

No. 26-3622

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**IN THE UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT**

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SAVE THE SOUTH FORK SALMON; *et al.*,

*Plaintiffs-Appellants,*

v.

U.S. FOREST SERVICE; *et al.*,

*Defendants-Appellees,*

and

PERPETUA RESOURCES IDAHO, INC.

*Intervenor-Defendant-Appellee.*

On Appeal from the United States District Court  
for the District of Idaho  
No. 1:25-cv-00086-AKB  
Honorable District Judge Amanda K. Brailsford

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**PLAINTIFFS-APPELLANTS' COMBINED\* REPLY  
IN SUPPORT OF EMERGENCY MOTION  
*RELIEF REQUESTED BY JUNE 19, 2026***

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\*This combined 20-page brief replies to Appellees' (23 pages) and Intervenor-Appellee's (27 pages) responses in compliance with Circuit Rule 27-1(d).

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**TABLE OF CONTENTS**

TABLE OF AUTHORITIES..... iii

ARGUMENT.....1

I. IMMINENT ACTIVITIES WILL CAUSE IRREPARABLE HARM .....1

    A. Irreparable Harm to Interests in National Forest Lands.....1

    B. Irreparable Harm to ESA-Listed Species .....4

II. SSFS IS LIKELY TO SUCCEED ON THE MERITS .....8

    A. Burntlog Route & Associated Gravel Mines .....9

        1. The Burntlog Route Is Not “Authorized by the Mining Laws.....8

        2. The Burntlog Route Is Not Exempt from the Idaho Roadless Rule....13

        3. Gravel Mines Are Not Authorized by the 1872 Mining Law .....13

    B. Endangered Species Act.....14

III. THE BALANCE OF EQUITIES AND PUBLIC INTEREST SUPPORT

    AN INJUNCTION .....16

CONCLUSION .....20

## TABLE OF AUTHORITIES

### Cases

<i>All. for the Wild Rockies v. Cottrell</i> , 632 F.3d 1127 (9th Cir. 2011).....	2, 3, 4
<i>Amoco Prod. Co. v. Vill. of Gambell</i> , 480 U.S. 531 (1987) .....	2, 20
<i>Cameron v. United States</i> , 252 U.S. 450 (1920) .....	9
<i>Clouser v. Espy</i> , 42 F.3d 1522 (1994) .....	11
<i>Cottonwood Env’t L. Ctr. v. U.S. Forest Serv.</i> , 789 F.3d 1075 (9th Cir. 2015) ....	5, 6
<i>Ctr. for Biological Diversity v. U.S. Fish &amp; Wildlife Serv.</i> , 33 F.4th 1202 (9th Cir. 2022) (“Rosemont”) .....	9, 10, 11, 12, 13, 14
<i>Ctr. for Biological Diversity v. U.S. Fish &amp; Wildlife Serv.</i> , 409 F. Supp. 3d 738 (D. Ariz. 2019) .....	9
<i>Flathead-Lolo-Bitterroot Citizen Task Force v. Montana</i> , 98 F.4th 1180 (9th Cir. 2024) .....	19
<i>Friends of the Wild Swan v. Weber</i> , 767 F.3d 936 (9th Cir. 2014) .....	16
<i>Great Basin Res. Watch v. U.S. Dep’t of the Interior</i> , No. 3:19-cv-00661-LRH- CSD, 2023 WL 2744682 (D. Nev. 2023).....	9
<i>Hualapai Indian Tribe v. Haaland</i> , 755 F. Supp. 3d 1165 (D. Ariz. 2024) .....	18
<i>League of Wilderness Defs. v. Connaughton</i> , 752 F.3d 755 (9th Cir. 2014).....	20
<i>League of Women Voters of United States v. Newby</i> , 838 F.3d 1 (D.C. Cir. 2016).....	20
<i>Nat’l Wildlife Fed’n v. Nat’l Marine Fisheries Serv.</i> , 886 F.3d 803 (9th Cir. 2018) (“NWF” ) .....	1, 6, 7, 8, 16
<i>NDN Collective v. U.S. Forest Serv.</i> , No. 5:26-cv-5035-CCT, 2026 WL 1229595 (D.S.D. May 5, 2026).....	18

*Sierra Club v. Trump*, 977 F.3d 853 (9th Cir. 2020), *vacated sub nom. Biden v. Sierra Club*, 142 S. Ct. 56 (2021) .....17

*Sierra Forest Legacy v. Sherman*, 646 F.3d 1161 (9th Cir. 2011) .....19

*Tenn. Valley Auth. v. Hill*, 437 U.S. 153 (1978).....19

*Watt v. W. Nuclear, Inc.*, 462 U.S. 36 (1983).....14

*Winter v. NRDC*, 555 U.S. 7 (2008) .....17, 18

**Statutes**

16 U.S.C. § 478 .....11

16 U.S.C. § 551 .....11

16 U.S.C. § 1607 .....18

30 U.S.C. §§ 21–54 .....9

30 U.S.C. § 611 .....14

43 U.S.C. §§ 1761–71 .....12

43 U.S.C. § 1761(a)(6) .....12

43 U.S.C. § 1764(a) .....13

**Other Authorities**

73 Fed. Reg. 61456, 61459 (Oct. 16, 2008) .....19

**Regulations**

36 C.F.R. § 228.1..... 9

36 C.F.R. § 228.3(a) .....8

36 C.F.R. § 294.25(b) .....	13
36 C.F.R. Part 228A .....	8, 9, 10, 11, 12, 14
36 C.F.R. Part 228C .....	14
36 C.F.R. Part 251 .....	11

## ARGUMENT

### **I. IMMINENT ACTIVITIES WILL CAUSE IRREPARABLE HARM**

#### **A. Irreparable Harm to Interests in National Forest Lands**

The district court committed clear error by failing to even consider the irreparable harm Save the South Fork’s members will suffer when the specific National Forest lands they visit and cherish are cleared of vegetation, graded, and built into an industrial-scale mining road and supporting facilities.

Perpetua, like the district court, tries to straightjacket Save the South Fork into proving irreparable harm tied to a specific *legal claim*. Int. at 25-26.<sup>1</sup> But the proper nexus is between “the alleged irreparable harm and the *activity* to be enjoined, and showing that the requested injunction would forestall the irreparable harm qualifies as such a connection.” *Nat’l Wildlife Fed’n v. Nat’l Marine Fisheries Serv.*, 886 F.3d 803, 819 (9th Cir. 2018) (“*NWF*”) (quotations omitted) (emphasis added). Here, the activity to be enjoined is the Stibnite Gold Project, including Perpetua’s imminent and underway “critical-path activities.” Pausing these activities will forestall the certain irreparable harm Save the South Fork faces.

Defendants try to trivialize these harms as “temporary disruption[s]” or “remediable.” Def. at 19. Not so. These are quintessential irreparable harms.

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<sup>1</sup> Save the South Fork hereafter cites Defendants Response Brief, Dkt. 11.1, by the shorthand “Def.”, and Intervenor’s Response, Dkt. 12.1, as “Int.” All pincites to these refer to the Court’s ECF pagination stamped at the top of each Brief.

“Environmental injury, by its nature, can seldom be adequately remedied by money damages and is often permanent or at least of long duration, *i.e.*, irreparable.”

*Amoco Prod. Co. v. Vill. of Gambell*, 480 U.S. 531, 545 (1987). Thus, this Court enjoined vegetation clearing, road reconstruction, and construction in national forest because, like here, it irreparably harmed plaintiff members’ ability to “view, experience, and utilize” public lands in their “undisturbed state.” *All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1135 (9th Cir. 2011). There was irreparable harm even though the action included post-project road restoration. *See id.* at 1129.

Perpetua misleadingly tries to minimize its “critical-path activities.” To construct the Burntlog Route, Perpetua would reconstruct *23 miles* of existing small National Forest roads, widening them from 12 feet to 26 feet, and installing side-ditching, culverts, guardrails, and bridges; and would cut *15 miles* of entirely new road segments running “primarily” through Inventoried Roadless Areas (“IRAs”). 2-ER-171–73; 2-ER-182. All told, “[d]evelopment of the Burntlog Route would entail *340.9 acres of new* cut and fill activity.” 2-ER-161 (emphasis added).

While Perpetua does not plan to complete the entire Route this year, the imminent and underway critical-path activities are significant. The Worker Housing Facility (“WHF”) at the north end of the Route, and the BLR Maintenance Facility (the “RQ-1” site) at the south end, would occupy a combined 17.1 acres of National Forest. *See* 2-ER-163-64; FER-25-29. These areas are being cleared and

constructed right now. Fend Decl. (ECF 12.3), ¶ 5. In between, Perpetua plans to widen a specific 4.3 miles of existing road along the Route this year *and* get started building an unspecified amount of each and every segment of the 15 miles of new road that primarily cuts through Roadless Areas. 2-ER-60; 1-SER-124.

Make no mistake, Perpetua plans to build new road “extending the existing BLR from its current terminus to Trapper Creek.” 1-SER-125. This would sever the Burntlog IRA south of Trapper Creek. *See* 2-ER-173, 184 (maps). Perpetua also plans to begin “pioneering” routes and “clearing” trees along the new segment from Trapper Creek north to Meadow Creek Lookout, and along the new segment north of Meadow Creek Lookout to the WHF, which will cut through the Black Lake and Meadow Creek IRAs respectively. *See* 2-ER-60, 173, 184.

To deflect from its imminent plans to start bulldozing new road in IRAs, all Perpetua offers is its opinion that some of these areas are not pristine (because they have been burned by wildfires and impacted by past roads and mining), and its recommendation that Save the South Fork members find somewhere else to recreate. Int. at 18, 26–27. This Court’s decision in *Alliance for the Wild Rockies* forecloses these arguments. The Project enjoined there was entirely within an area of national forest that burned two years earlier. 632 F.3d at 1129. And this Court specifically rejected the argument that members recreate elsewhere in the national forest, finding irreparable harm where the project would “prevent the use and

enjoyment” of the specific acres of the forest that plaintiffs use. *Id.* at 1135.

Like in *Alliance for the Wild Rockies*, Save the South Fork members hike, hunt, fish, ride, and maintain trails in the very places Perpetua is currently and will be imminently clearing. For example, Jeff Abrams backpacked in proposed new road areas along the Burntlog Route, camped and hunted near its middle segments, and traveled its southern portion this year, overlapping with the proposed WHF and RQ-1 sites. 2-ER-109–121. He explains that construction would “radically alter[]” or “pre-empt[]” his use of that specific area, including the Summit Trail, which the Route would “obliterate,” and the Black Lake cirque he plans to trek into this summer. 2-ER-111, 119–20. Scott Keithley has spent forty years visiting the Trapper Creek, Riorden Creek, and Burntlog Creek drainages to ride, hunt, camp, fish, and maintain trails the new road would displace, and he plans this year to hike into Black Lake to camp, fish, and climb Chilcoot Peak. 2-ER-140–43.

Neither wildfire nor past mining eliminates Save the South Fork’s recreational interest, the ecological value of the area, or the presence of ESA-protected species. Indeed, members attest from firsthand experience that Burntlog country remains “nearly as remote and natural as designated Wilderness,” offering solitude, recovering forest, and wildlife found in few other places. 2-ER-119–20. They describe their joy in the “comeback” of “new life” there. 2-ER-135–36.

## **B. Irreparable Harm to ESA-Listed Species**

Perpetua’s ongoing and imminent activities in “threatened” species habitat *additionally* create irreparable harm in an ESA case like this, where “establishing irreparable injury should not be an onerous task.” *Cottonwood Env’t L. Ctr. v. U.S. Forest Serv.*, 789 F.3d 1075, 1091 (9th Cir. 2015).

What the district court got wrong, and what Defendants and Perpetua try to hide, is that imminent “critical-path activities” would occur *almost entirely* in important wolverine denning habitat. One look at the map FWS relied on to identify denning habitat makes this clear. 2-ER-275 (map).<sup>2</sup> It shows nearly all the Route cuts through denning habitat, and that the WHF and the RQ-1 site—where Perpetua is already clearing and building—are entirely within denning habitat.

Thus, it is not surprising that FWS admitted: “Impacts to wolverines are *likely* from the construction of access roads and geophysical investigation of the Burntlog Route, creating 427 acres of disturbance” in wolverine habitat where “332.6 acres are denning habitat.” 2-ER-281. Notably, these 332.6 acres of disturbance from constructing Burntlog represent 42.7% (or nearly half) of the entire Project’s disturbance in denning habitat. 2-ER-295–96 (779.3 acres total).

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<sup>2</sup> FWS considered areas with “persistent snow cover” in at least 3 or more out of 7 surveyed years as suitable denning habitat. 2-ER-176. FWS’s map shows the vast majority of the Burntlog Route overlapping such areas, with just a few short segments not in denning habitat. 2-ER-275 (map). And it shows RQ-1 site (BLR Maintenance Facility) and the WHF to be entirely within denning habitat. *Id.*; see also 2-ER-164 (map clarifying WHF location).

Constructing parts of the Route, RQ-1 site, and WHF and conducting geophysical investigations in denning habitat are precisely what Perpetua has already initiated and will begin more of soon. 2-ER-56–60. Yet Defendants, Perpetua, and the district court ignore these facts and pretend that it is a mystery whether any imminent activities are in wolverine habitat. This is clear error.

Perpetua’s attempt to downplay activities as occurring outside of denning season also fails. FWS acknowledged Burntlog construction would occur outside of denning season, but still reached its above-noted finding of “likely” impacts to wolverine because they may still be “foraging, sheltering in, or otherwise using” the area. 2-ER-281. Moreover, the “take surrogate” FWS selected for wolverine (acres of denning habitat disturbed by construction) is entirely independent of the time of year the construction occurs. 2-ER-295–96. This is because FWS knows that after forest is cleared and converted to haul roads and mine features, those scars will remain on the landscape and will be under industrial use, putting wolverine at risk of vehicle collisions, disturbance, and displacement.

Defendants and Perpetua attempt to fall back on FWS’s conclusory findings for Project effects at the species level, and related findings that habitat loss is a percentage of all wolverine habitat. But a plaintiff need not prove jeopardy or extinction-level risk to establish irreparable harm; the standards are distinct. *Cottonwood*, 789 F.3d at 1091; *NWF*, 886 F.3d at 818–19. Even small actions can

cause irreparable harm to a rare species. *NWF*, 886 F.3d at 821–22. Only 318 wolverine remain in the contiguous U.S. 1-ER-23. Yet at least 16 have been identified in or near the Project area. 2-ER-276. FWS’s wolverine and den observation map confirms the area is a hot spot. 4-SER-922.

Retired agency biologist Diane Mack, who studied wolverine around the Project area for years, warns “modifications to the existing Burntlog Road and construction of new sections . . . would substantially change the character of this landscape for all wildlife, including wolverine.” FER-21. “New construction would insert a new travel corridor immediately adjacent to, and, in some locations, directly through, some of the highest-quality wolverine habitat in the Project area.” *Id.* The Forest Service knows this. It too warned that reduced habitat connectivity plus displacement caused by the Project “would result in localized, long-term, and moderate impacts to the wolverine, particularly the local population.” 2-ER-177. It also warned: “Impacts to populations of threatened . . . species, or species with low populations, such as . . . wolverine, would be considered irreversible, because recovery may take a long period of time or not occur at all.” 2-ER-181.

This is irreparable harm. Defendants fail in attempting to cast these harms as speculative or subjective fears disconnected from Save the South Fork’s interests. Defs. at 23. Its members look for and have even observed wolverine along the Burntlog Route. 2-ER-126; 2-ER-143. Stripping a plaintiff’s ability to enjoy

wildlife in its natural setting is irreparable harm. *NWF*, 886 F.3d at 822–23.

Defendants rest on the same flawed arguments for bull trout. They admit imminent Burntlog culvert and bridge installations are expected to injure and kill bull trout. Def. at 21–22. But they point to FWS’s finding that harm would be localized to the area. *Id.* Perpetua similarly points to the small percentage of Idaho’s broader bull trout population that would be harmed. Int. at 24. Again, no species-wide extinction-level threat is required to show irreparable harm. *NWF*, 886 F.3d at 818–19. Retired Forest Service fisheries biologist Mary Pettersen warns Burntlog Route work will irreparably harm local bull trout (FER-9-13) in the very streams Save the South Fork members visit and care about. *See* 2-ER-98, 115, 117, 128. This too is irreparable harm.

## **II. SSFS IS LIKELY TO SUCCEED ON THE MERITS**

### **A. Burntlog Route & Associated Gravel Mines**

#### **1. The Burntlog Route Is Not “Authorized by the Mining Laws”**

Defendants and Perpetua double-down on their assertion that the Burntlog Route can be authorized as if by statutory right, in the absence of statutory text, by instead relying on regulations. Def. at 24–25; Int. at 30–34. They admit the agency approved the Route’s construction based solely on the broad “operations” definition in the 36 C.F.R. Part 228A mining regulations. Def. at 24; 36 C.F.R. § 228.3(a). This is the same error the district court made. *See* 1-ER-010–11.

Yet Defendants and Perpetua continually ignore the central limitation to those regulations: they only cover activities “authorized by the mining laws.” 36 C.F.R. § 228.1. They fail to identify any provision of the 1872 Mining Law (30 U.S.C. §§ 21–54) that gives a mining company rights to occupy off-site public lands to build additional access infrastructure. There is none.

They fail to address the fundamental holding of *Ctr. for Biological Diversity v. U.S. Fish & Wildlife Serv.*, 33 F.4th 1202 (9th Cir. 2022) (hereafter, *Rosemont*). Without a “statutory basis” under the Mining Law, federal land is not given away to mining companies by right, and the Part 228A regulatory definition of “operations” cannot create an end-run around that limitation. *Rosemont*, 33 F.4th at 1223. Without a showing of valid statutory rights on public lands, “a miner has no right, possessory or otherwise, in connection with the land.” *Id.* at 1210 (citing *Cameron v. United States*, 252 U.S. 450, 460 (1920) (a contrary holding would “work an unlawful private appropriation in derogation of the rights of the public”)).

Defendants also ignore the on-point district court order in *Rosemont* (affirmed by this Circuit), which explained that “the Forest Service’s application of its regulations to mining operations cannot grant rights outside the bounds of the Mining Law of 1872.” *Ctr. for Biological Diversity v. U.S. Fish & Wildlife Serv.*, 409 F. Supp. 3d 738, 763 (D. Ariz. 2019). They fail to rebut the same holding from a post-*Rosemont* decision from Nevada. *Great Basin Res. Watch v. U.S. Dep’t of*

*the Interior*, No. 3:19-cv-00661-LRH-CSD, 2023 WL 2744682, \*5 (D. Nev. 2023) (regulatory definition of “operations” cannot create rights under the Mining Law).

For the mine approval found unlawful in *Rosemont*, the Forest Service attempted the same approach as here: using the Part 228A Rules’ broad definition of “operations” to authorize mine-related infrastructure on other public lands away from the actual mineral claims being developed. In district court, the agency had relied on the statutory phrase “reasonably incident” to contend that such off-site activity fell adequately under the Part 228A rules. The fatal problem with this argument, however, was that the “reasonably incident” provision was enacted expressly to *limit* mining activities *on* claim sites (to reign in abuse of claims to serve non-mining activities), and not to expand mining entitlements off-site. *See Ctr. for Biological Diversity*, 409 F. Supp. 3d at 749.

On appeal, the Forest Service abandoned that argument. As this Court noted, the statutory source of the “reasonably incident” phrase “gave no rights beyond those conferred by the Mining Law,” so the agency needs “some other statutory basis” for applying Part 228A. *Rosemont*, 33 F.4th at 1223. Here, the Forest Service has fallen back to its discredited argument that it can simply use the Part 228A rules to authorize the Burntlog Route, without any underlying statutory basis.

Perpetua argues that *Rosemont* only dealt with “land tenure.” Int. at 33. That is wrong. While the agency in *Rosemont* also tried (and failed) to rely on the

presence of un-validated claims beneath the proposed waste locations, *Rosemont* further held that, in order for the mining applicant to assert an entitlement to land use under the Mining Law, rights to those lands must be found in the Mining Law, which is prerequisite to the Part 228A regulations. The fact that the infrastructure at issue in *Rosemont* involved mine waste, while here the issue is a new haul road, does nothing to change the requirement of a “statutory basis.” 33 F.4th at 1223.

Further, the Organic Act of 1897 authorizes the Forest Service to promulgate regulations to protect National Forest lands. 16 U.S.C. § 551. That Act specifies that persons exploiting mineral resources “must comply with the rules and regulations covering such national forests.” 16 U.S.C. § 478. Such regulations plainly include those under Congress’s later-enacted FLPMA permitting scheme. *See* 36 C.F.R. Part 251. And in *Clouser v. Espy*, 42 F.3d 1522 (1994), this Court explained that applicable laws and cases make clear the Forest Service can regulate mining to protect the environment, with “no compelling reason for distinguishing means of access issues from other such forms of regulation.” *Id.* at 1530.

Perpetua asserts, falsely, that the Burntlog Route is the only reasonable access. Int. at 30–33. As the Forest Service stated in the FEIS:

[T]he Johnson Creek Route Alternative would be using an existing route, with improvements, for mine access during operations and reclamation instead of the Burntlog Route that requires new road construction in IRAs. The Johnson Creek Route would be used during the construction, operations, and closure and reclamation phases of the SGP.

2-ER-160. The agency determined that Johnson Creek, with upgrades, is “technically feasible,” “economically feasible,” and would “meet the purpose and need of the Stibnite Gold Project.” *See* 2-ER-155–57. While Perpetua might prefer Burntlog, the upgraded Johnson Creek Route is indisputably a reasonable option that would “accommodate the size of equipment” Perpetua wants. Int. at 9.

The issue is not comparing the pros and cons of the Johnson Creek and Burntlog routes. The legal question is whether the Burntlog Route is governed by statutory mining rights such that it could be authorized under the Part 228A regulations (as the Forest Service did here), or whether Perpetua instead has to apply for a FLPMA right-of-way, 43 U.S.C. §§ 1761–71. Just because a company would prefer a second and new road across public lands to reach its mine site does not create any entitlement or statutory rights under the Mining Law. Again, the Mining Law says nothing about access, and neither Defendants nor Perpetua point to anything in that Law giving it such a right. FLPMA, by contrast, explicitly provides for rights-of-way across National Forest land for “roads,” *id.* § 1761(a)(6).

Save the South Fork does not maintain that Perpetua lacks a right to access its mining claims at the site. Int. at 34. But neither the agency nor the district court supplied the *Rosemont*-required “statutory basis” for treating the new Burntlog Route as “authorized by the mining laws” and thus immune from FLPMA permitting. 33 F.4th at 1223. Federal law requires that Perpetua either obtain a

FLPMA right-of-way for the Burntlog Route, which as a discretionary permit requires payment for such use, “no unnecessary damage to the environment,” and other factors which the agency never considered. 43 U.S.C. § 1764(a). Or it can upgrade and use the Johnson Creek Route instead. There is nothing unusual about this. The Forest Service conceded that a FLPMA right-of-way is required for the new transmission line to the mine, even though it was part of Perpetua’s operations proposal. 2-ER-150–51, 155. The Burntlog Route should be no different.

2. The Burntlog Route Is Not Exempt from the Idaho Roadless Rule

In approving the Burntlog Route through three protected Roadless Areas, Defendants and Perpetua fall back on their view that its construction counts as “mining activities under the General Mining Law of 1872” (Def. at 25) and is thus exempted from the Idaho Roadless Rule, 36 C.F.R. § 294.25(b). But again, a mere association between off-claim activities and a distant mining development cannot provide the “statutory basis” (*see* 33 F.4th at 1223) to wrap the Route in the cloak of the Mining Law. The fact that Perpetua prefers a different, additional Route does not override the Idaho Roadless Rule. The Rule’s narrow Mining Law exception cannot be used to allow carving up roadless areas when there is a reasonable and feasible alternative, like Johnson Creek, which already avoids roadless areas.

3. Gravel Mines Are Not Authorized by the 1872 Mining Law

Approving eight gravel mines along Burntlog under the Part 228A rules fare no better. Defendants and Perpetua argue the gravel mines are “in connection with mining ‘operations,’” or “in support” of gold mining and are thus covered by the Mining Law. Def. at 25; Int. at 35. But this is the same erroneous “reasonably incident” argument first lost and then abandoned in *Rosemont*. They fail to provide any statutory authority to authorize “common variety” gravel under the Mining Law. In fact, gravel mining on public lands was expressly removed from Mining Law coverage by the 1955 Common Varieties Act. *See* 30 U.S.C. § 611; *Watt v. W. Nuclear, Inc.*, 462 U.S. 36, 57 (1983); *Rosemont*, 33 F.4th at 1209.

That the gravel will not be commercially sold, but instead used for the Perpetua’s own commercial ends (Int. at 35), does not transform it into a “valuable mineral” under the Mining Law. The Forest Service can consider approving Perpetua’s mining of gravel on public lands. But it must do so under the correct permitting regime for common variety materials, which requires economic reimbursement, environmental, and other considerations. 36 C.F.R. Part 228C.

## **B. Endangered Species Act**

The district court correctly held that Save the South Fork is likely to succeed on its claims that FWS’s Incidental Take Statements (“ITS”) for wolverine and bull trout fail to include basic mandatory requirements set by the ESA and its regulations to minimize, monitor, and protect against harm to ESA-listed species.

1-ER-027–30, 32–35, 41–44. Defendants make a half-hearted attempt to defend the ITSs, by arguing that the “path” FWS could have taken to a legally sufficient ITS “is discernible” in scattered parts of the record. Def. at 26. Notably, Defendants do not cite the ESA, ESA regulations, or a single ESA case in defending the merits of the ITSs. This is understandable, since those authorities specify mandatory content to be developed and included in an ITS—work that FWS failed to do here.

Defendants quickly pivot away from the ESA merits to a red-herring argument about whether remand without vacatur is appropriate. *Id.* at 26–27. But the question of the appropriate remedy following a full ruling on the merits of all pending claims is entirely separate from whether preliminary injunctive relief is necessary to preserve the status quo and stop irreparable harm now.

In their pivot away from substantively defending the merits, Defendants try to trivialize the ITSs’ numerous shortcomings as “formatting issues.” *Id.* at 26. But matters like the take limits, the monitoring and reporting required to ensure take limits are not exceeded, and the reasonable and prudent measures and terms and conditions designed to minimize take, are substantive legal requirements to ensure the Project does not cause excessive harm. To correct the legal deficiencies, FWS will have to substantively revise its assessments to change, improve, and add terms to these ITSs, and in so doing might also revisit and revise other findings.

Perpetua does not even defend the merits of the ITSs. Instead, it falls back to irreparable harm and again attempts to create a causal requirement between irreparable harm and legal claims. Int. at 35. But the proper causal nexus is between irreparable harm and the activity to be enjoined. *NWF*, 886 F.3d at 819. Save the South Fork has amply shown such harm from imminent Project activities.

The single case Perpetua cites, *Friends of the Wild Swan v. Weber*, 767 F.3d 936 (9th Cir. 2014), is inapposite. The only irreparable harm at issue there was from a “worst-case scenario” of overlapping projects and storms which was inadequately analyzed under NEPA. *Id.* at 946. The plaintiff had “not shown any likelihood” of this scenario, and the record showed it “highly unlikely” to occur. *Id.* Here, it is certain that Perpetua is currently engaged in (and prepping for more) harmful activities, including clearing vegetation, grading land, and degrading forest areas Save the South Fork members cherish and visit for their ecological values.

### **III. THE BALANCE OF EQUITIES AND PUBLIC INTEREST SUPPORT AN INJUNCTION.**

To try to justify moving forward with the Project, even if it was not lawfully approved, Defendants argue at length that antimony has military value and that there are national benefits from the Department of Defense purchasing some of this material from domestic commercial sources. But these propositions are not contested. While the Project is above all else a gold mine—96% of the Project’s

value is gold (2-ER-303)—Save the South Fork does not dispute that there may be benefits, in general, in reducing the nation’s reliance on foreign antimony.

However, Defendants cannot escape the fact that any antimony benefits are years away, attenuated, and modest. Even without an injunction, it will take at least three or four years for Perpetua to complete construction and then start extracting antimony. 2-ER-151. It will take even longer, and only if uncertain refining tests succeed, before the mine might begin supplying antimony. *See* 2-ER-92 (noting efforts underway now to try to develop domestic refining capability). These years-away, uncertain prospects do not compare to the immediate, lasting environmental degradation and harm to ESA-listed species Perpetua is causing right now.

Defendants rely heavily on *Winter v. NRDC*, 555 U.S. 7, 20 (2008). But *Winter* was clear that “military interests do not always trump other considerations.” 555 U.S. at 26. Even if the government asserts interests like national security, “it cannot suffer harm from an injunction that merely ends an unlawful practice . . . . The fact an important interest is at stake does not permit the government to use unlawful means to further that end.” *Sierra Club v. Trump*, 977 F.3d 853, 889 (9th Cir. 2020), *vacated sub nom. Biden v. Sierra Club*, 142 S. Ct. 56 (2021).

Moreover, one reason the court overturned the injunction in *Winter* was because it applied to “conduct otherwise permitted by law.” *Sierra Club*, 977 F.3d at 889. In *Winter*, the President and DEQ invoked available exemptions to the

applicable environmental laws. 555 U.S. at 18–19. Here, by contrast, no exemptions are at play. The best Defendants can do is point to 16 U.S.C. § 1607, which merely calls for “timelines and schedules,” tracking “permitting performance goals,” interagency and state collaboration, and similar procedural and transparency measures for critical minerals projects. 16 U.S.C. § 1607(c). That is a far cry from exempting critical mineral from other statutory obligations like the ESA and national forest protections like FLPMA and the Idaho Roadless Rule. As two district courts held, the public’s interest in critical minerals does not override its interest in compliance with environmental laws. *NDN Collective v. U.S. Forest Serv.*, No. 5:26-cv-5035-CCT, 2026 WL 1229595, at \*5 (D.S.D. May 5, 2026); *Hualapai Indian Tribe v. Haaland*, 755 F. Supp. 3d 1165, 1198 (D. Ariz. 2024)

Further distinguishing *Winter*, this case does not involve an injunction against military action. Rather, it concerns federal land and wildlife agencies permitting private commercial mining. Defendant’s argument hinges on misattributing the Project to the military and implying a false binary between Chinese antimony or antimony from this Project. But as Defendants admit, even prior to recent export bans, the U.S. acquired nearly half its antimony imports outside of China. Def. at 13–14. And the military has shifted sources such that Defendants clarify the interest at stake here is really just the modest benefit of an eventual “domestic fallback” for some added “supply-chain resilience.” Def. at 15.

While the Court can defer to military expertise on the need for domestic antimony, it need not defer to government statements about how this balances out against ecological harms. *Sierra Forest Legacy v. Sherman*, 646 F.3d 1161, 1185–86 (9th Cir. 2011). As this Court has noted, “[i]f the federal government’s experts were always entitled to deference concerning the equities of an injunction, substantive relief against federal government policies would be nearly unattainable, as government experts will likely attest that the public interest favors the federal government’s preferred policy, regardless of procedural failures.” *Id.* at 1186.

Defendants’ efforts to minimize the Project’s environmental harms largely ignore that the case involves harm to protected roadless areas and ESA-listed species. The Idaho Roadless Rule identifies “timber cutting and road construction or reconstruction as having the greatest likelihood of altering and fragmenting landscapes and the greatest likelihood of resulting in an immediate, long-term loss of roadless area values and characteristics.” 73 Fed. Reg. 61,456, 61,459 (Oct. 16, 2008). And Congress’s clear intent in the ESA was to afford “endangered species the highest of priorities.” *Tenn. Valley Auth. v. Hill*, 437 U.S. 153, 174, 180, 194 (1978). That priority means the “balance of hardships and the public interest [ ] always tip heavily in favor of protected species.” *Flathead-Lolo-Bitterroot Citizen Task Force v. Montana*, 98 F.4th 1180, 1190 (9th Cir. 2024).

Defendants attempt to disguise the massive mine as a “restoration” project (Def. at 17), ignoring the Forest Service’s own debunking of this Perpetua sales pitch. Even with promised restoration and post-mining reclamation, the Forest Service concluded the area would be better off in the long-term without the Project. 2-ER-156. And in the short term, while construction and mining are underway, the environmental harm will be significantly worse. *See supra* Part I.

“[T]he balance of harms will usually favor the issuance of an injunction to protect the environment.” *Amoco Prod. Co. v. Vill. of Gambell*, 480 U.S. 531, 545 (1987). Constructing a massive mine on ecologically sensitive public lands is easily one of these usual cases warranting an injunction. This is not changed by Perpetua’s warning of delay or economic loss, for “the balance of equities tips toward [the plaintiffs] because the harms they face are permanent, while the intervenors face temporary delay.” *League of Wilderness Defs. v. Connaughton*, 752 F.3d 755, 765 (9th Cir. 2014). What must prevail is the “substantial public interest in having governmental agencies abide by the federal laws that govern their existence and operations.” *League of Women Voters of United States v. Newby*, 838 F.3d 1, 12 (D.C. Cir. 2016) (quotation omitted).

### **CONCLUSION**

Save the South Fork respectfully requests that the Court grant an injunction pending appeal, temporarily halting construction and preserving the status quo.

Dated: June 16, 2026

Respectfully submitted,

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