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Public Comments on IDAPA 53.01.11 Rule Draft 2

Diane Cutler
Department of Environmental Quality
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Dear Ms. Cutler,

Thank you for considering our comments on the Groundwater Quality Rule Draft 2, Docket # 58-0111-2601. We respectfully submit the following recommendations to the Idaho Department of Environmental Quality (DEQ) for your review and action.

The DEQ has undertaken a rulemaking to consider establishing new groundwater standards and evaluating whether existing implementation provisions, including aquifer categorization procedures, should be clarified or streamlined.

Perpetua Resources Idaho, Inc. (Perpetua Resources) is in the midst of construction for the Stibnite Gold Project (SGP), a gold and antimony mine located near Stibnite, Idaho. The SGP plan of operations includes measures to protect groundwater and surface water quality during construction, operations, reclamation, and post-closure. Under Idaho's existing groundwater quality rule (IDAPA 58.01.11), DEQ has set points of compliance around the SGP mine to ensure that mining activities do not adversely affect groundwater. Based on experience with the current rule and review of the proposed Groundwater Quality Rule Draft 2, Docket # 58-0111-2601, Perpetua Resources has the following comments on the proposed rule changes.

Incorporation of Federal Drinking Water Standards by Reference

Perpetua Resources is concerned with the proposal to revise Idaho's Groundwater Quality Rule (IDAPA 58.01.11) to incorporate the Federal Drinking Water Standards by reference (see proposed IDAPA 58.01.11.003), which would replace the majority of the current subsection and table for Numerical Groundwater Quality Standards (58.01.11.200.01).

Groundwater and Drinking Water

The first point of concern regarding this proposed change is that not all groundwater sources in Idaho are designated for drinking water beneficial use, and some groundwater sources are



found in naturally mineralized areas where treatment of groundwater would be needed before human consumption. It is therefore incorrect to assume that all groundwater in Idaho should be subject to a blanket application of federal drinking water standards. In areas where groundwater use is not for drinking water, using the federal drinking water standards without state-specific evaluation potentially places undue burdens on non-potable groundwater uses.

Instead of changing all groundwater quality standards to the federal drinking water standards to protect drinking water sources, DEQ should rely on the current rules, which are more fit for purpose and are properly working to protect the state's water resources and advance other important policy objectives. For example, the Idaho Groundwater Quality Rule currently provides the flexibility to modify contaminant standards based on use of the aquifer through the existing aquifer categorization procedure. Aquifer classification can be utilized to apply stricter standards for an aquifer that is vulnerable, based on the existing and projected future beneficial uses of the groundwater, existing water quality, and social and economic considerations. The existing state rules achieve the appropriate public health and environmental objectives while recognizing that not all groundwater is drinking water and recognizing water quality that may be degraded by natural conditions or pre-existing conditions may not need to meet drinking water standards where it will not be used as potable water.

State Public Participation

The second point of concern regarding the change to incorporate 40 CFR Part 141 by reference into state law is that Idaho would be deprived of its proper supervisory role. Under the proposed rule change, as federal drinking water standards are updated, Idaho's groundwater standards would update automatically, without an opportunity for public notice and comment, rulemaking at the state level, or other appropriate procedural safeguards for Idaho to protect its policy interests. This automatic tie to federal decision-making would cause increased uncertainty for the regulated community in Idaho such that target water quality could change without notice or public comment. For permitted mining operations with long construction, operations, and reclamation timelines, this regulatory uncertainty cannot be addressed through permitting alone. The current state procedure to modify a numeric groundwater standard that includes rulemaking and public comment is much more transparent and representative. Perpetua Resources recommends that any evaluation of federal water quality standards for use in Idaho include a mechanism for IDEQ to evaluate and confirm applicability to groundwater quality at the state level before a revised federal standard takes effect in Idaho.

The current IDAPA 58.01.11 approach to managing groundwater quality properly includes rulemaking and public comment for potential changes in applicable groundwater standards. The process provides the opportunity for more or less strict groundwater quality standards via



aquifer classification, and is a more flexible and tailored approach specific to the use of an aquifer, thereby recognizing that groundwater has many viable uses in addition to drinking water. Perpetua Resources respectfully recommends that the current Groundwater Quality Rule remains in place without revision.

Change to Aquifer Classification Procedure

Under IDAPA 58.01.11.350, DEQ has an established procedure for categorizing or recategorizing an aquifer. In the proposed revisions, DEQ has proposed adding the following language to the list of material to be attached to a petition for categorizing an aquifer (IDAPA 58.01.11.350.02):

i. Existing local groundwater or source water protection measures, including source water protection plans, local ordinances, or aquifer protection districts, if relevant to the criteria in Subsection 350.01.

The proposed language is vague and has the potential to be applied to a wider range of measures than DEQ may have intended. Because IDEQ does not control the process by which any local entity establishes a “protection plan”, ordinance, or “protection district,” adding this language to the state rules may be introducing unnecessary complexity and uncertainty for IDEQ in the future. For the rule as it currently stands, the information listed in proposed item “i” could also be submitted to DEQ with the petition under item “c” under IDAPA 58.01.11.350.02. IDAPA 58.01.11.350.02 it should remain as the current rule without the proposed addition.

Proposed Change to Contamination Definition

During the comment process on the earlier draft of the proposed rule, DEQ received comments proposing changes to the definitions of “contamination” and “natural background.”

There is no need to change these definitions to account for mobilization under anthropogenic-caused conditions. The existing definition of contamination under IDAPA 58.01.11.400.01 already accounts for instances when human activities result in a release of contaminants that result in an exceedance of a groundwater quality standard, permit limit, consent order etc., or harm to beneficial use. That includes activities that result in releases of minerals from soils or rocks that would only happen under conditions caused by human activities.

The concern regarding the contamination definition is particularly relevant to mining operations in naturally mineralized areas, where the distinction between contamination resulting from human activity and naturally occurring geologic conditions is central to appropriate regulatory oversight. The existing definition correctly focuses on human-caused releases; any expansion that could sweep in naturally occurring constituent concentrations even where those concentrations are elevated by geologic mobilization rather than operational activity would be inconsistent with the foundational distinctions the rule draws



between contamination and natural background. Therefore, the ultimate recommendation is to keep the existing definition of contamination under IDAPA 58.01.11.400.01.

Perpetua Resources reserves comments on any proposed change to the definition of natural background pending full stakeholder review. Regarding the definition of natural background: Perpetua Resources notes that this definition has significant operational consequence for mining projects in naturally mineralized areas, where the distinction between anthropogenic releases and native geologic conditions is foundational to sound regulatory oversight. Perpetua Resources recommends that any proposed revision be subject to full stakeholder review before the next rule draft and specifically requests the opportunity to comment on any proposed revision to this definition at the next rulemaking meeting.

Perpetua Resources the opportunity to participate with DEQ and other stakeholders to produce throughout this rulemaking process. If you have any questions, please reach out to myself via phone at 208-484-7218 or email at mckinsey.lyon@perpetua.us.

Respectfully,

McKinsey Lyon
Senior Vice President, External Affairs
Perpetua Resources Idaho, Inc.