.2 of the Development Agreement.

**CONCLUSIONS OF LAW**

If any of the Conclusions of Law are deemed to be findings of fact, they are incorporated in the Findings of Fact section.

**Holding:** CCE failed to show good cause for how the Board’s decision to provide an extension of Section 1.1 of the Development Agreement until October 17, 2026, was in error.

**Holding:** The Board was under no legal or contractual obligation to provide an extension to CCE of Section 1.1 of the Development Agreement being that the Stay issued by the Court related to Section 2.2 and CUP-2015-04 only.

**Holding:** The Board finds that CCE’s requested extension date of June 14, 2027, equates to roughly eight additional months from the October 17, 2026, extension the Board provided. The Board does not believe providing this additional eight months will have a significant impact on overall development of the project nor negatively impact Elmore County.

**Holding:** The Board will extend the deadline of Section 1.1 of the Development Agreement to June 14, 2027.



**Holding:** The evidence in the record demonstrates that the one-time, two-year extension provided by the Board in February 2022 was granted pursuant to the authority of Section 1.1 of the Development Agreement.

**Holding:** The caveat in providing this one-time, two-year extension was that should the courts determine that a judicial stay applied to all five CUPs and Section 1.1 then that would render the Board's two-year extension moot and would not count against CCE's one-time extension.

**Holding:** The Board finds the courts made no such finding and therefore the two-year extension was not rendered moot.

**Holding:** The Board finds that CCE is not prohibited from seeking an additional two-year extension if upon the expiration of the deadline on June 14, 2027, the project is not complete. Such an extension will be in the sole discretion of the Board and will not be granted unless CCE can demonstrate significant progress in the construction of the project and that CCE will commence regular operations within the requested two-year extension period.

**Holding:** The request for an extension of Section 2.2 of the Development Agreement until June 14, 2027, was never before the Board for consideration at its February 16, 2024, as it was never requested by CCE, and therefor is not before the Board for reconsideration.

**Holding:** The language of Section 2.2 is affirmed.

**Holding:** The Board finds that the Department has followed all procedural requirements for a request for reconsideration as outlined in Elmore County Code Section 7-3-12 and Idaho Code Section 67-6535(2)(b).

**Holding:** These Findings of Facts, Conclusions of Law, and Order serve as the final written action setting forth the reasons and basis for the Board's decision on CCE's Request for Reconsideration.

### **ORDER**

Based upon the foregoing Findings of Fact and Conclusions of Law, the information contained in the record for the February 4, 2022, hearing, and the February 9, 2024, and February 16, 2024, hearings, as well as the record for the Request for Reconsideration hearings on April 19, 2024 and May 3, 2024, the Board **AFFIRMS IN PART and DENIES IN PART** its decision from February 16, 2024, holding:

1) Section 1.1 of the Development Agreement shall read as follows:

*"The Conditional Use Permits shall be valid until June 14, 2027. The Applicant may seek a two-year extension upon application to the Elmore County Land Use*

*and Building Department ("Department"). The approval of an application for extension shall be in the sole discretion of the Commission, or Board if appealed thereto, provided the Applicant has demonstrated significant progress toward construction and it is likely that the Applicant will be in a position to commence regular operations within the two-year extension period. Provided all improvements are completed and the use commences within this timeframe, the CUPS, subject to compliance with the Conditions and this Agreement shall continue in effect for such time as the Project is in regular operation. In the event that the improvements are completed, and use commences within the timeframes provided for some but not all of the CUPs, the Approval for those CUPs that are not built out and operated within the foregoing time frames may be terminated as to those CUPs."*

- 2) The decision to allow CCE to withdraw the proposal for increasing water storage capacity of the proposed Cat Creek Reservoir is affirmed.
- 3) The existing language of Section 2.2 of the Development Agreement and the current deadline following the litigation stay is affirmed, requiring:

*"Given the complexities of water diversion and delivery related to the Project, and in an effort to move the Project forward without further delay, the County and Developer have agreed to defer the negotiations and execution of all Water Diversion and Delivery Agreements to a later date, to be heard after notice and public hearing, but which shall be done prior to July 28, 2024 or the CUP related to water (CUP-2015-04) shall lapse."*



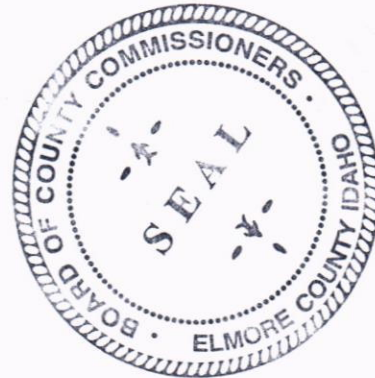
Dated this 17<sup>th</sup> day of May 2024.

**Elmore County, Idaho**

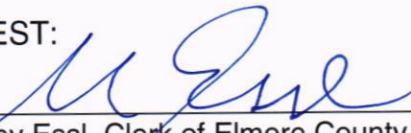
By   
Franklin L. Corbus, Chairperson

By   
Crystal Rodgers, Commissioner

By   
Albert Hofer, Commissioner



ATTEST:

  
Shelley Essl, Clerk of Elmore County

4871-7567-4296, v. 2



# Exhibit B

**BEFORE THE ELMORE COUNTY BOARD OF COUNTY COMMISSIONERS  
FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER**

**In Re: CUP-2015-03, CUP-2015-04, CUP-2015-05, CUP-2015-06, and CUP-2015-07: Cat Creek Energy, LLC**

**Background:**

This "Matter" is an appeal of the denial of a request for five (5) Conditional Use Permit (the "CUP") applications for transmission lines, pump storage hydro electrical generating facility and wind turbine electrical generating facility in the Agriculture, Wildland Urban Interface and the Area of Critical Concern Overlay Zones and a solar electrical generating facility and an electrical substation in the Agricultural Zone (the "Applications"), from Cat Creek Energy, LLC Development, LLC (the "Applicant"), for that real property as further described herein (the "Property"). The Matter was initially presented to the Elmore County ("County") Board of Commissioners ("Board") following receipt of a request for appeal following a denial of the Matter by the Planning and Zoning Commission of Elmore County, Idaho (the "Commission") on August 17, 2016. At that time the Board set the matter for public hearing, to be held on November 16<sup>th</sup> and 17<sup>th</sup> in 2016. Prior to the scheduled hearings, the Board received a request from the Applicant to conduct a site visit at the Property. On October 21, 2016, the Board conducted a hearing on the site visit at which time the Applicant withdrew its request for the site visit. The Board heard the Matter as on the 16<sup>th</sup> and 17<sup>th</sup> of November, 2016, pursuant to a public hearing, following public notice as required by law. The Board received written and verbal testimony from the Applicant, as hereafter defined, its representatives, those in support, neutral and in opposition, and other testimony and information for the Matter which was part of the record. At a meeting following the public hearings, the Board set deliberations for the Matter for January 13, 2017.

Subsequent to the initial hearing, one Board member inadvertently attended a presentation and discussion of water rights and the underlying project for the Matter. Following public notice of the event the Board conducted an additional hearing on December 16, 2016, to disclose the Board member's receipt of information, open the record and hear testimony in response to the disclosure. This second hearing was held as required by law. The Board received verbal testimony from the Applicant, and parties in opposition as well as other testimony and information for the Matter which is part of the record for the Matter. Deliberations for the matter were conducted on January 13, 2017, February 3, 2017 and February 10, 2017, when the Board issued these Findings of Fact, Conclusions of Law and Order.

**Findings of Fact:**

If any of these Findings of Fact are deemed to be conclusions of law, they are incorporated into the Conclusions of Law section. The following findings are based upon the record before the Board as well as those facts which are commonly known or of which there is general public awareness.

**1. Application.**

**The Board finds that the applications for the Matter ("Applications") are comprised of:**

- A. Application form prepared and submitted by the Applicant for a Conditional Use Permit for transmission lines in the Agriculture and Area of Critical Concern Overlay Zones. Case Number: CUP-2015-03 ("CUP 2015-03").**

9. Review all development proposals in areas that are critical to groundwater recharge and sources to determine impacts, if any, to surface and groundwater quantity and quality. ...

17. Evaluate all development proposals in terms of land use and environmental compatibility. Discourage development proposals, which negatively impact land use patterns and negatively impact the human and natural environment." Comprehensive Plan, pages 36 & 37.

#### **"Water Goal 1**

To protect, develop, and maintain the quality and quantity of our water resource. ...

#### **Water Objectives:**

1. Encourage land management and development of soil and water resources for economic growth of the County. ...

5. Water quality should be protected and preserved in all proposed developments. ...

7. Work with the Idaho Department of Water Resources and seek approval to study and construct necessary water development projects in the Boise River drainage system in order to transfer water into arid portions of Elmore County." Comprehensive Plan, pages 45 & 46.

#### **"Fish and Wildlife Goal 2**

Recognize the economic contributions that fish and wildlife-based recreation contribute to Elmore County.

#### **Fish and Wildlife Goal 3**

Sustain the fish and wildlife habitats necessary to provide quality fish and wildlife-related recreation.

#### **Fish and Wildlife Goal 4**

Recognize that fish and wildlife are public resources to be managed for the benefit of all and promote ongoing proper management of fish and wildlife resources. ...

#### **Fish and Wildlife Objectives:**

1. Request public agency input on proposed land and water development projects potentially impacting fish and wildlife habitat.

2. Consider ordinances and conditions of approval aimed at avoiding and mitigating adverse impacts to fish and wildlife resources as a result of development.

3. Encourage protection of water quantity and quality and multiple uses that are complementary to fish and wildlife populations." Comprehensive Plan, pages 49 & 50.

#### **"Scenic Areas Goal 1**



"5. Water quality should be protected and preserved in all proposed developments." Comprehensive Plan, page 46.

**The Board finds** that the Upper Reservoir will be filled during spring run-off. It will hold approximately 50,000 acre-feet of water. Roughly 8,000 – 10,000 acre-feet of water will be cycled through the pumped-hydro system daily. Another 10,000 acre-feet will be kept in reserve for operational purposes. The remaining 30,000 acre-feet will be available, as necessary and appropriate, to downstream irrigation districts and municipal users and, of special interest to Idaho Department of Fish and Game and Trout Unlimited, to help sustain the downstream fishery. The plant will produce power throughout the year. Based upon the Record for the Matter, there are no foreseeable impacts on water quality as a result of such release either in the Upper Reservoir or on the South Fork of the Boise River below the Anderson Ranch Dam. Record for the Matter, page 6688.

"7. Work with the Idaho Department of Water Resources and seek approval to study and construct necessary water development projects in the Boise River drainage system in order to transfer water into arid portions of Elmore County." Comprehensive Plan, page 46.

**The Board finds** that with the Conditions the Applicant will be required to obtain the necessary water rights and to seek approval from the Idaho Department of Water Resources ("IDWR") for necessary water development projects in the Boise River drainage system in order to transfer water into arid portions of Elmore County.

**The Board finds** that the Applicant will not be taking water during the time when the Boise drainage is fully appropriated. Furthermore, the remainder capacity in the Upper Reservoir reserved for other uses is filled during flood control period when excess water is released downstream. The fill rate shall be conditioned by IDWR, Bureau of Reclamation and US Army Corps of Engineers as they manage the Boise River drainage and its reservoirs. Record for the Matter, page 7011.

### **"Fish and Wildlife Goal 2**

Recognize the economic contributions that fish and wildlife-based recreation contribute to Elmore County." Comprehensive Plan, page 49.

**The Board finds** that the Applicant and the Applications were prepared to recognize the economic contributions that fish and wildlife based recreation contributes to Elmore County by developing reasonable mitigation strategies to minimize entrainment losses at the hydroelectric facility will be employed during the design stage for the intake and tailrace portion of the powerhouse. Any avoidable entrainment impacts to federally listed bull trout would be mitigated through support for long term projects, developed in cooperation with Idaho Department of Fish and Game ("IDFG") and United States Fish and Wildlife Service ("USFWS") to enhance bull trout habitat in the South Fork Boise River upstream of Anderson Ranch Dam. Pursuant to the Development Agreement, as set forth in the Conditions (the "**Development Agreement**") the Applicant would fund annual fish stocking in Anderson Ranch Reservoir to compensate for any net loss of game fish due to entrainment into the hydropower penstocks. The Applicant would work with IDFG to develop the details of this program. Record for the Matter, page 650.

### **"Fish and Wildlife Goal 3**

**The Board finds the Conditional Use Permits Applications must be in compliance with Chapter 27 of the Zoning Ordinance. Section 6-27-5A 4. Record for the Matter, page 1.**

**13. No Approval to Develop or Use Public Lands.**

**The Board finds that** nothing contained herein shall grant the Applicant consent or approval to develop, construct improvements on, use or operate any of the uses set forth in the Applications on any federal or state grounds without such permits, licenses and approvals as may be required by the United States of America or the State of Idaho, as applicable.

**14. Idaho Code § 67-6519(4)(c) what actions, if any, that the Applicant could have taken to obtain approval.**

With the addition of the Conditions the Applications are approved as further set forth herein.

**CONCLUSIONS OF LAW**

If any of the conclusions of law are deemed to be findings of fact, they are incorporated in the Findings of Fact section.

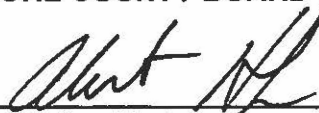
1. The Board concludes that the appeal application meets the requirements of Zoning Ordinance.
2. The Board concludes that the notice requirements of the Zoning Ordinance have been met.
3. The Board concludes that the public hearing notice requirements of LLUPA have been met.
4. The Board concludes that the Applications with the Conditions comply with the required findings set forth in [Sections 6-27-4, 6-27-7 and 6-8-26 B.1-4 of] the Zoning Ordinance.

**ORDER**

Based upon the foregoing Findings of Fact and Conclusion of Law and the record for the Applications, the Board hereby **reverses** the decision of the Commission denying the Applications and **approves** the Applications subject to the Conditions.

Dated this 10th day of February 2017.

**ELMORE COUNTY BOARD OF COMMISSIONERS:**

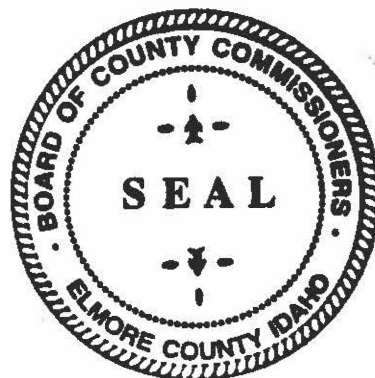
By:   
Albert Hofer, Chairman

By: Absent from hearings and deliberation  
Wesley R. Wootan, Commissioner

By:   
Franklin L. Corbus, Commissioner

Attest:

By:   
Barbara Steele, Clerk





**Exhibit A**  
**Conditions of Approval of the Applications**

**“Conditions”**

**General Conditions:**

1. The Conditional Use Permit is valid for four (4) years and may be extended for one 2-year period (“**Expiration Date**”) upon application to the Department, which extension may be granted in the discretion of the Commission or Board, if appealed thereto, provided the Applicant has demonstrated significant progress in obtaining federal permits and it is likely that the Applicant will be in a position to start construction of the proposed improvements within the two-year extension period. All improvements shall be completed and the use shall commence within this timeframe.
  
2. A “**Development Agreement**” between the Applicant, the landowner of the Property and Elmore County which shall be recorded against the Property on or before November 15, 2017, which date may be extended by the Board for one additional six month period, and shall following ongoing discussions and draft reviews with county staff, be presented to the Board in a public hearing subject to the Zoning Ordinance and the LLUPA, and shall include, among other things, the following terms and conditions:
  - (a) clear definition of the project based upon the site plan presented to the Board at the November 16 and 17, 2016 hearings and such site plan and project description shall be added to and included into the Application;
  - (b) develop methods of furthering water delivery in the county for the transfer of county water to Little Camas Reservoir or other county water diversion or storage areas based upon county needs and the county’s water rights, which may include the storage of water for the county until such time as the county water may be needed;
  - (c) in conjunction with IDWR approval, construct necessary water development projects in the Boise River drainage system in order to transfer water into arid portions of Elmore County;
  - (d) obligation and time frame to develop a Community and Stakeholder Board (“**Stakeholder Board**”), to: (a) oversee the expenditure of the required the annual contribution of \$330,000 by the Applicant to the Stakeholder Board for management, conservation and enhancement of plants, animals, fish and birds that inhabit the project area, (b) oversee development of wetlands mitigation due to the project which is the subject of the Applications; (c) provide oversight and approval of the visual audio screening and minimization of impact to the surrounding areas of the solar array, substation and transmission lines which shall be designed using best practices to minimizing visual and audio impact; The number, backgrounds, stakeholder groups for members of the Stakeholder Board will be established by the Applicant and the Board as a part of the Development Agreement and shall consist of members from different agencies such as Mountain Home Irrigation District, Idaho Department of Fish and Game, Glens Ferry Highway District, a member or the chairman of the sage grouse conservation group for Elmore County, a Pine-Featherville resident, one or more representatives of Elmore County

# Exhibit C



**DEVELOPMENT AGREEMENT RELATIVE TO CAT CREEK ENERGY, LLC  
CONDITIONAL USE PERMITS (CUP 2015-03, CUP 2015-04, CUP 2015-05, CUP 2015-06, CUP 2015-07)**

This Development Agreement Relative to Cat Creek Energy, LLC Conditional Use Permits (CUP 2015-03, CUP 2015-04, CUP 2015-05, CUP 2015-06, CUP 2015-07) (the "Agreement") is entered into this 9 day of February, 2018, ("Effective Date"), by and between Elmore County (the "County"), a political subdivision of the State of Idaho, and Cat Creek Energy, LLC, an Idaho limited liability company (the "Developer") (collectively, the "Parties").

**WITNESSETH:**

WHEREAS, Developer, pursuant to a Memorandum of Agreement with Sawtooth Grazing Association, Inc. and Wood Creek Ranch, LLC (the "Landowners") has the authority and responsibility to develop, construct, install, and operate an electrical generating facility, known as the Cat Creek Energy & Water Storage Renewable Power Station (the "Project"), on a certain tract of land in the County of Elmore, State of Idaho, which land is more particularly described in Exhibit A, attached hereto and incorporated herein by this reference, (the "Property"); and

WHEREAS, the Project will be comprised of: 1) a wind turbine electrical generating facility; 2) a pumped storage hydro electrical generating facility; 3) a photovoltaic solar electrical generating facility; 4) electrical substations; 5) overhead and underground transmission lines; and (6) operations, maintenance, and other buildings and appropriate structures necessary for all accompanying uses related to the successful operations of the Project to generate and store both electricity and water therein; and

WHEREAS, the Project also serves as a water storage facility; and

WHEREAS, the Landowners are the fee simple owners of the Property; and

WHEREAS, Developer submitted an application ("Application") for the Project to the County for the approval of five (5) Conditional Use Permits ("CUPs") for the Project that was deemed complete on or about March 21, 2016 under the Elmore County Zoning and Development Ordinance, as amended (the "Zoning Ordinance"); and

WHEREAS, the CUPs were for electrical transmission lines, pumped storage hydro electrical generating facility in the Agricultural Zone, Wildland Urban Interface and the Area of Critical Concern Overlay Zones, solar electrical generating facility, wind turbines as an electrical generating facility, and an electrical substation in the Agricultural Zone, which were all approved by the Board of Elmore County Commissioners (the "Board") with those conditions ("Conditions") set forth in and pursuant to the Findings of Fact, Conclusions of Law and Order dated February 10, 2017 (the "Approval"); and



and conditions of this Agreement. This Agreement hereby amends the Master Site Plan on Exhibit C, with Master Site Plan as Exhibit D. The Master Site Plan attached hereto as Exhibit D contains certain modifications as provided for in this Agreement and shall serve as the Master Site Plan for all purposes related to the Project. Should further material modifications need to be made to the Master Site Plan, as a result of any federal permitting, state legislation, or amendment request by Developer, Developer and Board may, subject to notice and public hearing, process the necessary amendment or amendments to the Master Site Plan within this Agreement.

**2.1.3. Further Site Plan Changes.** All requests for changes to the Master Site Plan shall be submitted to the County's Director of the Land Planning and Use Department (the "Director"), for further review by the County for a determination of whether any requested change is material, which will determine if the Master Site Plan should need modification as set forth herein. All minor, non-material site plan changes, may be made by Developer, with the written approval of the Director so long as best available technology and practices are used for minimizing visual and audio impact.

**2.1.4. Change of Use.** No change in use from the Approval shall be permitted without an application to the County in accordance with the Zoning Ordinance. As set forth hereinabove, the approved use is as set forth in the Approval.

**2.1.5. Modification.** Material modifications of the Master Site Plan, as determined by the Director in Section 2.1.3. herein regarding, among other items, the locations for wind turbines, solar panels, transmission lines, substation, collector stations, the operations and maintenance building, reservoir boundaries, and the pumped storage hydro equipment may be modified, with consent of Parties and following public hearing. Specifically, the following changes to the Master Site Plan shown on Exhibit D, and the terms, conditions, and descriptions provided in this Agreement, are incorporated into and shall become part of the Applications.

**2.2. Water Diversion and Delivery.** Given the complexities of water diversion and delivery related to the Project, and in an effort to move the Project forward without further delay, the County and Developer have agreed to defer the negotiation and execution of all Water Diversion and Delivery Agreements to a later date, to be heard after notice and public hearing, but which shall be done prior to December 31, 2018 or the CUP related to water shall lapse.

**2.3 Stakeholder Advisory Board.** Prior to the issuance of the first building permit for the Project, Developer and the Board shall create the Cat Creek Energy Stakeholder Advisory Board ("Stakeholder Advisory Board"). Stakeholder Advisory Board's purpose is to oversee the expenditure of funds (the "Contribution") by the Developer, in the amount to be based upon a formula set forth herein in Section 2.3.3 for (a) environmental mitigation as determined by federal and state permitting for the management, conservation and enhancement of plants, animals, fish and birds that inhabit the Project area, (b) review of the development of wetlands mitigation due to the Project; (c) review and recommendation to the Board of the visual and audio screening and

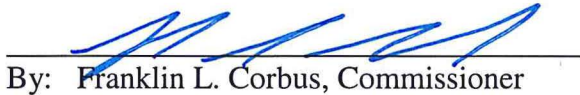
IN WITNESS WHEREOF, this Agreement has been executed by the Parties hereto on the day and year first above written.

ELMORE COUNTY:

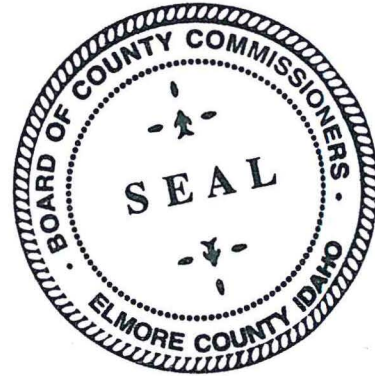
Board of Elmore County Commissioners



By: Wesley R. Wootan, Commissioner



By: Franklin L. Corbus, Commissioner



ATTEST:



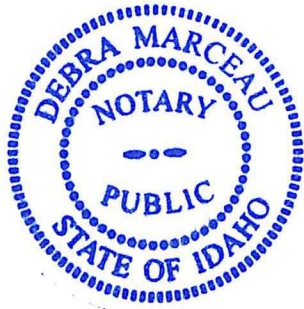
Barbara Steele, Elmore County Clerk



STATE OF IDAHO )  
 ) ss.  
County of Elmore )

On the 9 day of February, 2018, before me, Debra Marceau, a Notary Public in and for said state, personally appeared WESLEY R. WOOTAN, Commissioner of **Elmore County**, a political subdivision of the State of Idaho, the county that executed the foregoing instrument, who duly acknowledged to me that such county executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.



Debra Marceau  
NOTARY PUBLIC for Idaho  
Residing at Hammett, Idaho  
My commission expires: 10-18-2023

STATE OF IDAHO )  
 ) ss.  
County of Elmore )

On the 9 day of February, 2018, before me, Debra Marceau, a Notary Public in and for said state, personally appeared FRANKLIN L. CORBUS, Commissioner of **Elmore County**, a political subdivision of the State of Idaho, the county that executed the foregoing instrument, who duly acknowledged to me that such county executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

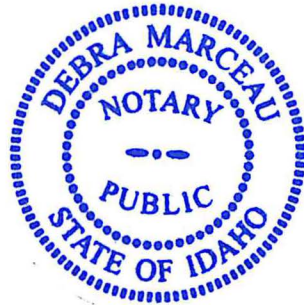


Debra Marceau  
NOTARY PUBLIC for Idaho  
Residing at Hammett Idaho  
My commission expires: 10-18-2023

STATE OF IDAHO )  
 ) ss.  
County of Elmore )

On the 9 day of February, 2018, before me, Debra Marceau a Notary Public in and for said state, personally appeared BARBARA STEELE, the Clerk of **Elmore County**, a political subdivision of the State of Idaho, the county that executed the foregoing instrument, who duly acknowledged to me that such county executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.



Debra Marceau  
NOTARY PUBLIC for Idaho  
Residing at Hammett, Idaho  
My commission expires: 10-18-2023

IN WITNESS WHEREOF, this Agreement has been executed by the Parties hereto on the day and year first above written.

CAT CREEK ENERGY, LLC  
an Idaho limited liability company

John Faulkner  
By: John Faulkner  
Its: Manager

STATE OF IDAHO    )  
                                      ) ss.  
County of Elmore     )

On this 9 day of February, in the year 2018, before me, a Notary Public in and for the State of Idaho, personally appeared John Faulkner, known or identified to me to be the Manager of the limited liability company that executed the instrument or the person who executed the instrument on behalf of said limited liability company, and acknowledged to me that such limited liability company executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.




Debra Marceau  
NOTARY PUBLIC for Idaho  
Residing at Hammett, Idaho  
My commission expires: 10-18-2023


Landowner:

The undersigned, each as an owner of the Land, hereby acknowledges and agrees to the terms of this Agreement and in order to receive the benefits of this Agreement, agrees to assume all obligations of Developer under this Agreement on any Transfer and Assignment.

**Sawtooth Grazing Association, Inc.  
An Idaho corporation**

  
By: \_\_\_\_\_  
Name: JOHN FAULKNER  
Title: PRESIDENT

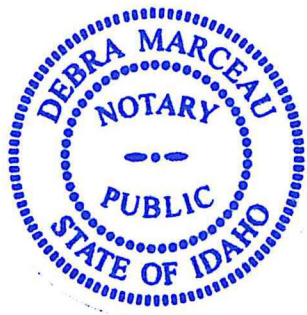
**Wood Creek Ranch, LLC  
An Idaho limited liability company**

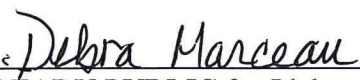
  
By: \_\_\_\_\_  
Name: JOHN FAULKNER  
Title: MANAGER

STATE OF IDAHO )  
  ) ss.  
County of Elmore )

On this 9 day of February, in the year 2018, before me, a Notary Public in and for the State of Idaho, personally appeared John Faulkner, known or identified to me to be the President of the corporation that executed the instrument or the person who executed the instrument on behalf of said corporation, and acknowledged to me that such corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.



  
\_\_\_\_\_  
NOTARY PUBLIC for Idaho  
Residing at Hammett, Idaho  
My commission expires: 10-18-2023

# Exhibit D



FEDERAL ENERGY REGULATORY COMMISSION  
WASHINGTON D.C. 20426  
May 19, 2023

OFFICE OF ENERGY PROJECTS

Project No. 14655-002 – Idaho  
Cat Creek Energy and Water Storage  
Project  
Cat Creek Energy, LLC.

**VIA Electronic Mail**

James Carkulis  
Cat Creek Energy, LLC  
[jtc@ccewsrps.net](mailto:jtc@ccewsrps.net)

**Reference: Notification of the Integrated Licensing Process Being Placed in  
Abeyance**

Dear Mr. Carkulis:

On January 25, 2023, Cat Creek Energy, LLC (CCE) filed a Proposed Study Plan (PSP) under the Integrated Licensing Process (ILP) for the Cat Creek Energy and Water Storage Project (Cat Creek Project or project). CCE held study plan meetings on February 23 and 24, 2023. The Boise Project Board of Control, the U.S. Forest Service, the U.S. Fish and Wildlife Service, Trout Unlimited, the Elmore County Commission, the State of Idaho,<sup>1</sup> the U.S. Bureau of Reclamation (Reclamation), the National Marine Fisheries Service, Ann Parry, and Idaho Rivers United submitted comments on the proposed study plan. The commentors also generally expressed concern that the PSP was general and vague in its description of study objectives and methods, and did not identify which of the requested studies were adopted, adopted in part, or were not adopted by CCE. In its comments, Reclamation states that it has “ceased work on the Project due to insufficient funding but may resume work once funds have been received and are available for use.”

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<sup>1</sup> Collective comments from the Idaho Department of Fish and Game, Idaho Governor’s Office of Species Conservation, Idaho Department of Environmental Quality, Idaho State Historic Preservation Office, Idaho Department of Parks and Recreation, and the Idaho Governor’s Office of Energy and Mineral Resources were submitted in one letter.

During the study plan meetings, CCE agreed to a number of study components suggested by the agencies and to distribute updated versions of the study plans for review prior to when their comments were due on April 26, 2023. CCE is to file its Revised Study Plan (RSP) by May 26, 2023. On May 10, 2023, CCE requested an extension of time to resolve study plan issues with the stakeholders. As part of the request, CCE proposes to file an updated PSP by July 20, 2023, followed by another 90-day comment period, and to file the RSP by September 7, 2023.

CCE states in its request that it needs additional time to review and respond to all stakeholder comments and to resolve some apparent misunderstandings it has with stakeholders about the design of the project and the need for certain studies. CCE does not address in its request if or when it proposes to enter into a new cost recovery agreement with Reclamation. Since CCE filed its request, Commission staff has been in contact with Reclamation staff who confirmed that no updated agreement is in place that would allow them to continue work on the project.<sup>2</sup>

Because we have no assurance as to when Reclamation can resume work on this project, we are denying CCE's request to extend the ILP schedule and are instead placing the project in abeyance until further notice. Once CCE provides documentation that a new cost recovery agreement has been established with Reclamation, and Reclamation confirms that it has resumed its role as a cooperator, Commission staff will resume the ILP and issue a new process plan.

If you have questions, please contact Michael Tust at (202) 502-6522 or via email at [michael.tust@ferc.gov](mailto:michael.tust@ferc.gov).

Sincerely,

Vince Yearick  
Director  
Division of Hydropower Licensing

---

<sup>2</sup> Reclamation is a NEPA cooperator with Commission staff on preparation of an environmental document for the project. CCE must obtain from Reclamation a Lease of Power Privilege before it can construct portions of the project.