

Exhibit 1

Pickens Law, P.A.

Terri R. Pickens
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February 27, 2024

SENT VIA OVERNIGHT MAIL

AND E-MAIL

Mitra Mehta-Cooper
Vicky Trevathan
Dylan Lawrence
Elmore County Board of Commissioners
Elmore County Clerk's Office
150 South 4th East, Suite #3
Mountain Home, ID 83647

Re: Cat Creek Energy, LLC
CUP 2015-03, CUP 2015-04, CUP 2015-05, CUP 2015-06, CUP 2015-07
Our File No.: 360-2

Ladies and Gentlemen:

Please find the attached Application for Reconsideration of the Board's recent Findings of Fact, Conclusions of Law and Order entered February 16, 2024. Please also find my Request for Reconsideration narrative along with the \$800.00 filing fee.

If you have any questions concerning the foregoing, please do not hesitate to contact me.

Sincerely,

/s/ Terri R. Pickens

Terri R. Pickens



ELMORE COUNTY LAND USE & BUILDING DEPARTMENT
520 E 2nd South – Mountain Home, ID 83647 – (208) 587-2142
www.elmorecounty.org
Appeal to the Elmore County Board of County Commissioners
for Reconsideration
\$800

Please attach additional sheets of paper if necessary. **Reconsideration request shall comply with Elmore County Zoning and Development Ordinance Section 7-3-12. Do not fax! Please complete in INK.**

Name: Cat Creek Energy, LLC

Address: c/o Pickens Law, P.A. P.O. Box 915, Boise, Idaho 83701

Email / Phone: terri@pickenslawboise.com 208-954-5090

Subject of Reconsideration & Case #: CUP-2015-03, CUP-2015-04, CUP-2015-05
CUP-2015-06, and CUP-2015-07

Basis for reconsideration: See Request for Reconsideration attached hereto.

Signature: 

Printed Name: Terri R. Pickens

For Administrative Use Only

File Number: _____

Fee: \$800 Date Paid: _____

Receipt Number: _____

Date Accepted: _____ By: _____

REQUEST FOR RECONSIDERATION

By Cat Creek Energy, LLC,

Re: Finding of Fact, Conclusions of Law, and Order dated February 16, 2024

By Elmore County Board of County Commissioners' Order Amending Condition 1.1 of
Section 1.1 of the Development Agreement

[CUP-2015-03, CUP-2015-04, CUP-2015-05, CUP-2015-06 and CUP-2015-07]

The basis of this Request for Reconsideration is the failure of the Elmore County Board of County Commissioners ("The Board") to adhere to the proper timeline for Cat Creek Energy, LLC ("CCE") to complete construction of the Cat Creek Energy and Water Storage Renewable Power Station Project due to delays caused by reconsideration and judicial review in the district court and the Idaho Supreme Court.

The requesting party, CCE, an Idaho Limited Liability Company ("requesting party"), is an affected party in accordance with Idaho Code §67-6521(1)(a)(i). Specifically, the requesting party applied for and was granted five Conditional Use Permits (CUPs), in addition to an approved development agreement, allowing the project to move forward.

I. This Request for Reconsideration is Timely

- A. Idaho Code. This Request for Reconsideration is made in accordance with Idaho Code § 67-6535(2)(b) and is hereby submitted within fourteen (14) days from February 16, 2023, as required by Idaho Code §67-6535(2)(b).
- B. Elmore County Code. Further, the requesting party seeks reconsideration in accordance with the Amended Zoning and Development Ordinance, adopted May 18, 2018, Section 7-3-12 A, which requires requests for reconsideration to be filed within fourteen (14) days of the entry of the final Findings of Facts, Conclusions of Law, and Order.

II. Failure to Adhere to the Timeline in the Original Development Agreement While Accounting for Delays due to Litigation.

CCE objects to the first condition given in the County's final Findings of Facts, Conclusions of Law, and Order, and requests reconsideration of this order because the proposed timeline for the validity of CCE's CUPs does not adhere to the timeline approved in the original development agreement plus the extension given to CCE due to delays caused by litigation.

On February 10, 2017, The Board conditionally approved CUP-2015-03, CUP-2015-04, CUP-2015-05, CUP-2015-06 and CUP-2015-07 pursuant to the Findings of Fact, Conclusions of Law, and Order dated February 10, 2017. The effective date of the CUPs, Section 1.1 in the original development agreement, stated the following:

1. The Conditional Use Permits shall be valid for a period of time for five (5) years from February 10, 2017 and may be extended for one 2-year period upon application to the Elmore County Land Use and Building Department ("Department"). The approval of an application for extension shall not be

unreasonably withheld and is 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 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 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.

On February 16, 2018, S Bar Ranch filed its first request for reconsideration, beginning an administrative law appeal process and which eventually became a litigation process. During that time, CCE was unable to continue efforts with Elmore County to negotiate Section 2.2 of the Development Agreement, so it moved the District Court for an order staying Section 2.2. of the Development Agreement pending the outcome of the litigation. The District Court granted the motion for stay. A copy of the Order is attached hereto as **Exhibit A**.

In addition, while litigation was ongoing, on March 1, 2021, CCE filed a Petition for Writ of Mandate with the Idaho Supreme Court requesting the Court grant a writ of mandamus to compel Elmore County to allow it to continue with the permit process. That motion included correspondence from counsel for Elmore County, confirming that CCE was *not able to move forward with permitting or construction* due to the litigation. Copies of the petition for writ of mandate and supporting affidavit are attached hereto as **Exhibit B** and **Exhibit C**, respectively. Elmore County filed a non-opposition through its counsel to the motion for writ of mandate. A copy of the Declaration of Scott Hess is attached hereto as **Exhibit D**. Despite the non-opposition, on April 8, 2021, the Supreme Court denied the petition, effectively staying the permitting process until litigation with S Bar Ranch was completed. A copy of the Order denying CCE's request is attached hereto as **Exhibit E**.

CCE had no choice but to discontinue all efforts to continue permitting through Elmore County due to the stays entered by the District Court and the Idaho Supreme Court.

With the stay in place, CCE presented its annual report to the Board of Commissioners on February 4, 2022. On its own accord, and because CCE could not move forward with the permitting and construction process pending the litigation, the Board took it upon themselves to formally enter a stay of the Development Agreement.

The Board issued Findings of Fact, Conclusions of Law, and Order on February 4, 2022, in which a one-time, two-year extension of CCE's construction deadline was granted. A copy of the Findings is attached hereto as **Exhibit F**. This was not a two-year extension under the Development Agreement (Section 1.1), but rather, simply an extension to recognize the judicial stay.

The Conclusions read, in part:

1. The pending judicial review litigation, now on appeal, partially or wholly subjects one or more CUPs to a stay.
2. A time extension to maintain the status quo preserves the status of matters/positions of the parties pending the Idaho Supreme Court decision and remand.
3. *A time extension may be moot*, depending on the scope of the stay resulting from judicial review and the appeal. **Therefore, if a stay or other legal function is judicially determined to render the extension of approvals moot, it shall not count as exercise of the one two-year time extension provided for in the Development Agreement.**

Findings of Fact, Conclusions of Law, and Order (February 4, 2022), pg. 1-2 (emphasis added).

As this Board of Commissioners concluded, the extension was not an exercise of the one two-year time extension under the Development Agreement. To now find that it was an exercise of the two-year extension called for in the Development Agreement is gross error and incorrect according to this Board's own findings and conclusions, and must be reversed on reconsideration.

Litigation ended on June 14, 2022, when the Idaho Supreme Court issued its Amended Opinion and Remittitur, holding in favor of CCE and the Board. However, this process and litigation affected CCE's ability to satisfy Section 1.1 of the Development Agreement. As such, CCE filed an application for a second amendment to the development agreement on December 1, 2023, requesting to extend the validity of the CUPs for a period of five (5) years from June 14, 2022, with the possibility of an additional one-time extension of two (2) years. The Board held a hearing on February 9, 2024, regarding CCE's request for a second amendment, and determined that the matter was tolled until February 16, 2024. On February 16, 2024, The Board issued its Findings of Facts, Conclusions of Law, and Order, denying CCE's request, and issuing its own "timeline" wholly inconsistent with the Findings from February 2022.

The Board ordered three changes to CCE's second amendment. The order stated:

1. Amend Condition No. 1 of Section 1.1 of the Development Agreement in the following manner:

"The Conditional Use Permits shall be valid until October 17, 2026. Provided all improvements are completed and the use commences within this timeframe, the CUPs, subject for 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 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 timeframes may be terminated as to those CUPs."

2. Allow CCE to withdraw the proposal for increasing water storage capacity of the proposed Cat Creek Reservoir; and

3. Deny the proposed Section 2.2 and keep the existing language of Section 2.2 of the Development Agreement for CUP-2015-03, CUP-2015-04, CUP-2015-05, CUP-2015-06 and CUP-2015-07 (“CUPs”).

Findings of Fact, Conclusions of Law, and Order, pg. 6. These findings are in direct contradiction of the Findings of Fact, Conclusions of Law and Order dated February 4, 2022, and must be modified as originally requested by CCE regarding Section 1.1.

As mentioned above, on February 12, 2024, after the public hearing, CCE sent a letter to Elmore County, withdrawing its request for increased storage capacity, and simply asked for an extension of time for the Development Agreement and Section 2.2. of the Development Agreement. A copy of the letter and proposed Second Amendment to the Development Agreement are attached hereto as **Exhibit G**.

The proposed language proposed stated:

The Parties hereby agree to replace Section 1.1 of the Development Agreement with the following:

1.1 Effective Date. This Agreement will be effective upon the Effective Date and, except as otherwise provided herein, shall run so long as the Project is being operated and one or more of the CUPs remain in full force and effect. Notwithstanding, certain dates set forth in the Approval and/or Conditions, may be changed as set forth in this Agreement.

Condition No. 1 from the Approval is hereby deleted in its entirety and replaced with the following:

“1. The Conditional Use Permits shall be valid for a period of time of five (5) years from June 14, 2022, and may be extended for one 2-year period upon application to the Elmore County Land Use and Building Department (“Department”). The approval of an application for extension shall not be unreasonably withheld and is 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 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 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.”

Additionally, CCE proposed the following language to extend Section 2.2 as follows:

The Parties hereby agree to replace Section 2.2 of the Development Agreement with the following:

2.2. Water Storage 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 June 14, 2027 or the CUP related to water shall lapse.

The foregoing extension request was directly in line with the District Court's stay of the water provision and the Idaho Supreme Court's decision to stay the entire matter pending the outcome of the litigation. It is appropriate to allow the extension to run in line with the other Section 1.1 extension as proposed hereinabove.

CCE is opposed to the amendment of Section 1.1 adopted by the Board, as the proposed deadline is completely miscalculated. The Board, in its Resolution that accompanied the Findings of Fact, Conclusions of Law, and Order, included an "Attachment A" Timeline of Events listing three scenarios for calculating CCE's timeline for the validity of CCE's CUPs. *None* of the scenarios are accurate. This Board's Findings of Fact, Conclusions of Law and Order dated February 4, 2022, absolutely governs the actual time calculation for the stay of the CUP, and that is from the date litigation commenced (February 16, 2018) to the date when the Supreme Court issued its final order (June 14, 2022). The timeline suggested by the Board in Resolution 887-24 is irrelevant, incorrect, and must not be the basis for the Board's calculation of time for the Development Agreement extension.

CCE argues that tolling is assumed to begin at the commencement of S Bar Ranch's challenges to the Development Agreement on February 16, 2018. After subtracting the time for S Bar Ranch's litigation *in which litigation was stayed and CCE's February 4, 2022, extension was moot*, the new deadline for the CUPs must be June 14, 2027. Based on input from counsel for the County, over the recommendation in the Staff Report to extend the Development Agreement for five years as requested, the Board complicated the extension by miscalculating the appropriate time for CCE's CUPs. This is not a complicated calculation. Litigation ended on June 14, 2022. CCE is entitled to its five years, from that date, bringing the new date to June 14, 2027, with the possibility of a one-time, two-year extension.

III. CONCLUSION

CCE requests that the Board reconsider its Finding of Fact, Conclusions of Law, and Order entered February 16, 2024, and amend Section 1.1 and Section 2.2 as attached in the draft Second Amendment to the Development Agreement attached hereto.

DATED THIS 27th day of February, 2024.

PICKENS LAW, P.A.

By /s/ Terri Pickens
Terri Pickens, Of the Firm
Attorney for Cat Creek Energy, LLC

EXHIBIT A

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Filed: 05/23/2019 11:07:17
Fourth Judicial District, Elmore County
Shelley Essl, Clerk of the Court
By: Deputy Clerk - Furst, Heather

Attorneys for Intervenor Cat Creek Energy, LLC

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ELMORE

S BAR RANCH, an Idaho limited liability
company,

Petitioner/Plaintiff,

vs.

ELMORE COUNTY, IDAHO, a political
subdivision of the State of Idaho,

Defendant.

CAT CREEK ENERGY, LLC, an Idaho limited
liability company,

Intervenor.

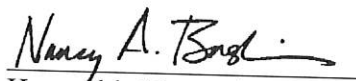
Case No. CV-2018-00525

**ORDER GRANTING INTERVENOR
CAT CREEK ENERGY, LLC'S
MOTION TO STAY PROCEEDINGS**

This court has considered Intervenor's Motion to Stay Proceedings Related to the Development Agreement ("Motion to Stay") to which Petitioner and Respondent are not opposed and finds that the stay of deadlines in the underlying proceedings before Elmore County regarding section 2.2 of the Development Agreement for CUP-2015-04 for a pump storage and hydro electrical facility is warranted under the circumstances and for other good cause existing. Additionally, Petitioner and Elmore County have filed non-oppositions to the motion.

IT IS HEREBY ORDERED, Intervenor's Motion to Stay is GRANTED.
The hearing on this motion is VACATED.

Dated: Signed: 5/17/2019 02:49 PM



Honorable Nancy A. Baskin
District Judge

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on Signed: 5/23/2019 11:07 AM he/she caused a true and correct copy of the foregoing instrument to be served on the following persons by the means indicated:

<p>Merlyn W. Clark Richard F. Goodson Justin T. Cranney William K. Smith Hawley Troxell Ennis & Hawley LLP 877 Main Street, Suite 1000 P.O. Box 1617 Boise, ID 83701-1617</p>	<p><input type="checkbox"/> U.S. Mail <input type="checkbox"/> Facsimile: (208) 954-5210 <input type="checkbox"/> Hand Delivery <input checked="" type="checkbox"/> i-Court E-file Electronic Service mclark@hawleytroxell.com rgoodson@hawleytroxell.com jcranney@hawleytroxell.com wsmith@hawleytroxell.com</p>
<p>L.W. (Buzz) Grant III 246 S. Cole Road Boise, ID 83709 P.O. Box 872 Boise, ID 83701</p>	<p><input type="checkbox"/> U.S. Mail <input type="checkbox"/> Facsimile: (208) 336-0388 <input type="checkbox"/> Hand Delivery <input checked="" type="checkbox"/> i-Court E-file Electronic Service bgrant@grantlawpllc.com</p>
<p>Scott D. Hess Claire C. Rosston Holland & Hart LLP 800 W. Main Street, Suite 1750 P.O. Box 2527 Boise, ID 83701</p>	<p><input type="checkbox"/> U.S. Mail <input type="checkbox"/> Facsimile: (208) 343-8869 <input type="checkbox"/> Hand Delivery <input checked="" type="checkbox"/> i-Court E-file Electronic Service sdhess@hollandhart.com ccrosston@hollandhart.com</p>
<p>Edward A. Lawson Heather E. O'Leary Lawson Laski Clark & Pogue, PLLC 675 Sun Valley Road, Suite A Post Office Box 3310 Ketchum, Idaho 83340</p>	<p><input type="checkbox"/> U.S. Mail <input type="checkbox"/> Facsimile: (208) 725-0076 <input type="checkbox"/> Hand Delivery <input checked="" type="checkbox"/> i-Court E-file Electronic Service eal@lawsonlaski.com heo@lawsonlaski.com efiling@lawsonlaski.com</p>

H. Furst
Deputy Clerk



EXHIBIT B

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abigail@pickenslawboise.com
Attorneys for Intervenor Cat Creek Energy, LLC

SUPREME COURT OF THE STATE OF IDAHO

CAT CREEK ENERGY, LLC, an Idaho
limited liability company,

Petitioner,

vs.

S BAR RANCH, an Idaho limited liability
company,

Respondent,

and

ELMORE COUNTY, IDAHO, a political
subdivision of the State of Idaho,

Respondent.

Docket No.

[Elmore County Case No. CV20-18-00525]

**VERIFIED PETITION FOR A WRIT OF
MANDATE**

COMES NOW Petitioner Cat Creek Energy, LLC, by and through its counsel of record, Terri Pickens Manweiler, of the firm Pickens Law PA, and hereby petitions this Court pursuant to Idaho Rule of Civil Procedure 74(b) for an Alternative Writ of Mandate, ordering Elmore County to allow site permitting for Cat Creek's wind and solar projects to proceed.

On February 10, 2017, Elmore County Board of Commissioners approved five (5) applications for conditional use permits (collectively, the "CUPs") for the construction of certain energy facilities, including a pump-storage hydroelectric generating facility, a solar generating facility, and a wind turbine electrical generating facility, in Elmore County.

SBar Ranch "SBar" was then, and is still currently, of the belief that the wind turbines and other electrical generating facilities Cat Creek intends to develop in Elmore County will adversely affect it and violate its rights. SBar made several requests for reconsideration to the Board, which were all ultimately denied for various reasons.

Resultingly, SBar filed a Petition for Judicial Review/Complaint, with the District Court seeking review of the Board's denial of SBar's request. Ultimately a Second amended Petition was filed on November 15, 2018 to include all denied requests for reconsideration made to the Board. The District Court issued a Memorandum Decision and Order on November 8, 2019, in the matter, denying Sbar's Petition for Judicial Review and SBar appeal to this Court, the above captioned matter currently pending. At no time has SBar ever sought or received a stay against Cat Creek continuing with the Project.

Since the District Court issued its decision, denying any relief to SBar, Elmore County has refused to allow Cat Creek to proceed with the permitting process. Elmore County Commissioners have prohibited Cat Creek from not only engaging county personnel, but also from conducting public meetings and submitting any application to move forward with the Project. This has stalled

all progress and complicated compliance with CUP deadlines and has serious economic and timing impacts on the Project.

The County states that SBar' s appeal to the Supreme Court makes it inappropriate and premature for Cat Creek to proceed with the permitting process for its wind and solar CUPs. Further they have affirmatively taken the position that they will only allow Cat Creek to proceed if there is an order issued from the District Court or this Court compelling them to do so.

There are no stays in place. No portion of the District Court's opinion, or portions of the currently pending appeal would preclude Cat Creek from moving forward with permitting for its project at this time. A writ of mandate is appropriate to enter, ordering Elmore County to allow Cat Creek to proceed with the permitting process for its wind and solar CUPs.

DATED: March 1, 2021.

PICKENS LAW, P.A.

By /s/ Terri Pickens Manweiler
Terri Pickens Manweiler, Of the Firm
Attorneys for Cat Creek Energy, LLC

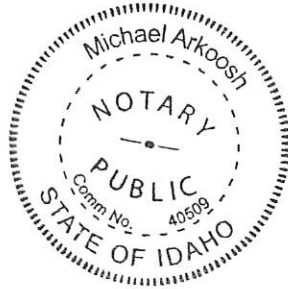
VERIFICATION

I, John Faulkner, verify that I have read the allegations contained in this Petition and that, other than allegations made upon information and belief, the allegations are true to the best of my knowledge, and I believe that the allegations made upon information and belief are true.

DATED: 2/26/21

John Faulkner
JOHN FAULKNER

SUBSCRIBED AND SWORN to before me on 02/26/2021



Michael Arkoosh
Notary Public for the State of Idaho
Residence: Gooding, Idaho
Commission Expires: 08/07/2021

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on March 1, 2021, a true and correct copy of the foregoing document was served as follows:

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Richard F. Goodson
Justin T. Cranney
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/s/ Terri Pickens Manweiler
Terri Pickens Manweiler

EXHIBIT C

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Attorneys for Intervenor Cat Creek Energy, LLC

SUPREME COURT OF THE STATE OF IDAHO

CAT CREEK ENERGY, LLC, an Idaho limited liability company,

Petitioner,

vs.

S BAR RANCH, an Idaho limited liability company,

Respondent,

and

ELMORE COUNTY, IDAHO, a political subdivision of the State of Idaho,
Respondent.

Docket No.

[Elmore County Case No. CV20-18-00525]

AFFIDAVIT OF JOHN FAULKNER IN SUPPORT OF VERIFIED PETITION FOR WRIT OF MANDATE

STATE OF IDAHO)
 : ss.
County of Ada)

JOHN FAULKNER being first duly sworn upon oath, deposes and says:

1. I am the Member of Intervenor, Respondent, Cross Appellant Cat Creek Energy LLC in the above captioned matter, and as such, have personal knowledge of the facts herein.
2. In February 2017, Elmore County Board of Commissioners (“County”) approved five (5) applications for conditional use permits (collectively, the “CUPs” or the “Project” when required in context) for Cat Creek Energy’s planned development of energy facilities, including a pump-storage hydroelectric generating facility, a solar generating facility, and a wind turbine electrical generating facility, in Elmore County.
3. The County and Cat Creek entered into a Development Agreement that governed the process of construction, and requirements for approval from the County at various stages.
4. SBar Ranch (“SBar”) was then, and is still currently, of the belief that the wind turbines and other electrical generating facilities Cat Creeks intends to develop in Elmore County will adversely affect it and violate its rights.
5. SBar made several requests for reconsideration to the County, which were all ultimately denied for various reasons.
6. SBar filed a Petition for Judicial Review/Complaint, with the District Court.
7. The District Court issued a Memorandum Decision and Order on November 8, 2019 in the matter, denying SBar’s Petition for Judicial Review. A true and accurate copy of the memorandum decision and order is in the appeal record.
8. SBar appealed to the Supreme Court.
9. Prior to the appeal, Cat Creek had filed a timely motion for reconsideration on the memorandum decision seeking clarification of the sentence that “another public hearing may likely be required” on the locations and final heights of the turbines.
10. Cat Creek sought clarification because the Development Agreement between it and the County did not require a public hearing absent a material change in the master site plan.
11. The District Court denied the motion for reconsideration, entering its order to that effect on February 20, 2020. A true and accurate copy of the denial is included in the appeal record.

12. By October of 2020 Cat Creek had been attempting to proceed to a public meeting regarding the Project, in accordance with the Development Agreement and the County was resistant.

13. In a letter sent from counsel for the County, he stated "On behalf of Elmore County, I cannot agree that it is appropriate for Cat Creek Energy to proceed to a public meeting with regard to the CCE project." He provided various reasons. First being that there was an appeal pending filed by SBar, stating "we therefore have great concern that proceeding... would act in violation of matters stayed due to the pendency of the appeal." The second reason was that the District Court "indicated that a further public hearing was likely," thereby perceiving that a public meeting was somehow a "run around" of the matters pending before the Supreme Court and of the decision at the District Court level. A true and accurate copy of the letter is attached hereto as Exhibit A.

14. While the County's concerns were noted, Cat Creek was inclined to continue with the permit application to stay on schedule.

15. This was because no stay had been sought by SBar after the District Court decision was entered, nor was a stay sought in the Supreme Court appeal.

16. The District Court did not order a stay of any kind on Cat Creek continuing the permit process.

17. The Supreme Court has not entered any form of stay with respect to the appeal matters that would stop Cat Creek from proceeding in the permit process.

18. Despite the absence of a stay, the County refused to allow Cat Creek to proceed with the permitting process.

19. On February 5, 2021, I met with Buzz Grant, the Board of County Commissioners legal counsel, whereby he articulated that the County would not be in a position not take any action on the Cat Creek energy matter until the Supreme Court made its decision.

20. Subsequently, Scott Hess, counsel for the County, sent a letter to counsel for Cat Creek articulating that the County does not have jurisdictional authority to allow Cat Creek to proceed. The letter concluded that absent a court order from the District Court or from the Supreme Court, the County would not allow Cat Creek to proceed. A true and accurate copy of this letter is attached hereto as Exhibit B.

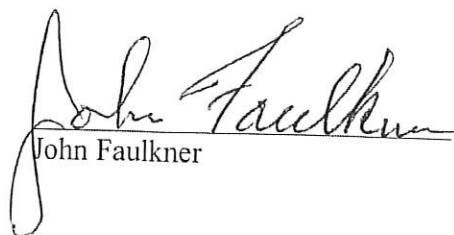
21. If this refusal to proceed persists until the Supreme Court decision on the appeal is issued, Cat Creek will be unable to complete the project per CUP approvals.

22. Cat Creek has been unable to stage construction, and this will create substantial issues with health and safety requirements as a direct result of the delays the County is creating.

23. Further, securing capital is becoming increasingly difficult when no forward movement is being made, absent any official and legally legitimate decision from the County.

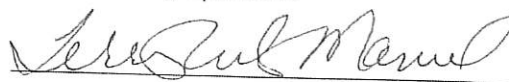
24. Time is not on Cat Creek's side. If Cat Creek is not allowed to commence the permitting process, it will not be able to meet all of its CUP deadlines and deadlines imposed in the Development Agreement.

DATED this 17th day of February 2021.


John Faulkner

SUBSCRIBED AND SWORN to before me on February 26, 2021.




Notary Public for the State of Idaho
Residence: BOISE, ID
Commission Expires: 11-1-22

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on March 1, 2021, a true and correct copy of the foregoing document was served as follows:

Merlyn W. Clark
Richard F. Goodson
Justin T. Cranney
William K. Smith
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877 Main Street, Ste. 1000
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Boise, ID 83701-1716

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Scott D. Hess
Claire C. Rosston
Holland & Hart LLP
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ccrosston@hollandhart.com

/s/ Terri Pickens Manweiler
Terri Pickens Manweiler

EXHIBIT A

October 22, 2020

Terri Pickens Manweiler
Pickens Cozakos, P.A.
P.O. Box 915
Boise, ID 83701
terri@pickenslawboise.com

Re: Cat Creek Energy

Dear Terri:

I am writing to follow up on our conversation last week and our telephone conversation of Tuesday of this week. As I noted in our recent conversation, on behalf of Elmore County, I cannot agree that it is appropriate for Cat Creek Energy (“CCE”) to proceed to a public meeting with regard to the CCE project.

First, there is an appeal pending filed by SBar Ranch. As set forth in SBar Ranch’s Amended Notice of Appeal, literally dozens of issues are raised. SBar Ranch’s challenges to the scope of the appeal with regard to the wind turbine issue are unclear. In light of Judge Baskin’s decision, the overall scope of the appeal is very apparent. SBar Ranch challenges, on many bases, the authority of the Elmore County Board of County Commissioners not only to act, but further challenges their conclusions reached as a result of such actions. We therefore have great concern that proceeding as you now propose would act in violation of matters stayed due to the pendency of the appeal.

Second, as you are aware, after Judge Baskin issued her decision, indicating that a further public hearing was “likely,” on behalf of Elmore County, we sought a remand of this matter from the District Court to the County Commissioners so that that hearing could occur. Judge Baskin denied that motion. We thus perceive the efforts of CCE to seek an end run around the matters currently pending before the Supreme Court and an end run around the decision of Judge Baskin.

Third, the Development Agreement, quoted by Judge Baskin, in section 2.1.5, requires a public hearing whenever there is a material modification. Judge Baskin concluded that specific siting of the wind towers would constitute a material modification under that provision. Therefore, as the record currently stands, a public hearing is required before final siting of the wind towers can occur.

Fourth, we have carefully reviewed other materials. Condition No. 9 relates to a public meeting. That requirement imposes an obligation for two public meetings to occur. Those

public meetings must occur in advance of the issuance of a building permit. It appears to us, on behalf of Elmore County, that any effort at the current time by CCE to seek a building permit is totally premature. We do not see how it is appropriate to seek a building permit with the pendency of the appeal before the Idaho Supreme Court. We do not see how it is appropriate to seek a building permit in light of the decision issued by Judge Baskin.

Accordingly, we have advised the director that any form of meeting regarding the CCE project is simply premature and should not occur. During our call on Tuesday, you indicated that CCE was nonetheless going to go forward. I do not understand exactly what you intend. If it is the intention of CCE to hold a public meeting at some public facility in or near Mountain Home, we certainly cannot stop you from having such a meeting. However, please be advised that any such meeting would not comply with any requirements that must be met should a building permit ultimately be sought by CCE. Moreover, it is our belief that any such public meeting would add nothing but confusion for an already contentious project.

Very truly yours,

/s/ Scott D. Hess

Scott D. Hess
Of Counsel
for Holland & Hart LLP

SDH:cmc

15608936_v1

EXHIBIT B

February 10, 2021

VIA E-MAIL

Terri Pickens Manweiler
Pickens Cozacos, P.A.
P.O. Box 915
Boise, ID 83701
terri@pickenslawboise.com

Re: Elmore County/Cat Creek Energy

Dear Terri:

I have now had the opportunity to review the “Third Annual Elmore County Update” (copy attached) which represents Cat Creek Energy’s (“CCE”) status update. I write to respond to certain comments contained in that update.

In the section entitled “Actions, or Lack Thereof, Have Consequences,” you state:

[T]hat despite no apparent basis in law, the Elmore County Commissioners have decided to prohibit CCE from not only engaging county personnel, but also from submitting any application to move forward with any module technology of the Project. Therefore, there have been no court mandated hearings for micro-siting of wind turbines, no building permit applications for review and approval, no required meetings for the public, and no submission of an update of the Wildlife Mitigation Plan to the County Commissioners. . . . Neither meaning nor intending any disrespect, CCE suggests that Elmore County should review its actions in this regard to determine if matters may proceed in light of the fact that there has been no stay on such actions sought by SBAR Ranch or imposed by the court.

Both Mr. Carkulis and Mr. Faulkner have approached the Board to raise similar concerns.

On 22nd day of October, 2020, when you first raised this issue, I sent you correspondence (copy attached) setting forth the County’s position as to why a hearing on these matters would not, in our view, be appropriate. I have never received any formal response providing any legal analysis explaining why the Board would have the jurisdictional authority to proceed as CCE now requests. Absent such compelling legal analysis, we stand on the comments contained in my correspondence.

February 10, 2021

Page 2

The Board simply will not agree to a hearing at this stage. We acknowledge the language contained in Judge Baskin's Order noting that a new public hearing with regard to the siting would "likely" be necessary. But, please recall it was the County that filed the motion with Judge Baskin asking for a remand to the Board for the exact purpose that you now assert. As you are aware, Judge Baskin denied the request.

Accordingly, the County's position is that a hearing at this stage is not something that rests within the jurisdiction of the Elmore County Board of County Commissioners. If you decide to seek an order from the District Court or from the Supreme Court that would allow such a hearing to proceed, we will respond accordingly and will, of course, abide by any decision that issued.

Very truly yours,

/s/ Scott D. Hess

Scott D. Hess
for Holland & Hart LLP

SDH:cmc
Enclosure
cc (w/enc.): Merlyn Clark

EXHIBIT D

Scott D. Hess, ISB #2897
Claire C. Rosston, ISB #9285
Philip J. Griffin, ISB #11093
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Attorneys for Elmore County, Idaho

SUPREME COURT OF THE STATE OF IDAHO

CAT CREEK ENERGY, LLC, an Idaho limited liability company,

Petitioner,

Vs.

S BAR RANCH, an Idaho limited liability company,

Respondent,

and

ELMORE COUNTY, IDAHO, a political subdivision of the State of Idaho,

Respondent.

Docket No. 48661-2021

[Elmore County Case No.
CV20-18-00525]

**DECLARATION OF SCOTT D.
HESS**

SCOTT D. HESS states as follows:

1. I am an attorney with Holland & Hart LLP, counsel for Respondent/Cross-Appellant, Elmore County, Idaho (“Elmore County”), in the above-referenced matter. In such capacity, I have personal knowledge of all matters stated herein.

2. Attached hereto as **Exhibit "A"** is a true, correct and authentic copy of Elmore County's Motion Pursuant to Idaho Rule of Civil Procedure 11.2(b)(1) and Idaho Appellate Rule 13(b)(13) together with the supporting Memorandum filed with the District Court on March 5, 2020.

3. Attached hereto as **Exhibit "B"** is a true, correct and authentic copy of the District Court's July 23, 2020, Order which denied the Motion to remand the matter to Elmore County Board of County Commissioners.

4. Attached hereto as **Exhibit "C"** are two items of correspondence sent to counsel for Cat Creek dated October 22, 2020, and February 10, 2021.

I declare under the penalties of perjury that the foregoing is true and correct.

DATED this 19th day of March, 2021.

/s/ Scott D. Hess
Scott D. Hess

CERTIFICATE OF SERVICE

I hereby certify that on this 19th day of March, 2021, I caused to be filed with iCourt and served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

Merlyn W. Clark	<input type="checkbox"/>	U.S. Mail
Richard F. Goodson	<input type="checkbox"/>	Hand Delivered
Justin T. Cranney	<input type="checkbox"/>	Overnight Mail
William K. Smith	<input type="checkbox"/>	Telecopy (Fax) to 208-954-5936
Hawley Troxell Ennis Hawley, LLP	<input checked="" type="checkbox"/>	iCourt/eServe
877 W. Main St., Suite 1000		
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<i>Attorneys for SBar Ranch</i>		

Edward A. Lawson	<input type="checkbox"/>	U.S. Mail
Heather E. O'Leary	<input type="checkbox"/>	Hand Delivered
Lawson Laski Clark, PLLC	<input type="checkbox"/>	Email
675 Sun Valley Road, Suite A	<input type="checkbox"/>	Telecopy (Fax) to 208-725-0076
P.O. Box 3310	<input checked="" type="checkbox"/>	iCourt/eServe
Ketchum, ID 83340		
<i>Attorneys for Cat Creek Energy, LLC</i>		

Terri Pickens Manweiler	<input type="checkbox"/>	U.S. Mail
Abigail McCleery	<input type="checkbox"/>	Hand Delivered
Pickens Law, P.A.	<input type="checkbox"/>	Email
398 South 9th Street, Suite 240	<input type="checkbox"/>	Telecopy (Fax) to 208-954-5099
P.O. Box 915	<input checked="" type="checkbox"/>	iCourt/eServe
Boise, ID 83701		
<i>Attorneys for Cat Creek Energy, LLC</i>		

/s/ Scott D. Hess

Scott D. Hess
for HOLLAND & HART LLP

16429896_v1

EXHIBIT A

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Attorneys for Elmore County

**IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF ELMORE**

S BAR RANCH, an Idaho limited liability
company,

Petitioner/Plaintiff,

vs.

ELMORE COUNTY, IDAHO, a political
subdivision of the State of Idaho,

Respondent/Defendant.

CAT CREEK ENERGY, LLC, an Idaho limited
liability company,

Intervenor.

Case No. CV20-18-00525

MOTION PURSUANT TO IDAHO
RULE OF CIVIL PROCEDURE
11.2(b)(1) AND IDAHO APPELLATE
RULE 13(b)(13)

COMES NOW Elmore County, Idaho, by and through its attorneys of record, Holland & Hart LLP, and move this Court pursuant to the provisions of Idaho Rule of Civil Procedure 11.2(b)(1) and Idaho Appellate Rule 13(b)(13) for an order implementing the Court's recent "Order on Cat Creek's Motion for Reconsideration" by directing that further proceedings occur before the Elmore County Board of County Commissioners.

MOTION PURSUANT TO IDAHO RULE OF CIVIL PROCEDURE 11.2(b)(1) AND IDAHO APPELLATE RULE 13(b)(13) - 1

CERTIFICATE OF SERVICE

I hereby certify that on this 5th day of March, 2020, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

Merlyn W. Clark	<input type="checkbox"/>	U.S. Mail
Richard F. Goodson	<input type="checkbox"/>	Hand Delivered
Justin T. Cranney	<input type="checkbox"/>	Overnight Mail
William K. Smith	<input type="checkbox"/>	Telecopy (Fax) to 208-954-5936
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877 W. Main St., Suite 1000		
Boise, ID 83702		

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P.O. Box 3310	<input checked="" type="checkbox"/>	iCourt/eServe
Ketchum, ID 83340		

Terri Pickens Manweiler	<input type="checkbox"/>	U.S. Mail
Pickens Cozacos, P.A.	<input type="checkbox"/>	Hand Delivered
398 South 9th Street, Suite 240	<input type="checkbox"/>	Email
P.O. Box 915	<input type="checkbox"/>	Telecopy (Fax) to 208-954-5099
Boise, ID 83701	<input checked="" type="checkbox"/>	iCourt/eServe

/s/ Scott D. Hess

Scott D. Hess
for HOLLAND & HART LLP

14272583_v1

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Attorneys for Elmore County

**IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF ELMORE**

S BAR RANCH, an Idaho limited liability
company,

Petitioner/Plaintiff,

vs.

ELMORE COUNTY, IDAHO, a political
subdivision of the State of Idaho,

Respondent/Defendant.

CAT CREEK ENERGY, LLC, an Idaho limited
liability company,

Intervenor.

Case No. CV20-18-00525

MEMORANDUM IN SUPPORT OF
MOTION PURSUANT TO IDAHO
RULE OF CIVIL PROCEDURE
11.2(b)(1) AND IDAHO APPELLATE
RULE 13(b)(13)

COMES NOW Elmore County, Idaho ("Elmore County"), by and through its attorneys of record, Holland & Hart LLP, and submits this Memorandum in support of Elmore County's Motion pursuant to Idaho Rule of Civil Procedure 11.2(b)(1) and Idaho Appellate Rule 13(b)(13). By this Motion, Elmore County requests that this Court, as part of the Petition for Judicial Review that is currently pending, remand the matter to the Elmore County Board of

County Commissioners for further proceedings. Elmore County will file motion with the Supreme Court seeking to stay all appellate proceedings pending resolution of this Motion. In the event this Court grants this Motion, Elmore County will Petition the Idaho Supreme Court to dismiss the pending appeal or to stay all proceedings in the current appeal until the Elmore County Board of County Commissioners has completed its review and any subsequently filed Petition for Judicial Review is resolved.

I. AUTHORITY

In the recent Order on Cat Creek Energy, LLC's ("CCE") Motion for Reconsideration ("Reconsideration Order"), this Court fully set forth the standards that guide a court in addressing a motion for reconsideration. It is unnecessary to restate those standards, except to emphasize that the Court must act with appropriate discretion in addressing a reconsideration request. As noted in *Arregui v. Gallegos-Main*, 153 Idaho 801, 808, 291 P.3d 1000, 1007 (2012), "evidence is not required and the moving party can reargue the same issues in addition to new arguments." However, it is not the intention of Elmore County to simply reargue the prior Motion for Reconsideration. It is the intention, however, of Elmore County to request that this Court act to implement its order its Reconsideration Order. Notwithstanding the pendency of the appeal, this Court is authorized to take such action pursuant to Idaho Appellate Rule 13(b)(13) which provides:

(b) Stay Upon Appeal – Powers of District Court – Civil Actions.
In civil actions, unless prohibited by order of the Supreme Court, the district court shall have the power and authority to rule upon the following motions and to take the following actions during the pendency on [sic] an appeal;

...

(13) Take any action or enter any order required for the enforcement of any judgment or order.

Upon the filing of an appeal, the district court is ordinarily divested of jurisdiction to act in any manner with relation to the rights and liabilities of an appellant, except to act in aid of and not inconsistent with the appeal. *See, e.g., H&B Engineering Inc. v. Idaho State Board of Professional Engineers and Land Surveyors*, 113 Idaho 646, 747 P.2d 55 (1987). This principle is, however, subject to Idaho Appellate Rule 13 which specifically authorizes a court to consider a motion for reconsideration under Idaho Rule of Civil Procedure 11.2(b)(1) and/or under Idaho Appellate Rule 13(b)(7)) to take action or enter “any order” required for the “enforcement of any judgment or order.”

Based upon this authority, Elmore County contends that this Court has jurisdiction to consider the present Motion. Elmore County contends that this Court has the authority under the Rules set forth to remand this matter to the County for further proceedings.

II. ARGUMENT

Cat Creek Energy, LLC (“Cat Creek”) filed a Motion for Reconsideration of a portion of the Memorandum Decision and Order on Petition for Judicial Review, filed November 8, 2019, (“Memorandum Decision”). In its Memorandum Decision, the Court concluded that the actions taken by Elmore County, specifically the actions of the Elmore County Board of County Commissioners, did not violate any aspect of the due process rights, either procedural or substantive, as had been asserted by SBar. The Court further concluded SBar Ranch’s rights, as set forth in LLUPA, were not violated. Finally, the Court concluded that SBar had failed to establish a violation of its substantial rights by any of the actions taken, findings of fact issued, or conclusions of law entered by the Board with regard to the Cat Creek project.

Within the Court's Memorandum Decision, at pages 56-57, the Court expressed some concern as to the height of the wind towers and the specific location of the wind towers. The Court noted in the original CUP grant, confirmed by the Board on February 10, 2017 the location of the wind towers was generally described in an area encompassing approximately 15,000 acres. That "location" was confirmed by the Board of County Commissioners as acceptable. Notwithstanding that, Cat Creek later modified its intentions regarding the location of the wind turbines describing their intention to be placement of the wind towers "on approximately 40 of the 3,354 acres." This limitation of the area where the towers would be located was confirmed by the Elmore County Board of County Commissioners. The Court found no error in this approval granted by the Board. However, the Court noted: "The Board's approval of the final location of the wind turbines and their final heights are therefore likely to require an additional public hearing under LLUPA and the Zoning Ordinance to avoid violating due process rights or substantial rights of SBar and other members of the public." Memorandum Decision at 56-57. Cat Creek sought reconsideration of this aspect of the decision.

Elmore County took the position that reconsideration was unnecessary. Elmore County understood that the Court had approved the procedures utilized and the conclusions that the County had reached. Memorandum Decision, pgs. 75-77. The County had approved the siting of the wind towers to occur on approximately 40 of the 3,354 acres. It was the County's position that if the wind towers were actually placed on no more than 40 acres within the 3,354 designated acres, then such action was approved.

A. The Court's Reconsideration Order.

The Court's Reconsideration Order took a different approach. The Court noted, at page 5 of its Reconsideration Order, that the representation from Cat Creek that the wind towers would

in fact be located within the 3,354 acres on the Revised Master Site Plan, Exhibit D of the Development Agreement, was insufficient. The Court concluded that such representation was not included within the administrative record. In that regard, Elmore County simply notes that its approval of the Revised Master Site Plan, and specifically Exhibit D of the Development Agreement, confirmed the County's understanding that wind turbines would, in fact, be located on 40 acres of the identified 3,354-acre parcel.

The Court further held, at page 7 of its Reconsideration Order, that SBar had actual notice of and an opportunity to comment on the Revised Wind CUP, the incorporated Development Agreement, and the siting limitation of 3,354 acres for the wind turbines. Notwithstanding this, the Court concluded that the issue of the final locations for the turbines, within the 3,354 acres, had not been decided. Therefore:

The public has not had the opportunity to comment on the final location for the turbines within the 3,354 acres. Because the final locations of the turbines have not been determined, this issue is not before the Court in the Petition for Judicial Review. In the Petition for Judicial Review, the Court simply reviewed the Board's action on the project based on what has occurred, not on what actions may occur in the future. The Court takes no position regarding Cat Creek's argument that two building permit public hearings are sufficient to allow SBar and the public to effectively comment. The Court's Memorandum Decision and Order only determined SBar had not carried its burden to show the actions of the Board violated the law or that SBar's substantial rights had been prejudiced by the Board's actions on the project covered by the Petition for Judicial Review.

Reconsideration Order at p. 7. Thus, the Court concluded that the location of the "40 acres" within the total 3,354 acres for wind tower siting is a matter that the public has an interest in

commenting upon. The Court further noted that if the wind towers are to exceed 500 feet in height, the public has an interest in that issue, and public hearing would be necessary.¹

Finally, the Court noted the limited scope of its Memorandum Decision and Reconsideration Order in the face of the Petition for Judicial Review:

As stated earlier, the Court finds the interpretation and application of the Development Agreement to the final location and heights of the turbines yet to be determined is not before the Court on this Petition for Judicial Review. The Court merely pointed out some of the language of the Development Agreement in its Memorandum Decision and Order as well as referencing LLUPA and the amended zoning ordinance to support its finding that when the exact locations and final heights of the wind turbines are known, a hearing “may” be likely. In considering Cat Creek’s Motion for Reconsideration, the Court finds no reason to modify its findings. Whether or not the final placement of the turbines are a “material modification” was not determined by the Board in its approval of the Development Agreement and is not part of this Court’s judicial review of the actions of the Board on the project. Moreover, there is no evidence the height of the turbines will change or exceed 500 feet such that the height is a material modification requiring a public hearing under the Development Agreement, the amended zoning ordinances or LLUPA.

Reconsideration Order at p. 9.

B. Requested Relief.

Elmore County understands the Court’s Reconsideration Order—the question of final height of the wind towers and final location of the wind towers, within the 3,354 acres has not been decided. The Court concluded that Elmore County’s approval of wind towers not to exceed 500 feet was appropriate. In its Memorandum Decision, the Court noted the grant of approval by

¹ The County maintains its view, as set forth in its Opposition to CCE’s Motion for Reconsideration, that the Court’s approval of the Board’s actions approving the CUPs and the Development Agreement should end this matter. However, for the reasons set forth below, the County contends that judicial economy and effective and efficient use of resources compels a remand.

Elmore County to wind turbines not to exceed 500 feet. In its Reconsideration Order, the Court noted no evidence presented nor concern expressed that the wind towers would exceed 500 feet. Therefore, Elmore County interprets the wind turbine height issue to be concluded. Since the wind turbines will not exceed 500 feet in height, they have been approved by the Elmore County Board of County Commissioners and any objection to the heights as set forth by SBar Ranch were rejected by this Court. Of course, if CCE proposes a “material modification” to the maximum wind tower height allowed, such request would require a public hearing.

However, the issue of location remains. Elmore County requests that this Court enter an Order of Limited Remand, pursuant to either a reconsideration analysis under Rule 11.2(b)(1) or pursuant to the authority set forth in Idaho Appellate Rule 13(b)(13) that gives the Court authority to enforce its orders and judgments. The limited remand contemplated by Elmore County would require Cat Creek to set forth the final location for the wind towers. A public hearing would be conducted by Elmore County on that location issue. If either party felt it appropriate, they could submit a request for reconsideration to the Elmore County Board of County Commissioners. Thereafter, if either party concluded that a petition for judicial review on that limited issue was appropriate, such petition would be filed and heard by this Court. Thereafter, the issue would be ripe and appropriate for appeal. That appeal would include all issue currently identified in the pending appeal, together with any issues that a party felt it appropriate to add as a result of the decision of the Board upon limited remand.

Unfortunately, as the record now stands and if this Motion is not granted, two appellate processes appear likely. First, the pending matter would proceed to appellate review by the Idaho Supreme Court. If the Idaho Supreme Court were to affirm this Court’s Memorandum Decision on the Petition for Judicial Review and its Reconsideration Order, unfortunately the

matter would not be completed. Rather, further proceedings would be required at the Elmore County Board level to address wind tower siting, followed by a subsequent petition for review, and the potential if not likely subsequent additional appeal. That anticipated process will result in a substantial waste of judicial resources, and certainly a waste of the limited resources of Elmore County. Elmore County's goal is to have this matter resolved properly, consistent with statutory and constitutional requirements in the most efficient and expeditious fashion possible.

In the event the Court grants this Motion, Elmore County will proceed with a hearing consistent with all applicable rules and statutes so that the issue may be expeditiously resolved.

III. CONCLUSION

For the reasons set forth above, Elmore County respectfully requests that this Court reconsider its Reconsideration Order by remanding this matter to the Elmore County Board of County Commissioners for further, but limited proceedings. The Court is authorized to do so pursuant to Idaho Rule of Civil Procedure 11.2(b)(1) and pursuant to Idaho Appellate Rule 13(b)(13).

DATED March 5, 2020

HOLLAND & HART LLP

By /s/ Scott D. Hess
Scott D. Hess, of the firm
Claire C. Rosston, of the firm
Attorneys for Elmore County

CERTIFICATE OF SERVICE

I hereby certify that on this 5th day of March, 2020, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

Merlyn W. Clark	<input type="checkbox"/>	U.S. Mail
Richard F. Goodson	<input type="checkbox"/>	Hand Delivered
Justin T. Cranney	<input type="checkbox"/>	Overnight Mail
William K. Smith	<input type="checkbox"/>	Telecopy (Fax) to 208-954-5936
Hawley Troxell Ennis Hawley, LLP	<input checked="" type="checkbox"/>	iCourt/eServe
877 W. Main St., Suite 1000		
Boise, ID 83702		

Edward A. Lawson	<input type="checkbox"/>	U.S. Mail
Heather E. O'Leary	<input type="checkbox"/>	Hand Delivered
Lawson Laski Clark, PLLC	<input type="checkbox"/>	Email
675 Sun Valley Road, Suite A	<input type="checkbox"/>	Telecopy (Fax) to 208-725-0076
P.O. Box 3310	<input checked="" type="checkbox"/>	iCourt/eServe
Ketchum, ID 83340		

Terri Pickens Manweiler	<input type="checkbox"/>	U.S. Mail
Pickens Cozacos, P.A.	<input type="checkbox"/>	Hand Delivered
398 South 9th Street, Suite 240	<input type="checkbox"/>	Email
P.O. Box 915	<input type="checkbox"/>	Telecopy (Fax) to 208-954-5099
Boise, ID 83701	<input checked="" type="checkbox"/>	iCourt/eServe

/s/ Scott D. Hess

Scott D. Hess
for HOLLAND & HART LLP

14272622_v1

EXHIBIT B

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ELMORE

SBAR RANCH, an Idaho limited liability
company,
Petitioner,

vs.

ELMORE COUNTY, IDAHO, a political
subdivision of the State of Idaho,

Respondent.

CAT CREEK ENERGY, LLC, an Idaho
limited liability company.

Intervenor.

Case No. CV20-18-00525

ORDER ON ELMORE COUNTY'S
MOTION PURSUANT TO IDAHO RULE
OF CIVIL PROCEDURE 11.2(b)(1) AND
IDAHO APPELLATE RULE 13(b)(13)

On March 5, 2020, Elmore County has filed a Motion Pursuant to Idaho Rule of Civil Procedure 11.2(b)(1) and Idaho Appellate Rule 13(b)(13) to seeking a remand by this court so the Elmore County Board of Commissioners can conduct further proceedings which will provide a full and complete record for the Idaho Supreme Court to review. Plaintiff SBar Ranch objects to the motion as not being allowed under the applicable rules. Intervenor Cat Creek Energy, LLC filed a notice of non-objection to the County's motion. The Court scheduled a hearing on the motion and the hearing had to be reset to a late date based on the COVID-19 pandemic. The matter was taken under advisement after argument and the Court now issues its ruling.

Procedural History

The Court issued its Memorandum Decision and Order on Petition for Judicial Review and Judgment on November 8, 2019. Cat Creek filed a motion for reconsideration on November 22, 2019. SBar Ranch filed a Notice of Appeal on December 17, 2019 and the County and Cat
ORDER ON COUNTY'S MOTION PURSUANT TO IRCP 11.2 AND IAR 13- PAGE 1

Creek filed cross appeal on January 6, 2020. The Court denied Cat Creek's motion for reconsideration on February 20, 2020. When the County filed the current motion, the Court no longer had jurisdiction over the case. *See, e.g., H&B Engineering Inc. v. Idaho State Board of Professional Engineers and Land Surveyors*, 113 Idaho 646, 747 P.2d 55 (1987). However, on April 1, 2020, the Idaho Supreme Court granted a motion to suspend the appeal to allow the district court to rule on the County's motion.

Motion for Reconsideration

A motion to reconsider an order entered after the entry of final judgment must be made within fourteen days after entry of the order. I.R.C.P. 11.2(b)(1). The standard of review for a motion for reconsideration was set forth in the Order on Cat Creek's Motion for Reconsideration and is incorporated by reference in this Order as the standard of review for such a motion is not contested by the parties. Rather, SBar contests whether the County can even file a motion for reconsideration on a petition for judicial review.

The County requests the Court remand the matter to the Board of County Commissioners to hold a hearing regarding the exact siting for the wind turbines within the reduced area approved for the turbines to be placed. The County argues holding the hearing on the exact location of the wind turbines will allow that issue which the Court indicated would "likely" require an additional public hearing to be held and then have just one appeal on the entire project be reviewed by the Supreme Court. The County argues this Court is authorized to take such action pursuant to I.A.R. 13(b)(13) which provides:

(b) Stay Upon Appeal – Powers of District Court—Civil Actions. In civil actions, unless prohibited by order of the Supreme Court, the district court shall have the power and authority to rule upon the following motions and to take the following actions during the pendency on an appeal;

...

(13) Take any action or enter any order required for the enforcement of any judgment or order.

The County argues when the Court issued its ruling on Cat Creek's motion for reconsideration, the Court clarified its position in way that was different than the County had understood the Court's initial ruling in the Memorandum Decision and Order. The Court attempted to make clear in the Order on the Motion for Reconsideration that while the County had lawfully approved the reduced location of the wind turbine area to 3,354 acres, the public had not been given an effective opportunity to comment on the final location of the wind turbines expected to cover an area of approximately 40 acres of the 3,354 acres shown on the Revised Master Site Plan, Exhibit D to the Development Agreement. This is because Cat Creek could not say exactly where the turbines would be located when the public hearings were held. In the Court's opinion, Cat Creek did not expressly state in the public hearings the turbines would in fact be located in the 3,354 acres approved by the County¹ nor did it say exactly where the turbines would be sited within the 3,354 acres. The 40 acres within the 3,354 acres certainly has not been identified with particularity to allow a member of the public to effectively comment on the placement of the turbines. Additionally, Cat Creek did not state it had determined the exact height of the turbines. So this too was potentially an open question should the turbines exceed the lawfully approved maximum height of 500 feet. This is why, without taking a position on the interpretation of the Development Agreement, the Court indicated it was "likely" another public hearing would need to be held.

The County considers the issue of the height of the turbines to be resolved since it only approved a maximum height of 500 feet and there is no evidence Cat Creek will seek to exceed

¹ The County argues the Board of Commissioners understood they were approving that the turbines would be located within the 3,354 acres identified on the Revised Master Site Plan. The Court finds that fact is not clear since Cat Creek did not know where the turbines would be located and indicated wind studies needed to be completed, before the specific siting of the turbines would be known. If the wind turbines are in fact intended to be located somewhere within the 3,354 acres approved via the listed legal descriptions, then that may not be a modification of the Board's approval of the Wind Cup.

that height. Counsel for the County indicated at the hearing the County intends to comply with the Court's order regarding a public hearing on siting, but from a practical standpoint it argues it would be better to remand this case back to the County to hold the public hearing anticipated by the Court so the exact siting can be identified, commented on by the public and ruled upon by the Board of Commissioners. The County argues one appeal versus two appeals is the most efficient and expeditious manner in which to proceed.

SBar argues this attempt to reopen the administrative record is not allowed under the rules. SBar argues I.R.C.P. 11.2 does not apply as this is a petition for judicial review. SBar's argument begins noting this issue was not raised for Cat Creek's motion for reconsideration which was denied by the Court. SBar now argues that as to the County's motion for reconsideration, it should not be allowed as this case is a petition for judicial review not a civil complaint. As such the petition for judicial review is brought pursuant to I.R.C.P. 84 and such rule does not mention motions for reconsideration. However, SBar concedes that I.R.C.P. 84 does allow for a "petition for rehearing" that would allow a party the same type of relief as a motion for reconsideration. *See* I.R.C.P. 84(t)(2)(B). Additionally, Rule 84 also includes the following language: "Any procedure for judicial review not specified or covered by this rules must be in accordance with the appropriate rule of the Idaho Appellate Rules to the extent not contrary to this Rule 84." I.R.C.P. 84(r).

SBar continues that the Appellate Rules do not specifically allow for a motion for reconsideration, but do allow a party to file a petition for rehearing within 21 days after the filing of the Court's opinion. I.A.R. 42(a). So SBar now concludes Cat Creek's earlier motion for reconsideration was more properly a petition for rehearing under I.A.R. 42 and the County's motion for reconsideration should also be deemed a petition for rehearing. *See Ustick v. Ustick*, 104 Idaho 215, 219, 657 P.2d 1083, 1087 (Ct. App. 1983).

This Court denied Cat Creek's motion for reconsideration and no party argued it should be deemed a petition for rehearing at that time. To the extent the Court should have been deemed Cat Creek's motion a petition for rehearing pursuant to *Dieziger v. Pickering*, 122 Idaho 718, 719, 838 P.2d 321, 322 (Ct. App. 1992), the Court's ruling on such a petition for rehearing would have also been denied for the same reasons set forth in the Court's Order of February 20, 2020.

As to the County's motion it is slightly different than Cat Creek's as the County cites not only I.R.C.P. 11.2 but I.A.R. 13(b)(13). SBar argues that the County had to have filed a petition for rehearing within 21 days of the Court's Judgment on November 8, 2019 since the Court did not "modify" its opinion when it denied Cat Creek's motion. The Court agrees it should apply the rule for petitions for rehearing to the County's motion for reconsideration. The Court will deem the County's motion as a petition for rehearing. The Court finds the request is not timely filed as this Court did not modify its earlier ruling when it denied Cat Creek's motion. Any clarification by the Court did not rise to becoming a modification of the Court's earlier order. The petition for rehearing was not filed within the 21 day deadline from when the Judgment was filed. As discussed in *Pickering*, the clock does not start again for a second petition for rehearing by another party after the first motion for rehearing is denied.

As to the applicability of I.A.R. 13(b)(13), the Court finds that rule does not apply as the County is not requesting this Court take action or enter an order required for the *enforcement* of the judgment. See *Idaho First Bank v. Bridges*, 164 Idaho 178, 189, 426 P.3d 1278, 1289 (2018). The County is requesting the Court *change* its judgment and remand the matter to the Board of Commissioners for a further hearing which is not what this Court ruled must be done in this case. This would be a misapplication of I.A.R. 13(b)(13) as it would result in the reopening of the administrative record in this matter as well as potential motions for reconsideration of any further

ORDER ON COUNTY'S MOTION PURSUANT TO IRCP 11.2 AND IAR 13- PAGE 5

action by the Board of Commissioners. That is not what is intended by an action or order for enforcement of the judgment.

Conclusion

The Court is mindful of the fact that this litigation could be drawn out and may include a second appeal. But the County's request to remand simply is not timely and would have the effect of allowing the record to be reopened when the Court did not find that the Board of Commissioners had violated SBar's rights on the matters it decided. The County argued in its reply brief its goal in filing the motion for a limited remand was to preserve judicial resources and the parties' resources and it would require that Cat Creek was ready to identify tower locations. However, Cat Creek's counsel admitted at the hearing on this motion, it still does not know where the turbines will be sited. Therefore, it could take months before the siting question is before the Board of Commissioners even if the County intends to proceed with a hearing on the siting of the turbines.

Litigation gives the parties a full and fair opportunity to make their cases, but unfortunately it is not always a speedy resolution for the parties. Here, the Court has affirmed the actions of the Board of Commissioners and that decision has been appealed by the parties. The resolution of the appeals is the next step for this case as the Court does not have the authority under the rules cited by the County to allow it to rule on the County's request for a remand. The County's motion is denied.

IT IS SO ORDERED.

Dated this 17th day of July, 2020.


NANCY A. BASKIN
District Judge

CERTIFICATE OF MAILING

Signed: 7/23/2020 08:35 AM

I hereby certify that on _____, I caused a true and correct copy of the **ORDER ON ELMORE COUNTY'S MOTION FOR RECONSIDERATION** to be served by the method indicated below, and addressed to the following:

Merlyn W. Clark, Esq. [X] Email
Tyler J. Anderson, Esq.
William K. Smith, Esq.
HAWLEY TROXELL ENNIS & HAWLEY, LLP.
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Attorney for Intervenor

SHELLEY ESSL
Clerk of the District Court

By *S. Furst*
Deputy Clerk



EXHIBIT C

October 22, 2020

Terri Pickens Manweiler
Pickens Cozacos, P.A.
P.O. Box 915
Boise, ID 83701
terri@pickenslawboise.com

Re: Cat Creek Energy

Dear Terri:

I am writing to follow up on our conversation last week and our telephone conversation of Tuesday of this week. As I noted in our recent conversation, on behalf of Elmore County, I cannot agree that it is appropriate for Cat Creek Energy ("CCE") to proceed to a public meeting with regard to the CCE project.

First, there is an appeal pending filed by SBar Ranch. As set forth in SBar Ranch's Amended Notice of Appeal, literally dozens of issues are raised. SBar Ranch's challenges to the scope of the appeal with regard to the wind turbine issue are unclear. In light of Judge Baskin's decision, the overall scope of the appeal is very apparent. SBar Ranch challenges, on many bases, the authority of the Elmore County Board of County Commissioners not only to act, but further challenges their conclusions reached as a result of such actions. We therefore have great concern that proceeding as you now propose would act in violation of matters stayed due to the pendency of the appeal.

Second, as you are aware, after Judge Baskin issued her decision, indicating that a further public hearing was "likely," on behalf of Elmore County, we sought a remand of this matter from the District Court to the County Commissioners so that that hearing could occur. Judge Baskin denied that motion. We thus perceive the efforts of CCE to seek an end run around the matters currently pending before the Supreme Court and an end run around the decision of Judge Baskin.

Third, the Development Agreement, quoted by Judge Baskin, in section 2.1.5, requires a public hearing whenever there is a material modification. Judge Baskin concluded that specific siting of the wind towers would constitute a material modification under that provision. Therefore, as the record currently stands, a public hearing is required before final siting of the wind towers can occur.

Fourth, we have carefully reviewed other materials. Condition No. 9 relates to a public meeting. That requirement imposes an obligation for two public meetings to occur. Those

public meetings must occur in advance of the issuance of a building permit. It appears to us, on behalf of Elmore County, that any effort at the current time by CCE to seek a building permit is totally premature. We do not see how it is appropriate to seek a building permit with the pendency of the appeal before the Idaho Supreme Court. We do not see how it is appropriate to seek a building permit in light of the decision issued by Judge Baskin.

Accordingly, we have advised the director that any form of meeting regarding the CCE project is simply premature and should not occur. During our call on Tuesday, you indicated that CCE was nonetheless going to go forward. I do not understand exactly what you intend. If it is the intention of CCE to hold a public meeting at some public facility in or near Mountain Home, we certainly cannot stop you from having such a meeting. However, please be advised that any such meeting would not comply with any requirements that must be met should a building permit ultimately be sought by CCE. Moreover, it is our belief that any such public meeting would add nothing but confusion for an already contentious project.

Very truly yours,

/s/ Scott D. Hess

Scott D. Hess
Of Counsel
for Holland & Hart LLP

SDH:cmc

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February 10, 2021

VIA E-MAIL

Terri Pickens Manweiler
Pickens Cozacos, P.A.
P.O. Box 915
Boise, ID 83701
terri@pickenslawboise.com

Re: Elmore County/Cat Creek Energy

Dear Terri:

I have now had the opportunity to review the "Third Annual Elmore County Update" (copy attached) which represents Cat Creek Energy's ("CCE") status update. I write to respond to certain comments contained in that update.

In the section entitled "Actions, or Lack Thereof, Have Consequences," you state:

[T]hat despite no apparent basis in law, the Elmore County Commissioners have decided to prohibit CCE from not only engaging county personnel, but also from submitting any application to move forward with any module technology of the Project. Therefore, there have been no court mandated hearings for micro-siting of wind turbines, no building permit applications for review and approval, no required meetings for the public, and no submission of an update of the Wildlife Mitigation Plan to the County Commissioners. . . . Neither meaning nor intending any disrespect, CCE suggests that Elmore County should review its actions in this regard to determine if matters may proceed in light of the fact that there has been no stay on such actions sought by SBAR Ranch or imposed by the court.

Both Mr. Carkulis and Mr. Faulkner have approached the Board to raise similar concerns.

On the 22nd day of October, 2020, when you first raised this issue, I sent you correspondence (copy attached) setting forth the County's position as to why a hearing on these matters would not, in our view, be appropriate. I have never received any formal response providing any legal analysis explaining why the Board would have the jurisdictional authority to proceed as CCE now requests. Absent such compelling legal analysis, we stand on the comments contained in my correspondence.

The Board simply will not agree to a hearing at this stage. We acknowledge the language contained in Judge Baskin's Order noting that a new public hearing with regard to the siting would "likely" be necessary. But, please recall it was the County that filed the motion with Judge Baskin asking for a remand to the Board for the exact purpose that you now assert. As you are aware, Judge Baskin denied the request.

Accordingly, the County's position is that a hearing at this stage is not something that rests within the jurisdiction of the Elmore County Board of County Commissioners. If you decide to seek an order from the District Court or from the Supreme Court that would allow such a hearing to proceed, we will respond accordingly and will, of course, abide by any decision that issued.

Very truly yours,

/s/ Scott D. Hess

Scott D. Hess
for Holland & Hart LLP

SDH:cmc
Enclosure
cc (w/enc.): Merlyn Clark

THIRD ANNUAL ELMORE COUNTY UPDATE

CRITERIA UNDER DEVELOPMENT AGREEMENT SECTION 9, ANNUAL REVIEW

SECTION 9. ANNUAL REVIEW.

Commencing on the first-year anniversary of the Effective Date, and every year thereafter, so long as the Project is in operation, Developer shall submit a status report, and meet in person with the Board, detailing the status of the development and operations of the Project ("Annual Review"). Upon request by Developer, the Board, in its sole and absolute discretion, may modify, waive or terminate the Annual Review requirement after 5 years of Project operation.

The Annual Review during construction activities shall include a review of Developer's plan (i) to implement erosion control measures, (ii) for the timing of construction activities, (iii) on federal and state permitting efforts, and (iv) for any other activities associated with construction and permitting activities. The Annual Review once the Project is operational shall include a review of (i) fish stocking and other wildlife management, (ii) general operations and any problems associated with those operations, (iii) Developer concerns, and (iv) any other matters pertaining to the Project.

STATEMENT THAT PROJECT STILL UNDER DEVELOPMENT

No construction activities in the Cat Creek Energy ("CCE") project have been performed to date. The local permitting process has stopped construction of the wind and solar modules despite no discernible statute expressly prohibiting CCE activities under the 5 Conditional Use Permits and development agreement from moving forward. Therefore, this annual review covers only development activities.

ACTIONS, OR LACK THEREOF, HAVE CONSEQUENCES

CCE anticipated issuing a Limited Notice to Proceed in building the wind and solar modules of the Project in 2020, bringing jobs and other economic benefits to Elmore County. Unfortunately, SBAR Ranch legal actions against Elmore County and its Commissioners have led to a decision, that despite no apparent basis in law, the Elmore County Commissioners have decided to prohibit CCE from not only engaging county personnel, but also from submitting any application to move forward with any module technology of the Project. Therefore, there have been no court mandated hearings for micro-siting of wind turbines, no building permit applications for review and approval, no required meetings for the public, and no submission of an update of the Wildlife Mitigation Plan to the County Commissioners. This has serious economic and timing impacts on the success of the Project. It further complicates compliance with the CUPs deadlines. CCE designed the project to be built in stages and the wind and solar project delays have ramifications throughout the schedule. Neither meaning nor intending any disrespect, CCE suggests that Elmore County should review its actions in this regard to determine if matters may proceed in

light of the fact that there has been no stay on such actions sought by SBAR Ranch or imposed by the court.

STATUS OF OVERALL PROJECT

Despite the restrictions imposed by the Commission's decision, Cat Creek Energy continues to advance the project on the many fronts necessary to bring the most significant water storage and renewable energy project in the West to fruition. That is not just a CCE claim, but rather, it continues to find resonance in many NGOs, government entities, and expert reviews of the unique nature of the Project and its numerous contributions to both energy and water. The size necessitates staged construction, cooperation of agency participants, and a smooth procedural timeline to bring the Project to commercial operation.

2020 PROJECT MILESTONES

Technology:

- Pumped Storage Hydro – The selection of Voith ternary design hydro turbines has advanced the scope of services CCE can provide with a generating profile that can be used for Frequency Regulation to acting as a Baseload generator when called on. Given CCE's flexibility, the market is now demanding this flexibility as the shift from fossil-fueled generation to a 100% decarbonized electrical grid accelerates at a pace few had predicted outside of CCE.
- Large Volume, Long Duration ("LVLD") energy storage - The CCE concept combined with the ternary technology and other electrical conditioning equipment has been the basis for the experts' respect for the set of services CCE can provide customers and grid integrity. Few, if any, other technologies or installations can function simultaneously and seamlessly between services.
- Trybrid® Design - As now seen across the nation, hybrid systems of renewables, i.e., wind and solar, combined with energy storage are now becoming mainstream. CCE's Trybrid® technology module configuration has been well established since 2014.
- Wind Module - CCE is able to reduce the wind turbine footprint from its 39 permitted units to 22 units through technology selection and with an increase in height of either 25 ft or 35 ft depending on which variable one reads into the district court's opinion.
- Solar Module - Bifacial PV solar panels are being considered which might reduce the number of panels but would definitely increase the efficiency and power output of the solar park.
- Transmission and Substation Modules – The interconnection process has determined that each of the set of conductors of the dual-bundled transmission system will be capable of carrying the full load of the Project for grid integrity purposes.

CCE Finance and Marketing

- Obtained the necessary credit support for the Project to satisfy Rule 40.05 of the water rights application(s).

CCE settled many design elements of the Pumped Storage Hydro (“PSH”) facility in 2020., including:

- Selecting an oversight engineering firm,
- Performing a cost benefit analysis on PSH capacity,
- Selecting the hydropower equipment and configuration,
- Refining the Scope of Work for the EPC contractor, and
- Finalizing location, footprint and depth of the powerhouse and substation, and the location and width of the transmission corridor, penstock corridor, access road corridor, and spillway corridor.

Because of the unique technology and size of the Project, CCE has engaged with the National Laboratories as the original concept has become a contributing factor for investigation in moving to a 100% clean energy grid in the West

- Idaho National Laboratory
- National Renewable Energy Laboratory

REVIEW OF FEDERAL AND STATE PERMITTING EFFORTS

Despite the global pandemic, CCE made progress in its federal permitting in 2020. CCE submitted its annual report to the Federal Energy Regulatory Commission (“FERC”) in March 2020 and continued to work on license requirements. The CCE environmental team continues to work with the Bureau of Reclamation and FERC to provide a thorough Preliminary Application Document (PAD). This work plan for Reclamation is structured to reduce the number of potential issues requiring further studies and/or advanced mitigation within the NEPA process.

Elmore County’s filing in 2020 as a protestant in CCE’s water rights application impairs action by the Idaho Department of Water Resources. This action was undertaken despite the fact that CCE has made no change in its application’s total water volume as originally submitted and has honored the 2018 agreement between Elmore County and CCE to mutually respect each other’s applications and not interfere in each other’s rights process. Elmore County has set its own course on its water rights, its waterworks, and its point of diversion. CCE has had no input or impact on Elmore County’s water right application process. It seems more than just hypocritical that CCE does not enjoy the same respect and consideration from Elmore County.

ENVIRONMENTAL

CCE’s study of ungulate movement and their habitat as required by our Pumped Storage Hydro conditional use permit from Elmore County has been complicated by State actions impacting ungulates, their movements and habitat. Coincident with our study, the Idaho Department of Fish & Game has systematically eliminated hundreds of elk habitually resident Wood Creek

Ranch. Moreover, the hazing attempts by IDFG to move elk back onto Wood Creek Ranch and elsewhere to the west side of Little Camas Prairie nullifies any concerns over the Cat Creek Reservoir on ungulate movement. Furthermore, even updates of their studies still indicate that their many years of radio tagging movement repeatedly indicate that obstacles such as US 20 and Anderson Ranch Reservoir are far more inhibiting factors than the installation of the CCE project. CCE's judicious design is configured to lessen impact to these wild herds, however, the state's action to disrupt their natural movement may skew future mitigation measures.

PROJECT MISSION CONTINUES

Cat Creek Energy & Water Storage Renewable Power Station is dually focused toward answering two pressing climate driven needs, i.e., curbing carbon emissions and storing water. The Cat Creek Reservoir supporting six 120 MW Voith ternary hydro turbines driven by the 840 ft. head above the Anderson Ranch Reservoir creates the largest volume and longest duration energy storage facility in the nation. Hence our tagline, Large Volume, Long Duration ("LVLD®") energy storage system. Additionally, CCE will capture otherwise lost to the Pacific Ocean earlier snowmelt, more frequent winter rains, and will be the significant infrastructure to resolve the projected water storage shortage for the Boise basin. Our LVLD Pumped Hydro Energy Storage ("PHES") also helps lessen the current and increasing daily curtailment happening of renewable generators. CCE is the only at-scale solution to counter the impacts on the power grid caused by variable renewable energy penetration in the West. CCEW provides the technology to move renewable and grid support into the next decade and brings the elusive 'Last Mile' technology to get to a 100% clean energy, resilient, robust, and dependable grid.

In combination with the unique technology and services for both water and energy, CCE provides a platform of Environmental Justice for Elmore County in significant job growth, its Stakeholder Board, Senior and Scholastic Fund, and the benefits derived from the tax revenues annually.

Submitted by Cat Creek Energy, LLC on 04-February-2021.

October 22, 2020

Terri Pickens Manweiler
Pickens Cozacos, P.A.
P.O. Box 915
Boise, ID 83701
terri@pickenslawboise.com

Re: Cat Creek Energy

Dear Terri:

I am writing to follow up on our conversation last week and our telephone conversation of Tuesday of this week. As I noted in our recent conversation, on behalf of Elmore County, I cannot agree that it is appropriate for Cat Creek Energy (“CCE”) to proceed to a public meeting with regard to the CCE project.

First, there is an appeal pending filed by SBar Ranch. As set forth in SBar Ranch’s Amended Notice of Appeal, literally dozens of issues are raised. SBar Ranch’s challenges to the scope of the appeal with regard to the wind turbine issue are unclear. In light of Judge Baskin’s decision, the overall scope of the appeal is very apparent. SBar Ranch challenges, on many bases, the authority of the Elmore County Board of County Commissioners not only to act, but further challenges their conclusions reached as a result of such actions. We therefore have great concern that proceeding as you now propose would act in violation of matters stayed due to the pendency of the appeal.

Second, as you are aware, after Judge Baskin issued her decision, indicating that a further public hearing was “likely,” on behalf of Elmore County, we sought a remand of this matter from the District Court to the County Commissioners so that that hearing could occur. Judge Baskin denied that motion. We thus perceive the efforts of CCE to seek an end run around the matters currently pending before the Supreme Court and an end run around the decision of Judge Baskin.

Third, the Development Agreement, quoted by Judge Baskin, in section 2.1.5, requires a public hearing whenever there is a material modification. Judge Baskin concluded that specific siting of the wind towers would constitute a material modification under that provision. Therefore, as the record currently stands, a public hearing is required before final siting of the wind towers can occur.

Fourth, we have carefully reviewed other materials. Condition No. 9 relates to a public meeting. That requirement imposes an obligation for two public meetings to occur. Those

public meetings must occur in advance of the issuance of a building permit. It appears to us, on behalf of Elmore County, that any effort at the current time by CCE to seek a building permit is totally premature. We do not see how it is appropriate to seek a building permit with the pendency of the appeal before the Idaho Supreme Court. We do not see how it is appropriate to seek a building permit in light of the decision issued by Judge Baskin.

Accordingly, we have advised the director that any form of meeting regarding the CCE project is simply premature and should not occur. During our call on Tuesday, you indicated that CCE was nonetheless going to go forward. I do not understand exactly what you intend. If it is the intention of CCE to hold a public meeting at some public facility in or near Mountain Home, we certainly cannot stop you from having such a meeting. However, please be advised that any such meeting would not comply with any requirements that must be met should a building permit ultimately be sought by CCE. Moreover, it is our belief that any such public meeting would add nothing but confusion for an already contentious project.

Very truly yours,

/s/ Scott D. Hess

Scott D. Hess
Of Counsel
for Holland & Hart LLP

SDH:cmc

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EXHIBIT E

IN THE SUPREME COURT OF THE STATE OF IDAHO

In Re: Petition for Writ of Mandate.

S BAR RANCH,
an Idaho limited liability company,

Plaintiff-Respondent,

v.

ELMORE COUNTY, IDAHO, a
Political subdivision of the State of
Idaho,

Defendant-Respondent.

CAT CREEK ENERGY, LLC,
an Idaho limited liability company,

Intervenor-Petitioner.

**Order Denying Verified Petition for a Writ of
Mandate Without Prejudice**

Supreme Court Docket No. 48661-2021

Elmore County District Court No.
CV20-18-00525

1. A VERIFIED PETITION FOR A WRIT OF MANDATE, BRIEF IN SUPPORT OF VERIFIED PETITION FOR WRIT OF MANDATE, and AFFIDAVIT OF JOHN FAULKNER IN SUPPORT OF PETITION FOR WRIT OF MANDATE were filed by counsel for Petitioner Cat Creek Energy, LLC on March 1, 2021.
2. A NOTICE OF NON-OPPOSITION TO THE VERIFIED PETITION FOR WRIT OF MANDATE, and DECLARATION OF SCOTT D. HESS were filed by counsel for Elmore County on March 19, 2021.

Therefore, after due consideration;

IT IS HEREBY ORDERED that the Petitioner's VERIFIED PETITION FOR A WRIT OF MANDATE be, and is hereby, DENIED, without prejudice.

Dated April 8, 2021.

By Order of the Supreme Court



Melanie Gagnepain
Clerk of the Courts

EXHIBIT F

BEFORE THE ELMORE COUNTY BOARD OF COUNTY COMMISSIONERS

In Re: EOA-2022-01: This matter having come before the Board of County Commissioners of Elmore County, Idaho (Board), the 4th day of February 2022, for a public hearing, held pursuant to public notice as required by law, on a request for extension of time for approvals (EOA) to Cat Creek Energy, LLC, on Conditional Use Permits (CUP-2015-03, CUP-2015-04, CUP-2015-05, CUP-2015-06, and CUP-2015-07) requested by Terri Pickens, Attorney for Cat Creek Energy LLC (CCE). The Board heard from the applicant in support of time extension. Upon conclusion of the public hearing, the Board closed the record to additional evidence and commenced deliberations on the time extension and, after making findings and conclusions in accordance with the applicable law, approved the time extensions as hereafter defined.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

REQUIRED FINDINGS FOR EXTENSION OF APPROVALS. 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 Application for Extension of Approvals, Newspaper Publication, Neighborhood and Agency Notification, Site Posting Photos, Map of the CUPs, Agency Comment, the analysis and recommendations of the Elmore County Land Use and Building Department (Department), and the record of the public hearing consisting of the testimony and submissions received prior to and at the hearing.

1. Although only one of the CUP's may be expressly covered by the stay of proceedings on judicial review and appeal, the CCE project at issue consists of five CUPs for one integrated power project.
2. The time extension shall not exceed one (1) time extension for one (1) year, unless some other period of time is specified in the application and subsequently approved by the Director, Commission and/or Board per Section 7-3-17 of the Elmore County Zoning and Development Ordinance (Zoning Ordinance);
3. A one (1) time two-year time extension is envisioned for the conditional use permits in the Development Agreement between CCE and the Board; and
4. The time extension of approvals is necessary due to the pending litigation now on appeal.
5. Cat Creek Energy, LLC has continued with diligent efforts to move forward with the project such as federal permitting efforts.
6. The length of time which will be necessary for Cat Creek Energy, LLC to complete the project is reliant on the outcome and timeline of the pending litigation.

CONCLUSIONS FOR EXTENSIONS OF APPROVALS. 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 pending judicial review litigation, now on appeal, partially or wholly subjects one or more CUPs to a stay.
2. A time extension to maintain the status quo preserves the status of matters/positions of the parties pending the Idaho Supreme Court decision and remand.

3. A time extension may be moot, depending on the scope of the stay resulting from judicial review and the appeal. Therefore, if a stay or other legal function is judicially determined to render the extension of approvals moot, it shall not count as exercise of the one two-year time extension provided for in the Development Agreement.

4. The Board concludes that approval of time extension(s) is less consequential than taking no action, which may result in the expiration of one or more CUPs in the face of the permittee's request for extension and the contractual obligations of the parties to the Development Agreement.

5. Based upon the foregoing facts and conclusions, the Board concludes 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.

ORDER

Based upon the foregoing findings of fact and conclusion of law, the information contained in the Staff reports and the record for the Application, as set forth below, the Board hereby

APPROVES the waiver of the \$250 fees for the Application for Time extension of Approvals and 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 stay of proceedings, and/or by other legal function of the Court's Orders.

Dated this 11th day of February 2022

BOARD VOTE:

ELMORE COUNTY BOARD OF COUNTY COMMISSIONERS



By: ABSENT DURING PUBLIC HEARING
Crystal Rodgers, Chairperson

By: [Signature]
Franklin L. Corbus, Commissioner

By: [Signature]
Albert Hofer, Commissioner

ATTEST:

By: [Signature]
Shelley Essl, Clerk

NOTICE PURSUANT TO IDAHO CODE § 67-6519(5)(c)

The Applicant shall have the right to request a regulatory taking analysis pursuant to Idaho Code § 67-8003. An applicant denied an application or aggrieved by a final decision concerning matters identified in Idaho Code § 67-6521(1)(a) may, within twenty-eight (28) days after all remedies have been exhausted under local ordinance seek judicial review under the procedures provided by Title 67, Chapter 52, Idaho Code.

NOTICE PURSUANT ZONING ORDINANCE SECTION 7-3-10 E-F

A decision made by the Elmore County Planning and Zoning Commission may be appealed to the Board of Elmore County Commissioners provided the appeal application is complete and appeal fee is submitted to the Land Use and Building Department within fourteen (14) calendar days of Commission action. Questions concerning appeals or deadlines should be asked of the Elmore County Land Use and Building Department.

EXHIBIT G



Terri R. Pickens
Attorney at Law
terri@pickenslawboise.com
www.pickenslawboise.com

398 S. 9th Street, Ste. 240
P.O. Box 915
Boise, Idaho 83701
208.954.5090 (t)
208.954.5099 (f)

February 12, 2024

SENT VIA E-MAIL

Mitra Mehta-Cooper
Vicky Trevathan
Dylan Lawrence
Elmore County Board of Commissioners
Elmore County Clerk's Office
150 South 4th East, Suite #3
Mountain Home, ID 83647

Re: Cat Creek Energy, LLC
CUP 2015-03, CUP 2015-04, CUP 2015-05, CUP 2015-06, CUP 2015-07
Our File No.: 360-2

Ladies and Gentlemen:

After hearing the public comments, the staff report and comments of the three Elmore County Commissioners, Cat Creek Energy, LLC hereby withdraws its request to increase the size of the Cat Creek Reservoir from 100,000 acre feet to 140,000 acre feet. It is unfortunate that this modification must be made as it will limit Cat Creek Energy, LLC's ability to store additional water that could benefit Elmore County. However, under the circumstances, it seems apparent that the change is not going to get approved by the Board of Commissioners.

For your convenience, I have modified the draft Second Amendment to the Development Agreement and have taken out all of the proposed water diversion and storage provisions, and simply extended the CUPS and the water delivery provision to June 14, 2027, the five (5) year threshold after the appeal.

If you have any questions concerning the foregoing, please do not hesitate to contact me.

Sincerely,
/s/ Terri R. Pickens
Terri R. Pickens

**SECOND AMENDMENT TO 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 Second Amendment to 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 “Second Amendment”) is entered into this ___ day of _____, 2024, (“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, The Parties entered into a Development Agreement on February 9, 2018;

WHEREAS, As part of the Development Agreement, the Parties agreed to defer negotiations and agreement on certain provisions related to water diversion and delivery to a later date, not to exceed December 31, 2018,

WHEREAS, on May 1, 2018, a Petition for Judicial Review was filed to invalidate the Development Agreement, staying the proceedings and preventing the Developer from moving forward with the CUPs.

WHEREAS, on December 14, 2018, the Parties entered into a First Amendment to Development Agreement Relative to Cat Creek Energy, LLC Conditional Use Permits (“First Amendment”), amending Section 2.2 of the Development Agreement, specifically related to water diversion and delivery, extending the deadline for negotiating terms for water storage and delivery to June 30, 2019.

WHEREAS, on May 23, 2019, the District Court entered an Order staying the deadline in Section 2.2 of the First Amendment until further order of the Court.

WHEREAS, on November 8, 2019, the District Court entered its Memorandum Decision and Order upholding the Development Agreement and CUPs, entering Judgment that same day dismissing the Petition for Judicial Review with prejudice.

WHEREAS, on December 19, 2019, a Notice of Appeal was filed with the Idaho Supreme Court, challenging the Development Agreement and CUPs. Pursuant to Idaho law, the appeal prompted a stay of any further proceedings on the Development Agreement or CUPs through the course of the appeal.

WHEREAS, on May 18, 2022, the Idaho Supreme Court entered its Opinion on the appeal, upholding the Development Agreement and CUPs. On June 14, 2022, the Idaho Supreme Court then issued its Amended Opinion on the appeal, still upholding the Development Agreement and CUPs.

WHEREAS, on June 14, 2022, the Idaho Supreme Court entered its Remittitur, remanding the case back to the District Court confirming dismissal and lifting the automatic stay on appeal.

WHEREAS, during the course of the Petition for Judicial Review and Appeal, the Developer was unable to commence under the Development Agreement and First Amendment, necessitating an extension of time under the Development Agreement and First Amendment.

WHEREAS, the Parties have agreed to extend the effective date of the Development Agreement under Section 1.1 of the Development Agreement.

WHEREAS, the Parties desire to enter into a Second Amendment to Development Agreement to replace Section 1.1 of the Development Agreement which states:

1.1 Effective Date. This Agreement will be effective upon the Effective Date and, except as otherwise provided herein, shall run so long as the Project is being operated and one or more of the CUPs remain in full force and effect. Notwithstanding, certain dates set forth in the Approval and/or Conditions, may be changed as set forth in this Agreement.

Condition No. 1 from the Approval is hereby deleted in its entirety and replaced with the following:

“1. The Conditional Use Permits shall be valid for a period of time for five (5) years from February 10, 2017 and may be extended for one 2-year period upon application to the Elmore County Land Use and Building Department (“Department”). The approval of an application for extension shall not be unreasonably withheld and is 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 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 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.”

WHEREAS, The Parties have not had an opportunity to negotiate certain provisions related to water diversion and delivery and the Parties desire to extend the deadline for amending Section 2.2 until after the FERC process is complete by Developer; and

WHEREAS, The Parties desire to enter into this Second Amendment to Development Agreement to replace Section 2.2 of the Development Agreement which states:

2.2. Water Storage 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.

NOW, THEREFORE, in consideration of the promises, covenants, and provisions set forth herein, the Parties agree as follows:

AMENDMENT

The Parties hereby agree to replace Section 1.1 of the Development Agreement with the following:

- 1.1 Effective Date.** This Agreement will be effective upon the Effective Date and, except as otherwise provided herein, shall run so long as the Project is being operated and one or more of the CUPs remain in full force and effect. Notwithstanding, certain dates set forth in the Approval and/or Conditions, may be changed as set forth in this Agreement.

Condition No. 1 from the Approval is hereby deleted in its entirety and replaced with the following:

“1. The Conditional Use Permits shall be valid for a period of time of five (5) years from June 14, 2022, and may be extended for one 2-year period upon application to the Elmore County Land Use and Building Department (“Department”). The approval of an application for extension shall not be unreasonably withheld and is 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 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 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.”

The Parties hereby agree to replace Section 2.2 of the Development Agreement with the following:

2.2. Water Storage 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 June 14, 2027 or the CUP related to water shall lapse.

ALL OTHER PROVISIONS OF THE DEVELOPMENT AGREEMENT SHALL REMAIN IN FULL FORCE AND EFFECT.

[END OF TEXT]

[SIGNATURES TO FOLLOW]

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

ELMORE COUNTY:

Board of Elmore County Commissioners

By: Franklin L. Corbus, Chairman

By: Crystal Rogers, Commissioner

By: Albert Hofer, Commissioner

ATTEST:

Barbara Steele, Elmore County Clerk

STATE OF IDAHO)

) ss.

County of Elmore)

On the ____ day of _____, 2024, before me, _____, 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.

NOTARY PUBLIC for Idaho
Residing at _____, Idaho
My commission expires:

STATE OF IDAHO)

) ss.

County of Elmore)

On the ____ day of _____, 2024, before me, _____, a Notary Public in and for said state, personally appeared CRYSTAL ROGERS, 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.

NOTARY PUBLIC for Idaho
Residing at _____ Idaho
My commission expires:

STATE OF IDAHO)

) ss.
County of Elmore)

On the ____ day of _____, 2024, before me, _____, a Notary Public in and for said state, personally appeared ALBERT HOFER, 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.

NOTARY PUBLIC for Idaho
Residing at _____ Idaho
My commission expires:

STATE OF IDAHO)

) ss.
County of Elmore)

On the ____ day of _____, 2024, before me, _____, 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.

NOTARY PUBLIC for Idaho
Residing at _____, Idaho
My commission expires:

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

By: John Faulkner
Its: Manager

STATE OF IDAHO)
) ss.
County of Elmore)

On this _____ day of _____, in the year 2024, 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.

NOTARY PUBLIC for Idaho
Residing at _____, Idaho
My commission expires:

BOARD OF ELMORE COUNTY COMMISSIONERS
NOTICE OF PUBLIC HEARING FOR RECONSIDERATION OF THE BOARD'S DECISION FOR SECOND AMENDMENT TO THE DEVELOPMENT AGREEMENT RELATIVE TO CAT CREEK ENERGY, LLC CONDITIONAL USE PERMITS (CUP-2015-03, CUP-2015-04, CUP-2015-05, CUP-2015-06, AND CUP-2015-07) BY AND BETWEEN CAT CREEK ENERGY, LLC AND ELMORE COUNTY

NOTICE IS HEREBY GIVEN that on Friday, April 19, 2024 at the hour of 1:30 p.m. in the Elmore County Courthouse, downstairs in the Commissioner's room, 150 South 4 East, Mountain Home, ID 83647, a public hearing will be held for reconsideration of the Board of County Commissioners' decision made on February 16, 2024 for the second amendment to the Development Agreement ("DA-2024-01") Relative to Cat Creek Energy, LLC Conditional Use Permits (CUP-2015-03, CUP-2015-04, CUP-2015-05, CUP-2015-06, CUP-2015-07) between Cat Creek Energy, LLC and Elmore County.

The Elmore County Board of County Commissioners (the "Board") on February 9, 2018 approved that Development Agreement Relative to Cat Creek Energy, LLC Conditional Use Permits (CUP-2015-03, CUP-2015-04, CUP-2015-05, CUP-2015-06, and CUP-2015-07) between Elmore County and Cat Creek Energy, LLC (the "Developer") (the "Development Agreement"). The Board approved that First Amendment to 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) on December 14, 2018. The Board approved that Second Amendment to 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) on February 16, 2024, extending the development deadline under the five CUPs from February 10, 2022 to October 19,

2026. On February 27, 2024, Cat Creek Energy LLC filed a request for reconsideration of that decision, alleging that the Board has failed to adhere to the intent of Original Development Agreement in accounting for time delays caused by the previous judicial review process.

Any and all interested persons shall be heard at said hearing and the public is welcome and invited to submit testimony. Testimony will be limited to the reconsideration details for DA-2024-01. The Board reserves the right to set time limits on testimony, and if implemented, the time limits will be announced at the start of the hearing. Anyone who wishes to testify, but is unable to attend, may submit written testimony prior to the hearing by sending it to the Elmore County Land Use and Building Department (the "Land Use and Building Department"), 520 East 2nd South Street, Mountain Home, Idaho, 83647. The record for this matter may be reviewed prior to the hearing at the Land Use and Building Department and at the Elmore County Clerk's Office, 150 South 4th East, Mountain Home, Idaho, during regular business hours.

A common way of locating the property from Mountain Home, for the said CUPs, is to travel North on US 20 for 25.4 miles to Wood Creek Road. The center of projects is approximately 3.2 miles north on Wood Creek Road. The Elmore County Board of Commissioners is responsible for ensuring compliance with the Americans with Disabilities Act of 1990 (ADA). Any person needing special accommodations to participate in the public hearing should contact Elmore County ADA Coordinator, Kacey Ramsauer, 24 hours before the Public Hearing at 208-587-2142 ext. 1254, or in person at 520 East 2nd South, Mountain Home, Idaho 83647 or by email kramsauer@elmorescounty.org.
SHELLEY ESSL, CLERK
BOARD OF COMMISSIONERS
ELMORE COUNTY, IDAHO
First Publication:
April 3, 2024
Second Publication:
April 10, 2024

Please review, sign and return by fax or e-mail with any corrections by Noon the Friday prior to run date.

Total cost will be 203.85. If signed proof and prepayment (if required) is not received by deadline, this legal will not run.

Thank you,
Legal Department
Mountain Home News
ph (208) 587-3331
fax (208) 587-9205
legaldept@mountainhomenews.com

Proofed
Date 3/29/24
 Ok, with changes
 Ok, no changes
 Re-proof
Proofed by: KR

*Legals canceled prior to publication will incur a \$10 processing/typesetting fee

Prepayment Charge

Thank you, Swana



Elmore County Land Use and Building Department

520 East 2nd South Street
Mountain Home, ID 83647
Phone: (208) 587-2142 ext.1254
Fax: (208) 587-2120
www.elmorecounty.org

Exhibit 3

Mitra Mehta-Cooper
Director

David Abrahamson
Planner

Kacey Ramsauer
Planner & ADA
Coordinator

Johnny Hernandez
Building Official

Colton Janousek
Building Inspector

James Roddin
Code
Enforcement

Kamiah McDaniel
Permit Technician

Alyssa Nieto
Admin Assistant

Date: April 9, 2024

To: Whom It May Concern

Subject: Notice of Public Hearing

Case #: DA-20240-01

Applicant: Cat Creek Energy, LLC

Proposal: Reconsideration of a Board of County Commissioners' decision made on February 16th, 2024, for the second amendment to the Development Agreement (DA-2024-01) Relative to Cat Creek Energy, LLC Conditional Use Permits CUP-2015-03, CUP-2015-04, CUP-2015-05, CUP-2015-06, and CUP-2015-07) between Cat Creek Energy, LLC and Elmore County.

The Elmore County Board of County Commissioners (the "Board") on February 9, 2018, approved that Development Agreement Relative to Cat Creek Energy, LLC Conditional Use Permits (CUP-2015-03, CUP-2015-04, CUP-2015-05, CUP-2015-06, and CUP-2015-07) between Elmore County and Cat Creek Energy, LLC (the "Developer") (the "Development Agreement"). The Board approved that First Amendment to 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) on December 14, 2018. The Board approved that Second Amendment to 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) on February 16, 2024, extending the development deadline under the five CUPs from February 10, 2022, to October 19, 2026. On February 27, 2024, Cat Creek Energy LLC filed a request for reconsideration of that decision, alleging that the Board has failed to adhere to the intent of Original Development Agreement in accounting for time delays caused by the previous judicial review process.

A public hearing will be held before the Elmore County Board of Commissioners. The hearing is scheduled for Friday, April 19th, 2024, at 1:30 p.m.in the Elmore County Courthouse basement, at 150 South 4th East Street, Mountain Home, Idaho.

Please review the application and return your written comments to the Elmore County Land Use and Building Department, 520 East 2nd South Street, Mountain Home, ID, 83647, by 5 p.m. on Friday, April 12th, 2024, so your comments are included in the record. If you prefer, please come to the hearing to testify before the Commission.

The Elmore County Board of Commissioners is responsible for ensuring compliance with the Americans with Disabilities Act of 1990 (ADA). Any Person needing special accommodations to participate in the public hearing should contact the Elmore County ADA Coordinator, Kacey Ramsauer, 24 hours prior to the Public Hearing at 208-598-5247, extension 1254, or via email kramsauer@elmorecounty.org, or in person at 520 East 2nd South, Mountain Home, Idaho.

Sincerely,



Mitra Mehta-Cooper

Land Use and Building Department

Director

520 E 2nd S Street

Mountain Home, Idaho 83647

208-587-2142 ext 1256

Exhibit 4









Exhibit 5

From: [Chris R. Stephens](#)
To: [Mitra Mehta-Cooper](#)
Subject: Cat Creek Energy - extension request
Date: Sunday, April 7, 2024 3:34:11 PM

Hi Mitra,

I understand there will be a public hearing to consider a motion for reconsideration. I have a few points that I would like you to consider in your staff report:

1. The current two-year extension granted on 2/4/2022 that the project is currently utilizing, is in fact the two-year extension contemplated by the Development Agreement. Please review the transcript to the meeting for that approval where Commissioner Corbus was very clear that “this is it”. The time to request a reconsideration was two years ago.
2. Development Agreement 2.2 was originally to be settled in 2018, first within weeks of executing the DA, then by the end of 2018. It is now May 2024, two years post litigation and we still do not have a water and delivery understanding. Originally the developer promised cost free water delivery to the County from Anderson Ranch Reservoir to Little Camas Reservoir. The Commissioners have stated publicly that this was the primary reason for their support of this project. It is not clear to the public the direction this section is going but we are clear that the developer is proposing diverting water from Elmore County downriver to users outside of the County.
3. S Bar maintains that the developer has not shown control of all the land included in this development. You have documentation that Big Sky Farms is not working with Cat Creek. The developer’s most recent diagrams depict a significant portion of the 100,000 ac ft water storage and power transmission on adjacent private lands. The USFS has stated publicly that they are not working on any land exchange and there would be extreme opposition from Fish and Game, among others. It would seem reasonable that granting any extension, 11 years after inception, would require, at minimum, an up-to-date project description including proof of ownership.

As you know, the developer has requested and received multiple stays from IDWR. FERC placed the project in abeyance last year in conjunction with the Bureau of Reclamation as the developer has not replenished the cost recovery account.

The developer is now essentially requesting an extension to 6/14/2029 including their claim for a fresh two-year extension after 6/14/2027. The developer is very proud to “have all local permits” in their marketing message. Their cost for these extensions has been limited to letter writing. No substantive recognized environmental studies have been performed to date. There is however a cost to Elmore County as a “locally permitted” project that includes water diversions, 100’ high earthen dams, 500’ tall wind turbines, 15 miles of high-power transmission lines, electric substation at the Pine turnoff, and experimental PV floating farm on our precious water supply discourages new investment in farming, ranching and recreational facilities.

Chris R. Stephens, CEO

5B Investments, Inc.

www.5bi.com

O [\(208\)726-4300](tel:(208)726-4300)

P [\(208\)806-0725](tel:(208)806-0725) **E** cstephens@5BI.com

Post Office Box 1065

Sun Valley, ID 83353

Executive Assistant: Valerie Lakey

P [\(208\)806-0727](tel:(208)806-0727) **E** vlakey@5BI.com

VIA EMAIL ONLY:

mmehtacooper@elmorecounty.org

dylan@varinthomas.com

April 10, 2024

Mitra Mehta-Cooper
Dylan Lawrence
Elmore County Board of Commissioners
Elmore County Clerk's Office
150 South 4th East, Suite #3
Mountain Home, ID 83647

Re: Cat Creek Energy, LLC – FERC Project # 14655
CUP 2015-03, CUP 2015-04, CUP 2015-05, CUP 2015-06, CUP 2015-07

Ladies and Gentlemen:

Please accept this letter as a request to deny Cat Creek Energy, LLC's (CCE) Request for Reconsideration to the abovementioned Conditional Use Permits (CUPs).

As of May 19, 2023 the Federal Energy Regulatory Commission (FERC) filed an abeyance against CCE in that the proposed study plan "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." Further, the Bureau of Reclamation (BOR) had ceased work on the project due to insufficient funding. To date, there has been no indication that the FERC has lifted the abeyance against CCE or that BOR has commenced work on the project.

Also, to date, we are not aware that any of the vast number of environmental studies have been conducted that would allow CCE to continue or commence any work on the CCE project at Anderson Ranch Reservoir (ARR). CCE continues to claim that the wind and solar portion of the project can go forward as evidenced by CCE's claim of Limited Notice to Proceed in their January 30, 2024 Annual Report.

From the outset, CCE has continued to change most ever single element of the project including the below:

- Upper Reservoir – from 30,000 acre-feet to 50,000, to 100,000 and now 140,000. It is now April 2024, two years post litigation and there is still no clear understanding of the water and delivery.
- Penstocks – from 2 penstocks to 6 penstocks (estimate).
- Wind Turbines – from 39, 380 feet towers to 500 feet towers (location of the towers is still not identified).

- Float Voltic's (FV) – FV added to the upper reservoir that were not part of the original CUPs. **THIS SHOULD BE A SEPARATE CUP.** Major environmental studies need to be conducted due to the plethora of wildlife in the FV area, particularly birds.
- Extensions – again CCE continues to push for more extensions with Elmore County (EC).
- CUPS - when the CCE CUPS were approved by EC, it was stated by CCE that they were all or nothing and that one did not work without the other. Over the past several years, CCE has tried to separate the CUPS in an effort to commence work on the wind and solar. The public needs proof from EC when and what date was CCE given permission or allowed to separate the CUPS. If this did not occur, EC should deny separation of the CUPS. As stated above, the Float Voltics is a completely different element to the project that merits it's own CUP.

We implore the Elmore County Commissioners and the Land Use and Building Department to deny the Request for Reconsideration and require CCE to start the process over by filing CUPs (including the FV) that are complete, accurate, and include all the elements that have been added over the past several years. CCE should ensure environmental studies on all wildlife are in the process or completed. Also at that time, CCE should have the financial resources to proceed as to not hold up the project with the governmental agencies, EC, and the public.

Respectfully,

John and Wendi Combs
704 Lindenwood Drive
Nampa, Idaho 83686

1726 Aspen Drive
Mountain Home (Pine), Idaho 83647

CC: kramsauer@elmorecounty.org
terri@pickenslawboise.com (for CCE)

Exhibit 6

Attachment A Timeline of Events

CCE's delays in Development Agreement due to reconsideration and judicial review

<u>Date</u>	<u>Event</u>	<u>Deadline to Satisfy Sec. 1.1</u>	<u>Deadline to Satisfy Sec. 2.2</u>
2/9/18	Development Agreement (DA) Signed	2/10/22	12/31/18
2/16/18	S Bar Ranch files its first reconsideration request with Board	No change; still 2/10/22	No change; still 12/31/18
5/18/18	S Bar Ranch files petition for judicial review (98 days after DA) (does not automatically stay County proceedings)	No change; still 2/10/22	No change; still 12/31/18
12/14/18	1 st DA Amendment	No change; still 2/10/22	Updated to 6/30/19
5/23/19	District court orders stay of Sec. 2.2 only, tolling deadline for Sec. 2.2	No change; still 2/10/22	6/30/19 + number of days between 5/23/19 and end of judicial action
2/4/22	Board approves two-year extension (see note below)	Add 2 years; now 2/10/24	6/30/19 + number of days between 5/23/19 and end of judicial action + 2 years
6/14/22	Idaho Supreme Court issues amended opinion and remittitur (1,488 days after S Bar Ranch filed for judicial review)	No change; still 2/10/24	Locks in tolling at 6/14/22 – 5/23/19 = 1,118 days; 6/30/19 + 1,118 days + 2 years = 7/22/24
2/9/24	Board extends deadline for Sec. 1.1 to 2/16/24	Now 2/16/24	No change; still 7/22/24

Section 1.1 of the DA scenarios assumptions and explanations:

Under the Idaho Rules of Civil Procedure and the Idaho Administrative Procedures Act, a stay of proceedings before the County is not automatic. For there to be a stay, a court must order it.

However, as a practical matter, it would be risky for a project proponent to proceed with construction while CUPs are the subject of a petition for judicial review.

Attachment A **Timeline of Events**

CCE's delays in Development Agreement due to reconsideration and judicial review

Therefore, the scenarios below are based on the practical effect of petition for judicial review, not just formal stays by the courts.

In all scenarios, 6/14/22 is chosen as the end date for any tolling of deadlines, because that is when the Idaho Supreme Court issued its remittitur, which formally ends the appeal. The different scenarios are based on what the triggering event is to toll deadlines.

Scenario 1: This scenario assumes tolling begins at the earliest possible point in time, with the signing of the Development Agreement on 2/9/18. 6/14/22 minus 2/9/18 equals 1,586 days (i.e., 4 years, 126 days). 1,586 days plus 6/14/22 equals a new deadline of Sat., 10/17/26 (CCE requests 6/14/27 plus possible 2-year extension).

Scenario 2: This scenario assumes tolling begins when S Bar Ranch filed its first reconsideration request with the board on 2/16/18. 6/14/22 minus 2/16/18 equals 1,579 days (i.e., 4 years, 119 days). 1,579 days plus 6/14/22 equals a new deadline of Sat., 10/10/26 (CCE requests 6/14/27 plus possible 2-year extension).

Scenario 3: This scenario assumes tolling begins when S Bar Ranch filed its petition for judicial review on 5/18/18. 6/14/22 minus 5/18/18 equals 1,488 days (i.e., 4 years, 28 days). 1,488 days plus 6/14/22 equals a new deadline of Sat., 7/11/26 (CCE requests 6/14/27 plus possible 2-year extension).

Note regarding Section 2.2:

Note that when the Board approved the one-time 2-year extension on 2/4/22, it did not specify whether such extension was limited to Section 1.1 or also applied to Section 2.2. The timeline above assumes the 2-year extension applied to both Section 1.1 and Section 2.2.

Exhibit 7

Instrument # 464456 # Pages: 37
ELMORE COUNTY, Idaho
Feb 09, 2018 3:19:11 pm Fee: \$
For: ELMORE COUNTY COMMISSIONER
BARBARA STEELE, Recorder
DELLIS, Deputy

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 9th 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

WHEREAS, this Agreement shall serve as the Development Agreement as set forth in condition No. 2 of the Conditions; and

WHEREAS, the Application, including, but not limited to, all testimony made at the November 16, 2016 and November 17, 2016 public hearings (“Public Hearings”), for File Nos. CUP-2015-03, CUP-2015-04, CUP-2015-05, CUP-2015-06, and CUP-2015-07, established the Project may be a benefit to the County and was an essential inducement to the Board for its approval of the Project; and

WHEREAS, Developer is subject to rules governing development of the Project, as set forth under this Agreement, the Approval, the Zoning Ordinance, and other state and federal laws and regulations (“Rules”); and

WHEREAS, Developer desires to be assured that it may proceed with development of the Project in accordance with those Rules; and

WHEREAS, Developer, through its Project’s investment and infrastructure, has a unique ability to assist the County in water delivery; and

WHEREAS, the County, following the notice provisions under Idaho Code § 67-6509, conducted a public hearing regarding this Agreement; and

WHEREAS, both the County and Developer, in order to derive mutual benefits, have determined it is advantageous to enter into this Agreement to ensure Developer may design, develop, procure, construct, and operate the Project under a defined set of predictable conditions in order to advance the Project’s development in an orderly sequence and concurrently, to assure the County the Project will be designed, developed, constructed, and operated in compliance with this Agreement, the Approval, Zoning Ordinance, and state and federal laws and regulations.

NOW, THEREFORE, in consideration of the promises, covenants, and provisions set forth herein, the Parties agree as follows:

AGREEMENT

SECTION 1. DEVELOPMENT OF THE PROJECT.

1.1. Effective Date. This Agreement will be effective upon the Effective Date and, except as otherwise provided herein, shall run so long as the Project is being operated and one or more of the CUPs remain in full force and effect. Notwithstanding, certain dates set forth in the Approval and/or Conditions, may be changed as set forth in this Agreement.

Condition No. 1 from the Approval is hereby deleted in its entirety and replaced with the following:

“1. The Conditional Use Permits shall be valid for a period of time for five (5) years from February 10, 2017 and may be extended for one 2-year period upon

application to the Elmore County Land Use and Building Department (“Department”). The approval of an application for extension shall not be unreasonably withheld and is 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 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 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.”

1.2. Development of Permitted Uses. This Agreement describes the right to develop the Project in conjunction with, and subject to, the Conditions set forth in and pursuant to the Board Findings; and Developer shall comply with applicable rules, regulations and review processes required by the Zoning Ordinance in effect as of the Effective Date and as modified by this Agreement. Developer will pay all applicable fees required by the Zoning Ordinance as such fees may be established from time to time, by resolution approved by the Board, in relation to this Agreement.

Subject to the foregoing, and pursuant to the Zoning Ordinance, if the County adopts new ordinances, resolutions, rules or regulations that conflict with, alter, or amend the ordinances, resolutions, rules or regulations in effect at the time the CUPs were approved on February 10, 2017, such actions by the Board shall not prevent Developer from its right to develop and complete the Project as set forth in this Agreement. The County and Developer may amend this Agreement to include such changes to the ordinances, resolutions, rules and regulations as they apply to the Project, if beneficial to the Project and the County. Furthermore, the County may enact ordinances and amendments to existing ordinances that are applicable to the Project in so far as those ordinances do not materially and negatively impact the Developer’s rights to develop the Project in conformance with this Agreement, the Approval, and the Site Plan presented in the Application, as modified at the Public Hearings, and which Site Plan will be amended as set forth in this Agreement.

1.3. Compliance with the Approval. Approval of the CUPs through the Board Findings established that the Project is in compliance with the Zoning Ordinance and the County Comprehensive Plan. The development of the Project shall be in compliance with the Board Findings and Conditions, unless modified by and subject to the terms in this Agreement. The Conditions may be further amended, defined, expanded and/or refined by the Board and Developer, at a later date following notice and public hearing. To the extent there are any terms and conditions set forth herein that contradict terms or conditions of the CUP, this Agreement shall control.

1.4. Compliance with Project Schedule. Developer shall diligently proceed with the development of the Project in conformance with the provisions of the Approval and Conditions as

modified in this Agreement. The Project schedule may be modified by Developer and the County following notice and public hearing. Otherwise, Developer's failure to meet the time frame set in this Agreement shall constitute a default under the Conditions as modified herein and the Agreement, subject to the default provisions of this Agreement.

1.5. Changes in State and Federal Law. This Agreement shall not preclude the application of any law that is specifically mandated and required by changes in state or federal laws or regulations applicable to the Project. In the event such law prevents or precludes compliance with one or more provisions of the Conditions or this Agreement, excluding the Condition that the Project must be substantially complete and operational by that date set forth in the Conditions or this Agreement, the County and Developer shall, following notice and pursuant to a public hearing, meet and confer to determine how the provisions of this Agreement and/or Conditions would need to be modified, extended, or suspended in order to comply with the law and shall prepare and process the necessary amendment or amendments to this Agreement. If no agreement is reached, and federal or state law do not otherwise control, the Board may elect to pursue remedies under the default provisions of this Agreement. In the event federal and state laws in force on the Effective Date are in conflict with the Conditions or this Agreement, the federal and state laws shall control.

1.6. Police Power. Nothing in this Agreement shall be construed to be in derogation of the County's police power to protect the public health and safety in the case of an emergency. In the event of an emergency, Developer agrees to provide and maintain ongoing and daily contact with applicable County emergency response officials.

1.7. Effect of Landowners' Consent. In the event the Landowners desire to develop the Project, prior to doing so, the Landowners shall assume and undertake all obligations of Developer under this Agreement, pursuant to a written assignment of this Agreement, as stated in Section 11 herein.

1.8. Incorporation of Recitals. The foregoing recitals shall be deemed true and correct in all respects to this Agreement and shall serve as the basis for the interpretation of this Agreement.

SECTION 2. REQUIRED ENCLOSURES FROM CONDITION NUMBER TWO.

2.1 Site Plan.

2.1.1. Legal Description. The legal description of the Property is set forth in Exhibit A attached hereto. The County Tax Parcel for each of the areas for the CUPs are shown on Exhibit B, attached hereto.

2.1.2. Master Site Plan. The Master Site Plan presented at the Public Hearings in connection with the Board's Approval of the Project, subject to the Conditions, is the approved site plan for the Project, a copy of which is attached hereto as Exhibit C and made a part hereof. The Developer desires to further amend the Master Site Plan as set forth in Exhibit D attached hereto and made a part hereof by the terms

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

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.

2.3.1. Members. The Stakeholder Advisory Board shall consist of and shall be appointed jointly by the Board and the Developer:

- a. Two environmental members (i.e. Idaho Department of Fish and Game, Sage-Grouse Conservation Group, or other environmental organization inside or outside of a government entity impacted by the Project),
- b. One Member from Mountain Home Irrigation District,
- c. One Member from Glens Ferry Highway District,
- d. One County representative,
- e. One County resident from the Pine-Featherville area,
- f. One Developer operations manager,
- g. One Developer designee, and
- h. One Landowner.

2.3.2. Funding. The initial funding for the Stakeholder Advisory Board mitigation efforts during construction is anticipated not to exceed \$1,345,000 and would fund those mandated mitigation requirements and offsets necessary as part of the federal permitting processes. Subsequent annual contributions to the funding would first be used for environmental remediation as required by federal permitting and ancillary agreements, and then for the purposes the Stakeholder Advisory Board advises and recommends how to distribute funds to serve the purpose set forth herein.

2.3.3. Formula. The formula for the annual funding of the Stakeholder Advisory Board shall be as follows:

- a. 2.5 mils on revenues of the Project as defined as gross electrical power generation revenues less any associated pumping costs of the pump storage hydro portion of the facility. For example, if the gross revenues are \$1,000,000.00 and the pumping costs are \$300,000.00, the Stakeholder Advisory Board receives as follows: $700,000 \times 0.0025 = \$1,750.00$.
- b. The minimum amount of Contribution per year shall be \$100,000.
- c. The maximum amount of Contribution per year after the project is operational shall not exceed \$300,000. In the event the federal or state environmental mandate is greater than \$300,000, the Developer shall pay all costs in excess of \$300,000 to comply with those federal or state environmental mandates outside of the Stakeholder Advisory Board.
- d. If the Stakeholder Advisory Board does not designate any portion of the annual Contribution, that amount shall carry over to the next year and reduce the Contribution by that amount.

2.3.4. Designation of Funds. The Stakeholder Advisory Board shall first apply funds to all mandatory federal mitigation requirements. State mitigation requirements shall then be applied. Anticipated environmental mitigation procedures on an annual basis that may be conditioned for funding under federal and state permitting provisions are:

- a. Fish entrainment re-stocking.
- b. Upstream of Anderson Ranch Reservoir aquatic improvements.
- c. Monitoring of conditions in Anderson Ranch Reservoir.
- d. Wetlands improvements.
- e. Wildlife habitat improvements.

2.3.5. Meetings. Meetings of the Stakeholder Advisory Board shall be called by Developer with a two-week notice prior to the date of any funds distribution. A quorum is necessary for any resolution of the Stakeholder Advisory Board. A majority of the members constitutes a quorum. All resolutions for distribution of funds shall be by unanimous consent of all Stakeholder Advisory Board Members present at the meeting, including through teleconferencing, assuming a quorum is present. If there is any dissenting vote that stalls distribution of funds, Developer will fulfill its federal contractual and regulatory mitigation funding obligations first. Any remaining issues shall be determined by the Board after recommendation by the Stakeholder Advisory Board.

2.4. Fish Stocking. As part of the Stakeholder Advisory Board fund, Developer shall fund annual fish stocking in Anderson Ranch Reservoir to compensate for any net loss of game fish due to entrainment into the hydropower penstocks. Developer shall comply with all federal and state recommendations and directives agreed to during the federal permitting process on potential mitigation efforts that may be required for fish habitat, maintaining fish populations, and mitigating loss due to potential entrainment. As part of this Agreement, Developer shall also work closely with the Idaho Department of Fish and Game in conjunction with federal agencies on the fisheries of Anderson Ranch Reservoir for any mitigation that may be required in the federal permitting process.

2.5. Sage Grouse Mitigation. During the construction of the Project, and as part of the Stakeholder Advisory Board fund, Developer shall fund conservation efforts affecting areas of sage-grouse habitat on the Property where evidence of sage-grouse usage exists. Developer shall work with Idaho Department of Fish and Game to comply with the Sage-Grouse Initiative and may include measures such as prescribed grazing, fence marking, and water tank escape ramps. After any mitigation recommendation that may be required by federal permitting is completed, the Stakeholder Advisory Board may decide that if any monies are left over after the annual funding protocol in Section 2.3.4, a portion of those remaining funds may be dedicated to sage-grouse habitat enhancement on the Property, and then on other lands in the general geographic area of the Project.

2.6. Erosion Control Measures. Developer shall comply with all US Army Corps of Engineers and the Environmental Protection Agency regulations that are administrated through the

Idaho Department of Environmental Quality, submit applications for, and receive the permits from, those relevant agencies responsible for erosion control measures during construction and operations of the Project. Developer shall utilize best industry practices to implement erosion control measures, which would include minimizing ground disturbance areas during construction, stabilizing soils and installing barriers to prevent runoff, and contouring and revegetating all disturbed areas when construction is complete, including erosion control measures and revegetation activities that shall meet all industry standards and would prevent water quality impacts due to erosion/sedimentation, prevent the proliferation of noxious weeds and promote quality wildlife and grazing habitat.

2.6.1. Developer shall utilize best industry practices to implement erosion control measures, which would include minimizing disturbance of reservoir shorelines and vegetated upland areas during construction of the pump storage hydro intake, powerhouse and penstock, to minimize water quality impacts due to erosion/sedimentation, and to further minimize the potential to increase erosion and sedimentation, which could adversely affect water quality in Anderson Ranch Reservoir.

2.6.2. Developer shall utilize best industry practices to implement erosion control measures, which would include minimizing ground disturbance areas during the construction of roads and wind tower pads for the wind turbine project locations, including erosion control measures and revegetation activities which will meet all industry standards and would minimize erosion and sedimentation into any stream located in the construction area.

2.7. Communications with Wildlife Agencies. Developer shall maintain communications with Idaho Department of Fish and Game, the United States Federal Wildlife Service, and other agencies, in order to sustain fish and wildlife habitats on and surrounding the Project.

2.8. Noise Standard. Noise Standards shall comply with the Zoning Ordinance. No Noise Standard shall be more restrictive than the standards set forth in the Zoning Ordinance. The Noise Standards do not apply to any component constructed exclusively on federal lands or any component, facility, or technology that require approvals by the federal agencies overseeing the federal process for the Project.

2.9. Water Transmission Lines. Prior to the issuance of any building permit for the hydro electrical generation portion of the Project, Developer will submit to the Board for review the proposed water transmission lines from the Anderson Ranch Reservoir to the Reservoir, which submission shall include any proposed visual and audio screening.

2.10. Scholarship Fund. Upon commencement of the operation of the Project, or any part thereunder as set forth in the Application, the Developer shall make an annual contribution on October 1 of each year thereafter, in the amount of Ten Thousand Dollars (\$10,000.00) per year to the County ("**Scholarship Fund**") to fund post high school education opportunities for students who are residents of Elmore County, which Scholarship Fund shall be administered by the Board

or such other committees and administer and distribute along with other County scholarship programs.

2.11. Senior Contribution. Upon commencement of the operation of the Project, or any part thereof, the Developer shall make an annual contribution on October 1 of each year thereafter, in the amount of Ten Thousand Dollars (\$10,000.00) per year (“**Senior Contribution**”) to the County to be distributed to Elmore County senior citizens by the Board.

2.12. Incorporation and Modification of Conditions. The Conditions as modified herein, are hereby incorporated into this Agreement.

2.12.1. Conditions 2m, 25, 30, and 31 are hereby deleted.

2.12.2. Condition 24 shall read: Approval of the Interconnection Application.

2.12.3. Condition 15 shall read: Prior to any single CUP construction, an updated Wildlife Mitigation Plan/Environmental Impact Statement (“WMP/EIS”) shall be submitted to Elmore County. The WMP/EIS shall be reviewed by and subject to the approval by the Board for compliance with the Zoning Ordinance, including but not limited to standards for conditional use permits and environmental studies.

SECTION 3. ADDITIONAL VISUAL MITIGATION MEASURES.

Developer shall utilize best industry practices to implement visual mitigation surrounding the water pumping stations, pipelines, penstocks, solar array, substation, and transmission lines as prescribed by federal permitting rules set forth by the Bureau of Reclamation and FERC. Wind turbines do not qualify for visual mitigation. Developer shall provide visual elevations of the water pumping and diversion lines, solar array, substation and transmission lines to the Board, for the County’s review, demonstrating visual mitigation efforts and options prior to construction of these portions of the Project. The Board acknowledges and agrees that there shall be no further oversight by the Board on any additional visual mitigation measures beyond what is established, conditioned, or required under any federal or state procedures or permits.

SECTION 4. CONSTRUCTION.

The Project shall be developed in substantial compliance with the Master Site Plan and such other plans and specifications as approved by the County in this Agreement and subsequent amendments to this Agreement per Section 1.2. All development of the Project shall be constructed, processed, and approved in accordance with the Zoning Ordinance and federal and state laws as described in this Agreement. If a building permit is needed for any structure in the Project, then a building permit application shall be submitted to the Elmore County Building Department for review and approval. For purposes of the construction and permitting provisions under this Agreement, each CUP is separate. Prior to issuance of a building permit under each CUP, Developer shall be in substantial compliance with this Agreement pertaining to that CUP, defining the location of project structures for which such a permit is necessary. The County Engineer shall review the submission for drainage, storm water management, and any structural

element in the design to ensure compliance with all regulations. The submission of engineered drawings by Developer shall bear the appropriate professional stamp of an Idaho licensed engineer or architect. Original Equipment Manufactured components are an exemption to this provision as long as documented compliance is submitted under any IEEE and ISO designation. A state electrical permit as required for any electrical associated construction shall be submitted as an additional requirement for a building permit.

SECTION 5. DEFAULT.

5.1. General Provisions. A party shall be deemed to be in default of this Agreement only upon the expiration of ninety (90) days (ten [10] days in the event of failure to pay money) from receipt of written Notice from the other party specifying the particulars in which such party has failed to perform the obligations of this Agreement unless such party, prior to the expiration of said ninety (90) days (ten [10] days in the event of failure to pay money), has rectified the particulars specified in said Notice of default. However, such party shall not be deemed to be in default if such failure (except a failure to pay money) cannot be rectified within said ninety (90) day period and such party is using good faith and its best efforts to rectify the particulars specified in the Notice of default and such party in default shall have an additional ninety (90) days (180 days in total) to cure such default.

5.2. Hearings on Violations. Upon a determination by the Director that Developer has violated this Agreement and has failed to cure the violation as described in Section 5.1 above, the Director shall schedule a hearing before the Board with notice prior to a hearing. At the conclusion of the hearing, the Board may determine Developer to be in default, in partial default, may modify its decision, or take other action that the Board deems just, reasonable and in accordance with law, including termination of this Agreement and the revocation of the Approvals.

5.3. County Remedies. Should the Board determine Developer to be in default or partial default, the County, at its option, may institute all remedies available at law or equity; modify, in whole or in part, the permit, specific plan, or amend the Conditions; and/or terminate the Agreement and the Approvals, all as the Board may determine in the exercise of its discretion and subject to Idaho law.

5.4. Developer's Remedies. If the County is in default under this Agreement, after the expiration of the right to cure, Developer may pursue all remedies available at law or equity.

5.5. Restrictions to Cure. The Board shall not restrict the ability for any mortgagee, lender, insurer, Landowners, or equity member of Developer (the "Curing Party") from assuming all liabilities in the event of a default by Developer, which Developer is either unable or unwilling to cure, so long as such cure of the default(s) occurs within the time frames set forth in Section 5.1 or as otherwise established by the Board.

5.6. Landowners and Curing Party Remedies. During the time in which Developer is in default as provided in Section 5, the Landowners or any Curing Party who has an interest in the Project, may cure the default of Developer by giving Notice to the County of its desire to cure

such default and such cure shall be made within the time frame provided to Developer under Section 5.1.

- 5.6.1. The County agrees to give a copy of any Notice of default of Developer to the Landowners and any Curing Party so long as it provides advance written Notice to the County of their desire to receive any Notice of default and their Notice address(es).
- 5.6.2. The Landowners or Curing Party may cure the default of Developer within the time frame set forth in Section 5.1 or as otherwise established by the Board.

5.7. Termination.

- 5.7.1. This Agreement may be terminated upon the request of Developer, upon approval of the Board, following notice and public hearing, or upon a finding of default by the Board that Developer, a subsequent owner or any other person acquiring an interest in the Project site, is in default of any requirement in this Agreement.
- 5.7.2. Unless cured by the Landowners or a Curing Party, the Landowners and/or the Curing Party shall be subject to any default remedies of the County, including but not limited to termination of this Agreement.
- 5.7.3. Following notice and hearing procedures required above, the Board, may in its discretion, amend this Agreement in lieu of terminating the Agreement if the amendment otherwise complies with the Zoning Ordinance.
- 5.7.4. Should a default and termination occur after portions of building permits have been issued for a portion of the Project and such work under the issued building permit has commenced, beyond grading, the Developer or Landowners shall be permitted to complete such work, so long as they otherwise comply with this Agreement, the Zoning Ordinance, federal and state law, and the Board may not terminate this Agreement as to those developed sections that comply with this Agreement. The Board, after notice and public hearing may amend this Agreement to include only those sections, and the termination of this Agreement shall apply only to the undeveloped sections where no infrastructure has been provided.

SECTION 6. INTENTIONALLY OMITTED.

SECTION 7. PERMITTING.

Prior to issuance of any building permit for each CUP, Developer shall obtain: (i) any federal and state licenses and approval to operate that portion of the Project under the appropriate CUP; (ii) a demonstrated ability to connect to the appropriate electrical control area operator transmission or distribution lines or the construction of alternate transmission lines specifically for

this Project; and (iii) a strategy for the generating facility falling under the relevant CUP for the sale and delivery of electrical power as part of the Project.

SECTION 8. DECOMMISSIONING.

8.1. Decommission of Project. Prior to the issuance of any building permit for each CUP, Developer, Landowners, and the County shall enter into a decommissioning agreement and Developer shall place a bond or other acceptable financial instrument as approved by the County with the County based upon a decommissioning plan presented to the Director and approved by the Board, estimating the net cost of restoring the site pursuant to the decommissioning agreement. All improvements, facilities and buildings containing power generating or transmitting equipment with the Project shall be removed within 180 days of the discontinuance of operation of the Project on the Property and the Property restored to its natural state. For purposes of this Section, improvements, facilities, and buildings shall not include: (i) transmissions lines and the Reservoir, provided they are in use, and (ii) any storage or housing buildings. All footings and foundations shall be removed to a depth of three feet below the surface. The amount and terms of the bond shall be approved by the Board. Developer shall submit an updated decommissioning plan every five years and shall increase or decrease the amount of the bond if the net cost of restoration changes from the prior study.

SECTION 9. ANNUAL REVIEW.

Commencing on the first-year anniversary of the Effective Date, and every year thereafter, so long as the Project is in operation, Developer shall submit a status report, and meet in person with the Board, detailing the status of the development and operations of the Project (“Annual Review”). Upon request by Developer, the Board, in its sole and absolute discretion, may modify, waive or terminate the Annual Review requirement after 5 years of Project operation.

The Annual Review during construction activities shall include a review of Developer’s plan (i) to implement erosion control measures, (ii) for the timing of construction activities, (iii) on federal and state permitting efforts, and (iv) for any other activities associated with construction and permitting activities. The Annual Review once the Project is operational shall include a review of (i) fish stocking and other wildlife management, (ii) general operations and any problems associated with those operations, (iii) Developer concerns, and (iv) any other matters pertaining to the Project.

SECTION 10. NOTICES.

10.1. Notices. Any notice, demand, or other communication (a “Notice”) given under this Agreement shall be in writing and given personally or by certified mail (return receipt requested). If given by certified mail, a Notice shall be deemed to have been given and received on actual receipt of the certified mail or therein, its rejection as required by the U.S. Mail. If to a specific person, a Notice shall be deemed to have been given when delivered to the party to whom it is addressed, and notice of delivery has been registered. A courtesy copy of the Notice may be sent by facsimile transmission and/or electronic communication. Any party may designate any other address in substitution of the address contained herein by like written Notice.

10.2. Addresses. Notices shall be given to the Parties at their addresses set forth below:
If to County, to:

Elmore County Board of County Commissioners
150 South 4th East
Mountain Home, Idaho 83647
Telephone: 208-587-2130 ext. 212
Facsimile: 208-587-2159

With copy to:

Elmore County Courthouse Annex
Attn: Elmore County Prosecuting Attorney
190 South 4th East
Mountain Home Idaho 83647
Telephone: 208-587-2130

If to Developer, to:

Cat Creek Energy, LLC
Attn: John Faulkner
1989 South 1875 East
Gooding, Idaho 83330

With a copy to:

Terri Pickens Manweiler
Pickens Cozacos, P.A.
398 S. 9th Street, Ste. 240
Boise, ID 83702
Telephone: (208) 954-5090
Facsimile: (208) 954-5099
Email: terri@pickenslawboise.com

SECTION 11. ASSIGNMENT OR TRANSFER.

11.1. Assignment. Developer may assign or transfer all or any portion of the Project to any person or entity (“Transferee”), subject to the provisions of this Section.

11.2. Effect of Assignment; Public Records. It is the intent of the Parties that as the Project is developed, all requirements of the Approval, Conditions, as modified herein, and this Agreement shall be met. To that end, if Developer transfers any portion of the Property to a Transferee, Developer shall continue to be responsible for performing the obligations under this Agreement until such time as is there is delivered to the County a legally binding instrument in a form approved by the County (an “Assignment and Assumption Agreement”) where a Transferee agrees to perform all obligations and be responsible for all provisions of the Approval, Conditions as modified herein, and this Agreement as to the transferred property. The County shall review the

submittals for approval, approval by the County is required and such approval shall not be unreasonably withheld, that the transfer is in accordance with the provisions of this section. The County shall retain all records in compliance with the Idaho Public Records Law, including maintaining such confidential information, when marked as such by Developer or the Transferee, as permitted under the Idaho Public Records Law. No additional conditions may be placed on the Transferee outside this Agreement, other than the curing of any defaults.

11.3. Procedures. No fewer than sixty (60) days prior to entering into an Assignment and Assumption Agreement, Developer shall submit to the County a draft of the proposed Assignment and Assumption Agreement referring to the obligation of the Transferee to assume the obligation of the Conditions as modified herein and this Agreement and the conditions pertaining to the transferred property along with any other applicable conditions of approvals and any other obligations to be assumed by Transferee pursuant to the Assignment and Assumption Agreement.

Developer shall cooperate with the County by providing documents and information the County may deem necessary in the exercise of its reasonable discretion. All assignment information record keeping shall be administered by the County pursuant to the Idaho Public Record Law. The County may schedule a public hearing to discuss the transfer and make a decision, on the request for Assignment and Assumption. Such approval cannot be unreasonably withheld.

11.4. Default. Failure of Developer to provide an Assignment and Assumption Agreement as approved by the County, shall be a default under this Agreement.

11.5. The Entirety of this Agreement. This Agreement, the Approval, and the Conditions as modified herein, shall run with the land and shall be binding upon the Landowners, the Developer, and their successors, assigns, and heirs, and all obligations assumed by Developer are binding upon the Curing Parties, successors, heirs, assigns and transferees of the Curing Parties whether such is by contract, operation of law or any other mechanism.

SECTION 12. REPRESENTATIONS AND WARRANTIES OF DEVELOPER AND LANDOWNERS.

Developer represents it has full authority under existing agreements between Developer and Landowners to pursue development, construction, and operation of the facilities in the Project. Landowners represent they have given consent for the development, construction, and operation of said facilities contained in the Project and further represent that any agreements between Developer and Landowners are in full force and effect and are not currently in default and will not be in default prior to the Effective Date. Developer and Landowners represent and warrant to the County that the Landowners own the Property in fee simple title free and clear of all encumbrances unless set forth in the Title Commitment from Guaranty Title dated January 25, 2018. Developer represents and warrants to the County that no consent from any other person or entity is required for either Landowners or Developer to enter into this Agreement and that all corporate, company or other entity requirements have been fully satisfied.

SECTION 13. GENERAL PROVISIONS.

13.1. Recordation. This Agreement shall be recorded in the public land records of the County.

13.2. CUPs Run with the Land. The CUPs for the Project run with the land as long as the County, Developer, and Landowners are in compliance with the Approval, the Conditions as modified herein, and this Agreement. This Agreement is not a Development Agreement pursuant to I.C. § 67-6511A, but rather an agreement as a condition of the CUPs.

13.3. Existing Mortgages. In the event of the entry of decree of foreclosure of the Property by either of the two existing lenders, Northwest Farm Credit Services and Metlife Agricultural Investments, including all successors, assigns or purchasers of such loan(s), or a deed in lieu of foreclosure of each Property, the County shall have the absolute right to terminate the CUPs including the Agreement.

13.4. Mortgages and Other Security Provisions and Obligations (“Mortgage”). Subject to the entering into a subordination or non-disturbance and attornment agreement in such form as approved by the County, by those parties with a security interest in the Property, the Developer, and the Landowners, this Agreement and any easements granted by the Developer or Landowners for water distribution points and transmission lines, shall not be disturbed and shall be subordinate to those secured parties (along with the County, the Developer and the Landowners) that enter in to the agreement and record the same upon the Property. No default hereof shall invalidate or impair the lien of any Mortgage made in good faith and for value, and any acquisition or acceptance of title or any right or interest in or with respect to the Project, or any portion thereof, by a mortgagee (herein defined to include a beneficiary under a deed of trust), whether under or pursuant to a mortgage foreclosure, trustee’s sale or deed in lieu of foreclosure or trustee’s sale, or otherwise, shall be subject to all of the terms and conditions contained in this Agreement, but any such mortgage shall not prevent termination of this Agreement or other remedies by the County. No mortgagee shall have an obligation or duty under this Agreement to perform Developer’s obligations or other affirmative covenants of Developer hereunder, or to guarantee such performance; except that to the extent that any covenant to be performed by Developer is a condition to the performance of a covenant by County, the performance thereof shall continue to be a condition precedent to County’s performance hereunder.

13.5. Severability. If any provision of this Agreement is declared void or unenforceable, such provision shall be severed from this Agreement, which shall otherwise remain in full force and effect. It is the Parties express intention that the terms and conditions be construed and applied as provided herein, to the fullest extent possible. It is the Parties further intention that, to the extent any such term or condition is found to constitute an impermissible restriction of the police power of County, such term or condition shall be construed and applied in such lesser fashion as may be necessary to not restrict the police power of the County.

13.6. Good Standing; Authority. Developer hereby represents to that Developer is an Idaho limited liability company; (b) County represents that it is a governmental entity in the State of Idaho; and (c) the individual(s) executing this Agreement on behalf of the Parties represent that

they are authorized and empowered to bind the party, respectively, on whose behalf each such individual is signing.

13.7. Amendment. Subject to notice and hearing, all amendments shall be in writing and shall be approved and signed by the County, Developer and Landowners. Any amendment to this Agreement may be evidenced by recordation in the County land records. Developer agrees to pay all recording fees necessary to record any such amendment requested by Developer.

13.8. No Agency, Joint Venture or Partnership. County and Developer hereby renounce the existence of any form of joint venture or partnership between County and Developer and agree that nothing contained herein or in any document executed in connection herewith shall be construed as making County and Developer joint ventures or partners.

13.9. Construction. This Agreement has been reviewed by legal counsel for both County and Developer, and this Agreement, no presumption or rule that ambiguities shall be construed against the drafting party shall apply to the interpretation or enforcement of this Agreement.

13.10. Choice of Law. This Agreement and its performance shall be construed in accordance with and governed by the laws of the State of Idaho, with venue for any action brought pursuant to this Agreement to be in the Fourth Judicial District, State of Idaho.

13.11. Merger and Integration. The Application, Approval, Conditions as modified herein, and this Agreement embody the whole agreement of the parties. There are no promises, terms, conditions, or obligations other than those referenced to in the Recitals, contained in this Agreement or in the Application, Approval, and Conditions as modified herein. All previous and contemporaneous communications, representations, permits, or agreements, either verbal or written, between the Parties are modified or superseded by this Agreement.

13.12. Third Party Beneficiaries. Nothing contained herein shall create any relationship, contractual or otherwise, with, or any rights in favor of, any third party.

13.13. Waivers. No provision or condition of this Agreement shall be considered waived unless duly amended. The failure of County or Developer to require strict performance of any term or condition of this Agreement or to exercise any option here in conferred in any one or all instances shall not be construed to be a waiver or relinquishment of any such term or condition, but the same shall be and remain in full force and effect, unless such waiver is evidenced by the prior written consent of either County or Developer, as the case may be.

13.14. Duty to Act Reasonably. Unless otherwise expressly provided, each party shall act reasonably in giving any consent, approval, or taking any other action under this Agreement.

13.15. Excused Delay; Extension of Time of Performance.

13.15.1. “Excused Delay” means, with respect to Developer, any event or circumstance which is beyond the reasonable control of Developer and having a direct effect on Developer’s performance of this Agreement, and which (a) could not be

avoided, prevented or removed by Developer's commercially reasonable efforts, and (b) is not caused by or does not result from the negligence of Developer or breach or failure of Developer to perform its obligations under the Agreement; provided that Developer has taken all reasonable precautions, care and alternate measures to avoid or mitigate the effects thereof.

13.15.2. Excused Delay events shall include, but not be limited to: natural disasters, fire, hurricanes, tornadoes, dust or sand storms, mudslides, subsidence, lightning, flood, earthquake, explosions, acts of God, terrorism or similar actions by the public enemy, strikes or lockouts affecting the industry in general (national or regional in scope) where such strike or lockout has a direct effect on the performance of the Agreement, public disorder or civil disturbance, blockages, insurrections, riots, war, hostilities, sabotage, expropriation or confiscation, epidemic or quarantine, or environmental terrorism.

13.15.3. Upon delivery of written Notice of Excused Delay by Developer to the County an extension of time for cause will be considered, and may be granted in writing by the County for the period of the Excused Delay.

13.16. Covenants Appurtenant to the Project. All covenants and conditions set forth herein shall be appurtenant to and run with the Project and shall be binding upon the Parties hereto, their heirs, successors, and assigns.

13.17. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument. The signature pages from one or more counterparts may be removed from such counterparts and such signature pages all attached to a single instrument shall form a single document.

13.18. Further Acts. Each of the Parties shall execute and deliver all such documents and perform all such acts as reasonably necessary, from time to time, to carry out the matters contemplated by this Agreement.

13.19. Headings. The descriptive headings of the sections of this Agreement are inserted for convenience only and shall not control or effect the meaning or construction of any of the provisions hereof.

13.20. Names and Plans. Developer shall be the sole owner of all names, titles, plans, drawings, specifications, ideas, programs, designs, technology, processes, and work products of every nature at any time developed, formulated or prepared by or at the request of Developer in connection with the Project.

13.21. Attorney Fees. In the event that either party to this Agreement shall file suit or action at law or equity to interpret or enforce this Agreement, the unsuccessful party to such litigation agrees to pay to the prevailing party all costs and expenses, including reasonable attorneys' fees incurred by the prevailing party. Similarly, all fees and costs associated with an

appeal to any appellate court thereafter, including, without limitation, the prevailing party's attorneys' fees, shall be paid by the non-prevailing party.

13.22. Termination. This Agreement may be terminated upon the mutual written consent of the Parties.

13.23. Recitals. The Recitals to the Agreement are incorporated into the Agreement.

[Signatures on following pages]

Exhibits:

Exhibit A – Legal Description of the Property

Exhibit B – County Tax Parcels for Each of the Land Areas Comprising the CUPs

Exhibit C – Master Site Plan – from the November 2016 hearings

Exhibit D – Master Site Plan as modified under this Agreement

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

Wesley R. Wootan
By: Wesley R. Wootan, Commissioner

Franklin L. Corbus
By: Franklin L. Corbus, Commissioner



ATTEST:

Barbara Steele
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.

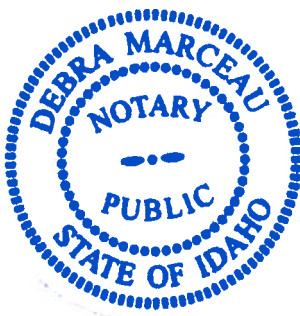


Debra Marceau
NOTARY PUBLIC for Idaho
Residing at Hammett, Idaho
My commission expires: 10-18-23

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



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.



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

[Signature]
By: JOHN FAULKNER
Name: _____
Title: PRESIDENT

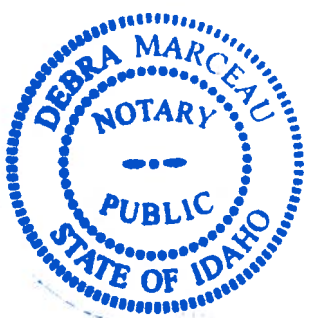
Wood Creek Ranch, LLC
An Idaho limited liability company

[Signature]
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.



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

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

Tract I:

Township 1 South, Range 10 East, Boise Meridian, Elmore County, Idaho

Section 13: S1/2SW1/4

Section 14: S1/2S1/2

Section 15: S1/2SE1/4, SE1/4SW1/4

Section 21: SW1/4SW1/4, E1/2NE1/4, NE1/4SE1/4 and SE1/4SE1/4

SAVE AND EXCEPT

Commencing at the SE Corner of Section 21 and running West 400 feet more or less to the Point of Beginning; running

thence N65°43'10" E 190 feet more or less, running

thence S 15°50'38" W 80 feet more or less, running

thence West 150 feet more or less to the Point of Beginning.

Section 22: All lying North of Highway 68

SAVE AND EXCEPT

Louse Creek Road running through Section 22

Section 23: N1/2, S1/2 lying North of Highway 68

Section 24: NW1/4, N1/2SW1/4

Section 28: NW1/4 lying North of Highway 68,
SW1/4 lying South of Highway 68,
SE1/4NW1/4 lying South of Highway 68, and
NE1/4 lying North of Highway 68

SAVE AND EXCEPT

A parcel of land being a portion of the Northeast 1/4 of the Northeast 1/4 of Section 28, Township 1 South, Range 10 East, B.M., Elmore County, Idaho:

Commencing at a found brass cap marked G.L.O. 1938, monumenting the East 1/4 corner of said Section 28;

thence along the Easterly boundary of said Section 28, North 00°36'26" West 2,433.62 feet to a point on the centerline of State Highway 20, said point being the beginning of a non-tangent curve, concave to the Southeast

and

having a radius of 5,729.58 feet, to which point a radial line bears North 21°04'18" West;
thence leaving said Easterly boundary, Southwesterly along said Centerline and arc of said curve 620.60 feet, through a central angle of 06°12' 22", having a chord bearing and distance of South 65°49'31" West 620.29 feet; thence leaving said center line, North 27°16'40" West 75.00 feet to a point on the Northerly right-of-way of said Highway 20, the REAL POINT OF BEGINNING;
thence leaving said Northerly right of way North 27°16'40" West 271.01 feet;
thence North 65°43'10" East 421.93 feet more or less to a point on a existing fence line;
thence East 150 feet more or less,
thence S 15°50'38" W 264.15 feet more or less;
thence leaving said fence line, Southwesterly along said right of way and the arc of said curve 376.11 feet through a central angle of 03°42'45", having a chord bearing and a distance of South 64°34'43" West 376.05 feet to the REAL POINT OF BEGINNING.

Subject To: All existing road right of way and easements of record or appearing on the above-described parcel of land.

Section 29: E1/2NW1/4, NE1/4, SW1/4 lying North of Highway 68,
W1/2SE1/4 lying North and South of Highway 68, and the
E1/2SE1/4 lying South of Highway 68

Section 30: S1/2NE1/4, N1/2SE1/4, and SE1/4SW1/4, S1/2SE1/4

SAVE AND EXCEPT

A parcel of land located in the North half of Section 31 and the South half of Section 30, Township 1 South, Range 10 East, Boise Meridian, Elmore County, Idaho, and more particularly described as follows:

Beginning at the Northeast corner of said Section 31, from which the North Quarter corner of said Section 31 bears

South 89°31'09" West 2,632.14 feet;

thence South 00°25'47" East along the East boundary of said Section 31 for a distance of 281.74 feet;

thence South 89°31'09" West parallel with the North boundary of said Section 31 for a distance of 1,383.62 feet;

thence South 00°19'47" East parallel with the West boundary of the NE1/4 of said Section 31 for a distance of 750.00 feet;

thence South 89°31'09" West parallel with the North boundary of the NE1/4 of said Section 31 for a distance of 1,249 .01 feet to a point on the West boundary of the NE 1/4 of said Section 31;

thence South 89°55'49" West parallel with the North boundary of the NW1/4 of said Section 31 for a distance of 1,308.70 feet to a point on the West boundary of the NE1/4NW1/4 of said Section 31;

thence North 00°05'27" West along the West boundary of the NE1/4NW1/4 of said Section 31 for a distance of 427.50 feet to a point on the southerly Right of Way of US-20, Highway project Number FHP-47A;

thence the following courses and distances along the southerly right of way of US Highway Number 20, Highway project number FHP-47A;

North 68°30'16" East for a distance of 86.29 feet to a point of spiral, Station 593+43.59, 75.00 feet right of said Highway project;

Northeasterly along a spiral curve left parallel to and 75.00 feet distant Southeasterly from the centerline of US-20

having a long chord bearing North 65°16'55" East for a distance of 367.86 feet to a point being 75.00 feet perpendicular to the centerline of US-20, Station 597+00.00;

South 86°57'58" East for a distance of 141.25 feet to a point of curvature and being 160.00 feet perpendicular to the centerline of US-20, Station 598+00.00;

Northeasterly 233.31 feet along a non-tangent curve left having a radius of 1,114.93 feet, delta angle of 11°59'22", and a long chord bearing North 47°06'10" East for a distance of 232.88 feet to a point being 160.00 feet perpendicular to the centerline of US-20, Station 600+00.00;

North 01°00'56" East for a distance of 140.75 feet to a point being 75.00 feet perpendicular to the centerline of US-20, Station 601+00.00;

Northeasterly 215.62 feet along a non-tangent curve left having a radius of 1,029.93 feet, delta angle of 11°59'43",

and a long chord bearing North 29°06'35" East for a distance of 215.23 feet to a point being 75.00 feet perpendicular to the centerline of US-20, Station 603+00.26;

Northeasterly along a spiral curve left parallel to and 75.00 feet distant South easterly from the centerline of US- 20

having a long chord bearing North 19°08'41" East for a distance of 208.28 feet to a point being 75.00 feet

perpendicular to the centerline of US-20, Station 605+00.26;

North 17°13'45" East for a distance of 31.99 feet to a point being 75.00 feet perpendicular to the centerline of US-20, Station 605+32.26;

Northeasterly along a spiral curve right parallel to an 75.00 feet distant Southeasterly from the centerline of US-20

having a long chord bearing North 18°55'19" East for a distance of 156.23 feet to a point being 75.00 feet perpendicular to the centerline of US-20, Station 607+00.00;

North 52°48'40" East for a distance of 100.76 feet to a point being 120.00 feet perpendicular to the centerline of US-

20, Station 608+00.00;

Northeasterly 391.23 feet along a non-tangent curve right having a radius of 596.20 feet delta angle of 37°35'53", and a long chord bearing North 49°17'46" East for a distance of 384.25 feet to a point being 120.00 feet perpendicular to the center line of US-20, Station 612+69.70;

Northeasterly along a spiral curve right parallel to and 120.00 feet distant Southeasterly from the centerline of US-20

having a long chord bearing North 77°51'29" East for a distance of 296.18 feet to a point being 120.00 feet perpendicular to the centerline of US-20, Station 616+00.00;

North 72°51'47" East for a distance of 232.06 feet to a point being 75.00 feet perpendicular to the centerline of US-20, Station 619+00.00;

North 84°05'42" East for a distance of 261.31 feet to a point being 75.00 feet perpendicular to the centerline of US-20, Station 621+61.37;

Northeasterly along a spiral curve right parallel to and 75.00 feet distant Southeasterly from the centerline of US-20

having a long chord bearing North 85°34'48" East for a distance of 294.03 feet to a point being 75.00 feet perpendicular to the centerline of US-20, Station 624+61.37;

Southeasterly 767.52 feet along a curve right having a radius of 1,834.86 feet, delta angle of 23°58'00", and a long chord bearing South 79°25'18" East for a distance of 761.93 feet to a point being 75.00 feet perpendicular to the centerline of US-20, Station 632+57.97;

Southeasterly along a spiral curve right parallel to and 75.00 feet distant Southwesterly from the centerline of US-20

having a long chord bearing South 64°25'24" East for a distance of 294.03 feet to a point being 75.00 feet perpendicular to the centerline of US-20, Station 635+57.97 Ahead-Station 635+60.26 Back;

South 62°56'18" East for a distance of 124.25 feet to a point being 75.00 feet perpendicular to the centerline of US-20, Station 636+83.07;

Southeasterly along a spiral curve left parallel to and 75.00 feet distant Southwesterly from the centerline of US-20

having a long chord bearing South 62°56'34" East for a distance of 18.13 feet to a point being 75.00 feet perpendicular to the center line of US-20, Station 637+00.00;

South 71°32'51" East for a distance of 101.40 feet to a point being 60.00 feet perpendicular to the centerline of US-20, Station 638+00.00;

Southeasterly along a spiral curve left parallel to and 60.00 feet distant Southwesterly from the centerline of US-20

having a long chord bearing South 64°19'24" East for a distance of 284.73 feet to a point being 60.00 feet perpendicular to the centerline of US-20, Station 640+83.07;

Southeasterly 44.64 feet along a curve left having a radius of 3,879.72 feet, delta angle of 00°39'33", and a long chord bearing South 66°16'05" East for a distance of 44.64 feet to a point on the East boundary of the SE1/4 of Section 30 and being 60.00 feet perpendicular to the centerline of US-20;

thence South 00°27'03" East along the East boundary of said Section 30 for a distance of 399.14 feet to the Southeast corner of said Section 30 and being the POINT OF BEGINNING.

Section 31: E1/2NW1/4 and NE1/4, N1/2SE1/4 and
E1/2SW 1/4 lying North of County Road

SAVE AND EXCEPT

A parcel of land located in the North half of Section 31 and the South half of Section 30, Township 1 South, Range 10 East, Boise Meridian, Elmore County, Idaho, and more particularly described as follows:

Beginning at the Northeast corner of said Section 31, from which the North Quarter corner of said Section 31 bears South 89°31'09" West 2,632.14 feet;

thence South 00°25'47" East along the East boundary of said Section 31 for a distance of 281.74 feet;

thence South 89°31'09" West parallel with the North boundary of said Section 31 for a distance of 1,383.62 feet;

thence South 00°19'47" East parallel with the West boundary of the NE1/4 of said Section 31 for a distance of 75 0.00 feet;

thence South 89°31'09" West parallel with the North boundary of the NE1/4 of said Section 31 for a distance of 1,249.01 feet to a point on the West boundary of the NE1/4 of said Section 31;

thence South 89°55'49" West parallel with the North boundary of the NW1/4 of said Section 31 for a distance of 1,308.70 feet to a point on the West boundary of the NE1/4NW1/4 of said Section 31;

thence North 00°05'27" West along the West boundary of the NE1/4NW1/4 of said Section 31 for a distance of 427.50 feet to a point on the southerly Right of Way of US-20, Highway project Number FHP-47A;

thence the following courses and distances along the southerly right of way of US Highway Number 20, Highway project number FHP-47A;

North 68°30'16" East for a distance of 86.29 feet to a point of spiral, Station 593+43.59, 75.00 feet right of said Highway project;

Northeasterly along a spiral curve left parallel to and 75.00 feet distant Southeasterly from the centerline of US-20

having a long chord bearing North 65°16'55" East for a distance of 367.86 feet to a point being 75.00 feet perpendicular to the centerline of US-20, Station 597+00.00;

South 86°57'58" East for a distance of 141.25 feet to a point of curvature and being 160.00 feet perpendicular to the centerline of US-20, Station 598+00.00;

Northeasterly 233.31 feet along a non-tangent curve left having a radius of 1,114.93 feet, delta angle of 11°59'22", and a long chord bearing North 47°06'10" East for a distance of 232.88 feet to a point being 160.00 feet perpendicular to the centerline of US-20, Station 600+00.00;

North 01°00'56" East for a distance of 140.75 feet to a point being 75.00 feet perpendicular to the centerline of US-20, Station 601+00.00;

Northeasterly 215.62 feet along a non-tangent curve left having a radius of 1,029.93 feet, delta angle of 11°59'43", and a long chord bearing North 29°06'35" East for a distance of 215.23 feet to a point being 75.00 feet perpendicular to the centerline of US-20, Station 603+00.26;

Northeasterly along a spiral curve left parallel to and 75.00 feet distant Southeasterly from the centerline of US-20

having a long chord bearing North 19°08'41" East for a distance of 208.28 feet to a point being 75.00 feet perpendicular to the centerline of US-20, Station 605+00.26;

North $17^{\circ}13'45''$ East for a distance of 31.99 feet to a point being 75.00 feet perpendicular to the centerline of US-20, Station 605+32.26;

Northeasterly along a spiral curve right parallel to a 75.00 feet distant Southeasterly from the centerline of US- 20

having a long chord bearing North $18^{\circ}55'19''$ East for a distance of 156.23 feet to a point being 75.00 feet perpendicular to the centerline of US-20, Station 607+00.00;

North $52^{\circ}48'40''$ East for a distance of 100.76 feet to a point being 120.00 feet perpendicular to the centerline of US-20, Station 608+00.00;

Northeasterly 391.23 feet along a non-tangent curve right having a radius of 596.20 feet delta angle of $37^{\circ}35'53''$, and a long chord bearing North $49^{\circ}17'46''$ East for a distance of 384.25 feet to a point being 120.00 feet perpendicular to the centerline of US-20, Station 612+69.70;

Northeasterly along a spiral curve right parallel to and 120.00 feet distant Southeasterly from the centerline of US-20

having a long chord bearing North $77^{\circ}51'29''$ East for a distance of 296.18 feet to a point being 120.00 feet perpendicular to the centerline of US-20, Station 616+00.00;

North $72^{\circ}51'47''$ East for a distance of 232.06 feet to a point being 75.00 feet perpendicular to the centerline of US-20, Station 619+00.00;

North $84^{\circ}05'42''$ East for a distance of 261.31 feet to a point being 75.00 feet perpendicular to the centerline of US-20, Station 621+61.37;

Northeasterly along a spiral curve right parallel to and 75.00 feet distant Southeasterly from the centerline of US-20

having a long chord bearing North $85^{\circ}34'48''$ East for a distance of 294.03 feet to a point being 75.00 feet perpendicular to the centerline of US-20, Station 624+61.37;

Southeasterly 767.52 feet along a curve right having a radius of 1,834.86 feet, delta angle of $23^{\circ}58'00''$, and a long chord bearing South $79^{\circ}25'18''$ East for a distance of 761.93 feet to a point being 75.00 feet perpendicular to the centerline of US-20. Station 632+57.97:

Southeasterly along a spiral curve right parallel to and 75.00 feet distant Southwesterly from the centerline of US-20

having a long chord bearing South $64^{\circ}25'24''$ East for a distance of 294.03 feet to a point being 75.00 feet perpendicular to the centerline of US-20, Station 635+57.97 Ahead-Station 635+60.26 Back;

South $62^{\circ}56'18''$ East for a distance of 124.25 feet to a point being 75.00 feet perpendicular to the centerline of US-20, Station 636+83.07;

Southeasterly along a spiral curve left parallel to and 75.00 feet distant Southwesterly from the centerline of US-20

having a long chord bearing South $62^{\circ}56'34''$ East for a distance of 18.13 feet to a point being 75.00 feet perpendicular to the centerline of US-20, Station 637+00.00;

South $71^{\circ}32'51''$ East for a distance of 101.40 feet to a point being 60.00 feet perpendicular to the centerline of US-20, Station 638+00.00;

Southeasterly along a spiral curve left parallel to and 60.00 feet distant Southwesterly from the centerline of US-20
having a long chord bearing South 64°19'24" East for a distance of 284.73 feet to a point being 60.00 feet perpendicular to the centerline of US-20, Station 640+83.07;
Southeasterly 44.64 feet along a curve left having a radius of 3,879.72 feet, delta angle of 00°39'33", and a long chord bearing South 66°16'05" East for a distance of 44.64 feet to a point on the East boundary of the SE1/4 of Section 30 and being 60.00 feet perpendicular to the centerline of US-20;
thence South 00°27'03" East along the East boundary of said Section 30 for a distance of 399.14 feet to the Southeast corner of said Section 30 and being the POINT OF BEGINNING.

Section 32: E1/2, NW1/4, N1/2SW1/4
Section 33: W1/2

Tract II: Wood Creek Ranch, LLC

Township 1 South, Range 9 East, Boise Meridian, Elmore County, Idaho

Section 1: U.S. Government Lots 2, 3 and 4,
South 1/2 North 1/2,
South 1/2
Together with vacated road which attached to said land by operation of law, as disclosed in Resolution No. 01(14)
Recorded: July 14, 2014, as Instrument No. 442877, or Official Records.

Section 2: U.S. Government Lots 1, 2, 3 and 4,
South 1/2 North 1/2,
South 1/2

Section 3: South 1/2 Southeast 1/4

Section 10: North 1/2 North 1/2

Section 11: ALL

Township 1 North, Range 9 East, Boise Meridian, Elmore County, Idaho

Section 25: East 1/2 East 1/2 Northeast 1/4 Northeast 1/4
South 1/2 Southeast 1/4 Northeast 1/4
Southwest 1/4 Northeast 1/4
Southeast 1/4 Northwest 1/4
South 1/2, SAVE AND EXCEPT Southwest 1/4 Southwest 1/4

Section 26: Northwest 1/4 Southwest 1/4
South 1/2 Northeast 1/4 Southwest 1/4
South 1/2 South 1/2

Section 27: North 1/2 North 1/2 Southeast 1/4

Section 35: ALL

Section 36: ALL

**EXHIBIT B
TAX PARCEL NUMBERS BY CUP**

Solar	Parcel Number	Acreage	Notes
	RP01S10E230025	509.24	
	RP01S10E220020	587.61	
	RP01S10E149010	160.00	
	RP01S10E159010	120.00	
	RP01S10E136610	80.00	
	RP01S10E242410	240.00	
Wind			
	RP01S10E210040	519.83	
	RP01S10E220020	587.61	Only that portion to the west of Elmore County Right of Way
	RP01S10E280085	347.09	
	RP01S10E290020	504.14	
	RP01S10E301840	231.02	
	RP01S10E310500	284.62	
	RP01S10E320020	560.00	
	RP01S10E332410	320.00	
Transmission			
	RP01S09E100010	160.00	
	RP01S09E039010	80.00	
	RP01S09E020010	577.00	
	RP01N09E350010	640.00	
	RP01N09E265410	220.00	
	RP01N09E277210	40.00	
Hydro			
	RP01N09E277210	40.00	
	RP01N09E265410	220.00	
	RP01N09E251210	380.00	
	RP01N09E360010	640.00	
	RP01N09E350010	640.00	
	RP01S09E020010	577.00	
	RP01S09E010610	551.58	Official Site Address: 10888 NE WOOD CREEK RD, 83647
	RP01S09E110040	640.00	
Substation			
	RP01S09E020010	577.00	
	RP01S09E110040	640.00	
	RP01N09E265410	220.00	Alt.

EXHIBIT C
MASTER SITE PLAN – REVISED 11-16-16

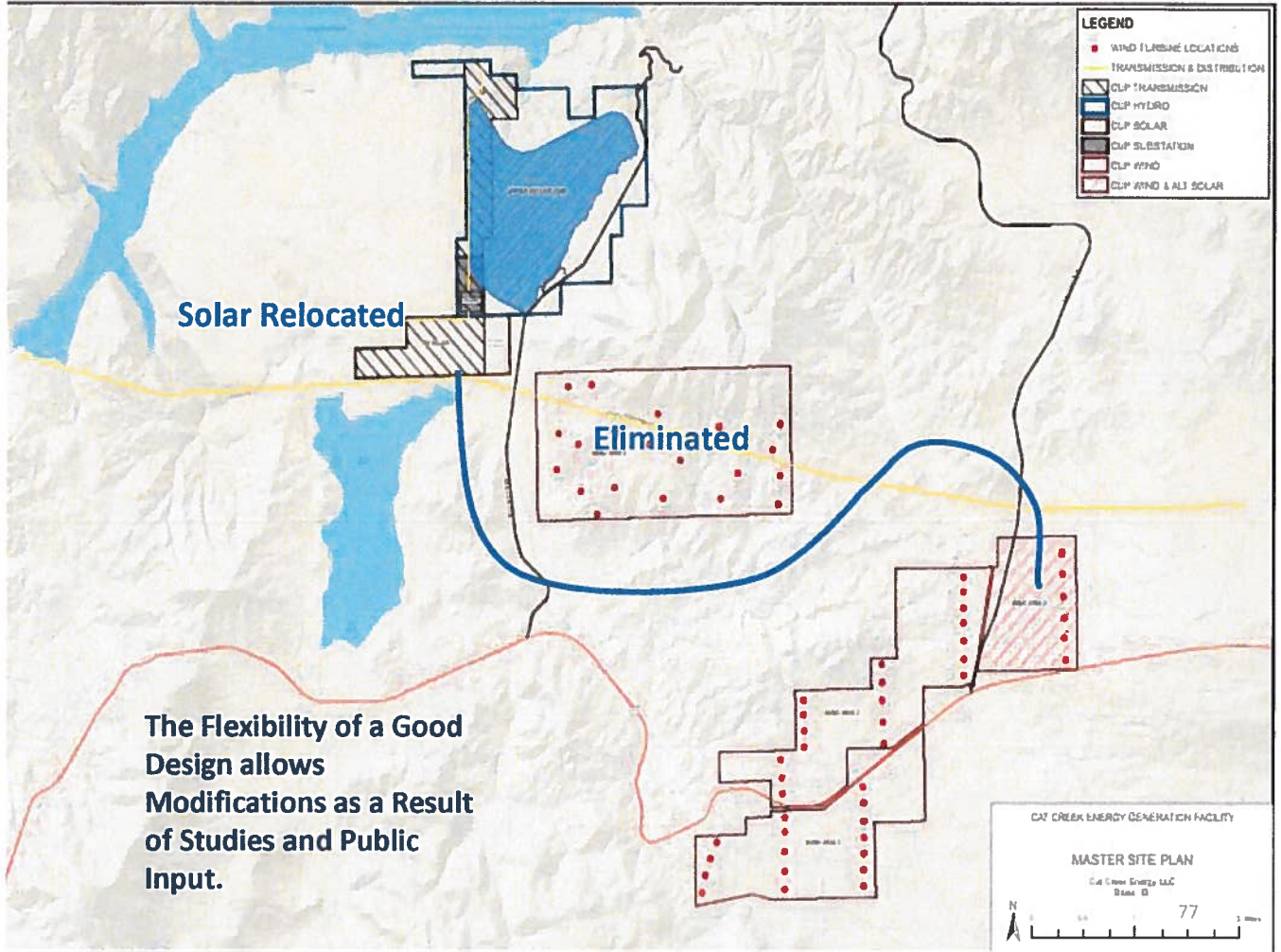


EXHIBIT C ORIGINAL MASTER SITE PLAN WITH APPLICATION

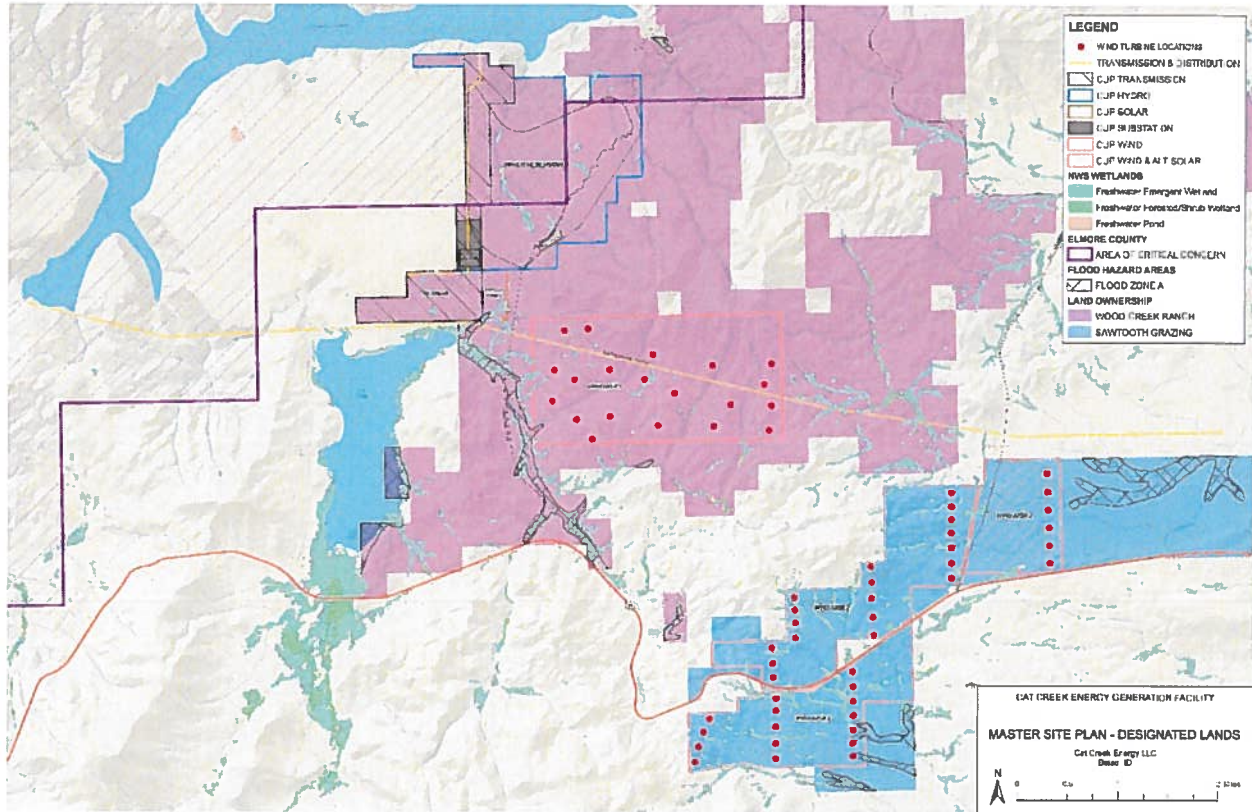
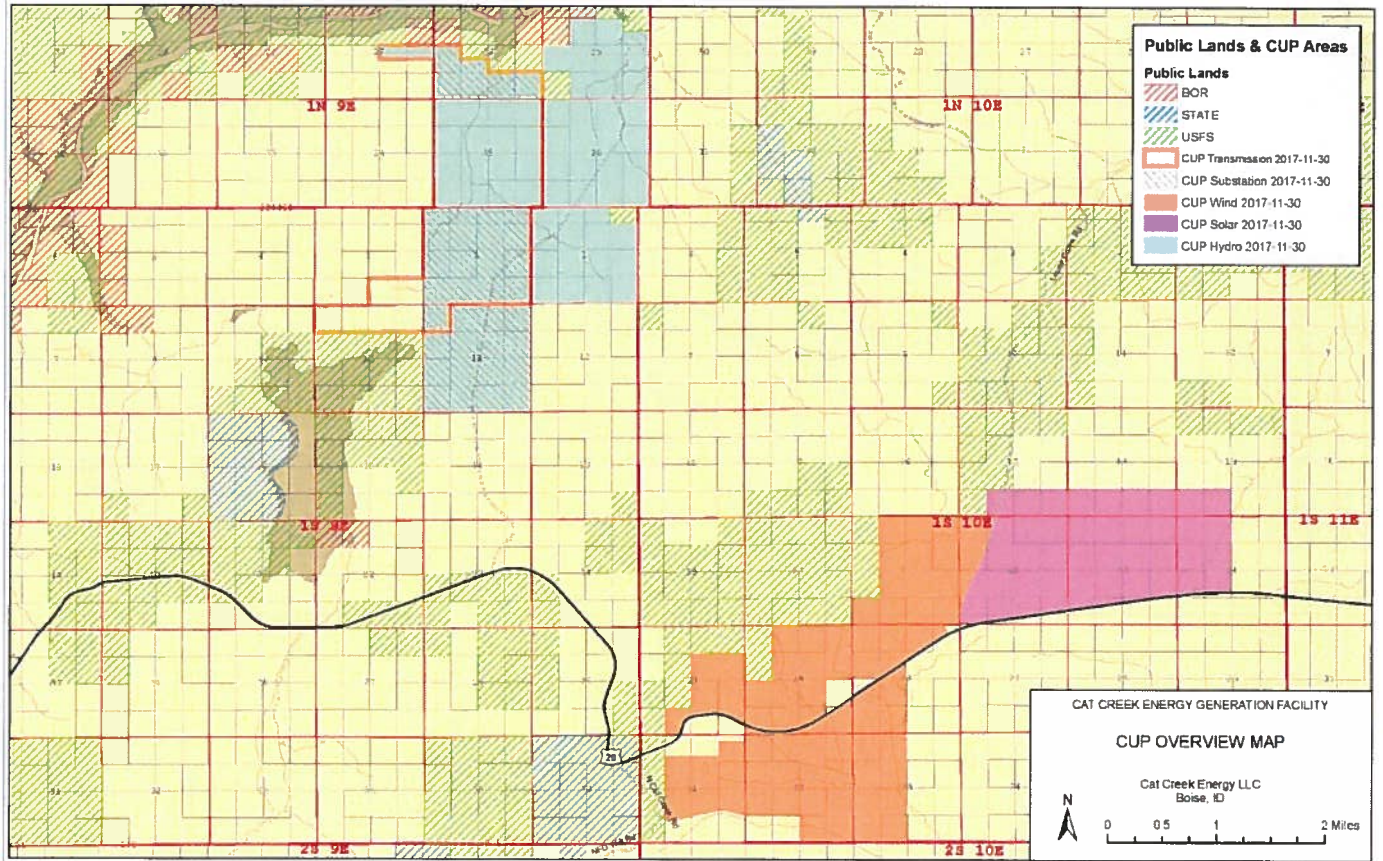


Exhibit D Master Site Plan as of the Effective Date



The following modifications are incorporated into the Master Site Plan according to the Approval, Conditions, and this Agreement.

- 1) The Upper Reservoir commonly known as the Cat Creek Reservoir (“CCR”) can be increased to a maximum size of 1,700 surface acres and 100,000 acre feet volume.
- 2) CCR can increase its depth up to ninety (90) feet maximum depth. The depth is a combination of excavation and the height of the embankment created.
- 3) The Pumped Storage Hydro (“PSH”) facility may contain up to six (6) penstocks, each with a maximum diameter of sixteen (16) feet.
- 4) The PSH facility may have underground tunnels with a maximum of thirty-four (34) feet in diameter on and under the CUP site.
- 5) The PSH facility may have an underground powerhouse cavern with dimensions of one hundred (100) feet in height, one hundred twenty (“120”) feet in width, and two hundred forty (240) feet in length under the CUP site.
- 6) A main electrical substation and switch station may be located anywhere in the Substation CUP as long as it is no less than 2,500 feet from any current residence.
- 7) The electrical switch station may be located alongside the electrical substation or may stand alone.
- 8) If auxiliary cooling is determined to be necessary for the PSH pump/generating units by the water quality studies, a water tower is permitted by the County as part of the equipment necessary for the successful operation of the PSH facility under any federal permitting as provided in the Zoning Ordinance.
- 9) A new wind/solar substation replaces the collector station for the wind/solar CUP site.
- 10) A transmission line replaces the distribution lines from the new wind/solar substation to the main substation or switch station.
- 11) Wind turbine towers may be located anywhere on the Wind CUP site. The maximum number of towers is thirty-nine (39). The maximum height is five hundred (500) feet. The minimum setback from any public road is 1.25 times the overall height of the wind turbine from the centerline of the wind turbine tower. The minimum setback from any existing residential dwelling shall be at least 2,500 feet.
- 12) A permanent meteorological tower can be built as necessary of any wind turbine configuration up to a height of three hundred twenty (320) feet and can be placed on any of the Land on or adjacent to the Wind CUP site.
- 13) A Doppler radar facility can be built on any of the Land as to accommodate its performance parameters.
- 14) The O&M complex site can incorporate a maximum of twenty (20) acres and can be placed on any CUP site.
- 15) One main O&M building can be built up to a maximum fifteen thousand (15,000) square feet with an approved building permit.
- 16) One equipment storage building up to five thousand (5,000) square feet can be built within the footprint of the overall O&M complex site with a maximum height of thirty--five (35) feet.
- 17) For each CUP site, a storage building or shipping containers with a total footprint of no greater than twenty-four hundred (2,400) square feet are permitted for housing spare parts, consumables, and vehicles with an approved building permit.

- 18) A cellular and/or microwave communication tower up to two hundred (200) feet in height may be placed on any of the Property on the CUP sites subject to any federal requirements and state permitting.
- 19) Transmission level electrical towers are engineered to accommodate the topography and electrical conductor size on any CUP site.
- 20) Temporary housing can be built on the PSH CUP Site to accommodate the construction cycle as provided in 6-8-206 with an approved Administrative Decision and an approved building permit.
- 21) One permanent Caretaker/Security dwelling unit can be constructed within the PSH or Substation CUP boundaries as provided in 6-8-89 with an approved building permit.
- 22) One duplex dwelling unit can be constructed within the PSH or Substation CUP boundaries as provided in 6-8-93 with a Conditional Use Permit and an approved building permit.
- 23) Temporary housing to accommodate construction personnel is allowed during the construction activity period under 6-8-206 and must be removed within thirty (30) days after commercial operations of the final power generator facility commences.
- 24) Rock crushing is allowed during the construction period as provided in 6-8-164 and an approved Administrative Decision for a temporary use.
- 25) Concrete batch plants are allowed during the construction period as provided in 6-8-164 and an approved Administrative Decision for a temporary use.
- 26) For fire safety, on site equipment shall include a tender, a pumper, and all necessary equipment for fire suppression.

The Developer will comply with the requirements for Building Permits in the Ordinance, including the Building Code, under the Agricultural Zoning designation, and FAA Regulations.

Exhibit 8

BEFORE THE ELMORE COUNTY BOARD OF COUNTY COMMISSIONERS

In Re: EOA-2022-01: This matter having come before the Board of County Commissioners of Elmore County, Idaho (Board), the 4th day of February 2022, for a public hearing, held pursuant to public notice as required by law, on a request for extension of time for approvals (EOA) to Cat Creek Energy, LLC, on Conditional Use Permits (CUP-2015-03, CUP-2015-04, CUP-2015-05, CUP-2015-06, and CUP-2015-07) requested by Terri Pickens, Attorney for Cat Creek Energy LLC (CCE). The Board heard from the applicant in support of time extension. Upon conclusion of the public hearing, the Board closed the record to additional evidence and commenced deliberations on the time extension and, after making findings and conclusions in accordance with the applicable law, approved the time extensions as hereafter defined.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

REQUIRED FINDINGS FOR EXTENSION OF APPROVALS. 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 Application for Extension of Approvals, Newspaper Publication, Neighborhood and Agency Notification, Site Posting Photos, Map of the CUPs, Agency Comment, the analysis and recommendations of the Elmore County Land Use and Building Department (Department), and the record of the public hearing consisting of the testimony and submissions received prior to and at the hearing.

1. Although only one of the CUP's may be expressly covered by the stay of proceedings on judicial review and appeal, the CCE project at issue consists of five CUPs for one integrated power project.
2. The time extension shall not exceed one (1) time extension for one (1) year, unless some other period of time is specified in the application and subsequently approved by the Director, Commission and/or Board per Section 7-3-17 of the Elmore County Zoning and Development Ordinance (Zoning Ordinance);
3. A one (1) time two-year time extension is envisioned for the conditional use permits in the Development Agreement between CCE and the Board; and
4. The time extension of approvals is necessary due to the pending litigation now on appeal.
5. Cat Creek Energy, LLC has continued with diligent efforts to move forward with the project such as federal permitting efforts.
6. The length of time which will be necessary for Cat Creek Energy, LLC to complete the project is reliant on the outcome and timeline of the pending litigation.

CONCLUSIONS FOR EXTENSIONS OF APPROVALS. 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 pending judicial review litigation, now on appeal, partially or wholly subjects one or more CUPs to a stay.
2. A time extension to maintain the status quo preserves the status of matters/positions of the parties pending the Idaho Supreme Court decision and remand.

3. A time extension may be moot, depending on the scope of the stay resulting from judicial review and the appeal. Therefore, if a stay or other legal function is judicially determined to render the extension of approvals moot, it shall not count as exercise of the one two-year time extension provided for in the Development Agreement.

4. The Board concludes that approval of time extension(s) is less consequential than taking no action, which may result in the expiration of one or more CUPs in the face of the permittee's request for extension and the contractual obligations of the parties to the Development Agreement.

5. Based upon the foregoing facts and conclusions, the Board concludes 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.

ORDER

Based upon the foregoing findings of fact and conclusion of law, the information contained in the Staff reports and the record for the Application, as set forth below, the Board hereby

APPROVES the waiver of the \$250 fees for the Application for Time extension of Approvals and 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 stay of proceedings, and/or by other legal function of the Court's Orders.

Dated this 11th day of February 2022

BOARD VOTE:

ELMORE COUNTY BOARD OF COUNTY COMMISSIONERS



By: ABSENT DURING PUBLIC HEARING
Crystal Rodgers, Chairperson

By: [Signature]
Franklin L. Corbus, Commissioner

By: [Signature]
Albert Hofer, Commissioner

ATTEST:

By: [Signature]
Shelley Essl, Clerk

NOTICE PURSUANT TO IDAHO CODE § 67-6519(5)(c)

The Applicant shall have the right to request a regulatory taking analysis pursuant to Idaho Code § 67-8003. An applicant denied an application or aggrieved by a final decision concerning matters identified in Idaho Code § 67-6521(1)(a) may, within twenty-eight (28) days after all remedies have been exhausted under local ordinance seek judicial review under the procedures provided by Title 67, Chapter 52, Idaho Code.

NOTICE PURSUANT ZONING ORDINANCE SECTION 7-3-10 E-F

A decision made by the Elmore County Planning and Zoning Commission may be appealed to the Board of Elmore County Commissioners provided the appeal application is complete and appeal fee is submitted to the Land Use and Building Department within fourteen (14) calendar days of Commission action. Questions concerning appeals or deadlines should be asked of the Elmore County Land Use and Building Department.

Exhibit 9

Edward A. Lawson, ISB No. 2440
Heather E. O'Leary, ISB No. 8693
LAWSON LASKI CLARK & POGUE, PLLC
675 Sun Valley Road, Suite A
P.O. Box 3310
Ketchum, Idaho 83340
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eal@lawsonlaski.com
heo@lawsonlaski.com
efiling@lawsonlaski.com

Filed: 05/23/2019 11:07:17
Fourth Judicial District, Elmore County
Shelley Essl, Clerk of the Court
By: Deputy Clerk - Furst, Heather

Attorneys for Intervenor Cat Creek Energy, LLC

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ELMORE

S BAR RANCH, an Idaho limited liability
company,

Petitioner/Plaintiff,

vs.

ELMORE COUNTY, IDAHO, a political
subdivision of the State of Idaho,

Defendant.

CAT CREEK ENERGY, LLC, an Idaho limited
liability company,

Intervenor.

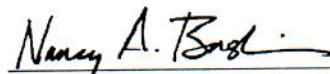
Case No. CV-2018-00525

**ORDER GRANTING INTERVENOR
CAT CREEK ENERGY, LLC'S
MOTION TO STAY PROCEEDINGS**

This court has considered Intervenor's Motion to Stay Proceedings Related to the Development Agreement ("Motion to Stay") to which Petitioner and Respondent are not opposed and finds that the stay of deadlines in the underlying proceedings before Elmore County regarding section 2.2 of the Development Agreement for CUP-2015-04 for a pump storage and hydro electrical facility is warranted under the circumstances and for other good cause existing. Additionally, Petitioner and Elmore County have filed non-oppositions to the motion.

IT IS HEREBY ORDERED, Intervenor's Motion to Stay is GRANTED.
The hearing on this motion is VACATED.

Dated: Signed: 5/17/2019 02:49 PM



Honorable Nancy A. Baskin
District Judge

Exhibit 10



Land Use and Building Department

Findings of Fact, Conclusions of Law, and Order

Application: Development Agreement 2024-01

Hearing Date: February 9, 2024

BEFORE THE ELMORE COUNTY BOARD OF COUNTY COMMISSIONERS

In the matter of Second Amendment to Cat)	DA-2024-01
Creek Energy, LLC's Development)	
Agreement with the Board of County)	FINDINGS OF FACT,
Commissioners signed on February 9, 2018)	CONCLUSIONS OF LAW,
and as amended on December 31, 2018)	AND ORDER
)	
)	
)	

In Re: Development Agreement 2024-01 (DA-2024-01): This matter having come before the Board of County Commissioners of Elmore County, Idaho (the "Board"), on February 9, 2024, for a public hearing held pursuant to public notice as required by law, on a request for the Second Amendment to Cat Creek Energy LLC's ("CCE") Development Agreement for CUP 2015-03, CUP 2015-04, CUP 2015-05, CUP2015-06, and CUP 2015-07 ("CUPs"). The proposal from CCE consisted amending of three major areas of the Development Agreement:

- (1) Extend the period of validity of the CUPs within the Development Agreement, to reflect litigation delays,
- (2) Increase the water storage capacity of the new Cat Creek Reservoir from 100,000 acre-feet to 140,000 acre-feet of water, and
- (3) Amend the terms of Section 2.2 of the Development Agreement in connection with the water diversion and water delivery to Elmore County.

At the said hearing, the Board opened the public hearing, heard from the Applicant's representative, Ms. Terri Pickens, and asked questions of her. The Board listened to the staff presentation, with staff recommendation for approval of Item # 1; evaluation of Item # 2 by the Planning & Zoning Commission; and denial of Item # 3 from the three requested areas. The Board opened the public hearing for public testimony, which included 5 people in support of the proposal to include CCE representatives, 5 people signed up for neutral position, and 7 people in opposition to DA-2024-01. Upon conclusion of the public hearing, the Board closed the record to additional evidence. The Board commenced deliberations on the Application, during which the Board asked staff to provide a detailed timeframe breakdown of the prior delays in the DA execution and how it relates to the requested 5-year extension period, to ensure that CCE receives an extension of time that commensurate with the delay caused by the reconsideration and judicial review process.

After that, the Board asked staff to prepare adopting documents and continued its deliberations to February 16, 2024, at 3:30pm, pending the additional extension information.

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 Application, the analysis and recommendations of the Elmore County Land Use and Building Department (the “**Department**”), and the record.

1) The Board finds that Application is comprised of:

- a) Application form prepared and submitted by Applicant for the proposed CUP application on or about December 1, 2023, subject to that additional submission from Applicant dated February 12, 2024; and
- b) Those supplemental letters, testimony, documentation, and memoranda submitted by the Applicant or on its behalf, whether submitted in response to questions from the Elmore County Land Use and Building Department (the “**Department**”) staff from or the Board.

2) The Board finds that the Applicant is:

Cat Creek Energy, LLC
398 S 9th St. #240
Boise, ID-83702

3) The Board finds the following facts as to the procedural matters pertaining to the Application:

- A. The Cat Creek Energy LLC’s Development Agreement with the Board was not required pursuant to Idaho Code Section 67-6511A, but instead, as a condition of approval for CUP 2015-03, CUP 2015-04, CUP 2015-05, CUP2015-06, and CUP 2015-07.
- B. CCE Representative, Terri Pickens, reached out to Mr. Dylan Lawrence on November 20, 2023 to start the second amendment process.
- C. On November 21, 2023, Mr. Dylan Lawrence, provided an application form for DA amendment and offered a pre-application meeting if the proposal needed to include amendments to Section 2.2.
- D. On December 1, 2024, the Applicant submitted the application to the Department along with required fees.
- E. On January 24, 2024, and January 31, 2024, the Mountain Home News published a Notice of Public Hearing.
- F. On January 26, 2024, the Department notified affected agencies and properties within a 1-mile radius of the CUPs.
- G. On January 2, 2024, the site was posted at five (5) locations in and around the site to provide additional notifications to the neighboring properties.
- H. The Department has received multiple written comments and those are

incorporated into the record for DA-2024-01.

- I. The Application was collectively reviewed and evaluated by the Director, Consulting Planner, and Counsel for the Department.
 - J. The Board opened the public hearing on February 9, 2024 at 1:30pm, and received verbal and written information regarding the Application.
 - K. At the conclusion of the testimony, the Chairman closed the public hearing.
 - L. The Board commenced deliberations on the Application. In the end, the Board asked staff to provide a detailed timeframe breakdown of the delays caused by the reconsideration and judicial review process and how it relates to the requested 5-year extension period, to ensure CCE receives additional time to commence the improvements and use envisioned in the CUPs.
 - M. Thereafter, the Board moved to continue its deliberations to February 16, 2024, at 3:30pm, pending the additional extension information. At the Applicant's request, the Board granted a temporary extension of DA and associated CUPs to February 16, 2024.
- 4) **The Board finds that DA-2024-01 is not attached with a Zoning Map Amendment and therefore, is not subject to Idaho Code Section 67-6511A, but instead, as a condition of approval for CUP 2015-03, CUP 2015-04, CUP 2015-05, CUP2015-06, and CUP 2015-07.**
- 5) **The Board finds the applicant's delays for commencing improvements or use acceptable, given S Bar Ranch's motions for reconsideration, petition for judicial review, and the appellate proceedings, which started on February 16, 2018, and continued until the Idaho Supreme Court's final decision on June 14, 2022. Therefore, the applicant's request to extend the validity of CUPs is reasonable in order to allow development of the property as set forth in the approved Development Agreement. The Board further finds that based on staff's detailed timeframe breakdown (Attachment A), the validity of the CUPs pursuant to Section 1.1 of the Development Agreement should be extended from February 16, 2024 to Monday, October 19, 2026.**
- 6) **The Board finds that CCE's request to increase the water storage capacity of the new Cat Creek Reservoir from 100,000 acre-feet to 140,000 acre-feet of water is not supported with sufficient factual support and has not been evaluated by the Planning & Zoning Commission. The Board further finds that the current Development Agreement does not preclude the Board from taking subsequent actions applicable to the property if so needed to comply with the Local Land Use and Planning Act (LLUPA) or Elmore County Zoning and Development Ordinance. Therefore, the Board accepts the CCE's oral request at the public hearing to withdraw this proposal from DA-2024-01.**
- A. The applicant has not yet secured water rights for 100,000- or 140,000-acre feet of water storage in support of the hydroelectric CUP (CUP 2015-04). The applicant

has reportedly recently filed a water permit application with the Idaho Department of Water Resources (IDWR) to accommodate the additional 40,000 acre-feet of storage contemplated by this amendment, though a copy has not been provided, and IDWR has not yet advertised it. Otherwise, the applicant's water right proceedings before IDWR and licensing proceedings before the Federal Energy Regulatory Commission (FERC) have been stayed indefinitely, and it is unclear when either of them will resume. While the Board's decision does not necessarily depend on completion of those permitting processes, it would be helpful for the applicant to provide more information regarding these state and federal approvals and how they may impact the size of the proposed reservoir.

- B. Based upon the information provided, the Board is unable to confirm if the increased storage will be within the existing footprint of the property or stored within the 90-foot allowance in Condition 2 to Exhibit D of the Development Agreement. The applicant declined to provide a redline version of DA-2024-01, including legal description of the property, as requested by staff.
- C. The applicant has provided "Exhibit D – Master Site Plan as of the Effective Date" with this proposal. This exhibit is not legible at the submitted scale to add any additional clarity.
- D. Increasing the size of the new Cat Creek Reservoir by 40% is a substantive increase in the scope of this project that should first be evaluated by the Planning & Zoning Commission in accordance with Sections 6-4-10(A)(6) and 7-9-2(B) of the Elmore County Code, the Local Land Use Planning Act ("LLUPA"), and related judicial decisions. In particular, Idaho Supreme Court Chief Justice Bevan, as well as Justices Brody, Stegner, and Moeller affirmed Judge Baskin, in their amended order on June 14, 2022. In her November 7, 2019 Memorandum Decision, Judge Baskin warned against using the Development Agreement to circumvent the typical LLUPA/CUP process for "material modifications" of the project. Despite these legal provisions, CCE's representatives have expressed unwillingness to return to the Planning and Zoning Commission and instead have withdrawn this request.

- 7) **The Board fails to recognize how the proposed replacement of Section 2.2 meets the intent or substance set forth in the Development Agreement for this section. The Board further finds it difficult to understand how the current proposal serves positive benefits to the County, its residents, or taxpayers as discussed by CCE during the CUP Hearings.**

CONCLUSIONS OF LAW

Based on the aforementioned findings of fact, the Board concludes that extending the deadline in Section 1.1 meets the intent and substance of the original Development Agreement. As to the request to increase the size of Cat Creek Reservoir, the Board concludes that request should first be evaluated by the Planning & Zoning Commission in order to determine how it complies with the following regulating documents governing the use and the CUPs:

- A. Elmore County 2014 Comprehensive Plan, adopted as Resolution 562-15 on January 20, 2014 (the “**Comprehensive Plan**”); and
- B. Zoning Ordinance, adopted as Ordinance 2018-03 on May 18, 2018, and all amendments thereof; and
- C. The Local Land Use Planning Act, Idaho Code § 67-6501 et seq.

As to the request to satisfy Section 2.2 of the Development Agreement, the Board concludes the current proposal does not meet the substance and intent of the Development Agreement because the marginal benefit to the County (temporary water storage) does not justify the costs to be incurred by the County in order to implement the proposal.

ORDER

Based on evidence presented at the February 9, 2024, public hearing and the aforementioned findings of fact and conclusions of law, the Board orders the following for DA-2024-01:

1. Amend Condition No. 1 of Section 1.1 of the Development Agreement in the following manner:

“The Conditional Use Permits shall be valid until October 17, 2026. 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 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 timeframes may be terminated as to those CUPs.”

2. Allow CCE to withdraw the proposal for increasing water storage capacity of the proposed Cat Creek Reservoir; and
3. Deny the proposed Section 2.2 and keep the existing language of Section 2.2 of the Development Agreement for CUP 2015-03, CUP 2015-04, CUP 2015-05, CUP2015-06, and CUP 2015-07 (“CUPs”).

Dated this 16th day of February 2024

BOARD OF COUNTY COMMISSIONER’S VOTE:

CHAIRMAN BUD CORBUS
 COMMISSIONER CRYSTAL RODGERS
 COMMISSIONER AL HOFER

VOTED
 VOTED
 VOTED

~~AYE/NAY~~
~~AYE/NAY~~
~~AYE/NAY~~



Bud Corbus, Chairman



Crystal Rodgers, Board Member



Al Hofer, Board Member

ATTEST:



Shelley Essl, Board Clerk



NOTICE PURSUANT TO IDAHO CODE § 67-6519(5)(c)

The Applicant shall have the right to request a regulatory taking analysis pursuant to Idaho Code § 67-8003. An applicant denied an application or aggrieved by a final decision concerning matters identified in Idaho Code § 67-6521(1)(a) may, within twenty-eight (28) days after all remedies have been exhausted under local ordinance seek judicial review under the procedures provided by Title 67, Chapter 52, Idaho Code.

NOTICE PURSUANT ZONING ORDINANCE SECTION 7-3-12

A decision made by the Board of County Commissioners may be reconsidered by the Board of Elmore County Commissioners provided the appeal application is complete and appeal fee is submitted to the Land Use and Building Department within fourteen (14) calendar days of Commission action. Questions concerning appeals or deadlines should be asked of the Elmore County Land Use and Building Department.

Attachment A
Timeline of Events

CCE's delays in Development Agreement due to reconsideration and judicial review

<u>Date</u>	<u>Event</u>	<u>Deadline to Satisfy Sec. 1.1</u>	<u>Deadline to Satisfy Sec. 2.2</u>
2/9/18	Development Agreement (DA) Signed	2/10/22	12/31/18
2/16/18	S Bar Ranch files its first reconsideration request with Board	No change; still 2/10/22	No change; still 12/31/18
5/1/18	S Bar Ranch files petition for judicial review (98 days after DA) (does not automatically stay County proceedings)	No change; still 2/10/22	No change; still 12/31/18
12/14/18	1 st DA Amendment	No change; still 2/10/22	Updated to 6/30/19
5/23/19	District court orders stay of Sec. 2.2 only, tolling deadline for Sec. 2.2	No change; still 2/10/22	6/30/19 + number of days between 5/23/19 and end of judicial action
2/4/22	Board approves two-year extension (see note below)	Add 2 years; now 2/10/24	6/30/19 + number of days between 5/23/19 and end of judicial action + 2 years
6/14/22	Idaho Supreme Court issues amended opinion and remittitur (1,505 days after S Bar Ranch filed for judicial review)	No change; still 2/10/24	Locks in tolling at 6/14/22 – 5/23/19 = 1,118 days; 6/30/19 + 1,118 days + 2 years = 7/22/24
2/9/24	Board extends deadline for Sec. 1.1 to 2/16/24	Now 2/16/24	No change; still 7/22/24

Section 1.1 of the DA scenarios assumptions and explanations:

Under the Idaho Rules of Civil Procedure and the Idaho Administrative Procedures Act, a stay of proceedings before the County is not automatic. For there to be a stay, a court must order it.

However, as a practical matter, it would be risky for a project proponent to proceed with construction while CUPs are the subject of a petition for judicial review.

Attachment A **Timeline of Events**

CCE's delays in Development Agreement due to reconsideration and judicial review

Therefore, the scenarios below are based on the practical effect of petition for judicial review, not just formal stays by the courts.

In all scenarios, 6/14/22 is chosen as the end date for any tolling of deadlines, because that is when the Idaho Supreme Court issued its remittitur, which formally ends the appeal. The different scenarios are based on what the triggering event is to toll deadlines.

Scenario 1: This scenario assumes tolling begins at the earliest possible point in time, with the signing of the Development Agreement on 2/9/18. 6/14/22 minus 2/9/18 equals 1,586 days (i.e., 4 years, 126 days). 1,586 days plus 6/14/22 equals a new deadline of Sat., 10/17/26 (CCE requests 6/14/27 plus possible 2-year extension).

Scenario 2: This scenario assumes tolling begins when S Bar Ranch filed its first reconsideration request with the board on 2/16/18. 6/14/22 minus 2/16/18 equals 1,579 days (i.e., 4 years, 119 days). 1,579 days plus 6/14/22 equals a new deadline of Sat., 10/10/26 (CCE requests 6/14/27 plus possible 2-year extension).

Scenario 3: This scenario assumes tolling begins when S Bar Ranch filed its petition for judicial review on 5/1/18. 6/14/22 minus 5/1/18 equals 1,505 days (i.e., 4 years, 45 days). 1,505 days plus 6/14/22 equals a new deadline of Tues., 7/28/26 (CCE requests 6/14/27 plus possible 2-year extension).

Note regarding Section 2.2:

Note that when the Board approved the one-time 2-year extension on 2/4/22, it did not specify whether such extension was limited to Section 1.1 or also applied to Section 2.2. The timeline above assumes the 2-year extension applied to both Section 1.1 and Section 2.2.