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August 27th, 2025

Dear Terri:

This correspondence responds to your letter dated July 28, 2025 regarding Cat Creek Energy's ("CCE") efforts to achieve "substantial progress" in its water right proceedings before the Idaho Department of Water Resources ("IDWR") and its licensing proceedings before the Federal Energy Regulatory Commission ("FERC"). As a reminder, these "substantial progress" requirements derive from the Third Amendment to Development Agreement adopted by the Board on August 2, 2024, and they require CCE to have achieved such "substantial progress" by July 28, 2025. I have read the July 28 letter and its attachments and make the following observations:

1. In the timeline attached to the letter as Exhibit A, only one event falls within the time period between execution of the Third Amendment on August 2, 2024 and the July 28, 2025 deadline. From the County's perspective, only events within this period of time are relevant to the "substantial progress" requirement.
2. The one event within the relevant period of time is a reference to the April 7, 2025 "credit support letter" from Lotus Infrastructure Partners. However, upon review of that letter, it simply states that Lotus is "approved to enter into negotiations" with CCE, and it does not otherwise inform the level of progress CCE has achieved before the two relevant agencies, IDWR and FERC.
3. The Notice of Disclosure of Documents CCE filed with IDWR was in response to an order issued by IDWR Director Mathew Weaver on May 16, 2025, specifically requiring CCE to provide that information. In other words, it was not an overt attempt by CCE to advance its water right proceedings.
4. Pursuant to IDWR's order of August 31, 2023, CCE is required to provide IDWR and the parties with a status report every six months, meaning that, during the relevant time period, two separate status reports were required, one towards the end of August 2024, and the other towards the end of February 2025. However, the County only has record of the February 2025 status report. In fact, that status report is the only document other than the Notice of Disclosure filed by CCE in its IDWR proceedings during the relevant time period.
5. Similarly, the only document the County is aware of that CCE has filed in its FERC proceedings during the relevant time period was its mandatory annual report of April 1, 2025.

6. FERC's April 18, 2019 order granting CCE a preliminary permit contains the following language: "A preliminary permit is issued for the Cat Creek Energy Generation Facility Pumped Storage Hydroelectric Project No. 14655 to Cat Creek Energy, LLC for a period effective the first day of the month in which this permit is issued, and ending either 48 months from the effective date or on the date that a development application submitted by the permittee has been accepted for filing, whichever occurs first." As we understand, this means that the preliminary permit expired unless CCE filed a formal development application prior to April 1, 2023.
7. The County does not have any record of CCE having filed a development application with FERC, and the FERC notice placing the licensing proceedings in abeyance was issued on May 19, 2023, after the April 1, 2023 expiration date.

As you may recall, at the time the Third Amendment was adopted, CCE declined Elmore County's invitation to further define the phrase "substantial progress" for the purpose of gauging compliance. Based upon that phrase's plain meaning, however, it appears CCE has not achieved "substantial compliance" in its IDWR and FERC proceedings and, therefore, that it is in violation of the Third Amendment and the 2018 Development Agreement.

Pursuant to Section 5.1 of the Development Agreement, this letter constitutes Notice that CCE has ninety (90) days to rectify this default. If you believe this conclusion is in error, please submit certified statements from both IDWR and FERC expressing their opinion that CCE has achieved "substantial progress" in their respective permitting processes within the next 90 days. In addition, we have recently become aware of the enclosed order issued by the Federal Energy Regulatory Commission on June 27, 2025, accepting Idaho Power's notice of termination of an agreement with CCE. To the extent CCE intends to challenge this preliminary conclusion of default, please also provide additional information regarding the background and context of the FERC order, its overall effect on CCE's proposed project, and why it was not discussed in your July 28 letter, even though it was issued within the relevant time period. Otherwise, we will proceed to schedule a hearing before the Board of Commissioners to determine if CCE is in default pursuant to Section 5.2 of the Development Agreement.

James Roddin



Interim Director
Planning Department