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Attorneys for Petitioner Elmore County, Board of County Commissioners

RECEIVED  
Jun 16, 2023  
DEPARTMENT OF  
WATER RESOURCES

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATIONS FOR )  
PERMITS FOR THE DIVERSION AND USE )  
OF SURFACE AND GROUND WATER )  
WITHIN THE SNAKE RIVER BASIN )  
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**NOTICE OF WITHDRAWAL OF  
PETITION**

The Board of Commissioners of Elmore County, through undersigned counsel of record, hereby files this notice of withdrawal of the County’s petition in this matter, pursuant to the Department’s Rule of Procedure 303.

**I. BACKGROUND**

Elmore County filed its Application for Permit 2-10535 on March 3, 2017 (the “Application”). The application proposes diversion of water from the mainstem Snake River upstream of Swan Falls Dam and downstream of King Hill. Notices of protest to the Application were timely filed by Cat Creek Energy LLC, Idaho Conservation League, the Idaho Water Resource Board, the U.S. Bureau of Land Management, Idaho Power Company, and the Idaho

Department of Lands. As of May 13, 2019, all of those protests had been withdrawn, either unconditionally or based upon stipulations between the protestant and Elmore County.

The Department issued its Amended Snake River Basin Moratorium Order on October 21, 2022 (the “Order”). That Order “suspends further action on the processing and approval of presently pending and new applications for permits to appropriate water from the Snake River upstream from Swan Falls Dam....” (Order, p. 27). While the Order extends existing moratoriums in some areas, the moratorium on the Snake River upstream of Swan Falls and downstream of King Hill is new. Therefore, the Order suspended processing of the County’s Application.

The County filed a Petition for Hearing challenging the Order on November 4, 2022 (the “Petition”). Among other things, the Petition asserts a moratorium on the mainstem Snake River is unnecessary because diversions can be regulated and administered in real time in order to avoid injury to senior water users and comply with the prior appropriation doctrine.

On May 22, 2023, the County and Department executed and filed their Amended Stipulation to Withdraw Petition for Hearing (the “Stipulation”). In the Stipulation, the County agreed to withdraw its Petition in exchange for the Department’s agreement to “begin processing [the Application] and...continue processing the Application toward a final decision with reasonable diligence.” No responses or oppositions to the Stipulation have been filed.

## **II. WITHDRAWAL OF PETITION**

Based on the foregoing, Elmore County hereby notifies the Department and other parties that it hereby withdraws its Petition for Hearing filed November 4, 2022, pursuant to the Department’s Rule of Procedure 303.

DATED THIS 16th day of June, 2023.

Varin Thomas LLC

By: 

Dylan B. Lawrence  
Attorneys for Elmore County, Board of  
County Commissioners

## CERTIFICATE OF SERVICE

I hereby certify that on this 16th day of June, 2023, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

*Original:*

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322 E. Front Street  
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