

PRIVILEGED AND CONFIDENTIAL ATTORNEY-CLIENT COMMUNICATION



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United States Forest Service, Payette National Forest
Attn: Linda Jackson, Payette Forest Supervisor
500 North Mission Street
McCall, ID 83638

Subject: COMMENTS ON THE SUPPLEMENTAL DRAFT ENVIRONMENTAL IMPACT STATEMENT FOR THE STIBNITE GOLD PROJECT

I. Tribal Interests

Perpetua Resources Idaho, Inc. (“Perpetua Resources” or the “Company”) is engaging in outreach to interested tribes and indigenous communities prior to and throughout the Stibnite Gold Project (“SGP” or “Project”) National Environmental Policy Act (“NEPA”) review process.¹ As indicated by actions and not mere words, Perpetua Resources honors and highly respects tribal treaty rights (off-reservation and otherwise) and broader interests and concerns regarding the SGP and its impacts. As set out in the Supplemental Draft EIS (the “SDEIS”), the 2021 Modified Mine Plan (“MMP”) incorporates substantial adjustments to the SGP that are acutely responsive to comments to the August 2020 Draft EIS from tribes as well as other stakeholders in reducing site impacts and advancing environmental values such as improving fish habitat, water quality, and other resources of concern.

Perpetua Resources remains committed to further addressing those interests and concerns through further mitigation, enhancement and other implementable actions, and continued engagement with interested tribal representatives. Perpetua Resources makes this

¹ Among other efforts, the Company maintained a Communications Agreement with the Nez Perce Tribe that was in effect from July 12, 2017, until its expiration on December 31, 2019. In the Agreement, the tribe and the Company declared that “the Tribe and [Perpetua Resources] desire to understand each other and to communicate in an open, respectful, and transparent manner regarding [Perpetua Resources] proposed Project in Stibnite, Idaho.” The Company has expressed an interest to the tribe in renewing the Agreement in the future. Also, the Company and the Nez Perce Tribe have been in confidential alternative dispute resolution since February 2021 to the present in an effort to resolve the tribe’s Clean Water Act litigation, *Nez Perce Tribe v. Midas Gold Corp., et al.*, Case No 01:19-cv-307 (Complaint filed Aug. 8, 2019). Additionally, Company representatives have met frequently with the Fort Hall Business Council, the governing body of the Shoshone-Bannock Tribes, and starting in 2019, Perpetua Resources team has engaged in multiple technical discussions with the Shoshone-Bannock Tribes’ environmental staff.





commitment in the context of the long-term restoration strategy through the SGP MMP that advances the off-reservation treaty interests the Company well understands from its direct engagement with Idaho’s Federally recognized tribes.

However, the SDEIS overstates impacts regarding various resources of concern to tribes and contains related inaccuracies in characterizing treaty rights, environmental justice, and heritage resources effects while minimizing the future environmental (and treaty interest) benefits from the MMP as proposed. Although there are SGP impacts on resources and uses of concern to tribes, the record does not support assertions that the Project’s operations or impacts will materially violate any treaty rights, or that tribal interests cannot be adequately accommodated (or, in the particular instances of fish passage and habitat restoration, *advanced*) through appropriate continued engagement and mitigation. These comments are intended to assist in informing appropriate corrections, clarifications, and other improvement in the SGP Final EIS (“FEIS”), without discounting or disrespecting tribal rights, interests, or concerns, or the efforts by the United States Forest Service to address them.

To be more precise, the SDEIS in various places tends to overstate impacts to tribal interests while inadequately noting beneficial mitigation features, such that minor impacts are inaccurately identified as “major” or “long-term,” in some sections going so far as to portray *any* resource modification as “inherently incompatible” with tribal interests:²

The Tribes have multiple and inter-related interests and associations with the local area resources (e.g., religious, sacred site, traditional, and subsistence uses). Many of these interests also are inherently incompatible with any resource changes, including increased presence or alternate use of the local area by non-tribal individuals or entities.³

Perpetua Resources strongly disagrees with this characterization. The general, unqualified assertion that an activity is “inherently incompatible” with tribal interests as a result of any potential resource change or effect on tribal use is excessive and inaccurate. While Perpetua Resources is sensitive to tribal treaty rights and interests, such a statement contributes to an inaccurate consideration of the legal bounds of tribal rights and interests, which are not unlimited. This approach erroneously ignores the beneficial mitigation features and their significant reduction of impacts, but also overlooks the many Project improvements resulting from the restoration of this legacy mine site, including the removal of fish barriers and other improvements to fish habitat and water quality.

² See SDEIS at 4-621, 4-675, 4-676.

³ SDEIS at 4-621 (emphasis added).





These inaccuracies are likely to contribute to an unnecessary, and overbroad exaggeration of the tribal interest and environmental justice impacts related to access, watersheds, air and water quality, heritage resources, and other concerns relative to tribal interests and environmental justice. Accordingly, Perpetua Resources respectfully requests that the following be considered and reflected in the FEIS.

A. Treaty Language and Traditional Use Areas

The FEIS should reflect the appropriate legal and geographic limits to the Tribes' off-reservation treaty rights. Any implication that all or most of the area within the SGP operations area or various resource effects analysis boundaries must be available for treaty rights use is not accurate.⁴ Based on a legal review, such a broad assertion is simply not supported by the language of the applicable treaties nor case law interpreting the same. The applicable treaties limit off-reservation treaty rights to those places where tribes demonstrate traditional hunting and fishing use at the time the treaties were executed.⁵ As such, statements such as the following in the SDEIS are a cause for concern:

Much of the SGP is on NFS land administered by the PNF and BNF and is mostly unoccupied federal lands; therefore, most lands are available for treaty rights use as stated in the various treaties and executive orders. [U]sual and accustomed fishing places are also available. ... Currently, there are no tribal access restrictions on the Forest Service lands in the SFSR watershed. Tribes access their usual and accustomed fishing places, hunting areas, and plant gathering areas consistent with their reserved rights.⁶

Federal public lands comprise a huge area of unoccupied National Forest lands in the vicinity of the SGP site (and far beyond it) and have been *and will remain available* for off-reservation treaty use in common with public and other authorized National Forest uses. However, statements like the above in the SDEIS inaccurately suggest that tribal rights extend to *all* such National Forest lands. This assertion does not account for whether the Tribes have sufficiently shown traditional use within or near the SGP site, particularly in the specific areas where access is alleged to be limited by the Project. Throughout the permitting process for the Project, Perpetua Resources has never disregarded the stated off-reservation cultural connection by Idaho's tribes to this part of the Gem State. Project operations do not preclude access by tribal members. Perpetua

⁴ SDEIS at 3-513.

⁵ *Seufert Bros. Co. v. United States*, 249 U.S. 194 (1919); *United States v. Winans*, 198 U.S. 371 (1905); *Makah Indian Tribe v. Quileute Indian Tribe*, 873 F.3d 1157, 1168 (9th Cir. 2017); *United States v. State of Wash.*, 730 F.2d 1314 (9th Cir. 1984); *United States v. State of Wash.*, 384 F. Supp. 312, 332, 353 (W.D. Wash. 1974), *aff'd and remanded* 520 F.2d 676, 5 Env'tl. L. Rep. 20552 (9th Cir. 1975); *United States ex rel. Charley v. McGowan*, 2 F. Supp. 426 (W.D. Wash. 1931), *aff'd* 62 F.2d 955 (C.C.A. 9th Cir. 1933), *aff'd sub nom United States v. Bakers Bay Fish Co.*, 290 U.S. 592 (1933); *United States v. Taylor*, 13 P. 333 (Wash. 1887).

⁶ SDEIS at 3-513-14 (emphasis added).





Resources remains committed to accommodating tribal members exercising treaty-based off-reservation access and use to the maximum extent practicable and allowable, consistent with reasonable health and safety protocols. However, and consistent with the exercise of appropriate off-reservation treaty-based hunting and fishing rights, as a matter of health and safety during Project operations site access for Idaho's tribes has already been and may continue to be reasonably restricted at locations occupied by mining facilities and operations. Temporary access restrictions during a proscribed time, place, and manner for the health and safety of Idaho tribal members is a wholly separate legal consideration than considerations for access by the general public. Stated simply, tribal treaty-based access and general public access to the Stibnite Gold Project are distinct.

The Fort Bridger Treaty,⁷ the governing treaty with the United States and the Shoshone-Bannock Tribes, provides tribal members with the right to hunt on “the unoccupied lands of the United States.”⁸ Similarly, the Stevens Treaties, provisions applicable to the Nez Perce Tribe, provide that its members may fish in all “usual and accustomed” places “in common with citizens of the Territory,”⁹ but may hunt, gather, and graze on “open and unclaimed lands.”¹⁰ Both treaties and their variations of phrase, “usual and accustomed,” “open and unclaimed,” and “unoccupied lands” have each been historically limited by courts to include only those places where the Tribes traditionally fished and hunted *when the treaties were executed*.¹¹

⁷ Fort Bridger Treaty of 1868, E. Band Shoshoni and Bannock Tribes-U.S., July 3, 1868, 15 Stat. 673.

⁸ *Id.* art IV. Notably, the Idaho Supreme Court has construed the word “hunting” to include a right to fish. *State v. Tinno*, 94 Idaho 759, 763, 497 P.2d 1386, 1390 (1972).

⁹ Treaty with the Nez Percés, art. 3, June 11 1855, 12 Stat. 957. (1855 Treaty.) In *Winans*, 198 U.S. at 378, the Court held that, despite the phrase “in common with citizens of the Territory,” Article III conferred upon the Yakimas continuing rights, beyond those which other citizens may enjoy, to fish at their “usual and accustomed places” in the ceded area. In *Seufert Bros.*, 249 U.S. 194, a similar conclusion was reached even with respect to places outside the ceded area. These court decisions did not, however, indicate that such treaty use rights were exclusive of other lawful uses by parties who are not members of the Tribe.

¹⁰ 1855 Treaty, art. 3. The United States Supreme Court has interpreted the treaty language “securing” or “secured” rights to be synonymous with “reserving” rights previously exercised. *State v. Buchanan*, 138 Wash. 2d 186, 203, 978 P.2d 1070, 1078–79 (1999) citing *Wash. v. Wash. State Com. Passenger Fishing Vessel Ass'n*, 443 U.S. 658, 678 (1979); see also *State v. Tinno*, 94 Idaho at 764, 497 P.2d at 1391 (construing the “unoccupied lands of the United States” clause of the Treaty of Fort Bridger, the Idaho Supreme Court suggested that the hunting right in that treaty is limited to lands traditionally used by the Tribe).

¹¹ *State v. Buchanan*, 138 Wash. 2d at 203, 978 P.2d at 1079–80; see *Skokomish Indian Tribe v. Goldmark*, 994 F. Supp. 2d 1168, 1174 (W.D. Wash. 2014) (noting tribe's disagreement with *Buchanan*); *State v. Bronson*, 372 P.3d 560, 569-70 (2016) (trial court properly applied *Buchanan*, regardless of whether *Buchanan* requires a showing of historic occupancy or merely use for hunting.); Wash. Admin. Code § 220-413-170 (hunting enforcement policy regarding area ceded in Medicine Creek Treaty).





The fishing clauses of the Stevens Treaties have received the most judicial attention.¹² Though there is no precise method for determining what constitutes a “usual and accustomed place,” the scope of such places and the accompanying treaty rights are not without limitation or condition, and such rights are subject to reasonable restrictions.¹³ As part of the requirements set forth above, a tribe whose rights are defined by the fishing clauses of the Stevens Treaties must show that any asserted use was not occasional or incidental:

Excluded from a tribe’s [usual and accustomed places] are “unfamiliar locations and those used infrequently or at long intervals and extraordinary occasions.” In other words, the term “usual and accustomed” was “probably used in [its] restrictive sense, not intending to include areas where use was occasional or incidental.”¹⁴

Here, the SDEIS does not address or reflect the required evidence of use. If such evidence may be established by the Tribes’ ethnographic studies,¹⁵ it should be disclosed in the FEIS. More specifically, and for purposes of a transparent administrative record, the FEIS should discuss whether each tribe has sufficiently demonstrated traditional, treaty-time use in the specific areas that will be restricted by the SGP, based on any supporting documentation.

B. Impacts to Tribal Interests

The SDEIS’ overly broad characterizations of the Tribes’ interests set out above are likely to create faulty inferences that off-reservation treaty rights are at risk and overstate SGP impacts which are not supported by the record. These impacts should more appropriately be characterized in the FEIS to reflect the updated legal analysis and guiding case law regarding tribal interests outlined above. In any case, in the FEIS and otherwise, broader tribal interests and concerns regarding the SGP site and surrounding areas cannot be equated with offending off-reservation treaty rights.¹⁶

¹² See e.g., *Seufert Bros.*, 249 U.S. 194; *Winans*, 198 U.S. 371; *Makah Indian Tribe*, 873 F.3d at 1168; *United States v. State of Wash.*, 730 F.2d 1314; *United States v. State of Wash.*, 384 F. Supp. 312; *United States ex rel. Charley*, 2 F. Supp. 426; *Taylor*, 13 P. 333.

¹³ See *Winans*, 198 U.S. at 384 (holding reserved access rights may be conditioned to protect landowners.); *United States v. State of Wash.*, 157 F.3d at 655. (holding Tribe’s ability to exercise treaty shell fishing rights on a private beach could be reasonably conditioned as to time, place, and manner.).

¹⁴ *United States v. Wash.*, 129 F. Supp. 3d 1069, 1110–11 (W.D. Wash. 2015), *aff’d sub nom. Makah Indian Tribe*, 873 F.3d 1157 (internal citations omitted, emphasis added).

¹⁵ SDEIS at 3-506, 3-508.

¹⁶ See e.g., *Gros Ventre Tribe v. United States*, 469 F.3d 801, 803 (9th Cir. 2006): (“[N]one of the treaties cited by the Tribes impose a specific duty on the United States to regulate third parties or non-tribal resources for the benefit of the Tribes. Because the government’s general trust obligations must be analyzed within the confines of generally





To the extent that tribal member access and use may be affected in the SGP area by any action alternative, this should not be equated with abrogation of treaty rights or major impacts to tribal interests and concerns. This consideration is especially important in the historical and geographical context that is reflected in the SDEIS and supporting record.

Tribal access, use, and available resources have remained resilient at the SGP site (which has been “highly disturbed by past mining activities”) and surrounding area during and after a long history of mining.¹⁷ The SGP is not proposed for construction and operation within the current exterior reservation boundaries of any Idaho Federally-recognized tribe; the site is many miles away from the tribal reservation communities expressing interest, “located more than 100 miles from the analysis area”.¹⁸ The SGP site is at, or near, the edge of the boundaries of off-reservation areas asserted by tribes as historical territories.¹⁹ SGP ground disturbance and operations will have limited, localized impacts, within a huge surrounding area remaining available for tribal member use: “offsite presence of tribal resources means the impact to overall access to a specific resource would be negligible to minor.”²⁰ As already noted and to clearly reiterate, Perpetua Resources is committed to accommodating tribal members exercising treaty-based off-reservation access and use to the maximum extent practicable and allowable, consistent with reasonable health and safety protocols. And, as discussed more specifically below related to access, the courts have held that off-reservation treaty rights are capable of being acclimated with other uses of public lands, here, mining featuring a restorative goal addressing contaminated National Forest lands, without being breached.

applicable statutes and regulations, we reject the suggestion to create by judicial fiat a right of action Congress has not recognized by treaty or statute.”)

¹⁷ SDEIS at 4-6; SDEIS at 4-474; *see also* SDEIS at 4-492 (“There would be a long-term loss of access to land for exercising treaty rights within the Operations Area Boundary while the lands are occupied for mining; however, lands within the Operations Area Boundary have been highly disturbed by past mining activities.”).

¹⁸ SDEIS at 3-471; *see also* SDEIS at 4-677 (“None of the SGP components are on reservation lands, and no significant adverse biological impacts (e.g., wildlife and vegetation resources), public health impacts (e.g., contamination of fish in local streams), or other physical impacts (e.g., air quality and noise) are identified that would directly impact reservation lands and their Tribal environmental justice communities that are located outside of the SGP area.”); SDEIS at ES-30 (“There are no environmental justice minority or low-income communities in the SGP area.”).

¹⁹ *See, e.g.*, Indian Land Areas Judicially Established 1978, <https://www.loc.gov/resource/g3701e.ct008649/?r=0.058-0.046.1.111.0.903.0> (last visited Jan. 5, 2023); *Scoping Comments* at 620 (Nez Perce Tribe’s Scoping Comments (July 20, 2017)), citing *Nez Perce Tribe v. United States*, Docket #175, 18 Ind. Cl. Comm. 1.

²⁰ SDEIS at 4-669; *see also* SDEIS at 4-266 (“[T]he localized and discontinuous ground disturbance for structure footings and ROW access roads, and permit-related requirements including use of BMPs, the potential for transmission line-related erosion and sedimentation would be minimal.”); SDEIS at 4-510 (“[I]t is not anticipated that long term visual, auditory, or vibratory adverse effects from the Johnson Creek Route upgrade would occur.”); SDEIS at 4-675.





And, again, a fair NEPA analysis should calibrate the long term environmental and social benefits of the Project moving forward. The SGP will promptly improve fish habitat early in its mine life and permanently enhance other features at the SGP site upon conclusion of its restoration strategy.²¹ Importantly, the SGP could produce the United States' only primary source of antimony, a mineral critical to our economic, environment and national security.²² SGP antimony production will serve clean energy grid storage battery and other efforts to mitigate climate change effects, benefiting tribes as well as other United States citizens and communities.²³

Though all impacts related to tribal interests should be updated in light of the foregoing, the following updates to tribal impacts associated with access, environmental justice, and heritage resources should fairly be reflected in the FEIS.

Impacts to Access

The FEIS should clearly portray that, as directed by the courts, not *all* impacts to access or other tribal interests amount to a violation of treaty. The SDEIS characterizes access restrictions as “a localized, long-term, and moderate to major impact to tribal treaty rights”²⁴ despite conceding that there is no identifiable material loss of resource availability for tribal use:

Access, or the continued availability of the traditional natural resources, would be affected by the SGP. ... There are no known types of natural resources available for exercising treaty rights in the SGP area that are not available on the

²¹ See SDEIS at Section 2.4.9; see also Table 2.4.13 (*Proponent Proposed Design Features*); SDEIS at 4-364 – 4-367; SDEIS at 4-378.

²² During World War II, antimony was key to domestic production of tungsten steel and the hardening of lead bullets used in combat. See *U. S. International Trade Commission, Antimony: A Critical Material You've Probably Never Heard Of* (paper published October 2021). At that time, up to 90 percent of antimony demand was fulfilled through domestic production. Today, antimony is used across numerous industrial sectors. As of 2020, the leading uses of antimony in the United States were in flame retardants, lead-acid batteries, as a key alloying material for strength, and antifriction alloys. Additionally, antimony is used in a variety of military applications, including night vision goggles, explosive formulations, flares, nuclear weapons production, and infrared sensors. *Id.*

²³ Antimony contributes to a leading technology for safe, reliable, and long-life stationary grid storage. Perpetua Resources recently announced a commercial relationship with Ambri, a producer of a liquid metal battery which requires a combination of calcium and antimony and is expected to play a critical role in achieving a net-zero energy grid by 2035. See <https://www.investors.perpetuaresources.com/investors/news/2021/perpetua-announces-antimony-supply-agreement-for-ambri-battery-production> (declaring that “Perpetua’s Stibnite Gold Project, located in central Idaho, will provide Ambri with antimony from the only responsible and domestically mined source of the critical mineral in the U.S.”)

²⁴ SDEIS at 4-675.





surrounding NFS lands. It is difficult to quantify or otherwise determine the impact of a temporary loss of a right.²⁵

The characterization that temporary, localized restrictions, impacts, or limitations amount to the “loss of a right” is not supported by law. Numerous courts have recognized that the rights of tribal members, specifically where exercised in “usual and accustomed” places, are not exclusive but in common with the public. Some courts, including the Ninth Circuit, have held “in common” to entitle tribes to “a fair and equitable share” of that sought to be harvested, linking the right to a volume of resources sufficient for sustenance:

The right secured by the treaties ... exists in part to provide a volume of fish which is sufficient to the fair needs of the tribes. The right is to be exercised in common with non-Indians, who may take a share which is fair by comparison with the share taken by the tribes.²⁶

In analyzing the right “of taking fish ... in common with all citizens of the Territory,” the Ninth Circuit additionally held “[T]he central principle here must be that Indian treaty rights to a natural resource ... secures so much as, but no more than is necessary to provide the Indians with a livelihood-that is to say, a moderate living.”²⁷

In that case, the Court of Appeals additionally ruled that the Treaties were ultimately understood by tribes to be “a means of supporting [tribes] once the Treaties took effect.”²⁸ This interpretation, which links the analysis of whether a treaty violation occurred directly to the impact to the resources sought, is inapposite to the SDEIS statement above, that “major” impacts are likely to result from localized access restrictions which do not result in any identifiable impact to the availability of those resources. Accordingly, the FEIS should reflect that a localized, temporary access restriction, which does not result in the loss of any identifiable resource, is not the legal equivalent of the loss (or degradation) of an off-reservation treaty right. Perpetua Resources has, and will, continue to work with the Tribes to provide treaty-based hunting and fishing access where safe and otherwise practicable to do so. Perpetua Resources’ intent is to provide continued access to tribal members, restricting only those particular locations which would compromise operations or the safety of employees or other authorized persons on site.

Tribal access to and use within the Stibnite Mining District area has been enduring and robust throughout a long history of large-scale mining activity that has left behind legacy conditions proposed to be addressed by the SGP. The FEIS should reflect that the SGP is not

²⁵ *Id.* (emphasis added).

²⁶ *United States v. State of Wash.*, 384 F. Supp. at 401 (emphasis added).

²⁷ *United States v. State of Wash.*, 157 F.3d at 630, 651 (emphasis added).

²⁸ *Id.*





“inherently incompatible” with tribal interests, especially given the pronounced restorative nature of the Project and its targeted improvements to resources and features at the site, as described in the MMP and various SDEIS sections.

These site improvements, which, but for the Project otherwise would not occur, include the removal of fish passage barriers and other improvements to water quality and species habitat.²⁹ The SDEIS does recognize many of these benefits:

- It is important to note that under baseline conditions, Chinook salmon do not volitionally occur upstream from the Yellow Pine pit lake cascade barrier. ... Overall, there would be a localized, permanent, major beneficial effect on access to Critical Habitat for Chinook salmon.³⁰
- Changes to water chemistry would primarily have minor effects but would have unknown level of beneficial effects through the reduction of arsenic and antimony.³¹
- Based on modeled results, the effects of the 2021 MMP on steelhead caused by changes to temperature-based suitable habitat are expected to be moderate, permanent, and localized, with beneficial effects resulting from increased access to habitats not previously accessible.³²
- “The restoration activities, particularly providing volitional passage in the East Fork SFSR, would result in a major, permanent, regional, and beneficial effect on Chinook salmon, steelhead, bull trout, and westslope cutthroat trout within the vicinity of the mine.”³³

²⁹ See SDEIS Table 4.12-3; SDEIS at 4-344.

³⁰ SDEIS at 4-364, 4-365 (emphasis added).

³¹ SDEIS at 4-365 (emphasis added). See SDEIS at 4-7 (“[u]nder the 2021 MMP, approximately 280 million tons of development rock and 112 million tons of ore would be mined. About 3.2 million tons of historical Bradley tailings “ore” would also be removed and reprocessed.”). At the spent ore disposal area/Bradley tailings area alone, the United States Geological Survey estimated in a 2015 study that this part of the Stibnite Site is responsible contribute over 700 pounds of antimony and 1100 pounds of arsenic into Meadow Creek every year; see also Etheridge, A., 2015; Occurrence and Transport of Selected Constituents in Streams near the Stibnite Mining Area, Central Idaho, 2012-14; Scientific Investigations Report, 2015-5166, U.S. Geological Survey. That adds up to an estimated total of 22,000 pounds of arsenic into the Meadow Creek watershed since the year 2000 (date of the *Mobil Oil* Consent Decree).

³² SDEIS at 4-367 (emphasis added).

³³ SDEIS at 4-334.





- Overall, the SGP is expected to result in minor, permanent, and localized benefits to occupancy probability and the available habitat for occupancy potential for bull trout.³⁴

Improvements such as removing fish passage barriers have been recognized as remedial measures that benefit traditional and customary access and use under the Stevens Treaties.³⁵ These and other SGP benefits should be appropriately considered throughout the FEIS, but specifically in relation to tribal interests, as well as environmental justice and heritage resources discussions, further covered below.

Impacts to Environmental Justice

The SDEIS overstates implications related to tribal environmental justice communities by not accounting for existing mitigation mechanisms:

Under the 2021 MMP, impacts to subsistence resource availability on tribal communities with environmental justice concerns could potentially be adverse and would be localized, long-term to permanent, and moderate. ... There are no substitute resources or replacement opportunities for location-specific tribal interests and use of the local area. As a result, tribal members are more likely to be impacted by local area resource changes than the general public. However, specific information from the Tribes regarding the exact nature, duration, and location of impacts on tribal populations resulting from the excluded areas for the SGP and/or resource impacts is not available in the public domain. Based on the restricted ethnographic information provided to the Forest Service by the Tribes, it is expected that the SGP-related impacts would be of a type and/or magnitude to represent an adverse environmental justice impact to the tribal environmental justice communities.³⁶

This passage infers there will be an impact to subsistence resource availability stemming from access restrictions or resource changes. This directly contradicts the record, including the SDEIS' own determination which specifically finds: "There are no known types of natural resources available for exercising treaty rights in the SGP area that are not available on the surrounding NFS lands."³⁷ In this and the broader historical and geographic context summarized further above,

³⁴ SDEIS at 4-378.

³⁵ *United States v. Washington*, 20 F. Supp. 3d 986, 1022 (W.D. Wash. 2013).

³⁶ SDEIS at 4-677-78 (emphasis added).

³⁷ SDEIS at 4-675 (emphasis added).





any adverse impacts to environmental justice communities should be characterized as localized, limited, and minor at most.

For any such impacts, the FEIS should appropriately reflect existing mitigation features. The SDEIS states: “At this time, no mitigation measures have been identified for Tribal Rights and Interests.”³⁸ It is understood, or at least must be assumed, that the USFS is using the term “mitigation measures” narrowly here—*i.e.*, no mitigation measures in addition to those already incorporated in the MMP, best management practices, and regulatory requirements to meet Clean Water Act, Clean Air Act, Endangered Species Act, and other standards and to otherwise reasonably minimize impacts on National Forest surface resources to the extent feasible.³⁹ The FEIS should clarify this, as well as reflecting additional measures developed in response to comments on the SDEIS and through ongoing engagement with interested tribes.

In any case, as has already been indicated, Perpetua Resources will continue to engage with the relevant agencies and interested communities to refine and finalize SGP mitigation plans and measures to further reduce impacts to the extent feasible.

Impacts to Heritage Resources

The overstating of SGP impacts in the SDEIS extends to discussions related to tribal heritage resources. There is a dearth of information provided to support and implement protective measures regarding any particular identified traditional cultural property (“TCP”) locations at the SGP site. At this moment, there is insufficient information provided to warrant designation of a TCP District or a “Cultural Landscape.” Perpetua Resources supports completion and implementation of the Programmatic Agreement (“PA”) under the National Historic Preservation Act (“NHPA”) and 36 Code of Federal Regulations 800 to provide SGP mitigation for cultural and other historic properties, as described in the SDEIS.⁴⁰ As indicated in the previous sections above, Perpetua Resources welcomes broader engagement with the Tribes for continued access to and use of identified locations of cultural importance, consistent with health and safety protocols.

³⁸ SDEIS at 4-682.

³⁹ *See, e.g.*, SDEIS § 2.4.9.

⁴⁰ SDEIS at 4-511–12.



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Thank you for considering Perpetua Resources' comments. Please contact me if you any questions.

Sincerely,
PERPETUA RESOURCES IDAHO, INC.

A handwritten signature in blue ink, appearing to read "Alan D. Haslam".

Alan Haslam
Vice President – Permitting

