See Signature Page for List of Parties Represented

UNITED STATES DISTRICT COURT
DISTRICT OF IDAHO

SAVE THE SOUTH FORK SALMON; IDAHO CONSERVATION LEAGUE; IDAHO RIVERS UNITED; EARTHWORKS; CENTER FOR BIOLOGICAL DIVERSITY; and AMERICAN RIVERS,

Plaintiffs,

vs.

U.S. FOREST SERVICE; U.S. FISH AND WILDLIFE SERVICE; NATIONAL MARINE FISHERIES SERVICE; U.S. DEPARTMENT OF AGRICULTURE; U.S. DEPARTMENT OF THE INTERIOR; U.S. DEPARTMENT OF COMMERCE; BROOKE ROLLINS, in her official capacity as U.S. Secretary of Agriculture; DOUG BURGUM, in his official capacity as U.S. Secretary of the Interior; HOWARD LUTNICK,[1] in his official capacity as U.S. Secretary of Commerce,

Defendants,

and

PERPETUA RESOURCES IDAHO, INC.

Intervenor-Defendant.

Case No: 1:25-cv-00086 AKB

PLAINTIFFS' SEPARATE STATEMENT OF UNDISPUTED FACTS

[1] Automatically substituted pursuant to Fed. R. Civ. P. 25(d).

Overview of the Stibnite Gold Project

1. In 2016, mining company Midas Gold, now called Perpetua Resources Idaho, Inc. (Perpetua), submitted a proposal to the Forest Service seeking approval of the Stibnite Gold Project (the Project). FS-243699. In 2021, Perpetua submitted a refined proposal, called the "2021 MMP" or "ModPRO2." *Id.* The Forest Service approved this proposal in a January 2025 Record of Decision (ROD), based upon its 2024 Final Environmental Impact Statement (FEIS). FS-420770.

2. The Project would use "conventional open pit mining methods" (FS-243771) to "produce gold and silver doré, and antimony concentrates, for commercial sale" (FS-243646). Project activities would occur on about 820 acres of private lands and about 2,372 acres of public lands in the Payette and Boise National Forests. FS-420771. The mine site is in the headwaters of the East Fork of the South Fork Salmon River ("East Fork SFSR") watershed (FS-244012 (map), 244017), approximately 10 air miles and 14 road miles east of the community of Yellow Pine, Idaho, near the Frank Church-River of No Return Wilderness. FS-420771, 420912–13 (maps).

3. The Project would disturb approximately 3,266 acres of land to create or expand three open mining pits, an ore processing facility, a tailings storage facility and buttress, access roads, a transmission line, dewatering and industrial supply wells, a worker housing facility, a road maintenance facility, an underground exploration decline, and other facilities. FS-420774; FS-243743 (table). Project features would occupy over 900 acres of riparian areas and eliminate or degrade about 111,000 linear feet of streams and 150 acres of wetlands. *See* FS-244803–08.

4. Most of the Project would occur over approximately 20 to 25 years. FS-243739. Construction would occur over three years. *Id.* Next, mining and ore processing would occur for 15 years. *Id.* Mine exploration would occur for 17 years, beginning after the first year of mine construction and concluding the same time as mining and ore processing concludes. *Id*. Closure and

reclamation would begin next, and most activities would be completed within five years. *Id.* After these 20 to 25 years, it is estimated that Perpetua would need to continue treating polluted water for up to another 25 years. *Id.* Environmental monitoring would need to continue beyond that time, for "as long as needed to demonstrate that the site has been fully reclaimed." *Id.*

Forest Service Approval of the Project in the ROD and FEIS

5. Midas Gold submitted its original Plan of Operations for the Project in 2016 and then a revised proposed plan (the "ModPRO") in 2019. FS-243699–3700. The Forest Service published a draft EIS (DEIS) in 2020. *Id.* The DEIS included five alternatives: (1) the 2016 proposal; (2) the ModPRO; (3) an alternative relocating the mine tailings and waste rock storage facilities; (4) using the existing Johnson Creek Route instead of the new Burntlog Route for vehicle access; and (5) no action. *Id.* Perpetua submitted a further revised Plan of Operations in October 2021 ("ModPRO2" or the "2021 MMP"). *Id.* The Forest Service issued a supplemental draft EIS (SDEIS) in October 2022. *Id.* The SDEIS analyzed Perpetua's most recent proposal, the Johnson Creek Route Alternative, and a No Action Alternative, but no longer included the other two action alternatives from the DEIS or any other alternatives. *Id.*

6. Plaintiffs timely submitted comments on the Forest Service's scoping notice (FS-11532; FS-11560), DEIS (FS-221002), and SDEIS (FS-228433), raising numerous concerns and urging the agency, among other things: that the 1872 Mining Law was not a valid basis for Project infrastructure like the Burntlog Route; to comply with Forest Plan standards protecting roadless and riparian areas; to analyze adequate meaningful alternatives; and to better study and protect against the Project's threats to numerous environmental values.

7. In September 2024, the Forest Service issued its final EIS (FEIS) (FS-243640) and a draft Record of Decision (draft ROD) (FS-243496). In the draft ROD, the Forest Service determined

that taking "no action" was the "environmentally preferable alternative." FS-243540. Nevertheless, the Forest Service proposed to select and approve Perpetua's proposal. FS-243506.

8. In October 2024, Plaintiffs timely filed an administrative objection raising numerous concerns with the draft ROD and FEIS. *See* FS-404641. On December 20, 2024, the Forest Service issued its response, rejecting Plaintiffs' objections and requiring only minor clarifications and modifications in the final ROD. FS-420409; FS-420354. On January 3, 2025, the Forest Service issued the final ROD approving the Project, as proposed by Perpetua (the 2021 MMP). FS-420773.

FWS and NMFS Biological Opinions for the Project

9. In July 2024, the Forest Service prepared a Biological Assessment for the Project (FS-153274), which it submitted to the U.S. Fish and Wildlife Service (FWS) and the National Marine Fisheries Service (NMFS) for Endangered Species Act (ESA) consultation (FS-153293). The Forest Service determined the Project was likely to adversely affect "threatened" Chinook salmon, steelhead, and bull trout, and their designated critical habitat. FS-153752. It also determined the Project was likely to adversely affect "threatened" North American wolverine (wolverine) (FWS-153795) and whitebark pine (FWS-153821).

10. FWS and NMFS each issued a Biological Opinion (BiOp) for the Project in September and October 2024, respectively. FWS-1; NMFS-1. In its BiOp, NMFS determined the Project would not jeopardize the continued existence of Chinook salmon and steelhead. NMFS-371. NMFS did find the Project reasonably certain to cause "incidental take" (non-intentional harming and harassing) of these species. *Id.* To minimize take, NMFS imposed "reasonable and prudent measures" and "terms and conditions," including requiring minimum streamflows be maintained at multiple locations in the mine site and additional water quality treatment. NMFS-376–381.

11. FWS's BiOp determined the Project would not jeopardize the continued existence of

bull trout (FWS-261–62), whitebark pine (FWS-314–15), or wolverine (FWS-336–37). It found the Project was reasonably certain to cause "incidental take" of bull trout (FWS-263–275) and wolverine (FWS-338–39). FWS imposed monitoring requirements but no terms or conditions to reduce stream-flow or water-quality degradation for bull trout. FWS-276–77. FWS did not impose reasonable and prudent measures or terms and conditions to minimize wolverine take. FWS-339.

Major Project Features

12. At the mine site, Perpetua would excavate about 392 million tons of material from three open pits on 473 acres of land. *See* FS-243774. The Yellow Pine Pit is an existing historical mining pit. FS-243772. The East Fork SFSR currently flows through the existing pit, forming the Yellow Pine Pit lake. *Id.* The Project would expand the Yellow Pine Pit to cover about 222 acres and be 720 feet deep. FS-243774. To facilitate mining, the East Fork SFSR would be diverted into a 0.9-mile-long man-made tunnel for approximately 12 to 16 years. FS-243791–92; FS-153596–97 (tables). The Hangar Flats Pit, which would be built into steep slopes adjacent to the Meadow Creek valley floor, would cover about 66 acres and be about 460 feet deep. FS-243772, 243774. The West End Pit, which would be built under West End Creek, would cover 185 acres and be 440 feet deep. FS-243774, 243793. The Yellow Pine and Hangar Flat pits would be backfilled after mining concludes, but the West End Pit would result in a permanent pit lake. *See* FS-244712. At each of the three pits, even after refilling the pits and other reclamation work, the Forest Service admits the highwalls would be "permanent" and would have "major impacts" on the landscape. FS-244478.

13. Perpetua would conduct surface and underground exploration at the mine site to evaluate mining other areas in the future. FS-243811. Perpetua would also build an ore processing facility at the mine site to separate gold, silver, and antimony from the about 115 million tons of ore mined from the three pits. FS-243778. The ore processing area would have to accommodate

containment of ore processing materials, chemicals, wastes, and surface water runoff. *Id.*

14. To dispose of about 120 million tons of mine tailings solids, a Tailings Storage Facility (TSF) would be built on 423 acres of National Forest land in the Meadow Creek valley. FS-243784. The TSF would be 475 feet deep. FS-244479. After mining, Meadow Creek, which is a tributary of the East Fork SFSR, would be routed over the TSF, and seeps and springs under the TSF would be permanently collected and routed by pipes. FS-244662.

15. Beyond the mine site, Perpetua would construct a new vehicle access route, the Burntlog Route, connecting Warm Lake Road with the mine site. FS-243748–50. To build the Route, Perpetua would widen and improve approximately 23 miles of existing National Forest roads and construct 15 miles of new road. *Id.* Perpetua would use the existing Johnson Creek Route during initial construction phases until shifting to the new Burntlog Route. *Id.* The width of the Burntlog Route would be "approximately four times wider than standard roads" in the area. FS-244801. The new segment of the Burntlog Route would be "very close" to the Frank Church Wilderness. FS-245038. While the Burntlog Route would eventually be closed and reclaimed, it would continue to be used "until the tailings storage facility is fully reclaimed." FS-420775.

16. Perpetua would develop up to eight "borrow sites" (gravel mines) along the Burntlog Route. FS-243749. Materials from these gravel mines would be used to support construction, maintenance, and decommissioning of the mine. *Id.*

17. The Project also includes new and improved transmission lines beyond the mine site. FS-243754–56. Over 70 miles of transmission line and associated facilities would be rebuilt or constructed. *Id.* A new 9.1-mile transmission line would be built to link new substations at Johnson Creek and the mine site. *Id*. The new transmission line would require "major" improvements to an existing road and trail and construction of about four miles of new spur roads. FS-243763, 244480.

Construction in Inventoried Roadless Areas

18. New Project access roads, utilities, and mine facilities would cut through 16.8 miles (and cover 673.5 acres) of Inventoried Roadless Areas (IRAs). FS-243673, 245153 (map), 245154 (table). These would create "substantially noticeable human development and structures within IRAs." FS-245161. Even after mine closure and reclamation, "areas of mine related disturbance, access road retaining walls, geotextile fabric, and potentially foundations for the transmission poles, would remain" within four designated IRAs. FS-245159.

19. The Burntlog Route's new road construction would occur "primarily" in roadless areas. FS-245082. The Burnt Log, Black Lake, and Meadow Creek IRAs, which are managed for backcountry values and restoration under the Idaho Roadless Rule, would be damaged. FS-243673; FS-224914; FS-245153 (map). Mine traffic of heavy and light vehicles would utilize the Burntlog Route for decades. FS-243666; FS-243753 (table). The Route could also create new non-Project motorized access in the IRAs, displace wildlife-based and non-motorized recreation, and alter the recreational setting of the Frank Church-River of No Return Wilderness. FS-243669.

20. Several miles of the new transmission line would cut through the Meadow Creek and Horse Heaven IRAs. FS-245152–54, 245159.

Construction in Riparian Conservation Areas

21. The Forest Plans for the Boise and Payette National Forests designate and protect Riparian Conservation Areas (RCAs). *See* FS-1943; FS-3648. RCAs cover 300 feet on either side of forested perennial streams and 150 feet on either side of intermittent forested streams. FS-244165.

22. At the mine site, 39 Project components would occupy 618.2 acres of RCAs, including roads, transmission lines, mine pits, waste facilities, a processing plant, and other features. FS-244803–05 (Table). The TSF and its buttress would cover 226.6 acres of RCAs. *Id.*

23. Outside the mine site, another 299.5 acres of RCAs would be occupied by 14 different Project components, including multiple roads, transmission lines, and other components. FS-244806–07. The new road portion of the Burntlog Route would occupy 36.8 acres of RCAs, improvements to existing roads on parts of the Burntlog Route would occupy another 4.3 acres, and the borrow sources along the Burntlog Route would occupy 1.9 acres of RCAs. *Id.*

Risk of Hazardous Material Spill Risks

24. Annually, Perpetua would transport "[s]ubstantial quantities" of fuels, lubricants, and chemicals via large trucks to and from, as well as around, the Project site. FS-244604. This includes 5.8 million gallons of diesel fuel, 100 tons of explosives, and 4,000 tons of sodium cyanide, among dozens of other "hazardous materials". FS-244604–05 (table).

25. During the two to three years of initial construction, hazardous materials would be transported to and from the mine site using the existing Johnson Creek Route. FS-244606. The "largest volume of hazardous material" transported to the mine site during construction would be diesel fuel. *Id.* On average, two daily round trips would deliver fuel and other supplies. *Id.*

26. After initial construction, hazardous materials would be transported to and from the mine site using the new Burntlog Route. *Id.* The Burntlog Route crosses 37 streams and includes 9 total miles that are within 0.5 mile of surface water resources. FS-243656. The Route would be a high-elevation, remote mountain road that occasionally has "adverse road conditions," especially due to ice and snow in winter. FS-244614. The Route, which would have no emergency truck ramps, has segments with steep grades and switchbacks with reduced turning radius that "may be a challenge for large trucks." *Id.* The Route crosses 26 landslide/rockfall areas and 38 avalanche paths, which "could increase the potential for truck accidents resulting in spills." FS-244615.

Air Pollution Impacts

27. The Project construction, blasting, and haul road traffic would generate particulate matter (dust or PM). FS-393702 (table). Most of this dust is generated by haul road traffic. *Id.* Particulate matter is harmful to humans, FS-393651, and the Project's dust would include arsenic, a known carcinogen hazardous to humans. FS-393707–09. Of all air pollution emissions from the Project, the Forest Service singled out arsenic emissions as a significant issue. FS-393657.

28. The Idaho Department of Environmental Quality issued Perpetua an air-quality "Permit to Construct" allowing haul road traffic handling up to 180,000 tons per day. FS-101467. The FEIS assessed air quality impacts based on 99,500 tons per day. FS-244497, 393664–65.

Impacts to Wolverine

29. In November 2023, the wolverine was listed as threatened, due primarily to ongoing and increasing impacts of climate change and associated habitat degradation and fragmentation. FWS-316. Wolverines use areas at high elevations, with steeper terrain, more snow, fewer roads, and reduced human activity. FWS-317. Wolverine are "particularly sensitive to disturbances such as anthropogenic presence." FWS-326. "Females with kits are extremely sensitive to human disturbance and may abandon den sites if disturbed[.]" *Id.*

30. It is estimated that only 318 wolverine remain in the contiguous United States. 88 Fed. Reg. 83,726, 83,761 (Nov. 30, 2023). Data show dense clusters of wolverine and dens in Idaho's west central mountains, including the Project area, compared to other areas of wolverine habitat. *See* FWS-423 (map). A 2010 to 2015 study "identified at least 16 individual wolverines in or adjacent to the [Project] area," including four "within the mine site boundary, including a resident reproductive female, which likely indicates a den in the general area." FWS-319.

31. FWS admitted constructing the mine, the Burntlog Route, and utility corridors would

harm wolverine, including potentially denning females, through habitat loss and fragmentation. *See* FWS-322–25. The Project would cause 2,341 acres of habitat loss in wolverine habitat, including 779.3 acres in denning habitat. FWS-335–36. Noise, light, and other aspects of human and industrial presence from the Project would disturb and potentially displace wolverine. *See* FWS-325–33. The Project would include grooming a 10.8-mile long snowmobiling route in wolverine denning habitat (for use overlapping with the denning season). FWS-330. The Forest Service concluded that the Project would have long-term adverse impacts on wolverine, which may take decades to undo, and some of which could be irreversible. FS-251197, 251259.

Impacts to Whitebark Pine

32. In 2022, FWS listed whitebark pine as a threatened species. *See* 87 Fed. Reg. 76,882 (Dec. 15, 2022). Whitebark pine is a "keystone" species because it provides habitat and food for wildlife, can colonize after fire and other disturbances, can survive on harsh, high-elevation sites, regulates snowmelt, and reduces soil erosion. FS-244135. Whitebark pine faces four primary threats: "altered fire regimes, white pine blister rust (a disease caused by an introduced fungus), mountain pine beetle, and climate change." FWS-299. Surveys of whitebark pine habitat in the Project area show 92% affected by wildfire, 27% by mountain pine beetles, and 42% by blister rust. FWS-306.

33. FWS found that Project construction would impact about 337.5 acres of occupied and assumed-occupied whitebark pine habitat, and an estimated 1,278 individual trees, including 27 observed to be cone-bearing. FWS-307. "Individual whitebark pine of all age classes are expected to be injured or killed during ground disturbing activities associated with construction, exploration, operation, and restoration of the proposed mine site, roads, and facilities and utilities." FWS-313. "The majority of occupied whitebark pine habitat and individual tree removal will occur at three of the six Burntlog route borrow sources and along the Burntlog route itself[.]" FWS-309.

Impacts to Bull Trout

34. Bull trout were listed as a threatened species in 1999, due to "the combined effects of habitat degradation, fragmentation, and alterations associated with dewatering, road construction and maintenance, mining, inappropriate livestock grazing, blockage of migratory corridors by dams or other diversion structures, poor water quality, incidental angler harvest, entrainment, and introduced non-native species." FWS-136.

35. The Project area contains bull trout habitat, including in the upper East Fork South Fork Salmon River, Meadow Creek, Sugar Creek, Johnson Creek, Burntlog Creek, Trapper Creek, and Riordan Creek. FWS-138–144. The Forest Service classifies the upper East Fork SFSR as "a priority subwatershed." FWS-139. A 2005 study recognized bull trout have "high viability" in the upper East Fork SFSR because of "high connectivity among stream areas, the availability of suitable habitat, and the presence of fluvial and adfluvial migrants." *Id.*

36. FWS identified dozens of Project actions that would adversely affect bull trout. FWS-169–172 (tables). These actions would harm bull trout by causing or contributing to: physical passage barriers; sediment and turbidity pollution; the risk of hazardous material spills; chemical contamination; increased water temperatures; and streamflow depletions. FWS-256–59. Long-term decreased flows would occur in the East Fork SFSR at the mine site and in Meadow Creek, with the biggest changes in the vicinity of the TSF. FWS-264. Throughout the mine site, temperature increases would reduce the amount of habitat available, for over 100 years in some streams. FS-264–65. The TSF would create a permanent fish passage barrier, extirpating bull trout from 8,500 meters of "critical habitat" in Meadow Creek upstream from the TSF. FWS-267. Electroshocking and other "fish handling" techniques would harm over 900 bull trout while streams are dewatered, rerouted, buryied, piped, and/or tunneled during the Project. FWS-268–69.

Dated August 15, 2025.

Respectfully submitted,

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