

BEFORE THE BOARD OF ENVIRONMENTAL QUALITY
STATE OF IDAHO

IN THE MATTER OF AIR QUALITY
PERMIT TO CONSTRUCT P-2019.0047

Case Docket No. 0101-22-01
OAH Case No. 23-245-01

NEZ PERCE TRIBE, IDAHO
CONSERVATION LEAGUE, and SAVE THE
SOUTH FORK SALMON,

Petitioners,

v.

IDAHO DEPARTMENT OF
ENVIRONMENTAL QUALITY,

Respondents,

and

PERPETUA RESOURCES IDAHO, INC.,

Intervenor-Respondent.

ORDER ON SAVE THE SOUTH FORK
SALMON'S MOTION FOR
RECONSIDERATION BASED ON NEW
EVIDENCE DATED JUNE 6, 2025

I. INTRODUCTION

On June 6, 2025, Save the South Fork Salmon (“SSFS”) filed a *Petitioner Save the South Fork Salmon’s Motion for Reconsideration Based on New Evidence and Memorandum in Support* (“Motion for Reconsideration”), along with a *Declaration of Julia Thrower* (“Declaration.”). The Motion for Reconsideration seeks reconsideration of the Idaho Department of Environmental Quality Board’s (“DEQ Board”) *Final Order* issued in this matter on May 27,

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2025. The Motion for Reconsideration asserts that the United States Forest Service’s January 2025 Final Environmental Impact Statement (“FEIS”) and Final Record of Decision (“ROD”) for the Stibnite Gold Project (“STP”) provides relevant new information that addresses the issue of whether Perpetua Resources Idaho, Inc. (“Perpetua”) has legal control to preclude public access to the Stibnite Road Access Route such that it was appropriate for the Department of Environmental Quality (“DEQ”) to exclude the road from ambient air quality protections when it issued the Air Quality Permit to Construct (“PTC”) at issue in this case.

BACKGROUND

The DEQ Board issued a *Final Order* in this matter on May 9, 2024. REC 3695–3720. The Final Order found that 1) DEQ acted reasonably and in accordance with law when it determined that Perpetua will have legal control of the Stibnite Road Access Route such that it could properly be excluded from consideration as ambient air, 2) DEQ acted reasonably and in accordance with law when it determined that Perpetua will have physical and practical control of the Stibnite Road Access Route such that it could properly be excluded from consideration as ambient air, 3) DEQ acted reasonably and in accordance with law when it allowed Perpetua to submit some plans after the PTC was issued, 4) the PTC includes enforceable conditions that will achieve 93.3% dust control, and 5) DEQ did not act reasonably and in accordance with law when it analyzed the ambient arsenic air concentrations for the Stibnite Gold Project. REC 3717. The *Final Order* remanded the ambient arsenic air concentration issue back to the Hearing Officer for additional fact-finding. REC 3717.

On May 23, 2024, Petitioners the Nez Perce Tribe, Idaho Conservation League, and Save the South Fork Salmon filed a *Petitioners’ Motion for Clarification and/or Reconsideration of the Final Order*. REC 3721–3727. On May 23, 2024, Respondent/Intervenors DEQ and

Perpetua filed a *Joint Motion for Reconsideration and/or Clarification of Final Order* and *Memorandum in Support of Joint Motion for Reconsideration and/or Clarification of Final Order*. REC 3728–3730. On June 3, 2024, Petitioners filed *Petitioners Response Opposing DEQ/Perpetua’s Motion for Reconsideration*. REC 3757–3761. On June 4, 2024, DEQ and Perpetua filed a *Joint Motion to Strike Petitioners Response*. REC 3823–3827. The motions raised several issues including that the DEQ Board: 1) vacate the PTC while the matter was on remand or order an amended Application for Permit to Construction be filed, 2) reconsideration of the *Final Order* including clarification of its effective date, 3) reconsider its decision on the ambient arsenic concentrations, 4) hold additional hearings on the arsenic issues before issuing the *Final Order*, 5) reconsider or clarify the instructions on remand to the Hearing Officer.

On June 12, 2024, the DEQ Board issued an *Order on Petitions for Reconsideration and/or Clarification of Final Order* (“Order on Reconsideration”). REC 3835–T3843 The DEQ Board denied all the requests for reconsideration/clarification except the request for clarification of the effective date of the *Final Order*. REC 3842. The DEQ Board stayed issuance of the *Final Order* until the remand before the Hearing Officer was complete and all statutory deadline for review of the Hearing Officer’s Order had run. REC 3840 . The case was remanded to the Hearing Officer and a hearing was held October 17–18, 2024. The Hearing Officer issued a *Findings of Fact, Conclusions of Law, and Preliminary Order* on January 7, 2025. REC 7091–7118. On January 21, 2025, Petitioners filed their *Petitioners’ Petition for Review of January 7, 2025 Preliminary Order, Memorandum in Support, and Request for Hearing*. REC 7119–7145. The Petition requested a review of three issues: 1) That the 16/70 adjustment for arsenic was unlawful and not supported by the evidence, 2) the five-year rolling average was not reasonable, and 3) the PTC conditions were insufficient to limit production from West End Pit and/or non-

West End Pit sources to meet arsenic limits. REC 7122. On January 24, 2025, Save the South Fork Salmon filed its *Motion for Reconsideration of the Final Order*. REC 7146–7185. On February 24, 2025, the DEQ Board denied the *Motion for Reconsideration* without prejudice finding that, given its stay of the *Final Order*, the Motion was not timely filed. REC 7343–7348.

On May 27, 2025, the Board issued its *Final Order*. REC 7358–7373. The *Final Order* found: 1) there was Sufficient Evidence to Demonstrate that DEQ Acted Reasonably and in Accordance with Law in Using a Five-Year Rolling Average for T-RACT, 2) there was Sufficient Evidence to Demonstrate that DEQ Acted Reasonably and in Accordance with Law in Not Including Additional Permit Conditions Limiting the Non-West End Pit Production Limit, 3) there was Sufficient Evidence to Demonstrate that DEQ Acted Reasonably and in Accordance with Law When it Applied the 16/70 Adjustment. REC 7371. The Final Order was final as to all issues presented, as well as to all issues previously decided in the Final Order issued in this matter on May 9, 2024. REC 7371.

On June 6, 2025 Petitioners Save the South for Salmon filed *Petitioner’s Save the South Fork Salmon Motion for Reconsideration Based on New Evidence and Memorandum in Support*. REC 7374–7391.

ANALYSIS

The Motion for Reconsideration seeks to have the DEQ Board reconsider its *Final Order* based on new evidence in the form of the Forest Service’s FEIS and ROD. Petitioners argue that the FEIS and ROD provide new evidence demonstrating that Perpetua will not have legal control to preclude public access over the Stibnite Access Road. In support of this argument, Petitioners cite multiple portions of the FEIS that refer to the Stibnite Access Road as a “public road.”

Petition at 4–7. However, the Petitioners failed to site¹ the following language found in the Stibnite Gold Project Final Environmental Impact Statement Errata (“FEIS Errata”):

During operations, the public access road through the Operations Area Boundary would provide seasonal use, open to all vehicles; access would not be provided in winter when impassable (current county maintenance standards) and signs would inform the public of seasonal and temporary closures. Public vehicles passing through would be required to check-in with mine personnel at the North or South SGP entry points and would receive a safety briefing and would also be required to check-out with SGP personnel upon exiting the SGP. For safety purposes, public access would be separated from other SGP roads by berms, security fencing, and the underpass to allow the public road to pass beneath the mine haul road. No stopping or deviating from the public access road would be allowed. Perpetua could restrict access to any vehicles due to concerns related to public or employee health and safety, such as during road construction and maintenance, blasting, highwall scaling, mining in the immediate area of the road, and similar operations. *Because public use of the road would be subject to Perpetua’s control measures on general use, the public access road is not considered a public road.*

Declaration of Julia Thrower at Exhibit 3 p. 1 (italics in original).

This language from the FEIS Errata supports rather than undermines the DEQ Board’s analysis set forth in its May 9, 2024 *Final Order*. REC 3698–3703. In the May 9, 2024 *Final Order*, the DEQ Board analyzed the conditions set forth in the PTC that would require Perpetua maintain legal, physical, and practical controls over the Stibnite Access Road such that it was properly excluded from consideration as ambient air. *Id.* Nothing in the language from the FEIS Errata cited above undermines that analysis. Indeed, the italicized last sentence makes it clear that the USFS is expressly not designating the Stibnite Access Road as a “public road.” Thus,


¹ While Petitioners do make reference to the FEIS Errata in Footnote 2 on page 12 of their Petition, they do not cite it in the body of their petition, nor deal with it substantively in their analysis.

Petitioners have not presented any new evidence that would cause the DEQ Board to have to reevaluate the analysis it provided on this issue in the May 9, 2024 *Final Order*.

CONCLUSION

Based on the foregoing it is hereby ordered the Motion for Reconsideration is denied.

Dated this 27th day of June, 2025


Dr. John R. MacMillan
Chairman, Idaho Board of Environmental Quality

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 27th day of June 2025, I caused to be served a true and correct copy of the foregoing ORDER ON SAVE THE SOUTH FORK SALMON'S MOTION FOR RECONSIDERATION BASED ON NEW EVIDENCE DATED JUNE 6, 2025 by transmitting a copy thereof in the manner listed below:

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