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, 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' OPENING BRIEF IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION

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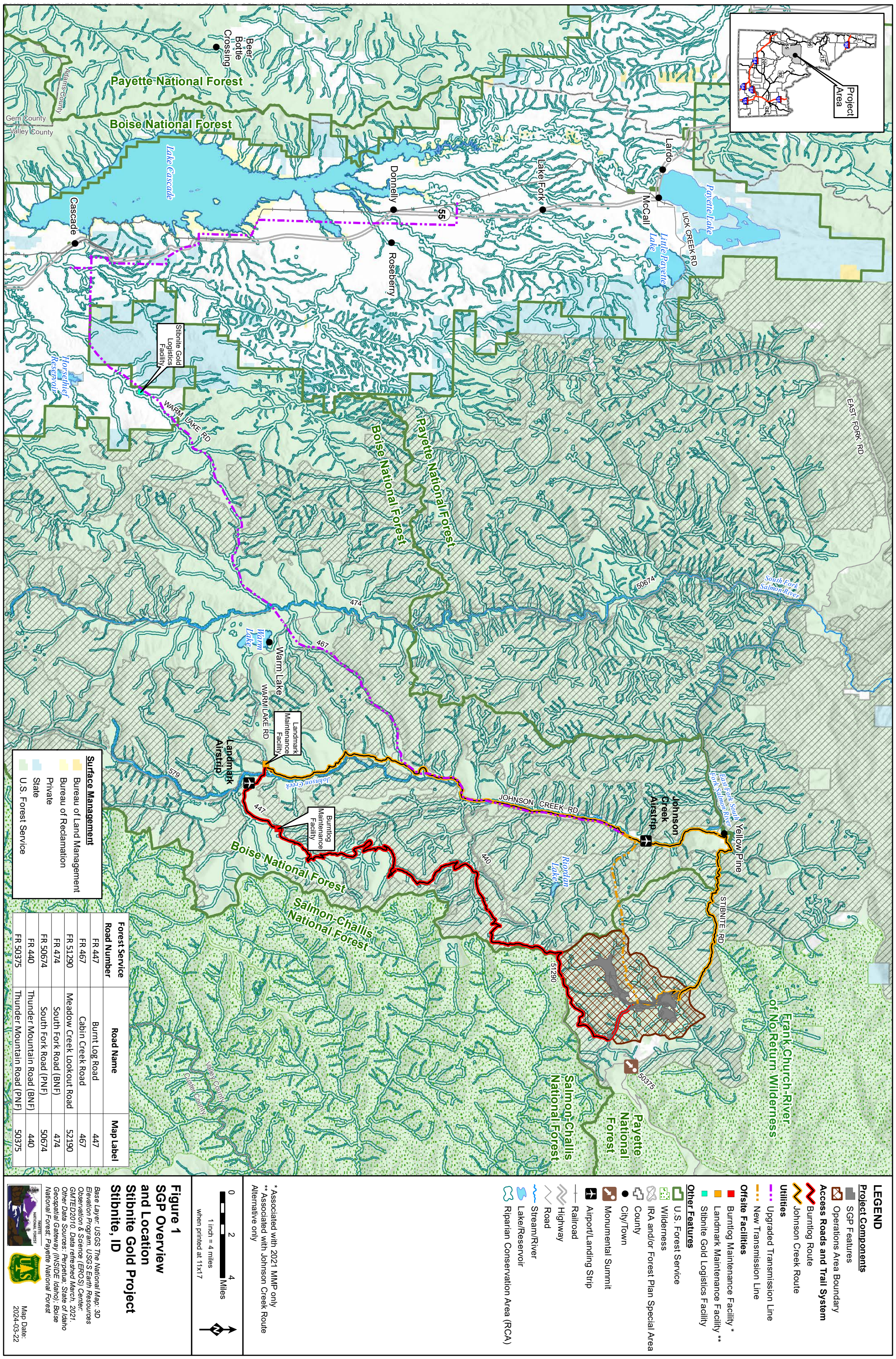
GLOSSARY OF TERMS

Term	Definition
APA	Administrative Procedure Act, 5 U.S.C. §§ 701–706
BA	Biological Assessment
BiOp	Biological Opinion
DEIS	Draft Environmental Impact Statement
DOI	United States Department of the Interior
ESA	Endangered Species Act, 16 U.S.C. §§ 1531 et seq.
FEIS	Final Environmental Impact Statement
FLPMA	Federal Lands Policy and Management Act, 43 U.S.C. §§ 1701 et seq.
FWS	United States Fish and Wildlife Service
ITS	Incidental Take Statement
MIST08	Standard for Management Direction for Mineral and Geology Resources, as defined by Payette and Boise National Forest Plans
MIST09	Standard for Management Direction for Mineral and Geology Resources, as defined by Payette and Boise National Forest Plans
MMP/ModPro2	Modified Mine Plan, as submitted in 2021 for the Stibnite Gold Project
NEPA	National Environmental Policy Act, 42 U.S.C. §§ 4321 et seq.
NFMA	National Forest Management Act, 16 U.S.C. §§ 1600 et seq.
NMFS	National Marine Fisheries Service
Organic Act	Forest Service Organic Act of 1897, 16 U.S.C. § 475
Project	The Stibnite Gold Project
RCA	Riparian Conservation Area (as defined in Payette and Boise National Forest Plans)
ROD	Record of Decision
RPM	Reasonable and Prudent Measure (see 16 U.S.C. § 1536(b)(4))
SDEIS	Supplemental Draft Environmental Impact Statement
SFSR	South Fork of the Salmon River
USDA	United States Department of Agriculture
USFS	United States Forest Service

MAPS



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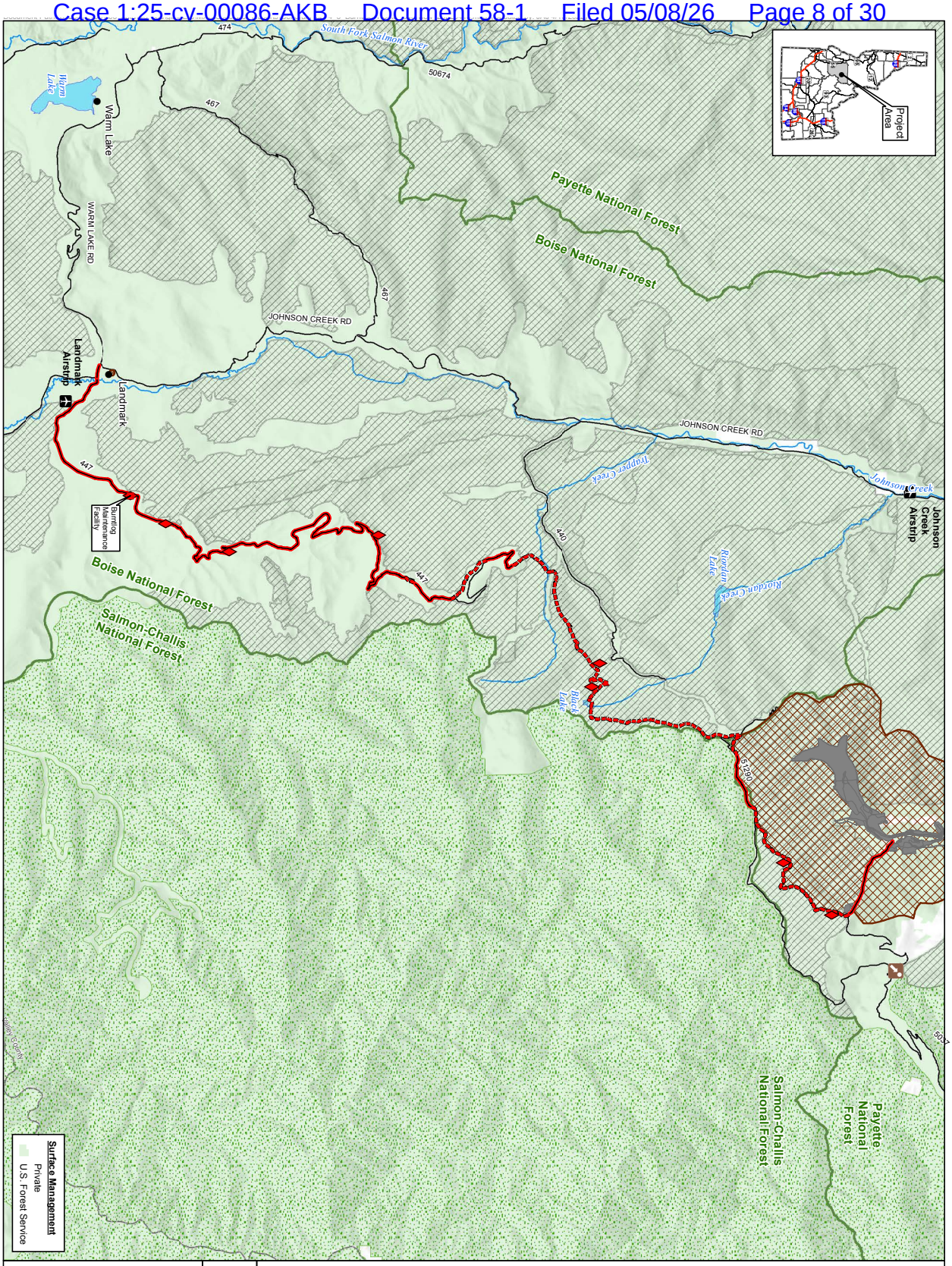
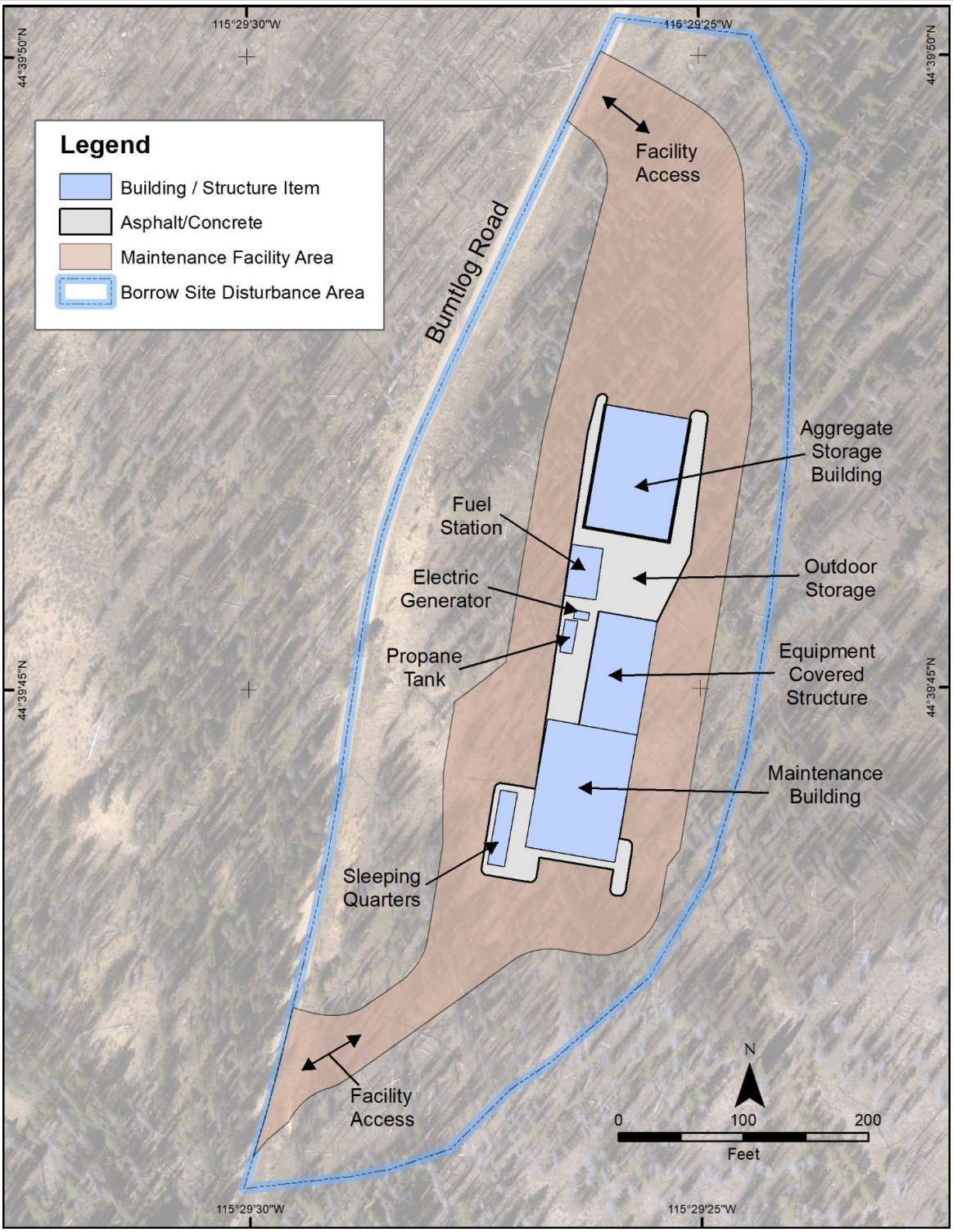


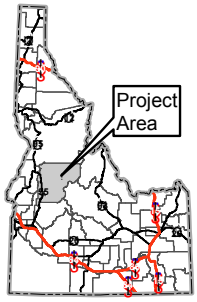
Figure 2.4-5
Burntlog Route
Stibnite Gold Project
Stibnite, ID

Base Layer:
Other Data Sources: Physiurus; State of Idaho Geospatial Gateway; INSIDE Idaho; Boise National Forest; Payette National Forest

Map Date: 4/10/2022

FS250050





(See Figure 2.4-1 for the Burntlog Maintenance Facility location.)

Figure 2.4-8
Burntlog Maintenance Facility

Stibnite Gold Project
Stibnite, ID
Data Sources: Perpetua 2021a

INTRODUCTION

Plaintiffs respectfully ask the Court to grant their Motion for Preliminary Injunction to halt Federal Defendants from allowing, and halt Intervenor-Defendant Perpetua from performing, activities authorized on National Forest lands as part of the Stibnite Gold Project: a massive gold and antimony mine located primarily on federal public lands in the remote headwaters of the East Fork South Fork Salmon River. Perpetua plans to "start full construction" on May 30. A preliminary injunction is necessary to prevent immediate, lasting irreparable harm to Plaintiffs and the environment while the Court resolves the pending cross motions for summary judgment.

Plaintiffs satisfy the four-part test for a preliminary injunction. As set forth below, and in detail in their summary judgment briefs (ECF Nos. 31-2 ("SJ Br.") & 52 ("SJ Reply")), Plaintiffs are likely to succeed on their claims challenging Defendants' Project approvals. Granting a preliminary injunction to protect the environment is in the public interest, and it would cause Perpetua only a short-term delay. Allowing heavy machinery to clear forest vegetation, grade land, alter riparian habitats, and erect structures—especially in sensitive riparian and roadless areas and threatened and endangered species habitat—would irreparably harm Plaintiffs.

FACTUAL & PROCEDURAL BACKGROUND

A detailed background is in Plaintiffs' Separate Statement of Undisputed Facts (ECF No. 31-1) ("SOF") and SJ Br. at 10–12[1]. The Project, which includes building an extensive network of access roads, transmission lines, gravel mines and other infrastructure; excavating three large open pits to extract gold; building and operating a gold ore processing facility; permanently filling the pristine Upper Meadow Creek Valley with millions of tons of mine waste rock and tailings; and burying and re-routing streams, including forcing the East Fork of the South Fork Salmon River

[1] When citing ECF documents, page citations are to the ECF-stamped page number.

(East Fork SFSR) into a tunnel for 12 or more years, would cause large-scale, long-lasting environmental damage to this remote, ecologically sensitive area. *See* SOF ¶¶ 1–4, 12–36.

Most of the Project would occur over approximately 20 to 25 years, including three years of construction. FS-243739. All told, Project land clearing (often referred to as "disturbance") would remove an estimated 3,266 acres. SOF ¶ 3. Project features would occupy over 900 acres of protected riparian areas and would eliminate or degrade about 111,000 linear feet of streams and 150 acres of wetlands. *Id*. New infrastructure, including the Burntlog Route, would cut through "inventoried roadless areas." *Id.* ¶¶ 18–20.

Defendant U.S. Forest Service approved the Project in its Record of Decision (ROD) issued on January 3, 2025, and based on its Final Environmental Impact Statement (FEIS) issued in September 2024. *See* SOF ¶¶ 5–8. Although the Forest Service determined the Project would have a net *negative* impact on the environment, it approved it in the ROD. FS-420806. Defendant U.S. Fish and Wildlife Service (FWS) approved the Project through its September 2024 Biological Opinion. *See* SOF ¶¶ 9–11. FWS found the Project would "take" (i.e., kill or harm) Endangered Species Act (ESA)-protected wolverine, whitebark pine, and bull trout, each of which inhabit the Project area, and issued an Incidental Take Statement authorizing such take.

Shortly after the Project's approval, Plaintiffs filed this action on February 18, 2025. The parties agreed to a schedule for cross motions for summary judgment, which the Court approved. *See* ECF No. 25. Federal Defendants lodged the Administrative Record (AR). ECF No. 29. And on August 15, 2025, Plaintiffs filed their Motion for Summary Judgment. ECF Nos. 31–32.

After Perpetua provided notice that it intended to conduct various initial activities beginning on October 20, 2025, and continuing to February 1, 2026, Plaintiffs and Perpetua entered into a Joint Stipulation, agreeing to a limited set of early construction activities which

Plaintiffs would not seek to enjoin. ECF No. 40. In the meantime, the parties completed briefing the cross motions for summary judgment, with the final brief filed on January 20, 2026.

Perpetua now seeks to "start full construction" on May 30, 2026, including constructing the Burntlog Route, a second and new access route to the mine site, through protected roadless and riparian areas, and in threatened species habitat. Perpetua would reconstruct and widen *23 miles* of existing road on National Forest road on the northern and southern segments of the Route, to be "approximately four times wider than standard roads" in the area to accommodate industrial mine traffic. SOF ¶ 15. Perpetua would also begin constructing the new segments of the Burntlog Route: *15 miles* of new road through remote wildlife habitat, mostly in inventoried roadless areas. *Id.* ¶ 16. In total, the Route would cross dozens of streams. Perpetua would also clear forest to build a maintenance facility and gravel mine near the south end of the Route. These activities are depicted on the maps and figure from the ROD reproduced above.

STANDARD OF REVIEW

Plaintiffs seeking a preliminary injunction must show they are "likely to succeed on the merits, that [they are] likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in [their] favor, and that an injunction is in the public interest." *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). The Court evaluates these factors on a sliding scale, such that a stronger showing of one element may offset a weaker showing of another. *Fellowship of Christian Athletes v. San Jose Unified Sch. Dist. Bd. of Educ.*, 82 F.4th 664, 684 (9th Cir. 2023) (*en banc*).

The Ninth Circuit has held that "'serious questions going to the merits' and a balance of hardships that tips sharply towards the plaintiff can support issuance of a preliminary injunction, so long as the plaintiff also shows that there is a likelihood of irreparable injury and that the injunction is in the public interest." *All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1135 (9th

Cir. 2011). When the government is a party, the factors regarding public interest and equities merge "into one inquiry." *Porretti v. Dzurenda*, 11 F.4th 1037, 1050 (9th Cir. 2021); *Drakes Bay Oyster Co. v. Jewell*, 747 F.3d 1073, 1092 (9th Cir. 2014). When environmental injury is "sufficiently likely," the 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).

Moreover, in cases raising claims under the Endangered Species Act, courts do not apply traditional equitable balancing because the "plain intent of Congress in enacting th[e] statute was to halt and reverse the trend toward species extinction, whatever the cost," and thus "the balance has been struck in favor of affording endangered species the highest of priorities." *Tenn. Valley Auth. v. Hill*, 437 U.S. 153, 184, 194 (1978). In such cases, the equities and public interest factors always tip in favor of the protected species. *Nat'l Wildlife Fed'n v. Nat'l Marine Fisheries Serv.*, 886 F.3d 803, 817 (9th Cir. 2018).

Here, Plaintiffs satisfy all elements of the *Winter* test.

ARGUMENT

I. PLAINTIFFS ARE LIKELY TO SUCCEED ON THE MERITS.

To establish a substantial likelihood of success on the merits, a plaintiff "must show a 'fair chance of success.'" *In re Focus Media Inc.*, 387 F.3d 1077, 1086 (9th Cir. 2004) (citation omitted). Plaintiffs' summary judgment briefing details their likelihood of success and entitlement to relief due to Defendants' legal violations under numerous environmental statutes and regulatory requirements, and Plaintiffs hereby incorporate by reference the substance of those briefs (*see* SJ Br. at 25–35, 55–57; SJ Reply at 21–34, 53). The most concerning and destructive work that Perpetua intends to undertake before resolution of the pending summary judgment motions is the construction of the Burntlog Route and its associated maintenance facility and gravel mines across 38 miles of remote public lands and habitat for ESA-protected species. Thus, Plaintiffs focus this

brief on the most relevant legal violations and harms in that context (issues within the amended complaint's First, Second, Fourth, Eighth, and Tenth claims for relief): (1) Defendant Forest Service's unlawful approval of the Burntlog Route and associated gravel mines as rights under the 1872 Mining Law; and (2) Defendant FWS's unlawful Biological Opinion and Incidental Take Statement under the ESA.

A. Defendants Unlawfully Approved the Project's Extensive Web of Infrastructure.

As Plaintiffs have explained (SJ Br. at 14–24; SJ Reply at 9–17), the Forest Service erred as a matter of law in approving the Project's extensive web of off-site infrastructure that would cut through protected roadless and riparian areas and would destroy, degrade, and fragment wildlife habitat on National Forest lands miles beyond the mine site. This infrastructure includes the new Burntlog Route that Perpetua prefers over the existing access route, eight gravel mines, and a new transmission line. *See* SOF ¶¶ 15–20.

1. Unlawful Approval of the Burntlog Route Under the 1872 Mining Law

While Perpetua can already indisputably access the mine site via the Johnson Creek Route, the Forest Service assumed that Perpetua is *entitled* under the 1872 Mining Law to construct *another* access route: the Burntlog Route. FS-420804. *See also* FS-245443–44. But a new, second access road across National Forest lands must be governed by the Federal Land Policy and Management Act (FLPMA). This is a critical distinction. Where the 1872 Mining Law limits the Forest Service's discretion over Perpetua's operations, under FLPMA, the Forest Service has broad discretion to deny a right-of-way, Perpetua must pay to occupy public lands, and any approval is subject to substantive and procedural public interest and environmental safeguards.

The Mining Law (30 U.S.C. §§ 21–54) and Forest Service mining regulations (36 C.F.R. §§ 228.1–228.15, or the "Part 228A" rules) cover rights to National Forest lands that accrue through the valid discovery of certain minerals. *See* SJ Br. at 14–16; *Ctr. for Biological Diversity*

v. U.S. Fish & Wildlife Serv., 33 F.4th 1202, 1208 (9th Cir. 2022) ("*Rosemont Appeal*"). The Mining Law and Part 228A rules apply only to activities that are indeed "authorized by the mining laws," and "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, 763–64 (D. Ariz. 2019) ("*Rosemont*"), *aff'd*, 33 F.4th 1202 (9th Cir. 2022). The Ninth Circuit has cautioned against overextending these regulations to assume mining-law rights where none exist in the statute, as that would give away, "essentially free of charge," rights on public lands. *Rosemont Appeal*, 33 F.4th at 1218; *see also* SJ Br. at 17–19.

In addition to the 1872 Mining Law, the Forest Service must also comply with numerous later-enacted statutes. One such statute is the 1897 Organic Act, which requires the agency "to regulate [the] occupancy and use [of national forests] and to preserve the forests thereon from destruction," 16 U.S.C. § 551, and requires that those pursuing mineral development "must comply with the rules and regulations covering such national forests," 16 U.S.C. § 478. Another is FLPMA, which requires the Forest Service to protect "ecological, environmental, air and atmospheric, [and] water resource" values, 43 U.S.C. § 1701(a)(8), and which was crafted in part to govern precisely the kind of public-land occupation that the Burntlog Route represents: issuance of rights-of-way and special use permits for infrastructure like access roads and powerlines to cross federal land, *see id.* §§ 1761–1771; *see also* SJ Br. at 15–16; SJ Reply at 13–17.

Perpetua already has reasonable access to the mine site on the Johnson Creek Route, which it and other mining companies have used for years. Nevertheless, the Forest Service granted Perpetua's request to build a brand-new second access road to the mine site, the Burntlog Route, based on the erroneous assumption that Perpetua has a statutory right under the Mining Law to construct a second route. Thus, the Forest Service approved the Burntlog Route under the Part

228A mining rules based on the Route's "connection with" mining activity. FS-243708; *see also* FS-245443–44, 420804. As a consequence, the Forest Service authorized extensive additional environmental impacts through the widening of existing national forest roads, construction of about 15 miles of new road, and allowing industrial mine traffic through protected roadless and riparian areas and threatened species habitat. *See* SJ Br. at 17; SOF ¶¶ 15, 17, 19, 24–26.

This approach was unlawful. Nothing in the Mining Law confers the right to construct a second access route over federal lands. The Mining Law is silent about access, authorizes only a limited set of activities on the surface of mining claims, and nowhere confers rights to additional access routes. *See* 30 U.S.C. §§ 21–54; *Rosemont*, 409 F.Supp.3d at 753–54, 763–64. Access rights to mining claims are the same as those for other inholdings surrounded by federal land, for which there are well-established statutory provisions and regulations governing uses of public land through rights-of-way under FLPMA, or where easements-by-necessity may apply. *See* SJ Br. at 17–19; SJ Reply at 13–17; *see also McFarland v. Kempthorne*, 545 F.3d 1106, 1111 (9th Cir. 2008); *Mont. Wilderness Ass'n v. U.S. Forest Serv.*, 496 F. Supp. 880, 885 (D. Mont. 1980).

Perpetua already has reasonable access to its mining claims via the Johnson Creek Route. *See* FS-111260, 243647, 344178–80, 358378. Thus, any implied right to a new route has no basis in easement law, *see McFarland*, 545 F.3d at 1111 ("easement by necessity does not exist if the claimant has another mode of access to his property . . . no matter how inconvenient"). Nor is there any right under the Mining Law or public land law. Approving the Burntlog Route under the Part 228A rules, as if by right under the Mining Law instead of under FLPMA, was unlawful.

2. Burntlog Route Violations of the Idaho Roadless Rule

The Forest Service's approval of the Burntlog Route is also illegal because it violates the Idaho Roadless Rule. As part of its Organic Act mandate "to preserve the forests thereon from destruction," 16 U.S.C. § 551, the Forest Service promulgated the Idaho Roadless Rule, 36 C.F.R.

§§ 294.20–29, to "ensure that inventoried roadless areas sustain their values for this generation and for future generations" and create "benefits associated with healthy watersheds and ecosystems." 73 Fed. Reg. 61,456, 61,459 (Oct. 16, 2008). The Idaho Roadless Rule generally prohibits new roads in Inventoried Roadless Areas. 36 C.F.R. § 294.23.

The Burntlog Route would "remove vegetation, alter topography, and modify fish and wildlife habitat" within *three* Inventoried Roadless Areas (FS-224914, 243673, 245153). The Forest Service approved it anyways, based on its erroneous assumption that Perpetua is entitled to this second route under the Mining Law. *See* FS-420819; 36 C.F.R. § 294.25(b). As explained above, nothing in the Mining Law authorizes or provides statutory rights to extensive off-site infrastructure like this additional road. And although the Idaho Roadless Rule contains an exception for mining in roadless areas, that exception only applies to statutory rights granted under the Mining Law. As shown above, Perpetua had no such right to the Burntlog Route. Thus, the Forest Service's action violated the Organic Act and Idaho Roadless Rule. *See Los Padres ForestWatch v. U.S. Forest Serv.*, 25 F.4th 649, 654–60 (9th Cir. 2022) (vacating and remanding approval of logging project in roadless area); *see also* SJ Br. at 23–24.

3. Unlawful Approval of Gravel Mines under the 1872 Mining Law

The Forest Service made a similar error when it approved eight gravel mines ("borrow sources") along the Burntlog Route, erroneously assuming Perpetua is entitled to such resource extraction under the Mining Law. *See* FS-243749, 244504, 404062; SJ Br. at 20–21; SJ Reply at 18–21. The Mining Law applies only to "locatable minerals" such as gold, whereas gravel is a "common variety" material governed by separate statutes (the Materials Act of 1947 and Common Varieties Act of 1955) and separate regulations. *Watt v. W. Nuclear, Inc.*, 462 U.S. 36, 57 (1983); *Rosemont Appeal*, 33 F.4th at 1209. By approving the gravel pits under the wrong statute and regulations (the Mining Law and Part 228A rules), the Forest Service bypassed the rules that

actually cover gravel mining, 36 C.F.R. Part 228 Subpart C.

Those rules give the Forest Service complete discretion whether to contract for the sale of gravel; require payment at no less than appraised value; and require protecting the "public interest" and other resources. *See* 36 C.F.R. § 228.43. Earlier in its review of the Project, the Forest Service planned to apply the correct common-variety mineral rules. *See* FS-404062, 420369. But the agency abruptly changed course, giving away the gravel to Perpetua for free under the Part 228A mining rules, relinquishing its discretionary authority, and bypassing the fair market value and public interest protections of the common-variety mineral rules. *Id.*

B. Plaintiffs Raise Serious Questions and Are Likely to Succeed on their Claims that Defendants Violated the Endangered Species Act.

The Forest Service and FWS also violated the Endangered Species Act in approving the Project. *See* SJ Br. at 35–55; SJ Reply at 33–53. Mine construction—including the Burntlog Route—will occur in occupied wolverine, whitebark pine, and bull trout habitat. FWS's Biological Opinion and Incidental Take Statement finding no jeopardy and permitting for take of these species, and the Forest Service's reliance on those flawed findings, violated clear statutory and regulatory standards under the ESA and were otherwise unreasonable, arbitrary, and capricious.

Wolverine: Wolverine are a low abundance species, with only an estimated 318 individuals inhabiting the lower 48 states. *See* Pls.' SOF ¶¶ 29-31. They are "particularly sensitive to disturbances such as anthropogenic presence." FWS-326. Constructing the mine, including Burntlog Route, will harm wolverine, including potentially denning females, through habitat loss and fragmentation. *See* FWS-322–25. The Project would cause 2,341 acres of wolverine habitat loss, including 779.3 acres in denning habitat. FWS-335–36. Noise, light, and other aspects of human/industrial presence would disturb and potentially displace wolverine. *See* FWS-325–33.

In reaching its "no jeopardy" determination for the wolverine, FWS unlawfully

downplayed these impacts and provided a rationale full of errors, contradictions, and unsupported assumptions, each of which renders the Biological Opinion unlawful. First, FWS made the blatantly false conclusion that the 65 or more years of Project impacts to wolverine would not be "long term." FWS-337; SJ Br. at 39; SJ Reply at 34–35.

Second, FWS impermissibly limited its jeopardy analysis to impacts on wolverine habitat and failed to consider the impacts of the Project on the local wolverine population. SJ Br. at 40; SJ Reply at 35–37. ESA regulations require BiOps to include a "detailed discussion of the environmental baseline of the listed species," and to use that baseline to evaluate jeopardy. 50 C.F.R. § 402.14(h). *See Am. Rivers v. FERC*, 895 F.3d 32, 48 (D.C. Cir. 2018) (no-jeopardy determination arbitrary because FWS assessed local take but failed to explain if or how "the local populations are insignificant to the larger populations").

Third, FWS made the very same error agencies have made in many recent cases: acknowledging climate change has taken and will take a toll on wolverine, but failing to "add" the effects of the Project together with *future* climate effects in order to accurately assess jeopardy. 50 C.F.R. § 402.14(g)(4). *See* SJ Br. at 41–43; SJ Reply at 37–38. S*ee, e.g., Willamette Riverkeeper v. Nat'l Marine Fisheries Serv.*, 763 F. Supp. 3d 1203, 1237 (D. Or. 2025) (holding unlawful a biological opinion for failing to assess project effects "on top of" climate change effects despite acknowledging the latter's "serious negative implications"); *Nat'l Wildlife Fed'n v. Nat'l Marine Fisheries Serv.*, 184 F. Supp. 3d 861, 874 (D. Or. 2016) (BiOp "analysis does not apply the best available science, overlooks important aspects of the problem, and fails properly to analyze the effects of climate change, including its additive harm").

FWS's "Incidental Take Statement" (ITS) for the wolverine is also unlawful. First, an ITS must include monitoring and reporting of the Project's "take" limit. 50 C.F.R. § 402.14(i)(4).

While FWS set the take limit based on the total acres of ground disturbance the Project will cause in wolverine denning habitat, the ITS fails to require monitoring or reporting the acres of disturbance in denning habitat. *See* FWS-337–41; SJ Reply at 38–39.

Second, an ITS violates the ESA if it sets a take limit based on only some types of take but fails to "quantify the amount of other types" of take expected by FWS. *Ctr. for Biological Diversity v. Bernhardt*, 982 F.3d 723, 749 (9th Cir. 2020). FWS admitted that the Project's winter grooming of Cabin Creek Road threatens significant harm to wolverine (FWS-330), but FWS failed to include these harms in the take limit. *See* FWS-337–41; SJ Reply at 39–41.

Third, an ITS must include "reasonable and prudent measures" and "terms and conditions" to minimize take. 50 C.F.R. § 402.14(i)(1)(ii) & (iv). FWS declined to include these, stating it "believes the measures proposed by the Forest are sufficient." FWS-339; SJ Reply at 41–43. These are not "optional," even if the action includes measures to avoid jeopardy. *Ctr. for Biological Diversity v. Culver*, No. 21-cv-07171-SI, 2024 WL 4505468, at *64–65 (N.D. Cal. Oct. 22, 2024).

Whitebark Pine: The ESA requires FWS to "add" the effects of the action, cumulative effects, and the environmental baseline to assess jeopardy. 50 C.F.R. § 402.14(g)(4). "This step is critical to ensure the action is not analyzed in a vacuum." *Appalachian Voices v. U.S. Dep't of Interior*, 25 F.4th 259, 278 (4th Cir. 2022) (quotation omitted). Here, the BiOp simply recites the primary threats to whitebark pine, including climate change, blister rust, pine beetle, and altered fire regimes (FWS- 299, 306), but then assesses the Project's impacts in isolation from those threats (FWS-314–15). This violates the ESA. *See* SJ Br. at 47–48; SJ Reply at 43–45.

Bull Trout: Allowing Project construction to move forward, including the immediate construction of the Burntlog route, would also have dire implications for ESA-protected bull trout. FWS has acknowledged that one of the first activities that "may affect" bull trout is "Burntlog

Route construction." FWS-169. "The construction of access roads (including the Burntlog Route) . . . will occur along and over bull trout occupied streams," FWS-175, and "local populations will be affected by the proposed culvert and bridge construction." FWS-233. In addition, "other effects include noise disturbance and reductions in habitat from water drafting for geotechnical investigation," *id.*, as well as culvert and bridge work that "will cause disturbance and injury or mortality to bull trout," FWS-234.

FWS irrationally rested its no-jeopardy conclusion for bull trout on incomplete arithmetic accounting for only a small subset of admitted forms of harm to the fish, and by impermissibly diluting its assessment of the impacts relative to state-wide populations without accounting for the significance or health of the more local-scale populations. *See* SJ Br. at 48–50; SJ Reply at 45–46. The Ninth Circuit has rejected precisely this tactic, holding that agencies are not allowed to "dilute[] to insignificance" the impacts of a site-specific project in a jeopardy determination by utilizing an overly broad scope of analysis. *Pac. Coast Fed'n of Fishermen's Ass'n v. Nat'l Marine Fisheries Serv.*, 265 F.3d 1028, 1036–37 (9th Cir. 2001).

Moreover, FWS failed to provide a rational and defensible assessment of bull trout impacts in relation to stream temperature and climate change, which are critical. *See* SJ Br. at 50–55; SJ Reply at 47–52. Stream temperature modeling, which FWS credited in its jeopardy analysis, *omits* climate change dynamics (*see* FWS-175, 261–62), and FWS did not adequately account for this limitation. As set forth in Plaintiffs opening summary judgment brief, numerous courts have overturned biological opinions where FWS acknowledged climate change effects, but failed to add these effects to the project's effects in the jeopardy analysis. SJ Br. at 44.

Then, FWS incorporated the output of that modeling into its incidental take monitoring scheme (essential to ensure long-term compliance and reinitiation of consultation if necessary) in

a manner that was nonsensical in practice and would allow for extensive periods over which failures to adequately restore low stream temperatures could pass without a trigger for correction. *See* SJ Br. at 54–55; SJ Reply at 50–52. FWS must "specif[y]" a "clear standard" for take monitoring and re-consultation triggers, 50 C.F.R. § 402.14(i)(1)(i), (i)(4), but what it provided here fell far short of that rule. Among other problems, FWS's scheme credulously applied a model that defined success as Perpetua restoring bull-trout-habitable temperatures in some streams *over a century* from now, despite the model not accounting for climate change and despite the fact that its output checkpoints leave a 60-year gap for enforcing compliance between the mine-year 52 and mine-year 112 targets. *See* FWS-264, 175; SJ Reply at 52.

II. INJUNCTIVE RELIEF IS NECESSARY TO AVOID IMMINENT IRREPARABLE HARM TO PLAINTIFFS FROM MINE DEVELOPMENT ACTIVITIES.

"Irreparable harm should be determined by reference to the purposes of the statute being enforced." *Nat'l Wildlife Fed'n*, 886 F.3d at 818. In an ESA case, for instance, given that Act's purpose of "conserving endangered and threatened species and the ecosystems that support them, establishing irreparable injury should not be an onerous task." *Cottonwood Env't Law Ctr. v. U.S. Forest Serv.*, 789 F.3d 1075, 1091 (9th Cir. 2015). The same is true under federal statutes designed to protect the public and public lands from environmental harms; courts have long recognized that "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." *Sierra Club v. Bosworth*, 510 F.3d 1016, 1033 (9th Cir. 2007) (citing *Amoco*, 480 U.S. at 545). Actions that impair a plaintiff's ability to enjoy wildlife in its natural environment is cognizable harm, *Nat'l Wildlife Fed'n*, 886 F.3d at 822, and constitutes irreparable harm because it cannot be undone. *Amoco*, 480 U.S. at 545.

Perpetua's commencement of "full construction," including running heavy machinery to clear forest vegetation, grade land, alter riparian habitats, and erect structures would irreparably

harm Plaintiffs' members' ability to "view, experience, and utilize" the affected areas of public lands in their "undisturbed state." *All. for the Wild Rockies,* 632 F.3d at 1127; *see also Sovereign Iñupiat for a Living Arctic v. Bureau of Land Mgmt.*, Case No. 3:20-cv-00290-SLG, 2021 WL 454280, at *3 (D. Alaska Feb. 6, 2021) (once blasting begins, the landscape will be "irreparably altered"). As the Forest Service found, Project impacts to biological resources "including mature vegetation, special status plants, and topsoil" "would be considered irreversible" because after clearing or removing they renew "only over long-time spans." FS-244797. Similarly, the recreation setting of the mine site and infrastructure areas would suffer "long-term and potentially irreversible alterations" from the Project. FS-245073.

This alone suffices to show Plaintiffs' members, who visit the Project area including along the Burntlog Route and other public lands slated for construction, will suffer irreparable harm. Members of Plaintiff organizations visit these public lands to view, experience, and utilize them in their undisturbed state. *See* ECF Nos. 31-3–31-12 ("Standing Declarations").

For example, ICL staff and member Jeff Abrams visited the northern segments of the proposed Burntlog Route last year to backpack and enjoy nature. Abrams Decl. ¶¶ 11–14 (filed herewith). He returned again last fall, near the middle segments of the proposed Burntlog Route, to camp and hunt for a week. *Id.* Most recently, on May 7, 2026, he visited areas of the southern portion, *id.* ¶¶ 13–18, stating that his "plans to continue visits to this landscape would be radically altered, if not pre-empted entirely, by the construction of the Stibnite Gold Project, the Burntlog Route, borrow pits and the new powerlines that would bisect the backcountry," *id.* ¶ 17. Save the South Fork Salmon member Zak Sears has kayaked the South Fork over 100 times, among other visits to the Project area, and he plans to visit Monumental Summit and snorkel in the East Fork South Fork below the Yellow Pine pit this June or July. Sears Decl. ¶¶ 6, 13–14 (filed herewith).

These Plaintiff members and others will be irreparably harmed by the surface disturbance Perpetua plans to begin, not just along the Burntlog Route but throughout the rest of the mine site, where it will remove trees and other vegetation and harm fish and wildlife. *See All. for the Wild Rockies v. Pierson*, 550 F. Supp. 3d 894, 898 (D. Idaho 2021) (vacated and remanded sub nom *Alliance for the Wild Rockies v. Petrick*, 68 F.4th 475 (9th Cir. 2023)) (finding irreparable harm in allowing logging, temporary road construction, and road maintenance on National Forest lands). *Idaho Rivers United v. Probert*, No. 3:16-CV-00102-CWD, 2016 WL 2757690, at *16–18 (D. Idaho May 12, 2016) (finding irreparable harm due to logging and harming scenic values).

Plaintiffs' irreparable harm is only underscored by the destruction and degradation of sensitive protected areas and threatened species' habitats, as discussed next:

Inventoried Roadless Areas. The majority of the 15-miles of new road construction for the Burntlog Route would occur in Inventoried Roadless Areas. *See* SOF ¶ 19; FS-250050 (map reproduced above). As part of its Organic Act mandate "to preserve the forests thereon from destruction," 16 U.S.C. § 551, the Forest Service promulgated the Idaho Roadless Rule, 36 C.F.R. §§ 294.20–29. In the preamble to the Idaho Roadless Rule, the Forest Service explained that it "identified 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, and long-term loss of roadless area values and characteristics." 73 Fed. Reg. 61,456, 61,459 (Oct. 16, 2008). Plaintiffs' members, including Messrs. Abrams, Tiedemann, Sears, and Keithley will be irreparably harmed if Perpetua cuts trees, grades land, and/or constructs or reconstructs roads in Inventoried Roadless Areas along the Burntlog Route.

Riparian Conservation Areas. Perpetua's looming activities would also occur in sensitive, riparian conservation areas (RCAs). Construction of the Burntlog Route (and its associated gravel

mines and maintenance facility) will occur within 13.6 acres of RCAs at the main mine site and 43 more acres of RCAs elsewhere along the Route. *See* FS-251103, 251106. These include "permanent" losses of wetlands. *Id.* Plaintiff members visit and enjoy rivers, streams, wetlands, other riparian areas, and the many species that depend on riparian areas, and will be irreparably harmed by these RCA incursions. *See*, *e.g.*, Keithley Decl. (ECF No. 31-6) ¶¶ 4–6, 14–15.

ESA Species. Plaintiffs will suffer irreparable harm to their interests in ESA-protected wolverine, whitebark pine, bull trout, salmon, and steelhead. *See*, *e.g.*, Abrams Decl. ¶¶ 6, 8, 12, 15 and pp. 8, 10; Tiedemann Decl. (ECF No. 31-2) ¶¶ 14, 15); Keithley Decl. ¶¶ 16–17. The ESA prohibits the "take" of "any animal from a listed species." 16 U.S.C. § 1538(a)(1)(B); *Nat'l Wildlife Fed'n*, 886 F.3d at 818. Thus, "the threat of death to individual [members of threatened species] … is sufficient" to establish irreparable harm. *Crow Indian Tribe v. United States*, No. CV-17-89-M-DLC, 2018 WL 4145908, at *1 (D. Mont. Aug. 30, 2018); *accord Fund for Animals, Inc. v. Turner*, No. CIV. A. 91-2201(MB), 1991 WL 206232, at *8 (D.D.C. Sept. 27, 1991). Harm to individuals from ESA-prohibited take is irreparable because "[o]nce a member of an endangered species has been injured, the task of preserving that species becomes all the more difficult." *Forest Conservation Council v. Rosboro Lumber Co.*, 50 F.3d 781, 785 (9th Cir. 1995).

Wolverine. FWS determined that the Project was reasonably certain to *injure and/or kill* wolverine from den abandonment due to increased energy expenditure, reduced condition of adult females, and increased offspring vulnerability and loss of kits. FWS-338. "Some females with kits are reasonably certain to be harmed[.]" *Id.* While only 318 wolverine remain in the contiguous United States, surveys "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." FWS-319. The Forest Service described the Project's harm to wolverine as "long-term" and

"irreversible." FS-244897, FS-244959. The Declaration of Diane Evans (filed herewith), a 40-year wildlife biologist with Forest Service and Idaho Fish and Game, further describes the way the Burnltog Route construction and Cabin Creek winter grooming will harm wolverine. The Ninth Circuit has recognized that even small actions (which this is not) can irreparably harm species with low abundance (as is the case with wolverine). *Nat'l Wildlife Fed'n*, 886 F.3d at 821–22.

Whitebark Pine. FWS found that Project construction requires cutting 1,278 individual whitebark pine trees, including 27 observed to be cone-bearing. FWS-302. "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.

Bull Trout, Chinook Salmon, and Steelhead. Initial mine construction activities, including those already noted occurring in RCAs, will degrade and harm streams occupied by bull trout, Chinook salmon, and steelhead. These ESA-listed fish species are found in numerous streams throughout the Project area, including streams in, adjacent to, and downstream of Project surface disturbances. *See* FS-250487 (Chinook salmon map), 250497 (steelhead), 250503 (bull trout). The Forest Service acknowledged that "take" of bull trout, Chinook salmon, and steelhead could occur due to the Project and that such take would be "irreversible." FS-244883. FWS identified dozens of Project actions that would adversely affect bull trout, including Burntlog Route construction. FWS-169–172 (tables). The Declaration of Mary Faurot-Petterson (filed herewith), a retired government fish biologist, explains how Burntlog Route construction would harm generations of bull trout due to sediment and other impacts to adults, fry, and eggs.

III. THE BALANCE OF EQUITIES AND PUBLIC INTEREST FAVOR PRELIMINARY INJUNCTIVE RELIEF.

In a challenge to government action by federal agency defendants such as this, the public interest and equities are treated as "one inquiry." *Porretti*, 11 F.4th at 1050. The public interest

weighs in favor of "careful consideration of environmental impacts," and "suspending such projects until that consideration occurs 'comports with the public interest.'" *All. for the Wild Rockies*, 632 F.3d at 1138 (quoting *S. Fork Band Council*, 588 F.3d at 728). "If environmental injury is sufficiently likely, the balance of harms will usually favor the issuance of an injunction to protect the environment." *High Sierra Hikers Ass'n v. Blackwell*, 390 F.3d 630, 642 (9th Cir. 2004) (citing *Amoco*, 480 U.S. at 545).

A limited preliminary injunction as Plaintiffs seek is warranted to protect the environment. Perpetua commencing "full construction" would cause immediate, lasting, and irreparable environmental harms in many ways as described above. When impending harm "may significantly degrade some human environmental factor, injunctive relief is appropriate." *Sierra Club*, 510 F.3d at 1033 (quoting *Nat'l Parks & Conservation Ass'n v. Babbitt*, 241 F.3d 722, 737 (9th Cir. 2001)).

Moreover, in ESA cases like this, the "language, history, and structure" of that Act show Congress's "determination that the balance of hardships and the public interest tips heavily in favor of protected species." *Nat'l Wildlife Fed'n v. Burlington Northern R.R., Inc.*, 23 F.3d 1508, 1511 (9th Cir. 1994). Thus, the court should "presume that remedies at law are inadequate, that the balance of interests weighs in favor of protecting endangered species, and that the public interest would not be disserved by an injunction." *Nat'l Wildlife Fed'n*, 886 F.3d at 817. The ESA strips courts of some equitable discretion because it "established an unparalleled public interest in the 'incalculable' value of preserving endangered species," which renders remedies available at law, such as monetary damages, inadequate. *Cottonwood Env't Law Ctr.*, 789 F.3d at 1091 (quoting *TVA v. Hill*, *id.* at 185, 187–88). Here, mine construction is expected to harm or kill wolverine, clear whitebark pine trees, and harm bull trout, salmon, and steelhead, as explained above.

Perpetua's private interests in short-term economic gain are not sufficient to outweigh these

harms to Plaintiffs. A preliminary injunction will be only a short-term pause on the activities Perpetua wants to perform starting May 30 until the Court issues a summary judgment decision. "[L]oss of anticipated revenues . . . does not outweigh the potential irreparable damage to the environment." *Nat'l Parks & Conservation Ass'n*, 241 F.3d at 738.

Finally, Perpetua's assertions about the urgency with which the Project could address any national security needs are overblown. *See* SJ Reply at 57. Perpetua would spend three years on construction before it might then start mining antimony. *See* FS-243742. The total antimony potentially extracted over the life of the mine would need to be smelted and refined, and would be a drop in the bucket of future U.S. demand. *See* Second Tiedemann Decl. ¶¶ 12–14. Moreover, Perpetua has stated that only up to 10% of the Stibnite antimony ore is slated for routing to the military, and that would only occur following a yet-to-be-completed demonstration that it can be refined to military grade. Third Tiedemann Decl. ¶¶ 4–8. Enjoining construction a month or so is negligible in the broader context of the government's antimony procurement strategies. *See id.* ¶¶ 9–14. Perpetua's speculative assertions about antimony it would not mine until years from now stand in stark contrast to the immediate, lasting environmental degradation and harm to ESA-listed species that mine construction will cause.

IV. THE COURT SHOULD IMPOSE NO BOND.

Plaintiffs respectfully request that the Court waive the bond requirement of Rule 65(c) or impose only a nominal bond if it issues a preliminary injunction. Under F.R.C.P. 65(c), in issuing a preliminary injunction, the "court has discretion to dispense with the security requirement, or to request a mere nominal security, where requiring security would effectively deny access to judicial review." *Cal. ex rel. Van de Kamp v. Tahoe Reg'l Plan. Agency*, 766 F.2d 1319, 1325–26 (9th Cir. 1985). Courts routinely waive the bond requirement or impose a nominal bond in cases involving public interest non-profits who would otherwise effectively be denied access to judicial review.

See id. "It is well established that in public interest environmental cases the plaintiff need not post bonds because of the potential chilling effect on litigation to protect the environment and the public interest." *Central Or. Landwatch v. Connaughton*, 905 F. Supp. 2d 1192, 1198 (D. Or. 2012).

This Court should follow numerous others that "consistently waive[] the bond requirement in public interest environmental litigation." *Id*.; *see also Hualapai Indian Tribe v. Haaland*, 755 F. Supp. 3d 1165, 1199 (D. Ariz. 2024) (no bond); *Save Strawberry Canyon v. Dep't of Energy*, 613 F. Supp. 2d 1177, 1191 (N.D. Cal. 2009) (no bond); *League of Wilderness Defs. v. Zielinski*, 187 F. Supp. 2d 1263, 1272 (D. Or. 2002) (no bond); *Wilderness Soc'y v. Tyrrel*, 701 F. Supp. 1473, 1492 (E.D. Cal. 1988) ($100 bond); *Ctr. for Biological Diversity v. Stahn*, No. CV-08-8031-PHX-MHM, 2008 WL 1701374, at *2 (D. Ariz. Apr. 10, 2008) (imposing a nominal bond and citing "a long line of cases that have consistently waived the bond requirement or imposed only a nominal bond in public interest environmental litigation").

Here, the public-interest nature of this litigation and Plaintiffs' nonprofit status warrant waiver of the bond requirement because the imposition of more than a nominal bond would chill Plaintiffs' ability to bring this case to vindicate the public interest. Furthermore, Rule 65(c) is based on the theory that a plaintiff should not benefit financially from the wrongful granting of preliminary relief against a defendant. Here, where Plaintiffs gain no pecuniary interest from the injunction, the purpose of Rule 65(c) is not served, and no bond should be required. Rather, Plaintiffs' request for temporary injunctive relief is geared toward preventing irreparable environmental harm to public resources and statutorily-protected wildlife.

CONCLUSION

For the reasons above, Plaintiffs respectfully request that the Court issue a preliminary injunction barring Perpetua from moving forward with Project activities on National Forest land authorized by the ROD and the Biological Opinion and Incidental Take Statement.

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Respectfully submitted,

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