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**BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY
STATE OF IDAHO**

IDAHO CONSERVATION LEAGUE,
IDAHO RIVERS UNITED, SAVE THE
SOUTH FORK SALMON, and
EARTHWORKS,

Petitioners,

v.

IDAHO DEPARTMENT OF
ENVIRONMENTAL QUALITY,

Respondent.

Case No.:

Petition for Review

Permit Holder: Perpetua Resources Idaho,
Inc.

Permitted Facility: Stibnite Gold Project
Stibnite Road
Stibnite, Idaho 83677

Permit Number: ID0030066

1. Petitioners Idaho Conservation League, Idaho Rivers United, Save the South Fork Salmon, and Earthworks, by and through their respective attorneys of record, file this Petition for Review to the Department of Environmental Quality (“Department” or “DEQ”) pursuant to Idaho Code § 39-175D and IDAPA 58.01.25.204.

2. This Petition challenges the Idaho Pollutant Discharge Elimination System Permit (the “Permit”) issued by DEQ on January 30, 2026, to mining company Perpetua Resources Idaho, Inc. (“Perpetua”) for its proposed Stibnite Gold Project.

3. The Stibnite Gold Project site is in the headwaters of the East Fork of the South Fork of the Salmon River, approximately ten miles east of the town of Yellow Pine, Idaho. As proposed, Perpetua would use conventional mining techniques over sixteen years to extract ore from three open pits, process gold, antimony, and silver, and dispose of mine waste at the site.

4. Under the federal Clean Water Act and Idaho law, before it can begin mining, Perpetua must obtain from DEQ a permit authorizing the discharge of pollutants from the project to the nearby surface waters. That permit, among other requirements, must ensure that the project will implement the appropriate pollution controls and ensure that the project’s discharges will comply with the state standards for protecting water quality.

5. In developing such a permit and its conditions, DEQ must follow a specific process laid out in federal and state law that allows the public to understand how the agency reached its decision on the necessary permit conditions and to provide meaningful public comment on that process and the permit’s conditions.

6. Here, DEQ’s issuance of the Permit violated Clean Water Act Section 402, the U.S. Environmental Protection Agency’s (“EPA”) implementing regulations, and Idaho law. The agency’s decision was procedurally unlawful, arbitrary and capricious, an abuse of discretion, and unsupported by substantial evidence in the record. Specifically, DEQ failed to: (1) develop and impose the necessary and appropriate technology-based effluent limitations for the facility; (2) gather, document, disclose, and allow meaningful public review and comment on the information and analysis necessary to develop those limits; (3) develop and impose the necessary

and appropriate water quality-based effluent limitations for the facility; and (4) develop and impose the necessary and appropriate effluent limitations to protect bull trout.

7. Petitioners respectfully request that the Hearing Authority therefore declare the Permit invalid, reverse, and set aside the Permit, and/or remand the Permit to DEQ to correct these errors.

REPRESENTATIVES

8. Copies of all pleadings, correspondence, and official documents shall be served on the Petitioners' counsel listed below:

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JURISDICTION AND PARTIES

8. Pursuant to Idaho Code § 39-175D and IDAPA 58.01.25, the Hearing Authority has jurisdiction over this Petition challenging DEQ's issuance of the IPDES Permit for the Stibnite Gold Project on January 30, 2026. This Petition is timely filed on February 27, 2026, within twenty-eight (28) days of the date of DEQ's January 30, 2026 decision. *See* IDAPA 58.01.25.204.01.b.

9. Pursuant to IDAPA 58.01.25.204.01(a): "A person who is aggrieved by the final permit decision may file a Petition for Review as provided in [Rule 204]." Person is defined to include "[a]n individual, public or private corporation, partnership, association, firm, [or] legal

entity.” IDAPA 58.01.25.010.61. An aggrieved person is defined as the “permit holder or applicant, and a person or entity who filed comments or who participated in the public meeting on the draft permit.” IDAPA 58.01.25.204.01.a.

10. PETITIONER IDAHO CONSERVATION LEAGUE (“ICL”) is an Idaho non-profit conservation organization. Its main office is in Boise, Idaho, and it has three field offices in Sandpoint, Ketchum, and McCall. ICL represents approximately 35,000 supporters dedicated to protecting and conserving Idaho’s clean water, air, public lands, and wildlife.

11. ICL supporters, staff, and board members (“ICL members”) regularly visit the Stibnite Gold Project area and the South Fork Salmon River watershed for professional, recreational, aesthetic, and other purposes. Some ICL members will suffer health, environmental, and aesthetic injuries from water-quality degradation caused by temperature, sediment, mercury, arsenic, and other pollutants from the Stibnite Gold Project, authorized by DEQ’s issuance of the Permit.

12. In furtherance of its mission, ICL participated in the public process for the Permit, including submitting formal public comments to DEQ on July 21, 2025. As a result, ICL is an aggrieved person.

13. PETITIONER IDAHO RIVERS UNITED (“IRU”) is an Idaho non-profit conservation organization with its principal place of business in Boise, Idaho. IRU represents over 3,500 members in its work to preserve and improve the environmental integrity of rivers throughout Idaho. IRU’s supporters, staff, and board members (“IRU members”) expect rivers to be protected for their ecological, scenic, and recreational values; accordingly, IRU’s mission is to protect and restore the rivers and fisheries of Idaho.

14. Some of IRU members regularly visit the Stibnite Gold Project area and/or nearby areas where water quality will be degraded for professional, recreational, aesthetic, and other purposes. Some of IRU members will suffer health, environmental, and aesthetic injuries from water quality degradation from temperature, sediment, mercury, arsenic, and other pollutants caused by the Stibnite Gold Project and authorized by DEQ's issuance of the Permit.

15. In furtherance of this mission, IRU participated in the public process for the Permit, including submitting formal public comments to DEQ on July 21, 2025. As a result, IRU is an aggrieved person.

16. PETITIONER SAVE THE SOUTH FORK SALMON ("SSFS") is a community-based, non-profit conservation organization headquartered in McCall, Idaho. SSFS represents approximately 500 members and supporters dedicated to preserving the South Fork Salmon River watershed and ecosystem.

17. SSFS members, supporters, and members of the Board of Directors ("SSFS members") regularly visit the South Fork Salmon River watershed and the Stibnite Gold Project area, where the water quality degradation due to DEQ's issuance of the Permit would impact professional, economic, recreational, aesthetic, environmental, and human health interests. Some SSFS members will suffer health, environmental, and aesthetic injuries from water quality degradation from temperature, sediment, mercury, arsenic, and other pollutants caused by the Stibnite Gold Project and authorized by DEQ's issuance of the Permit.

18. In furtherance of this mission, SSFS participated in the public process for the Permit, including submitting formal public comments to DEQ on July 21, 2025. As a result, SSFS is an aggrieved person.

19. PETITIONER EARTHWORKS is a non-profit conservation organization dedicated to protecting communities and the environment against the adverse impacts of mineral and energy development, while seeking sustainable solutions. Some of Earthworks' staff and supporters have visited the mine site and/or nearby areas where water quality will be degraded for professional, recreational, aesthetic, and other purposes. Some of Earthworks' staff/supporters will suffer health, environmental, and aesthetic injuries from water quality degradation from temperature, sediment, mercury, arsenic, and other pollutants caused by the Stibnite Gold Project and authorized by DEQ's issuance of the Permit.

20. In furtherance of this mission, Earthworks participated in the public process for the Permit, including submitting formal public comments to DEQ on July 21, 2025. As a result, Earthworks is an aggrieved person.

21. RESPONDENT IDAHO DEPARTMENT OF ENVIRONMENTAL QUALITY is an executive department and administrative agency organized under the laws of the State of Idaho, pursuant to the Idaho Constitution (Article IV, Section 20) and Idaho Code § 39-104(1). Its principal office is located at 1410 N. Hilton, Boise, Idaho 83706. DEQ, through its Director, and subject to Board oversight, is responsible for issuing IPDES permits.

22. On January 30, 2026, DEQ issued the Permit, which is the subject of this Petition for Review.

LEGAL BACKGROUND

23. The Idaho Legislature has found that “navigable waters within the state are one of the state’s most valuable natural resources.” Idaho Code § 39-175A(a). As a result, “it is in the public interest to promote effective and efficient regulation of the discharge of pollutants into

navigable waters, and that the state should control such permitting decisions as authorized under the federal clean water act.” *Id.* § 39-175A(b).

24. Congress enacted the Clean Water Act (“CWA”) to “restore and maintain the chemical, physical, and biological integrity of the Nation’s waters.” 33 U.S.C. § 1251(a). To achieve these goals, Congress established the goal of eliminating the discharge of pollutants into the Nation’s waters, *id.* § 1251(a)(1), and to achieve “water quality which provides for the protection and propagation of fish, shellfish, and wildlife and provides for recreation in and on the water.” *Id.* § 1251(a)(2).

25. Section 301 of the CWA expressly prohibits the discharge of pollutants into waters of the United States unless such discharges comply with the terms of any applicable permits and the terms of various other sections of the Act. 33 U.S.C. § 1311(a)(1); *see also* IDAPA 58.01.25.102. Point source discharges are regulated under the National Pollutant Discharge Elimination System (“NPDES”). 33 U.S.C. § 1342.

26. Section 402 of the CWA authorizes EPA to delegate its authority to states to implement and administer the CWA. 33 U.S.C. § 1342(b). Pursuant to this provision, DEQ has authority to regulate discharges of pollutants by, among other actions, issuing state NPDES permits, also known as IPDES permits, to dischargers. Specifically, DEQ is “charged with the supervision and administration of a system to safeguard the quality of the waters of the state, including the enforcement of standards relating to the discharge of effluent into the waters of the state.” IDAPA 58.01.02.

27. IPDES permits must include conditions that will ensure compliance with the CWA and Idaho law. *See* IDAPA 58.01.25.103. The federal regulations for such permits are made applicable to states by 40 C.F.R. § 123.25(a); *see generally* IDAPA 58.01.25.003.01.

28. All IPDES permits must include technology-based effluent limitations (“TBELs”), any more stringent limitations necessary to meet water quality standards, and monitoring and reporting requirements. *See* 33 U.S.C. §§ 1342, 1311, 1318.

29. Section 301 of the CWA requires all dischargers to achieve, at a minimum, best practicable control technology (“BPT”). 33 U.S.C. § 1311(b)(1)(A). Discharges of toxic pollutants and nonconventional pollutants must be treated pursuant to the best available technology (“BAT”), 33 U.S.C. § 1311(b)(2)(A), and conventional pollutant discharges must comply with best conventional technology (“BCT”). 33 U.S.C. § 1311(b)(2)(E). Each of these treatment categories is translated into effluent limitations that must be reflected in permits as restrictions on the rates, quantities, and concentrations of pollutants.

30. In addition to implementing technology-based controls, each point source discharger must achieve “any more stringent limitation necessary to meet water quality standards, treatment standards, or schedules of compliance ... or any [requirement] to implement any applicable water quality standard established pursuant to this chapter.” 33 U.S.C. § 1311(b)(1)(C). Water quality standards establish the goals for a water body’s water quality. 40 C.F.R. § 131.2.

31. Water quality standards serve as the regulatory basis for the establishment of water quality-based controls over point sources, as required under sections 301 and 306 of the CWA. Water quality standards must include three elements: (1) one or more designated “uses” of a waterway; (2) numeric and narrative “criteria” specifying the water quality conditions, such as maximum amounts of toxic pollutants, maximum temperature levels, and the like, that are necessary to protect the designated uses; and (3) an antidegradation policy and implementation methods that ensure that “[e]xisting instream water uses and the level of water quality to protect

facility or activity that is the subject of the draft permit;” the “[t]ype and quantity of wastes, fluids, or pollutants that are proposed to be or are being treated, stored, disposed of, injected, emitted, or discharged;” a “[s]ummary of the basis for the draft permit conditions, including references to applicable statutes or regulations and appropriate supporting references to the administrative record;” and any “[c]alculations or other explanations of the derivation of specific effluent limits and conditions, including a citation to the ELG or performance standard as required by Section 302, and reasons why the effluent limits and conditions apply, or an explanation of how an alternate effluent limit was developed.” IDAPA 58.01.25.108(b) (i)-(iii) & (viii).

FACTUAL BACKGROUND

35. Perpetua has received various permits and other approvals from federal and state agencies for the Stibnite Gold Project. Some of these permits and approvals are currently being challenged before the Board of Environmental Quality, in Idaho state court, and in federal court. In late October 2025, Perpetua commenced limited initial preparation activities at the site, but has not proceeded with full construction.

36. The proposed mine would consist of three open pits, establish ore processing facilities, build roads and transmission lines, and impound over 400 acres of the Meadow Creek valley with 120 million tons of mine tailings, inundating spawning and rearing habitat for native fish. It would clear thousands of acres of vegetation, destroy hundreds of acres of wetlands, eliminate fish and wildlife habitat, generate billions of pounds of waste, and impair surface water and groundwater regimes well past the life of the mine.

37. Under the proposed action plan, Perpetua would spend the first three years constructing infrastructure and preparing for mining operations. The operational construction and

the existing uses [will] be maintained and protected” and that high quality waters will be maintained and protected. 33 U.S.C. §§ 1313(c)(2), 1313(d)(4)(B); 40 C.F.R. Part 131, Subpart B.

32. Once water quality standards are established for a particular water body, any IPDES permit authorizing discharges of pollutants into that water body must ensure that the applicable water quality standard will be met. IDAPA 58.01.25.302.06; 33 U.S.C. § 1311(b)(1)(C); 40 C.F.R. §§ 122.4(d), 122.4(i), 122.44(d).

33. DEQ may not issue an IPDES to a “new source or new discharger, if the discharge from its construction or operation will cause or contribute to the violation of water quality standards.” IDAPA 58.01.25.103.07. More specifically, “[w]hen the owner or operator of a new source or new discharge proposes to discharge into a water segment that does not meet water quality standards, or that is not expected to meet those standards even after applying the effluent limit required by CWA Sections 301(b)(1)(A) and (B), and for which the state or interstate agency has performed a pollutant load allocation for the pollutant to be discharged, then the owner or operator must demonstrate [that] [s]ufficient remaining pollutant load allocations exist to allow for the discharge; and [t]he existing dischargers into the segment are subject to compliance schedules that bring the segment into compliance with water quality standards.” IDAPA 58.01.25.103.07.a. “The development of limits to meet the criteria of this section is explained in the fact sheet to the permit.” IDAPA 58.01.25.103.07.c.

34. When developing a permit, DEQ must produce a draft permit and Fact Sheet. IDAPA 58.01.25.108. The Fact Sheet “must describe the principal facts and significant factual, legal, methodological, and policy questions considered in preparing the draft permit.” IDAPA 58.01.25.108(b). Specifically, the Fact Sheet must include a “[b]rief description of the type of

mining activities would take place over an estimated 15 years, while mine closure and reclamation would take place during years 16 to 25. During its proposed operation, the Stibnite Gold Project is estimated to produce 4,150 kilo ounces of gold and about 59,888 metric tons of antimony.

38. The operation footprint extends across areas in the North Fork Payette River and South Fork Salmon River subbasins. The Stibnite Gold Project plan consists of developing three open pits at the project site, a tailings storage facility (“TSF”), an above-ground development rock storage facility (“DRSF”) to buttress the TSF embankment, three permanent DRSFs consisting of backfill of open pits, an ore processing facility, ore stockpiles, a worker housing facility, a truck shop, roads, and ancillary facilities.

39. The project proposes discharging into the East Fork of the South Fork Salmon River (“East Fork SFSR”) and Meadow Creek. As part of the systems associated with these proposed discharges, Perpetua intends to construct surface water and stormwater diversions, a tunnel diversion for the East Fork SFSR, a tunnel diversion for Meadow Creek, a diversion for West End Creek, water storage ponds, open pit dewatering wells, active and passive water treatment systems, and various water conveyance pipelines and storage tanks.

40. Perpetua applied for an IPDES permit on January 31, 2022.

41. On June 6, 2025, DEQ issued notice of a public comment period on the draft permit. DEQ extended the comment period through July 21, 2025.

42. Petitioners submitted joint written comments on July 21, 2025. Petitioners raised numerous concerns, including that DEQ failed to (1) develop the necessary and appropriate technology based effluent limitations for the facility; (2) to properly document and explain in the Fact Sheet how it calculated those limit and thus prevented the Petitions from providing

meaningful public comment on those limitations; (3) develop the necessary and appropriate water quality based effluent limitations for the facility; (4) develop the necessary and appropriate effluent limitations to protect bull trout; and (5) develop effluent limits on the total mass of each pollutant discharged from the facility.

43. On January 30, 2026, DEQ issued the final Permit, its response to comments, and the Fact Sheet.

44. DEQ made no changes to the Permit in response to Petitioners' comments outlined above.

FACTUAL AND LEGAL SUPPORT FOR THE PETITION

45. Petitioners challenge the following Permit Conditions:

A. Permit Section 1.2 Effluent Limits: DEQ failed to Impose Lawful Technology Based Effluent Limits

46. Under IDAPA 58.01.25.302.03, and section 301(b) of the CWA, technology-based treatment requirements are the minimum level of control to be imposed in any IPDES permit. 40 C.F.R. § 125.3(a).

47. Technology-based treatment requirements can be imposed in a permit through one of three methods: (1) application of EPA-promulgated effluent limitations, effluent limit guidelines ("ELGs"), developed under § 304 of the CWA for dischargers by category or subcategory; (2) on a case-by-case basis, to the extent that EPA promulgated effluent limitations are inapplicable; or (3) through a combination of 1 and 2 based on if promulgated ELGs only apply to parts of a discharger's operations and other aspects are subject to case-by-case regulation. 40 C.F.R. § 125.3(c) (incorporated by reference at IDAPA 58.01.25.003.n); *see also* IDAPA 58.01.25.302.03.a.iv.

48. In the absence of applicable ELGs for the discharger or pollutant, permit writers must identify any needed TBELs on a case-by-case, site-specific basis that reflects the best professional judgment (“BPJ”) of the permit writer. A permit writer in developing case-by-case TBELs must consider: (1) “the appropriate technology for the category or class of point sources of which the applicant is a member, based upon all available information;” and (2) “any unique factors relating to the applicant.” 40 C.F.R. § 125.3(c)(2).

49. The Stibnite Gold Project is a “new source.” IDAPA 58.01.25.010.53.

50. The Stibnite Gold Project is a gold and silver mine.

51. As a result, the new source performance standards under EPA’s ELG for gold and silver mines apply. *See* 40 C.F.R. §§ 440.100 & 104.

52. The Stibnite Gold Project is an antimony mine.

53. “In the event that waste streams from various categories or subcategories of dischargers, *see* 40 C.F.R. § 440, are combined for treatment and discharge, the quantity and concentration of each pollutant or pollutant property in the combined discharge that is subject to effluent limitations shall not exceed the quantity and concentration of each pollutant or pollutant property that could have been discharged had each waste stream been treated separately.” 40 C.F.R. § 440.131(a); *see also* IDAPA 58.01.25.003.01(z) (incorporating ELGs into Idaho law).

54. EPA has not developed ELGs for antimony mines. *See* 40 C.F.R. §§ 440.90-95.

55. Because there are no EPA-developed ELGs for antimony mines, the permit writer must use their BPJ to develop case-by-case TBELs for pollutants that may be discharged from the facility. IDAPA 58.01.25.302.03.a.iv; *see also* 40 C.F.R. § 125.3(c).

56. This BPJ analysis must determine the appropriate level of technology for a new antimony mine, applying the appropriate standard for each pollutant that may be discharged—namely, Best Conventional Technology for conventional pollutants, and Best Available Technology for toxic pollutants and all other pollutants. *See* 40 C.F.R. § 125.3(a)(2).

57. DEQ did not conduct this analysis before releasing the draft permit for public comment on June 6, 2025.

58. The Fact Sheet that accompanied the draft permit did not include any explanation of why DEQ did not conduct the required BPJ analysis to develop the required TBELs for the project, or what, if any, information DEQ had gathered or developed to conduct this analysis in compliance with 40 C.F.R. § 125.3.

59. DEQ did not impose any effluent limits in the Permit based on its BPJ of the technology-based effluent limits that should be applied to a new antimony mine that were more restrictive than what was required under the ELG for gold and silver mines.

B. Permit Section 1.2 Effluent Limits: DEQ Failed to Develop a Complete Fact Sheet

60. There is no explanation in the Fact Sheet of DEQ's process for developing the necessary TBELs. IDAPA 58.01.25.108.02.b.ix.4; *see also* 40 C.F.R. § 124.56(a).

61. When developing a permit, DEQ must produce a draft permit and Fact Sheet. IDAPA 58.01.25.108. The Fact Sheet “must describe the principal facts and significant factual, legal, methodological, and policy questions considered in preparing the draft permit.” IDAPA 58.01.25.108.b.

62. The Fact Sheet must accompany the draft permit, IDAPA 58.01.25.108.02.a, and must be made available during the public comment period. IDAPA 58.01.25.109.01.d.iii & 58.01.25.109.01.e.iv & ix.

63. The Fact Sheet must include a “[b]rief description of the type of facility or activity that is the subject of the draft permit;” the [t]ype and quantity of wastes, fluids, or pollutants that are proposed to be or are being treated, stored, disposed of, injected, emitted, or discharged; a “[s]ummary of the basis for the draft permit conditions, including references to applicable statutes or regulations and appropriate supporting references to the administrative record;” and any “[c]alculations or other explanations of the derivation of specific effluent limits and conditions, including a citation to the ELG or performance standard as required by Section 302, and reasons why the effluent limits and conditions apply, or an explanation of how an alternate effluent limit was developed.” IDAPA 58.01.25.108.02.b.i - iii & viii.

64. The Fact Sheet developed by DEQ includes no explanation of DEQ’s efforts to develop technology-based effluent limits based on its BPJ.

65. Petitioners noted this error in their comments.

66. DEQ’s response to comments acknowledges that DEQ did not develop technology-based effluent limits based on its BPJ for the facility.

67. DEQ’s response to comments provides some discussion of the information it may have considered, if it had developed technology-based effluent limits based on its BPJ.

68. DEQ’s discussion failed to comply with the requirements of 40 C.F.R. § 125.3 and the criteria for developing technology-based effluent limits.

69. Specifically, when developing technology-based effluent limits using its best professional judgment, DEQ is required to consider specific factors about the facility and the potential control technology. Those factors include, for example, when establishing the “best control technology,” “[t]he reasonableness of the relationship between the costs of attaining a reduction in effluent and the effluent reduction benefits derived; [t]he age of equipment and

facilities involved; [t]he process employed; [t]he engineering aspects of the application of various types of control techniques; and [n]on-water quality environmental impact (including energy requirements).” 40 C.F.R. § 125.3(d)(2). Similarly, when establishing the technology-based effluent limits based on the Best Available Technology, the permit writer must consider the age of equipment and facilities involved; the process employed; the engineering aspects of the application of various types of control techniques; process changes; the cost of achieving such effluent reduction; and any non-water quality environmental impact (including energy requirements). 40 C.F.R. § 125.3(d)(3).

70. Importantly, as DEQ notes, because “[t]his is the first IPDES permit for the new [] facility . . . there is the opportunity to install the best available demonstrated control technology that will provide optimal pollutant reduction in the effluent.”

71. DEQ has not developed technology-based effluent limits based on these factors.

72. DEQ’s limited discussion concerning the potential development of technology-based effluent limits, which did not include consideration of the factors in 40 C.F.R. § 125.3(d), in the Response to Comments is not reflected in the Fact Sheet.

73. DEQ’s discussion and the information provided in the Response to Comments were not available to the Petitioners during the public comment period.

74. DEQ did not reissue a new Fact Sheet, draft permit, or hold open another public comment period.

C. Permit Section 1.2 Effluent Limits: DEQ Failed to Impose Lawful Water Quality-Based Effluent Limits

- 1. DEQ failed to ensure that the discharges from the facility will not cause or contribute to a violation of the state’s numeric water quality criteria**

75. If the TBELS required by the statute and regulations are insufficient to ensure that a discharge will not cause or contribute to violations of water quality standards, permits must include water quality-based effluent limits (“WQBELs”). 33 U.S.C. §§ 1311(b)(1)(C), 1342(a)(2) (“[T]here shall be achieved . . . any more stringent limitation, including those necessary to meet water quality standards . . . established pursuant to any State law or regulations [.]”); *see also* IDAPA 58.01.25.302.06.a; 40 C.F.R. §§ 122.4(a), (d).

76. WQBELs must be set at a level that achieves water quality standards. IDAPA 58.01.25.302.06.a; *see also* 33 U.S.C. §§ 1313(a)(3), (c)(2)(a); 40 C.F.R. Part 131. Such water quality standards consist of designated uses for waters and water quality criteria (both numeric and narrative) necessary to protect those uses. 33 U.S.C. § 1313(c)(2)(a); 40 C.F.R. §§ 131.10-11.

77. WQBELs must control all pollutants that are or may be discharged at a level “which will cause, have the reasonable potential to cause, or contribute to an excursion above any State water quality standard, including State narrative criteria for water quality.” 40 C.F.R. § 122.44(d)(1)(i); *see also* IDAPA 58.01.25.302.06.a.i. Accordingly, WQBELs in NPDES permits must be “derived from” and comply with all applicable water quality standards. 40 C.F.R. § 122.44(d)(1)(vii).

78. However, “[t]he Department will not issue an IPDES permit for a discharge [u]nless the conditions of the permit provide for compliance with the requirements of IDAPA 58.01.02, “Water Quality Standards” and 58.01.25 “Idaho Pollutant Discharge Elimination System Rules.” IDAPA 58.01.25.103.01; *see also* 40 C.F.R. § 122.4(d) (“[n]o permit may be issued: . . . [w]hen the imposition of conditions cannot ensure compliance with the applicable water quality requirements of all affected States”).

79. The first step in establishing a WQBEL is determining if one is required. 40 C.F.R. § 122.44(d)(1) (“Limitations must control all pollutants or pollutant parameters (either conventional, nonconventional, or toxic pollutants) which the Director determines are or may be discharged at a level which will cause, have the reasonable potential to cause, or contribute to an excursion above any State water quality standard, including State narrative criteria for water quality.”). When developing a WQBEL, the permit writer must determine whether the discharge, together with other sources of the same pollutant, is causing or contributing to violations of water quality standards, and limit that discharge accordingly. Therefore, the federal regulations require the permit writer to assess the role of other sources in causing the violation. *Id.* § 122.44(d)(1)(ii) (“When determining whether a discharge causes, has the reasonable potential to cause, or contributes to an in-stream excursion above a narrative or numeric criteria within a State water quality standard, the permitting authority shall use procedures which account for existing controls on point and nonpoint sources of pollution, the variability of the pollutant or pollutant parameter in the effluent, the sensitivity of the species to toxicity testing (when evaluating whole effluent toxicity), and where appropriate, the dilution of the effluent in the receiving water.”).

80. There are specific rules for the discharge of pollutants into water that are not in compliance with a state’s water quality standards—known as “impaired” waters. Specifically, DEQ’s and EPA’s regulations prohibit the issuance of a permit to a “new source” or “new discharger” if the discharge from its construction or operation will cause or contribute to the violation of water quality standards, IDAPA 58.01.25.080.01(c); 40 C.F.R. § 122.4(i).

81. The prohibition against permitting new sources contains two exceptions: (1) there are sufficient remaining pollutant load allocations to allow for the discharge; and (2) the existing dischargers into that segment are subject to compliance schedules designed to bring the segment

into compliance with applicable water quality standards. IDAPA 58.01.25.103.07.a – c; 40 C.F.R. § 122.4(i).

82. With the Permit for the Stibnite Gold Project, DEQ failed to follow federal and state regulations on the issuance of permits for new discharge into impaired water bodies, and as a result, risks pushing the receiving waterbodies farther from attaining water quality standards.

83. Both receiving waters impacted by the facility are impaired. Specifically, in the Final 2022 § 305(b) Idaho Integrated Report, Meadow Creek is listed as impaired for temperature, arsenic, and antimony, and the East Fork SFSR is listed as impaired for temperature, arsenic, antimony, and mercury.

84. There are currently no EPA-approved Total Maximum Daily Loads (“TMDLs”) addressing any of these impairments. Although the lack of a TMDL should mandate DEQ to issue a permit with a water-quality based effluent limit of zero for the relevant impairment pollutants, DEQ maintains that it is sufficient that: (1) for antimony and arsenic treated effluent, concentrations are below the instream concentrations in the receiving water; and (2) for mercury, the permit will require further development of a mercury fish tissue monitoring plan. Fact Sheet at 50–51, 56. Without approved TMDLs, DEQ cannot legally demonstrate that sufficient remaining pollutant load allocations exist.

85. With respect to temperature, DEQ notes that the Project will increase stream temperatures. Specifically, the Project will increase Meadow Creek temperatures by up to 1.9°C and East Fork SFSR temperatures by almost 0.4°C during Project operation.

86. These thermal additions will cause or contribute to temperature violations on both Meadow Creek and the East Fork SFSR.

87. Despite this, DEQ failed to include water quality-based effluent limits to ensure the discharges will comply with water quality standards. IDAPA 58.01.25.103.01 & 07

88. In its response to Petitioners' comments on the lack of water quality-based effluent limits for temperature, DEQ suggests that because the expected temperature increases will occur after the expiration of this Permit, additional effluent limits are not required. However, in doing so, DEQ admits that it developed the permit without the information necessary to establish appropriate effluent limits, because "[n]o additional modeling was provided prior to the modeling for mine year 6 to allow for a more appropriate evaluation of potential thermal impacts during the construction and early operations phases of this initial permit term."

2. DEQ failed to ensure the discharges from the facility will comply with the State's antidegradation policy.

89. Under the CWA's "antidegradation policy," state standards must also protect existing uses of waters and prevent their further degradation. 40 C.F.R. § 131.12.

90. Idaho's antidegradation policy is a separate and independent requirement that is not necessarily satisfied by proper implementation of the applicable state water quality criteria.

91. The regulatory prohibition against issuing a permit that does not ensure compliance with state water quality "standards" requires the permitting authority to consider compliance with all components of the state's water quality standards, including compliance with the antidegradation rule, and not just compliance with the state's numeric water quality "criteria." *See* 40 C.F.R. § 122.4(d) (referring to compliance with water quality "standards," not "numeric criteria.")

92. Here, as discussed in detail above, DEQ has not met this standard because it intends to permit the discharge of additional impairment pollutants into already water quality limited waters.

93. Specifically, DEQ's proposed permit would allow the facility to add additional arsenic, antimony, mercury, and temperature to the receiving waters.

94. These discharges are also inconsistent with the state's antidegradation policy. Again, under Idaho's antidegradation policy, all water bodies are protected under "Tier I," which ensures that the level of water quality standards for existing uses of the water body will be maintained. IDAPA 58.01.02.051.01, 052.01. Under this level of protection, when DEQ is reviewing a permit, "[e]xisting uses and the water quality necessary to protect the existing uses must always be maintained and protected." *Id.* 58.01.02.052.07. As a result, "[n]o degradation or lowering of water quality may be allowed that would cause or contribute to violation of water quality criteria." *Id.*

95. These water bodies are not in compliance with the water quality criteria now, and thus, by definition, are not able to support the existing uses. As such, allowing the discharge of additional amounts of those pollutants will "contribute" to this ongoing violation of water quality criteria, which is expressly prohibited under the antidegradation policy.

D. Permit Section 1.2 Effluent Limits: DEQ Failed to Impose Lawful Effluent Limits for Temperature to Protect Salmon, Steelhead, Westslope Cutthroat Trout, and Bull Trout

96. Idaho's water quality standards established specific parameters for salmonid habitat. *See* IDAPA 58.01.25.250.02 - 03.

97. As DEQ notes in its response to comments, applying the various temperature criteria for the species habitat found in the receiving waters from the Project, the following water quality criteria apply:

- 10°C maximum weekly maximum temperature - June 1 through September 30
- 9°C daily average - September 1 through October 31

- 13°C or less with a maximum daily average no greater than 9°C - November 1 through May 31

98. Despite this, as discussed above, DEQ failed to impose effluent limits to ensure the discharge from the Project will comply with these water quality criteria.

99. In addition, under Idaho's water quality standards, "[n]o thermal discharges will be permitted to the [bull trout habitat] unless socially and economically justified as determined by the Department, and then only if the resultant increase in stream temperature is less than five-tenths degrees Celsius (0.5C)." IDAPA 58.01.02.250.02.g.ii.

100. Bull trout habitat includes "all tributary waters, not including fifth order main stem rivers, located within areas above fourteen hundred (1400) meters elevation south of the Salmon River basin-Clearwater River basin divide." IDAPA 58.01.02.250.02.g.i.

101. All waters within the Project boundary, including specifically Meadow Creek, meet this definition.

102. As noted above, the Project will increase the temperature in Meadow Creek by an average daily temperature of 1.9°C during the operation of the mine.

103. There is no "social or economic justification" for the thermal discharges.

104. The Permit fails to impose effluent limitations to ensure the discharge will not cause a thermal increase in the receiving waters of less than 0.5°C.

105. DEQ again admits that it "does not have sufficient information to determine whether the discharge will cause a measurable increase in receiving water temperatures or exceed the 0.5°C threshold identified in IDAPA 58.01.02.250.02.g."

E. Permit Section 1.1, Discharge Authorization

106. Permit condition 1.1 authorizes the permittee to discharge pollutants to Meadow Creek and the East Fork SFSR subject to all other conditions of the Permit.

107. IPDES permits must include conditions that will ensure compliance with the CWA and Idaho law. *See* IDAPA 58.01.25.103.

108. For each of the reasons in sections A through D above, the Permit lacks conditions that will ensure compliance with the CWA and Idaho law.

RELIEF REQUESTED

109. To cure these legal violations and redress the injuries, Petitioners respectfully request the Hearing Authority to:

- A. Vacate and remand the Permit;
- B. Declare DEQ failed to include conditions that will ensure compliance with the CWA and Idaho law;
- C. Declare DEQ failed to develop the appropriate technology-based effluent limits based on its best professional judgment;
- D. Direct DEQ to develop and impose appropriate technology-based effluent limits based on its best professional judgment in accordance with the Clean Water Act, its implementing regulations, and Idaho law;
- E. Direct DEQ to document its process for developing the technology-based effluents in the Fact Sheet;
- F. Declare DEQ failed to develop and impose the appropriate water quality-based effluent limits necessary to ensure compliance with applicable water quality standards;
- G. Direct DEQ to develop and impose water quality-based effluent limits to ensure the discharges from the facility do not cause or contribute to a violation of the state's numeric water quality criteria;
- H. Direct DEQ to develop and impose water quality-based effluent limits to ensure the discharges from the facility do not cause or contribute to a violation of the state's antidegradation water quality standard;
- I. Direct DEQ to document its process for developing the water quality-based effluents in the Fact Sheet; and
- J. Direct DEQ to provide public notice of a new draft permit with the revised effluent limits, a revised Fact Sheet, and allow for public comment on the draft permit.
- K. Award Petitioners their reasonable costs and attorney fees associated with this Petition, under Idaho Code § 12-117 and any other applicable law; and

- L. Provide any other relief that the Hearing Officer considers reasonable under the circumstances.

Dated: February 27, 2026

Respectfully submitted,

/s/ Bryan Hurlbutt

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CERTIFICATE OF SERVICE

I hereby certify that on February 27, 2026, I caused a true and correct copy of the PETITION FOR REVIEW to be served upon the following persons as indicated below:

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