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BEFORE THE BOARD OF ENVIRONMENTAL QUALITY
STATE OF IDAHO

IN THE MATTER OF AIR QUALITY)	
PERMIT TO CONSTRUCT P-2019.0047)	Agency Case No.
_____)	0101-22-01
NEZ PERCE TRIBE, IDAHO)	
CONSERVATION LEAGUE, and SAVE THE)	
SOUTH FORK SALMON,)	OAH Case No.
Petitioners,)	23-245-01
vs.)	
)	
IDAHO DEPARTMENT OF ENVIRONMENTAL)	
QUALITY,)	
Respondent,)	
and)	
)	
PERPETUA RESOURCES IDAHO, INC.,)	
Intervenor-Respondent.)	
_____)	

CONTESTED CASE HEARING
MARCH 14, 2023
IDAHO DEPARTMENT OF ENVIRONMENTAL QUALITY
1410 NORTH HILTON STREET
BOISE, IDAHO

REPORTED BY: DORIS M. BAILEY, CSR, RPR, CRR
Idaho CSR License Number SRL-1074

Contested Case Hearing March 14, 2024

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5 JOHN RANDY MACMILLAN, Vice Chair
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7 CLAYTON STEELE
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PAULA WILSON, Paralegal, DEQ
ELAINE GANINO, Clerk to the Board
--oOo--

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1 MARCH 14, 2024 9:00 AM
2 PROCEEDINGS
3 BOARD CHAIR BOWEN: I call to order the meeting
4 of the Idaho Board of Environmental Quality. In addition
5 to being a public meeting, we are also on the record in
6 the matter of the air quality permit to construct issued
7 to Perpetua Resources Idaho, Inc., agency case number
8 0101-22-01, OAH case number 23-245-01. This meeting is
9 being held in the state office of the Department of
10 Environmental Quality.
11 For those present in the meeting room, please
12 sign in on the sheet provided by the entrance. There
13 won't be an opportunity for public comment today.
14 Elaine, could you please take the roll?
15 BOARD CLERK GANINO: Yes, Mr. Chairman.
16 Mark Bowen.
17 BOARD CHAIR BOWEN: Here.
18 BOARD CLERK GANINO: Dr. Randy MacMillan.
19 VICE CHAIR MACMILLAN: Here.
20 BOARD CLERK GANINO: Carol Mascarenas. Carol?
21 BOARD MEMBER MASCARENAS: Here. I'm here.
22 BOARD CLERK GANINO: Beth Elroy.
23 BOARD MEMBER ELROY: Present.
24 BOARD CLERK GANINO: John Sigler.
25 BOARD MEMBER SIGLER: Present.

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<p>1 BOARD CLERK GANINO: Clayton Steele. 2 BOARD MEMBER STEELE: Here. 3 BOARD CLERK GANINO: Pat Purdy. 4 BOARD MEMBER PURDY: Here. 5 BOARD CHAIR BOWEN: Before we get started, I'd 6 like to take a moment to introduce the parties and talk 7 about some of the logistics for today. 8 You will notice that unlike normal DEQ Board 9 meetings we have a court reporter here today. The 10 reporter will be on the record throughout the proceeding 11 today, so please speak slowly and clearly, try not to 12 talk over one another, and use yes or no instead of 13 uh-huh or nodding your head, please. That will make the 14 court reporter's job easier today. 15 I'd also like to take a moment to introduce the 16 parties and get everyone's names and spellings down for 17 the record so the reporter has those going forward. 18 Let's begin with the parties. 19 The petitioners in this matter are the Nez Perce 20 Tribe, the Idaho Conservation League, and Save the South 21 Fork of the Salmon. Would you all take a moment and 22 please identify yourselves, the attorney representing 23 each party. 24 Let's begin with the South Fork of the Salmon 25 attorney.</p> <p style="text-align: right;">Page 6</p>	<p>1 (No response.) 2 BOARD CHAIR BOWEN: Thank you. So we have a 3 joint motion to supplement the record with a March 12th, 4 2024 letter from EPA to DEQ. This is not on the agenda 5 so we need a motion to add it to the agenda. 6 VICE CHAIR MACMILLAN: Mr. Chairman. 7 BOARD CHAIR BOWEN: Yes, Randy. 8 VICE CHAIR MACMILLAN: I make a motion to amend 9 the agenda to include and to supplement the record with 10 the letter received yesterday. 11 BOARD CHAIR BOWEN: Thank you. 12 VICE CHAIR MACMILLAN: Or the 12th, whichever 13 day that was. 14 BOARD CHAIR BOWEN: Okay. Do I have a second? 15 BOARD MEMBER MCELROY: I have a second. 16 BOARD CHAIR BOWEN: Thank you. 17 Elaine, would you call roll? 18 BOARD CLERK GANINO: Yes, Mr. Chairman. 19 Mark Bowen. 20 BOARD CHAIR BOWEN: Just a minute. 21 Randy, could you state the reason clearly why it 22 was not added to the agenda initially? 23 VICE CHAIR MACMILLAN: Yes, Mr. Chairman. The 24 supplement to -- the joint motion to supplement the 25 record was received by the Board anyway yesterday, so it</p> <p style="text-align: right;">Page 8</p>
<p>1 MS. THROWER: Julia Thrower, T-h-r-o-w-e-r. 2 BOARD CHAIR BOWEN: Thank you. 3 Nez Perce Tribe and ICL. I assume they have the 4 same attorney? 5 MR. HURLBUTT: Bryan Hurlbutt, 6 H-u-r-l-b-u-t-t. 7 BOARD CHAIR BOWEN: Thank you. 8 The respondents in this matter are the 9 Department of Environmental Quality and Perpetua 10 Resources. Would you please identify yourselves for the 11 record? 12 DEQ attorney. 13 MS. YOUNG: Hannah Young, Y-o-u-n-g. 14 BOARD CHAIR BOWEN: Thank you. Perpetua 15 attorney? 16 MR. POOSER: Good morning. Christopher Pooser, 17 P-o-o-s-e-r. 18 BOARD CHAIR BOWEN: Thank you. 19 Also in the courtroom today we have Deputy 20 Attorney General Ann Yribar. She's representing the 21 Board. 22 And we have DEQ board staff Paula Wilson and 23 Elaine Ganino here to help with logistics. 24 Is there anyone else that I missed who wants 25 their attendance put on the record?</p> <p style="text-align: right;">Page 7</p>	<p>1 had not been added to the -- or included in the agenda 2 for today. 3 BOARD CHAIR BOWEN: Right. Thank you, Randy. 4 Elaine, would you call the roll on the motion, 5 please? 6 BOARD CLERK GANINO: Yes, Mr. Chairman. 7 Mark Bowen. 8 BOARD CHAIR BOWEN: Aye. 9 BOARD CLERK GANINO: Dr. Randy MacMillan. 10 VICE CHAIR MACMILLAN: Aye. 11 BOARD CLERK GANINO: Carol Mascarenas. 12 BOARD MEMBER MASCARENAS: Aye. 13 BOARD CLERK GANINO: Beth Elroy. 14 BOARD MEMBER ELROY: Aye. 15 BOARD CLERK GANINO: John Sigler. 16 BOARD MEMBER SIGLER: Aye. 17 BOARD CLERK GANINO: Clayton Steele. 18 BOARD MEMBER STEELE: Aye. 19 BOARD CLERK GANINO: Pat Purdy. 20 BOARD MEMBER PURDY: Aye. 21 BOARD CHAIR BOWEN: Thank you. Motion carried. 22 Is it the desire of the Board to enter into 23 executive session to discuss this matter? I'll entertain 24 a motion. 25 VICE CHAIR MACMILLAN: Mr. Chairman, I move the</p> <p style="text-align: right;">Page 9</p>

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<p>1 Board enter into executive session pursuant to Idaho Code 2 74-206(1)(f) to communicate with legal counsel for the 3 public agency to discuss the legal ramifications of and 4 legal options for pending litigation for controversies 5 not yet being litigated but imminently likely to be 6 litigated. 7 I request that a roll call vote be taken and 8 that vote be recorded in the minutes of this meeting. 9 BOARD MEMBER PURDY: I second that motion. 10 BOARD CHAIR BOWEN: Thank you. Any discussion? 11 (No response.) 12 Elaine, will you take roll, please? 13 BOARD CLERK GANINO: Yes, Mr. Chairman. 14 Mark Bowen. 15 BOARD CHAIR BOWEN: Aye. 16 BOARD CLERK GANINO: Dr. Randy MacMillan. 17 VICE CHAIR MACMILLAN: Aye. 18 BOARD CLERK GANINO: Carol Mascarenas. 19 BOARD MEMBER MASCARENAS: Aye. 20 BOARD CLERK GANINO: Beth Elroy. 21 BOARD MEMBER ELROY: Aye. 22 BOARD CLERK GANINO: John Sigler. 23 BOARD MEMBER SIGLER: Aye. 24 BOARD CLERK GANINO: Clayton Steele. 25 BOARD MEMBER STEELE: Aye.</p> <p style="text-align: right;">Page 10</p>	<p>1 BOARD MEMBER ELROY: Aye. 2 BOARD CLERK GANINO: John Sigler. 3 BOARD MEMBER SIGLER: Aye. 4 BOARD CLERK GANINO: Clayton Steele. 5 BOARD MEMBER STEELE: Aye. 6 BOARD CLERK GANINO: Pat Purdy. 7 BOARD MEMBER PURDY: Aye. 8 BOARD CHAIR BOWEN: Motion carries. 9 We're back in general session. The Board is 10 going to take a five-minute break, a bathroom break, and 11 we will readjournal. Thank you. 12 (Thereupon there was a brief recess.) 13 BOARD CHAIR BOWEN: All right. Call back into 14 order the general session. 15 We're under the amended agenda item Joint Motion 16 to Supplement the Record with a March 12th, 2024 letter 17 from EPA to DEQ. 18 As a Board we're a little bit concerned that we 19 haven't had a chance to review this letter. I'd be 20 interested in other Board members, what your thoughts are 21 receiving the letter, where we are on that? Any 22 discussion? 23 Dr. MacMillan. 24 VICE CHAIR MACMILLAN: Mr. Chairman, I have 25 considerable reservation discussing very much of the</p> <p style="text-align: right;">Page 12</p>
<p>1 BOARD CLERK GANINO: Pat Purdy. 2 BOARD MEMBER PURDY: Aye. 3 BOARD CHAIR BOWEN: Thank you. Motion carried. 4 We'll now enter executive session. So we have 5 to clear the room. Sorry. 6 (Thereupon the Board convened into 7 executive session off the record.) 8 BOARD CHAIR BOWEN: I'll entertain a motion. 9 VICE CHAIR MACMILLAN: Mr. Chairman, I move that 10 the Board resolve off of executive session, and that the 11 minutes of the meeting reflect that no action was taken 12 during executive session. 13 BOARD CHAIR BOWEN: Thank you. 14 Do I hear a second? 15 BOARD MEMBER SIGLER: Second. 16 BOARD CHAIR BOWEN: Thank you. 17 Elaine, can you take a roll call? 18 BOARD CLERK GANINO: Yes, Mr. Chairman. 19 Mark Bowen. 20 BOARD CHAIR BOWEN: Aye. 21 BOARD CLERK GANINO: Dr. Randy MacMillan. 22 VICE CHAIR MACMILLAN: Aye. 23 BOARD CLERK GANINO: Carol Mascarenas. 24 BOARD MEMBER MASCARENAS: Aye. 25 BOARD CLERK GANINO: Beth Elroy.</p> <p style="text-align: right;">Page 11</p>	<p>1 substance of the -- of that letter, simply because I've 2 hardly had an opportunity to look at the letter, and 3 surely others would be in the same boat. 4 So in the interest of fairness, I think that's 5 something that we should allow the parties to fully 6 digest that letter and provide response to that letter. 7 BOARD CHAIR BOWEN: Okay. 8 BOARD MEMBER STEELE: I agree. 9 BOARD CHAIR BOWEN: Any other thoughts? 10 BOARD MEMBER MCELROY: Mr. Chairman. 11 BOARD CHAIR BOWEN: Yes. 12 BOARD MEMBER MCELROY: I would like to share the 13 disappointment that this letter was received at the last 14 minute. And I'm not sure how we message that back to 15 EPA, but I'm assuming that they were well aware of the 16 dates and what's been happening with this issue. And to 17 have a last minute letter submitted to the department, 18 they need the feedback that it makes this whole process 19 more challenging to receive that type of information very 20 last minute. 21 BOARD CHAIR BOWEN: Okay. Any other thoughts? 22 I think at this point the Board would like to 23 hear from the parties. We'd like to give the parties a 24 five minute opportunity just to give us your position on 25 this current agenda item.</p> <p style="text-align: right;">Page 13</p>

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<p>1 Let's start with DEQ. Five minutes, please. 2 MS. YOUNG: May I approach and sit at the table? 3 BOARD CHAIR BOWEN: Please, yeah. 4 MS. YOUNG: Thank you for this opportunity. I'd 5 love to have the five minutes to speak to you about this. 6 And again, my name is Hannah Young. I represent the 7 Department of Environmental Quality in this matter. 8 And I did want to note that I understand that 9 you have two motions truly before the Board to supplement 10 the record, and if I may, I'd like to talk about both of 11 them because they're obviously interrelated as they 12 relate to the same subject matter ultimately. 13 BOARD CHAIR BOWEN: Excuse me. 14 MS. YOUNG: Yeah. 15 BOARD CHAIR BOWEN: Could you stick to the one 16 agenda item at this point? 17 MS. YOUNG: Oh, absolutely. 18 BOARD CHAIR BOWEN: You'll have an opportunity 19 to talk about the other one later. 20 MS. YOUNG: Oh, okay. Sure. I wasn't clear on 21 that, so thank you for that clarification, chairman. 22 As Ms. Elroy just pointed out, we only received 23 this letter two days ago late in the afternoon, and so 24 the parties, Perpetua and DEQ, made the motion to 25 supplement the record with this March 12th letter</p> <p style="text-align: right;">Page 14</p>	<p>1 officer allowed that original EPA letter to be 2 introduced. Since the hearing officer made his decision, 3 two more letters have been issued between the parties, 4 between DEQ and EPA. 5 DEQ responded, that is the first motion which we 6 will take up later. 7 And then EPA finally responded to us two days 8 ago, about four months after DEQ issued its letter. 9 And so now here we are in a bit of an 10 uncomfortable position putting something, you know, 11 before the Board at a very late hour. 12 But the only reason that we're doing that is 13 because we'd like the Board to have the complete story. 14 If you were just left with what the record entails today, 15 which is just that initial EPA letter, you would have a 16 false impression of the story. It may lead you to 17 believe that the conversation ended there, but that's 18 absolutely not the case. 19 In reality, DEQ responded to that letter, 20 continued to defend the permit, provided a lot of helpful 21 information that EPA as the agency not writing the permit 22 didn't know, and ultimately this final letter -- which we 23 received two days ago, which now in our minds we consider 24 the matter closed based on this letter -- is another very 25 critical part of that story which is that DEQ essentially</p> <p style="text-align: right;">Page 16</p>
<p>1 yesterday. 2 And the reason that we are moving to put this in 3 front of the Board today is because in the underlying 4 contested case proceeding, the petitioners in this case 5 moved to enter EPA's original letter, which was issued in 6 2023 of August. And at that time DEQ and Perpetua 7 objected to the inclusion of that letter, primarily 8 because EPA is not a party to this case -- although they 9 could be if they wanted to be, they are not. 10 And because the letter was being introduced at a 11 very late juncture during the contested case proceeding, 12 over a year after the contested case proceeding had been 13 initiated, and so the parties objected to the inclusion. 14 However, the hearing officer did allow that 15 original EPA letter to be introduced into the record. 16 And because of that -- well, and I should back up. 17 He allowed it to be introduced in the record, 18 but only for limited purposes. It wasn't a carte 19 blanche, you know, it wasn't allowed in for you to read 20 anything you wanted into it, he had three limitations: 21 One was that the letter could not add new allegations of 22 error; it could not add factual information that was not 23 already part of the record, or the proxy for expert 24 testimony to the Board. 25 And so under those limitations, the hearing</p> <p style="text-align: right;">Page 15</p>	<p>1 was able to come to a common understanding with EPA and 2 find that the letter does meet the Clean Air Act and that 3 it's -- the matter is closed. 4 And so, again, we did not start this process of 5 putting these letters into the record, but now that it's 6 here, out of fairness and to not prejudice any of the 7 parties, we would strongly argue that all of the letters 8 be allowed in. 9 And the final point I'd like to make is that 10 just because you allow the letter into the record today 11 doesn't mean that you don't have time to study it, 12 consider it, think about the merits of what's being 13 raised, you know, under those limitations set by the 14 hearing officer, of course, and analyze it in your own 15 time, and decide what weight to give it. 16 By allowing it to be introduced into the record 17 today though, it's at least something that you can do, 18 you can consider it and make your judgment when you're 19 ready and when you have time to review it fully. 20 And to that end I did bring courtesy copies of 21 our motion and declaration that was filed yesterday. I 22 don't know if that would be helpful to pass around, 23 because I do realize and apologize for its very late 24 filing. 25 If you want a copy you can certainly take one</p> <p style="text-align: right;">Page 17</p>

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1 and pass it around, but there's both the declaration of
 2 Ms. Floyd with the letter attached as well as our motion.
 3 So provide that.
 4 So with that, I would absolutely stand for any
 5 questions, but that's all I have to say.
 6 BOARD CHAIR BOWEN: Could I ask you a question?
 7 MS. YOUNG: Yeah.
 8 BOARD CHAIR BOWEN: I think one of the concerns
 9 the Board has is what about the opportunity to fair
 10 response to this letter? Do you have an opinion on
 11 whether the parties should be given a chance to have fair
 12 time to respond to this letter before it's considered
 13 entered into the record?
 14 MS. YOUNG: Mr. Chairman, if I may ask a
 15 clarifying question? Who do you mean by parties? Do you
 16 mean the petitioners?
 17 BOARD CHAIR BOWEN: To them and the respondents
 18 to this motion.
 19 MS. YOUNG: I don't think that that's necessary.
 20 If the Board did want to allow the petitioners
 21 to write an objection or write some sort of response to
 22 our motion, that would certainly, you know, be fine.
 23 They were allowed that opportunity to file an
 24 objection to our first motion to supplement the record
 25 and have their voices heard.

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1 But again, the substance of the EPA letter is
 2 really not incredibly relevant to the issues today,
 3 because EPA is not a party to this case, and because we
 4 see this dialogue with EPA as sort of a separate matter.
 5 They're talking about issues that don't completely
 6 overlap with what is in front of the Board today. As
 7 we'll talk about later, of course, the petitioners have
 8 sort of narrowed down their issues as this process has
 9 gone on, and so we don't have that same overlap.
 10 I don't think we're really here to discuss or
 11 debate the merits of what EPA said, it's more just for
 12 the Board to understand from a high-level perspective
 13 that when we received that letter from EPA in August of
 14 2023, it didn't end there; the story didn't end there,
 15 and we continue to defend the permit just like we are
 16 today.
 17 BOARD CHAIR BOWEN: Okay. Thank you.
 18 Any other questions from the Board?
 19 BOARD MEMBER STEELE: So in the letter from EPA,
 20 there's no new facts in that letter for us to consider?
 21 MS. YOUNG: No, I would say there are no new
 22 facts. From the most recent EPA letter?
 23 BOARD MEMBER STEELE: Yes.
 24 MS. YOUNG: Sorry, Mr. Steele.
 25 No, there's really no new facts. There are --

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1 and I hesitate because I don't want to get into the first
 2 two separate. But, you know, it's really --
 3 There's been a dialogue between DEQ and EPA
 4 since that letter, and there are things that have
 5 transpired, there's information that's been shared.
 6 Again, that is all information that, you know, has been
 7 vetted during the public comment process, during the
 8 dialogue with EPA. As far as the response to comments
 9 documents and things like that, the EPA has raised some
 10 of these same issues, has raised the same issues during
 11 the permit development as they did in their letter, so
 12 there's really no new facts.
 13 Again, we are just hoping to put it in front of
 14 the Board. Because petitioners moved to enter the August
 15 2023 letter, we don't want the Board to have a false
 16 impression that DEQ didn't respond and take, you know,
 17 serious, take it very seriously the statements and, quite
 18 frankly, accusations made in that letter from EPA.
 19 BOARD MEMBER STEELE: Thank you.
 20 BOARD CHAIR BOWEN: All right. Thank you.
 21 MS. YOUNG: Thank you.
 22 BOARD CHAIR BOWEN: Does Perpetua's attorney
 23 want to make a statement?
 24 MR. POOSER: Yeah. Thank you. Christopher
 25 Pooser for Perpetua.

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1 Only to say that we join in the motion and we
 2 concur with Ms. Young's remarks. We don't really have
 3 anything to add to what she said. I'd be happy to stand
 4 for any questions.
 5 BOARD CHAIR BOWEN: Thank you.
 6 Let's give the respondents an opportunity.
 7 Let's begin with -- go ahead. Decide. Tell us who you
 8 are.
 9 MR. HURLBUTT: Bryan Hurlbutt representing the
 10 Nez Perce Tribe and the Idaho Conservation League.
 11 We do not oppose adding the new EPA letter to
 12 the record.
 13 And relatedly, in interest of completing the
 14 record, we are willing to withdraw our opposition to the
 15 motion to add DEQ's previous letter to the record. It
 16 seemed fairly incomplete before without EPA's response,
 17 but now with that, we do not oppose having both of these
 18 documents before the Board to consider.
 19 And as far as whether there should be an
 20 opportunity to respond to that letter, we're prepared to
 21 talk about the letter today to the extent that the Board
 22 wants to, and how it relates to the merits of our claims,
 23 and we are happy to provide supplemental briefing or
 24 something like that if the Board thinks that would be
 25 helpful for considering the EPA letter. Yeah.

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1 BOARD CHAIR BOWEN: Okay. Questions?
 2 BOARD MEMBER STEELE: So with that statement, I
 3 mean, would you formally want to provide written
 4 comments? Or you said you'd be happy to provide written
 5 comments?
 6 MR. HURLBUTT: We are happy to if the Board
 7 thinks that that would be helpful to reach a decision.
 8 And if not, we're happy to just say some things about it
 9 today during our argument.
 10 BOARD MEMBER PURDY: So I guess an additional
 11 follow-up then. If you had the opportunity to provide
 12 oral argument today, then do you feel like you need to
 13 still have the time frame in statute to respond in
 14 writing? Or do you feel like just today's would be --
 15 you don't have an opposition, so it seems like you're
 16 saying that today would be enough; is that what I'm
 17 hearing?
 18 MR. HURLBUTT: Correct. As far as responding to
 19 the actual motion that was filed yesterday.
 20 BOARD MEMBER PURDY: Okay.
 21 MR. HURLBUTT: Yeah.
 22 BOARD CHAIR BOWEN: Okay. Thank you.
 23 Any other parties want to speak to that?
 24 MS. THROWER: No. Thank you.
 25 (Reporter clarification.)

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1 MS. THROWER: Julia Thrower for Save the South
 2 Fork Salmon.
 3 BOARD CHAIR BOWEN: Any other discussion?
 4 Yeah, I, for one, after that new information
 5 would like to entertain -- if the Board would like to
 6 entertain moving to executive session?
 7 Randy, do you want to make a motion?
 8 VICE CHAIR MACMILLAN: Yes, sir. I move that
 9 the Board enter into an executive session pursuant to
 10 Idaho Code 74-206(1)(f) to communicate with legal counsel
 11 and the public agency to discuss the ramifications of and
 12 legal options or controversies not yet being litigated
 13 but imminently likely to be litigated.
 14 I request that a roll call vote be taken and
 15 that vote be recorded in the minutes of this meeting.
 16 BOARD CHAIR BOWEN: Do I hear a second?
 17 BOARD MEMBER MCELROY: Second.
 18 BOARD CHAIR BOWEN: Thank you.
 19 Elaine, let's take a roll call, please.
 20 BOARD CLERK GANINO: All right, Mr. Chairman.
 21 Mark Bowen.
 22 BOARD CHAIR BOWEN: Aye.
 23 BOARD CLERK GANINO: Dr. Randy MacMillan.
 24 VICE CHAIR MACMILLAN: Aye.
 25 BOARD CLERK GANINO: Carol Mascarenas.

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1 BOARD MEMBER MASCARENAS: Aye.
 2 BOARD CLERK GANINO: Beth Elroy.
 3 BOARD MEMBER ELROY: Aye.
 4 BOARD CLERK GANINO: John Sigler.
 5 BOARD MEMBER SIGLER: Aye.
 6 BOARD CLERK GANINO: Clayton Steele.
 7 BOARD MEMBER STEELE: Aye.
 8 BOARD CLERK GANINO: Pat Purdy.
 9 BOARD MEMBER PURDY: Aye.
 10 VICE CHAIR MACMILLAN: So motion passes?
 11 BOARD CHAIR BOWEN: Motion passes.
 12 Moving to executive session. Thank you.
 13 (Thereupon the Board convened into
 14 executive session off the record.)
 15 BOARD CHAIR BOWEN: Okay. I'll entertain a
 16 motion.
 17 VICE CHAIR MACMILLAN: Mr. Chairman, I move that
 18 the Board resolve out of the executive session, and that
 19 the meeting of the minutes reflect that no action was
 20 taken during the executive session.
 21 BOARD MEMBER PURDY: Second.
 22 (Unreportable simultaneous cross-talk.)
 23 BOARD CHAIR BOWEN: Carol, can you hear us?
 24 BOARD SECRETARY MASCARENAS: Yes, I can.
 25 BOARD CHAIR BOWEN: Okay.

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1 BOARD MEMBER MASCARENAS: Thank you.
 2 BOARD CHAIR BOWEN: All right. We have a motion
 3 and a second.
 4 Elaine, will you take the roll?
 5 BOARD CLERK GANINO: Yes, Mr. Chairman.
 6 Mark Bowen.
 7 BOARD CHAIR BOWEN: Aye.
 8 BOARD CLERK GANINO: Dr. Randy MacMillan.
 9 VICE CHAIR MACMILLAN: Aye.
 10 BOARD CLERK GANINO: Carol Mascarenas.
 11 BOARD MEMBER MASCARENAS: Aye.
 12 BOARD CLERK GANINO: Beth Elroy.
 13 BOARD MEMBER ELROY: Aye.
 14 BOARD CLERK GANINO: John Sigler.
 15 BOARD MEMBER SIGLER: Aye.
 16 BOARD CLERK GANINO: Clayton Steele.
 17 BOARD MEMBER STEELE: Aye.
 18 BOARD CLERK GANINO: Pat Purdy.
 19 BOARD MEMBER PURDY: Aye.
 20 BOARD CHAIR BOWEN: Okay. We're back in general
 21 session here. I'd like to thank the audience for
 22 indulging the Board. I think with this new information
 23 we've received -- any discussion from the Board?
 24 VICE CHAIR MACMILLAN: Mr. Chairman.
 25 BOARD CHAIR BOWEN: Yes.

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<p>1 VICE CHAIR MACMILLAN: It would seem that all 2 the parties have agreed that the correspondence between 3 DEQ and EPA is appropriate to include in the record, and 4 that resolves our concern about making sure that this 5 whole process is fair and open. 6 BOARD CHAIR BOWEN: Okay. Any other comments? 7 (No response.) 8 BOARD CHAIR BOWEN: I think the Board would like 9 to hear from the parties that they agree to stipulate 10 bringing these two letters into the record under the 11 stipulation that -- under the same conditions as found by 12 the previous hearing officer: 13 That the EPA letter cannot be used, one, to add 14 new allegations of error. 15 Two, to add factual information that was not 16 already part of the record. 17 Or three, as a proxy for expert testimony to the 18 petitioners. 19 Do the parties stipulate? DEQ? 20 MS. YOUNG: Yes, Mr. Chairman, we would 21 stipulate to that. Thank you. 22 BOARD CHAIR BOWEN: Perpetua? 23 MR. POOSER: Yes, Mr. Chairman, we stipulate. 24 BOARD CHAIR BOWEN: ICL? 25 MR. HURLBUTT: Yes, we stipulate.</p> <p style="text-align: right;">Page 26</p>	<p>1 BOARD MEMBER MASCARENAS: Aye. 2 BOARD CLERK GANINO: Beth Elroy. 3 BOARD MEMBER ELROY: Aye. 4 BOARD CLERK GANINO: John Sigler. 5 BOARD MEMBER SIGLER: Aye. 6 BOARD CLERK GANINO: Clayton Steele. 7 BOARD MEMBER STEELE: Aye. 8 BOARD CLERK GANINO: Pat Purdy. 9 BOARD MEMBER PURDY: Aye. 10 BOARD CHAIR BOWEN: Motion carried. Thank you. 11 So that was essentially amended agenda item 12 number 1. 13 Item number two was the second letter which 14 we've just handled. 15 Any further comment on those two agenda items? 16 (No response.) 17 BOARD CHAIR BOWEN: If not, we'll move to the 18 last agenda item. This next item on the agenda is oral 19 argument on the amended petition for review of the 20 preliminary orders that was filed by the petitioners, the 21 Nez Perce Tribe, ICL, and Save the South Fork of the 22 Salmon on December 15th, 2023, in the matter for Air 23 Quality Permit to Construct P-2019.0047, case docket 24 number 0101-22-01, OAH case number 23-245-01. 25 The amended petition asked this Board to review</p> <p style="text-align: right;">Page 28</p>
<p>1 BOARD CHAIR BOWEN: And does that include the 2 other parties? 3 MS. THROWER: Yes, it does. Thank you. 4 BOARD CHAIR BOWEN: Okay. Nez Perce. 5 MR. HURLBUTT: Yes, for the Nez Perce as well. 6 BOARD CHAIR BOWEN: Thank you. Okay. With 7 that I'll hear -- I'll entertain a motion. 8 VICE CHAIR MACMILLAN: Mr. Chairman, I move that 9 the Board accept into the record, under the same 10 conditions as identified by the hearing officer with 11 regard to the August 10th, 2023 letter, the November 12 22nd, 2023, and the March 12th, 2024 correspondence 13 between DEQ and EPA. 14 BOARD CHAIR BOWEN: Do I have a second? 15 BOARD MEMBER STEELE: Second. 16 BOARD CHAIR BOWEN: Any discussion? 17 (No response.) 18 BOARD CHAIR BOWEN: We'll entertain a vote. 19 Elaine, will you call roll? 20 BOARD CLERK GANINO: Yes, Mr. Chairman. 21 Mark Bowen. 22 BOARD CHAIR BOWEN: Aye. 23 BOARD CLERK GANINO: Dr. Randy MacMillan. 24 VICE CHAIR MACMILLAN: Aye. 25 BOARD CLERK GANINO: Carol Mascarenas.</p> <p style="text-align: right;">Page 27</p>	<p>1 the amended preliminary order issued by the hearing 2 officer on December 5, 2023. The matter has been fully 3 briefed. 4 We'd like to provide 30 minutes to each party to 5 argue the amended petition. In addition, there will be 6 10 minutes allotted to the petitioners for rebuttal. 7 Let's begin with the petitioners first, the Nez 8 Perce Tribe, then ICL, then Save the South Fork Salmon. 9 MR. HURLBUTT: And if it's okay with you, we 10 planned to sort of do this together instead of dividing, 11 you know, by parties. 12 Ms. Thrower is going to handle two of the four 13 issues that we raised, and I was going to handle the 14 other two, if that's okay. 15 BOARD CHAIR BOWEN: Okay. Are you okay with 30 16 minutes between you? 17 MS. THROWER: Yes. 18 BOARD CHAIR BOWEN: Okay. Thank you. Begin. 19 MS. THROWER: Thank you, Mr. Chairman. 20 And just as a technical question, are we able to 21 put up some of the record documents? 22 MS. WILSON: Uh-huh. 23 MS. THROWER: Okay. Can I have you please go to 24 REC 0145? 25 MS. WILSON: Do you know which number it is? Or</p> <p style="text-align: right;">Page 29</p>

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<p>1 REC which again? 2 MS. THROWER: 415. So yeah, you have to scroll 3 up quite a bit. 4 VICE CHAIR MACMILLAN: Carol, can you hear us? 5 BOARD SECRETARY MASCARENAS: If the respondents 6 can talk a little louder, that would be great. 7 VICE CHAIR MACMILLAN: There is a chair up here 8 if you'd like. 9 BOARD CHAIR BOWEN: Move the microphones back 10 there. 11 MS. WILSON: Can you repeat the REC number? 12 MS. THROWER: It's document 36 REC 145. 13 MS. WILSON: Okay. 14 BOARD MEMBER STEELE: Which two were you going 15 to talk about? Is it ambient air or -- 16 MS. THROWER: I'm going to talk about ambient 17 air, the access road issue, and also the fourth issue in 18 our brief, the arsenic issue. 19 BOARD MEMBER STEELE: Okay. Thank you. 20 MS. WILSON: Do you know what page number other 21 than the -- 22 MS. THROWER: It's REC 415 on the bottom. 23 MS. WILSON: I'll just do math, I'll figure it 24 out 25 MS. THROWER: Sorry, I don't have the PDF page Page 30</p>	<p>1 miles of unpaved roads that are within the proposed mine 2 site. And that's been the problem, most of the problems 3 that petitioners have focused on. 4 All through the versions of the various draft 5 permits, Perpetua and DEQ have had trouble on figuring 6 out how to deal with this dust. It's not just a problem 7 with compliance with the National Air Quality Ambient Air 8 Quality Standards or NAAQS which in this case does 9 involve, in particular, particulate matter, but it is 10 also an issue with the state's Toxic Air Pollutant rules 11 or TAPs, and in this case we're talking about arsenic 12 which is a carcinogenic pollutant. 13 The approved permit and records supporting its 14 decision demonstrates that DEQ still cannot comply with 15 the NAAQS for particulate matter and for the TAPs for 16 arsenic emissions. 17 Rather, the record demonstrates that DEQ took 18 unprecedented, unsupported, and groundless measures to 19 make it appear that the permit will comply with the law 20 and the regulation. 21 As I said at the beginning, and Mr. Hurlbutt 22 said, I'll talk about the Stibnite Road access route, and 23 how we feel that that, including their excluding that 24 route from ambient air protections violates the Clean Air 25 Act and creates a public health risk for those using that Page 32</p>
<p>1 number. 2 MS. WILSON: That's okay. 3 MS. THROWER: Well, I can go ahead and start, 4 Mr. Chairman, while that comes up. 5 BOARD CHAIR BOWEN: Thank you. 6 MS. THROWER: So, you know, we've heard, and I'm 7 sure we'll hear more today, but we've read in 8 petitioners' and Perpetua's brief about this pioneering 9 approach for this proposed mining project to access some 10 minerals. But what we're talking about here is an 11 age-old problem of dust from roads that are created by 12 vehicles traveling on unpaved roads. 13 There's no pioneering approach here to 14 controlling dust. We at times will call that fugitive 15 dust. There's no technological advances for controlling 16 fugitive dust like there are for controlling pollution 17 like out of a smoke stack, something that's more of a 18 point source. 19 The pollution that we're concerned about here is 20 creating a public health risk for those traveling and 21 recreating through and around the proposed mine site. 22 Some of that will be created, that dust will be created 23 by blasting and crushing ore, but most of it is going to 24 be caused by heavy trucks hauling ore up from blasting 25 sites to ore processing facility and traveling on 55 Page 31</p>	<p>1 road. 2 I'll also talk about the arsenic emissions. 3 And as Mr. Hurlbutt says, he'll talk about the 4 other two issues, the fugitive dust control efficiency, 5 and also the plans that were not developed -- that are 6 supposed to contain the enforceable permit conditions 7 that were not developed in time for public review. 8 So indeed, if this permit is approved and this 9 mine continues or is allowed to operate under the guise 10 of the state's approval, this suggests that it complies 11 with the Clean Air Act and Idaho state rules. And this 12 creates a grave risk to public health for those who 13 travel, recreate, and use the area to support their 14 livelihood. 15 That's why we ask the Board to carefully 16 consider the evidence before it and vacate this permit 17 and remand it back to DEQ for reconsideration. 18 So I had an exhibit pulled up because there's a 19 lot going on in this area. And I know it can be a little 20 confusing if you're not -- if you haven't studied this 21 map and aren't really familiar with the area. 22 So what this map shows is the ambient air 23 boundary, sometimes it's called the operations boundary 24 as well. And that's that blue line that encircles the 25 entire mine site and several other thousand acres. That Page 33</p>

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<p>1 ambient air boundary is, you can think of it sort of as a 2 bubble.</p> <p>3 Inside that ambient air boundary, the air 4 quality does not meet -- does not need to meet the NAAQS, 5 and it does not need to meet the state's toxic air 6 pollutant standards.</p> <p>7 Outside that ambient air boundary, and that is 8 where the public is allowed to recreate, it will be open 9 for public use, there's a lot of important recreational 10 sites, important sites that the Nez Perce Tribe uses, and 11 those sites and those uses were established in our 12 standing declarations that were submitted before the 13 Office of Administrative Hearings.</p> <p>14 Outside that, again, like I said, the public is 15 allowed to recreate, to use the public lands, and outside 16 that ambient air boundary the air quality must be 17 consistent with the NAAQS or it must meet the NAAQS, and 18 it must meet the state's toxic air pollution standards.</p> <p>19 So we're concerned -- so going through -- let me 20 back up.</p> <p>21 So looking inside that ambient air boundary, the 22 gray color is -- are the proposed mining sites, some of 23 the pits that will be mined. And I want to draw your 24 attention to that green line that kind of goes from the 25 north, where it says north entry, all the way through the</p> <p style="text-align: right;">Page 34</p>	<p>1 Cascade log route. That currently does not exist. That 2 is a road that is proposed as one of the alternatives 3 under the mine plan that the Forest Service is 4 considering in its National Environmental Policy Act or 5 NEPA analysis.</p> <p>6 So I just wanted to give you kind of a lay of 7 the land. Hopefully that will make it a little more -- 8 make a little more sense of what our issue is here.</p> <p>9 So as I said, inside the ambient air boundary 10 there aren't -- the air doesn't need to meet the NAAQS or 11 the state's caps criteria outside of the, we might call 12 that the point of compliance, the air needs to meet both 13 of those standards.</p> <p>14 So in this issue when I'm talking about the 15 access road, we are mainly concerned about access through 16 the mine inside of that ambient air boundary.</p> <p>17 Now, we raised two issues, one that sort of goes 18 to the same problem here.</p> <p>19 One is the legal control of the road. So under 20 the Clean Air Act -- and the Idaho state rules have 21 adopted the regulatory definition of ambient air -- the 22 issue is whether that road can be excluded from ambient 23 air protections, meaning that it can have polluted air 24 that exceeds healthy standards set by the EPA and set by 25 the state for toxic air pollutants. The threshold</p> <p style="text-align: right;">Page 36</p>
<p>1 mine site and to -- if we can scroll down a little bit, 2 there's -- that road goes to the south entry where it 3 exits the mine site and exits the ambient air boundary. 4 So that is called the Stibnite Road access route. It is 5 a proposed route.</p> <p>6 Currently there is a route called the Stibnite 7 Road that is being used by the public to go through this 8 area. That road, as I said, exists. Under the proposed 9 mine plan, that road will be reconstructed so that it can 10 be separated a little bit more from mining activities and 11 provide a safer route to the public.</p> <p>12 As I said, the public access is important for 13 recreation sites on public land, both from the north 14 entry and the south entry.</p> <p>15 Currently the only way to get from -- to 16 recreational sites at the south entry is to go through 17 this road from the north entry to the south entry. And 18 there's some sites, Thunder Mountain, Monumental Summit 19 that you'll see that we referenced, both in our standing 20 declarations and also in our briefing. And those are all 21 recreational sites that are on Forest Service land.</p> <p>22 The road that appears there at the south entry 23 is a proposed road called the Burntlog Road. If you 24 scroll down a little bit, I think you can see the name of 25 it there. But that -- it says main access road to the</p> <p style="text-align: right;">Page 35</p>	<p>1 question in whether a facility, an applicant can exclude 2 any portions of the facility, outside of the building, 3 can exclude that from ambient air protection is whether 4 it has legal control and practical control.</p> <p>5 So if we look at EPA's policy on ambient air -- 6 and just for your reference, that is REC 1138, and we 7 don't need to go to that up on the screen.</p> <p>8 But EPA says that in order to exclude an area 9 from ambient air, you have to have two things: You have 10 to have the legal power to control, and exclude the 11 public. Not just control the public, but exclude the 12 public, and the physical ability to exclude the public. 13 So think about fences, maybe surveillance, that kind of 14 thing.</p> <p>15 The issue here is that DEQ is arguing -- and the 16 hearing officer accepted this argument -- that they were 17 reasonable in relying on the single statement and 18 certification provided by Perpetua in the application 19 that Perpetua has the legal control to exclude the 20 public. And the reason this is important is because 21 they're allowing the public through there.</p> <p>22 So, you know, one of the problems is -- and, you 23 know, if you look at the record, is there is evidence 24 that Perpetua does have legal control to control access 25 to a certain extent, but not to preclude public access.</p> <p style="text-align: right;">Page 37</p>

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1 So legal control can be just, you know, from their plain
2 old simple ownership of land and they can keep people
3 out. It can also be controlled as given to them through
4 a different entity, from, for instance, the Forest
5 Service. So there's a mix of land ownership patterns
6 here, some of it on patented lands Perpetua owns, the
7 rest of it, most of that ambient air boundary, inside
8 that ambient air boundary the Forest Service owns, and
9 that's public land.
10 The Forest Service, under the current mine
11 plan -- which is not approved yet by the Forest Service,
12 they're still going through the NEPA process. The Forest
13 Service will give Perpetua the legal ability to control
14 access to the extent that they can control the public's
15 access for safety reasons. But there's evidence in the
16 record that shows that Perpetua does not have the legal
17 access to preclude the public. And some of those
18 statements are related to the Forest Service's process
19 here.
20 That process, the mine plan, currently there was
21 a proposal to close that road, but comments from the
22 public to the Forest Service had made it clear that that
23 is an important road for the public to have open to
24 access these recreational sites. And so the Forest
25 Service, under both alternatives that are being

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1 considered for the mine plan, that road is going to be
2 open to public access. Perpetua cannot, if those two --
3 if one of those two alternatives -- it doesn't matter
4 which one, as I said, it's the same thing.
5 If one of those two alternatives gets approved,
6 Perpetua will have the ability to control access to the
7 extent that it needs to to make sure that people can
8 travel safely through there, but it will not be able to
9 close the road to public access.
10 And so based on that, we don't believe that
11 Perpetua can exclude this road from ambient air
12 protection. It just doesn't meet the two requirements
13 under EPA's policy on ambient air to be able to do that.
14 Again, that's the legal power to exclude the public and
15 the physical ability to also do so.
16 BOARD MEMBER STEELE: So real quick on that. I
17 mean, we're talking about controlling access or excluding
18 access?
19 MS. THROWER: Right.
20 BOARD MEMBER STEELE: I mean, that's what the
21 argument is here?
22 MS. THROWER: Right. And, I mean, in order to
23 be able to exclude an area from ambient air protections,
24 meaning you don't have -- basically this is -- the whole
25 idea of ambient air is to protect public health; right?

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1 I mean, you have standards, the NAAQS standards, how much
2 particulate matter can be in the air, the state standards
3 for toxic air pollutants, how much can be in the air;
4 that does not create a public risk, a public risk large
5 enough for us to really worry about.
6 Particulate matters or respiratory irritants
7 particularly, you know, affecting children, older people,
8 people that have pre-existing conditions, but also it
9 does affect, you know, healthy people if there's enough
10 in the air. Same thing with arsenic, it's a carcinogen.
11 BOARD MEMBER PURDY: But isn't exposure time --
12 excuse me.
13 But exposure time is a critical part of that;
14 right? If an individual is allowed to go into the area
15 and camp for two or three days versus only allowed to
16 pass through, and they only spend a half an hour or an
17 hour inside of that bubble, that makes a big difference,
18 doesn't it, the amount of the exposure time?
19 MS. THROWER: Well, yes and no.
20 BOARD MEMBER PURDUE: Okay.
21 MS. THROWER: Under the National Ambient Air
22 Quality Standards which, you know, the state needs to
23 meet, there's criteria set, levels of pollution that you
24 can't go above --
25 BOARD MEMBER PURDY: Period?

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1 MS. THROWER: -- to the ambient air. Yeah. It
2 doesn't matter if, you know, people are just passing
3 through or if they're going to be camping or if they're
4 living there, you know. You just can't -- it's just a
5 threshold. You're either meeting ambient air qualities
6 standards or you're not.
7 BOARD MEMBER PURDY: So you don't -- obviously
8 you don't accept Perpetua's guest of the mine --
9 MS. THROWER: Yes. Right.
10 BOARD MEMBER PURDY: -- process where it would
11 either escort or control or monitor that access to make
12 sure the people were moving through and not stopping and
13 hanging out in that area, that they would move through
14 the mine area safely as an escorted guest or a monitored
15 guest.
16 MS. THROWER: That's right. Yeah. And it makes
17 sense in terms of safety. Obviously they don't want
18 people straying off the path, you know.
19 But in terms of air quality, it -- yeah, that
20 doesn't matter. And it, you know, this is, you know, on
21 paper it's a recreation area; a lot of people are
22 traveling there, are going to travel there in the summer
23 in open air vehicles, like Razors, ATV's or whatever, you
24 know, people who pass in cars and supposedly they can
25 close up their windows and turn their air off and

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1 everything like that. But that still doesn't matter in
2 terms of compliance with the National Ambient Air Quality
3 Standards.
4 And that's really the threshold that we're
5 talking about here. The state caps that we talk a lot
6 about that, that kind of comes into the arsenic air issue
7 and outside the ambient air boundary, but really for the
8 access road it's the NAAQS and the particulate matter.
9 And so yeah -- oh, go ahead.
10 BOARD MEMBER STEELE: I've got a follow-up. So
11 right now is the general public going from the north
12 through the south, or is that whole area controlled right
13 now?
14 MS. THROWER: It is open to public use. I think
15 that I'll defer that question to Perpetua in terms of
16 whether they have any, you know, if they're doing any
17 activities. There are exploration activities out there.
18 Whether -- they probably do have the ability to control
19 access, maybe even temporarily shut down if they're going
20 to be doing something that would create too much of a
21 safety hazard for the public to pass through. But those
22 are temporary closures, not a complete closure for 16
23 years, you know, the life of the mine.
24 BOARD MEMBER STEELE: Okay.
25 MS. THROWER: If you -- and yeah, if you enter

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1 that south -- if you exit on that south entry, there are
2 Forest Service roads that continue on into, as I said,
3 the important recreational areas --
4 BOARD MEMBER STEELE: Okay. Thanks.
5 MS. THROWER: -- that are pretty heavily
6 accessed through summer. Yeah.
7 So I do want to -- I'm taking a lot of time on
8 this issue, and I do want to go ahead and move to the
9 issue that you mentioned in terms of the guest of the
10 mine.
11 We don't think that this --
12 We don't believe that that is consistent with
13 EPA's policy, and it's not consistent with DEQ's guidance
14 on ambient air boundaries.
15 I think I'll just, in the interest of time, I
16 will just point out one of the glaring inconsistencies is
17 with DEQ's guidance. And I'm going to note a
18 typographical error in our motion in terms of the number,
19 the record number. So I talked --
20 In our brief we talked about how the guest of
21 the mine issue, which is really the public going through,
22 they don't want to visit the mine, they just want to get
23 to public land. So to call them guests of the mine to
24 take away these ambient air protections is really
25 inconsistent and really against the law and the purpose

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1 and intent of the Clean Air Act.
2 But even DEQ's guidance says, and I quote,
3 "For the purpose of defining ambient
4 air, the general public is considered
5 anyone not directly associated with the
6 facility. In general, if someone
7 present at the site would not be subject
8 to OSHA or other worker exposure
9 regulations, then they are considered as
10 the general public."
11 And that is at REC 1109.
12 I don't think anybody here can credibly claim
13 that people traveling on this road to access public lands
14 are going to be covered under OSHA or worker exposure
15 laws.
16 So, you know, allowing people to do this and
17 calling them guests of the mine because they sign a
18 waiver I think is inconsistent with this DEQ guidance, it
19 is against EPA's ambient air policy, and it creates a
20 huge public health risk for the public traveling that,
21 you know, isn't going to understand that when they sign
22 this waiver that they're necessarily going to be exposed
23 to air quality that doesn't meet EPA's standards for
24 public to be able to breathe.
25 I want to move on to the second issue with

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1 arsenic unless there are any further questions on that?
2 BOARD MEMBER STEELE: Well, I guess, you know,
3 you talk about DEQ basically not using their guidance
4 appropriately and same with EPA. But DEQ has had
5 correspondence with EPA on that.
6 MS. THROWER: Right.
7 BOARD MEMBER STEELE: And they have decided that
8 the road is likely exempt from ambient air protection.
9 MS. THROWER: Yeah.
10 BOARD MEMBER STEELE: So would you talk a little
11 bit about that?
12 MS. THROWER: Yeah. We can go to this recent
13 EPA letter that was just submitted into the record this
14 morning.
15 And in that case EPA does still have concerns
16 about the road and whether Perpetua has -- has the legal
17 right to exclude the public. So at the top of page 2 it
18 says,
19 "With respect to ambient air
20 boundary designation, the EPA continues
21 to have concerns with IDEQ's acceptance
22 of Perpetua's assertion that members of
23 the general public do not have the legal
24 rights of access to areas within the
25 operations area boundary."

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<p>1 So I wouldn't say that that is completely 2 resolved.</p> <p>3 There were other issues that EPA had brought up 4 about general access around the ambient air boundary in 5 terms of there being a lot of trails, rivers going 6 through there and everything like that.</p> <p>7 But the EPA goes on in that letter, and I think 8 there they are saying that, okay, we are okay with that. 9 The access management plan provides those physical 10 barriers for other areas around the ambient air boundary, 11 and they believe that that is consistent with the policy.</p> <p>12 But I think that this road access is still an 13 issue, even after all these communications with EPA.</p> <p>14 Okay. So I'll move on to arsenic. So we're 15 moving outside of the ambient air boundary. There's 16 still a lot of dust that's going to be flying around, and 17 what I'm going to go through is the state's rules on 18 this.</p> <p>19 Because I think what is clear here is that 20 there's certain prescribed ways to assess toxic air 21 pollutants -- and now I'm shifting to arsenic and more 22 away from particulate matter.</p> <p>23 But there are specific state rules on how you 24 calculate your toxic air pollutant emissions, and there's 25 specific thresholds that you have to be under. There are</p> <p style="text-align: right;">Page 46</p>	<p>1 on here is the called the Acceptable Ambient Air 2 Concentrations for carcinogen or AACC. And arsenic has a 3 number, an AACC number.</p> <p>4 The regulations also state that AACC's are 5 annual averages. So you figure, like with the mine, 16 6 years, maybe emissions aren't exactly the same every 7 year. You add up 16 years of emissions, you divide by 8 16, that's your annual average.</p> <p>9 Section 203 requires an applicant to, "Use 10 methods under Section 210 to demonstrate compliance with 11 Section 203."</p> <p>12 So if we go to Section 210, it prescribes 13 standard methods an applicant can use in sections .05 and 14 .08 or specialized methods in Sections .09 and .12.</p> <p>15 So the one that Perpetua and DEQ used is Section 16 210.12. And we're all good here, this is all working 17 fine. It says that you can use a method called T-RACT, 18 which is Reasonably Available Control Technology, to 19 demonstrate compliance with the TAP increments in Section 20 586. So if you do that, if you can't meet the TAP 21 increments in 586, you can meet them by applying this 22 reasonably available control technology. And the 23 regulations give you a little bit of a bonus. They -- 24 instead of having to meet the thresholds in 586, they 25 allow you a ten-fold increase in that threshold.</p> <p style="text-align: right;">Page 48</p>
<p>1 ways to -- different ways to calculate that and 2 everything and, but this isn't a free-for-all, there's no 3 availability to do project specific adjustments as 4 Perpetua and DEQ have suggested.</p> <p>5 So if you look at the state's rule, Section 203 6 says that,</p> <p>7 "No permit to construct shall be 8 granted unless an applicant can show 9 that emissions of TAPs will not injure 10 or unreasonably affect human health or 11 animal life or vegetation as required by 12 Section 161."</p> <p>13 So 161 basically says that toxic air pollutant 14 must not be admitted in quantities or concentrations up 15 to, alone or with other contaminants, injure or 16 unreasonably affect human life -- excuse me -- human 17 health or animal life or vegetation.</p> <p>18 Section 203 also states that you can -- that, 19 "An applicant can demonstrate 20 compliance with Section 161 by meeting 21 the emission increments in section 586." 22 Don't you love regulations, right? I'm sure 23 you'll be pulling all of these up at some point. 24 Section 586 is basically a table of toxic air 25 pollutants emission limits. The one that we're focused</p> <p style="text-align: right;">Page 47</p>	<p>1 Okay. So let's say you can emit one unit under 2 586. Well, now if you use reasonably controlled 3 technology, they're going to let you emit 10 units and 4 you'll still be in compliance. Okay. You're still not 5 going to injure human health unreasonably.</p> <p>6 So Section 210.12(B) again states this ten-fold 7 bonus as the cancer risk probability of less than 1 to 8 100,000. So before with the TAPs increments it was one 9 to a million, now, we're at 1 to 100,000. And the 10 regulation states, "Which is equivalent to ten times the 11 applicable AACC listed under 586." That's where we get 12 that ten-fold bonus.</p> <p>13 Now, Section 210.12(C) says that you can 14 demonstrate that you meet the T-RACT AACC, the ten-fold 15 increased AACC, if you -- if you can meet that -- excuse 16 me. If you can meet that amount, then you don't have to 17 do any further demonstration of compliance with Section 18 161 which is, you know, that's not unreasonably injuring 19 human health.</p> <p>20 There are other methods. 210 says that you can 21 use -- or excuse me -- 212 -- 210.12 says there are a 22 couple of other methods you can use: 212.09, I think, 23 net emissions or whatever in addition to T-RACT, but 24 that's not what we're talking about here.</p> <p>25 What DEQ and Perpetua did is they did a project</p> <p style="text-align: right;">Page 49</p>

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<p>1 specific adjustment factor is what they called it. And 2 what they did was they took the annual arsenic -- they 3 took the arsenic emissions, the total emissions, and 4 instead of dividing by the life of the mine, which would 5 be your annual emissions as required under the 6 regulations, they divided by a 70-year human lifetime. 7 So what that essentially does is it lessens the 8 emissions significantly. They were able to comply with 9 the ten-fold AACC level if they did that. 10 But deleting the emissions that way does not 11 comply with the fact that you need to be comparing your 12 annual emissions, and not, you know, including another 54 13 years of nothing to derive that figure for your annual 14 emissions. So we don't believe what Perpetua did here 15 complies with the state's rules. 16 We also don't believe, to the extent that 17 they're arguing that, oh, you can do other things to 18 demonstrate compliance, to demonstrate that there's not 19 an unreasonable risk to human health, we don't see that 20 anywhere in the record. 21 There's a declaration by Kevin Schilling, who is 22 an atmospheric scientist not a cancer risk assessment 23 scientist, who tried to justify their use of this 70-year 24 dilution factor. We just don't see the evidence that -- 25 again, even if you read the rules to allow something like</p> <p style="text-align: right;">Page 50</p>	<p>1 the mine site. There are -- there's a population there 2 that lives there year-round. It's not huge, but, you 3 know, rural people are afforded the same protections -- 4 BOARD MEMBER STEELE: Yeah. 5 MS. THROWER: -- under the Clean Air Act as 6 anybody else. 7 BOARD MEMBER STEELE: For sure. 8 MS. THROWER: The Nez Perce Tribe that uses the 9 fishing and gathering and hunting -- I can't attest to 10 the amount of time they spend there -- they're not my 11 client. But in terms of, you know, it's not just an area 12 that people pass through on their way to somewhere else. 13 BOARD CHAIR BOWEN: Any other questions? 14 BOARD MEMBER MCELROY: Mr. Chairman. 15 BOARD CHAIR BOWEN: Yes. 16 BOARD MEMBER MCELROY: I have a quick question. 17 So the 70-year dilution factor that you're calling out, 18 does DEQ have any guidance documents that walks through 19 how to use that type of factor? Or has this approach 20 been used in other air permits that the DEQ has issued in 21 the past? 22 MS. THROWER: Not that we are aware of. During 23 discovery we asked DEQ if they could provide us with any 24 other permits that used this type of dilution factor, and 25 we did not get any documents from that. They simply do</p> <p style="text-align: right;">Page 52</p>
<p>1 that, we just don't see the rationale or the 2 justification or the support in the record to demonstrate 3 that this was a reasonable decision based on the record, 4 and not arbitrary and capricious. 5 I have taken a lot of Bryan's time. I'm going 6 to stop for questions. But I'm sorry, Bryan, and I hope 7 they'll be a little lenient on the time understanding 8 that, of course, the other parties should have the same 9 amount of time as well. 10 BOARD MEMBER STEELE: So I just have a couple of 11 questions. 12 BOARD CHAIR BOWEN: Go ahead. 13 BOARD MEMBER STEELE: So is there any human 14 habitation that's being impacted, you know, like for 16 15 years of this project? Or are we mainly talking about 16 the access road? 17 MS. THROWER: Well, the access road is really 18 just regarding the particulate matter. 19 Outside the ambient air boundary where the 20 arsenic issue comes in, Yellow Pine is the closest 21 community. I mean, we don't know. We can do a dilution 22 factor and everything, we don't know how far out you 23 would have to go to actually comply with the TAPs 24 increments, the ten-fold TAPs increments. 25 I think Yellow Pine is about 10 miles west of</p> <p style="text-align: right;">Page 51</p>	<p>1 not have that. 2 So we are assuming that this is really the first 3 time in a very precedential move to use this kind of 4 project-specific dilution factor for this permit. 5 BOARD CHAIR BOWEN: Any other questions? 6 (No response.) 7 BOARD BOARD BOWEN: Okay. Mr. Hurlbutt, you've 8 got 30 minutes. We were prepared for 30 each, so 30 9 minutes, you've got 30 minutes. 10 MR. HURLBUTT: Appreciate it. 11 MS. THROWER: Thank you. I definitely 12 appreciate that. I'll have a better lunch with my 13 colleague. 14 MR. HURLBUTT: Yeah. All right. So I'm going 15 to turn to the issue of DEQ allowing Perpetua to submit a 16 number of plans later, after the permit was already 17 approved, after public comment period had already 18 happened. Those plans still haven't been submitted, 19 they're required to be submitted 30 days before 20 operations might start. 21 So the permit allows for Perpetua to submit 22 these four plans -- the fugitive dust control plan, the 23 haul road capping plan, the access management plan, and 24 the operation and maintenance manual -- later. 25 But the Air Rules require, as I'll walk through,</p> <p style="text-align: right;">Page 53</p>

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<p>1 that plans and other information about the project be 2 submitted by the applicant, be evaluated by DEQ, and be 3 subjected to public comment before DEQ issues a permit or 4 makes a final decision on a permit. 5 And I'll also walk through how relevant case law 6 on meaningful public involvement supports this, and shows 7 that important project details like those that will be 8 included in these plans cannot be shielded from public 9 comment, as was done here. 10 So starting with the Air Rules -- and this is 11 not nearly as in-depth or as confusing as the arsenic 12 standard stuff that Julie just walked through -- but I'm 13 going to talk about Air Rules. 14 Let's start with Section 202 of the Air Rules. 15 This is what talks about what needs to be in an 16 application, required information for an application. 17 And this is in Air Rule 202.01.A(i). Required -- 18 applicants must provide, quote, 19 "Site information, plans, 20 descriptions, specifications, and 21 drawings showing the design of the 22 stationary source facility or 23 modification, the nature and amount of 24 emissions, including secondary 25 emissions, and the manner in which it</p> <p style="text-align: right;">Page 54</p>	<p>1 and comment on before a permit is approved. 2 Two of the plans have to do with dust control, 3 that's the fugitive dust control plan and the haul road 4 capping plan. 5 The fugitive dust control plan, that's permit 6 condition 2.6. You can see that at REC 0375, 376. 7 The haul road capping plan, that's permit 8 condition 3.13 at RAC 0385 through 86. 9 And the fugitive dust control plan requires, 10 among other things, quote, 11 "Specific criteria to determine what 12 frequency and type, water and/or 13 chemical, of dust suppressant must be 14 applied, and appropriate suppressant 15 application rates," end quote. 16 So the fugitive dust control plan is going to 17 include information about how often Perpetua is going to 18 use dust controls, what types of dust controls they're 19 going to use, and the rates at which they're going to 20 apply them. And this is super important information, as 21 Julia already mentioned. 22 While there are other sources of fugitive dust 23 from blasting and other operations at the site, the main 24 source is from the haul roads. And how dust is going to 25 be controlled on those haul roads goes straight to the</p> <p style="text-align: right;">Page 56</p>
<p>1 will be operated and controlled." End 2 quote. 3 Air Rule Section 209 also requires public 4 comment. And it states there that required information 5 for public comment is, quote, 6 "The department's proposed action 7 together with the information submitted 8 by the applicant and the department's 9 analysis of that information will be 10 made available to the public," end 11 quote. That's 209.01(c)(1). 12 The four plans that haven't been submitted 13 include: 14 The type of required information from Air Rule 15 Section 202; 16 Information about how the site's going -- the 17 facility is going to be operated and how emissions are 18 going to be controlled; 19 And it includes the kind of information that the 20 Section 209 requires to be made available during the 21 public comment period; 22 And the analyses that DEQ is going to perform in 23 the future when it reviews these plans that Perpetua is 24 supposed to submit is the kind of analysis that Section 25 209 requires to be put forth before the public to review</p> <p style="text-align: right;">Page 55</p>	<p>1 heart of whether this project can comply with the 2 National Ambient Air Quality Standards. 3 Similarly, the haul road capping plan, it 4 requires a silt content sampling plan; it requires an 5 arsenic rock sampling plan; and it also requires 6 specifications for how Perpetua is going to inspect and 7 maintain the haul roads. 8 These plans, these do indeed -- well, first of 9 all, they are plans. They have plans in the name of 10 them. And remember, the required information the 11 applicant must submit includes plans. And it also 12 includes information, specifications, descriptions 13 related to how the site will operate, and how pollution 14 will be controlled. And that's exactly what these plans 15 are and what they include. They describe how Perpetua 16 will operate and control the roads, and how they will try 17 and control dust at the site. 18 So instead of deferring them to the future, they 19 should have been developed now. There's no reason not to 20 develop them now and submit them to the public for 21 comment before making a decision on the final permit. 22 And this isn't just kind of a technical gotcha 23 thing. Again, this is really important as the record 24 shows in the air modeling that's included with the 25 Statement of Basis -- I have it right here.</p> <p style="text-align: right;">Page 57</p>

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<p>1 Appendix B to the Statement of Basis has the 2 ambient air quality impact analysis. And as we pointed 3 out in our briefing, DEQ and Perpetua model, what would 4 happen if instead of achieving 93.3 percent dust control, 5 which is what Perpetua is targeting to achieve, what 6 would happen if they instead achieved slightly less dust 7 control and only controlled 90 percent of the dust? 8 In that modeling they also said, and let's 9 suppose that Perpetua cut its emissions by a lot instead 10 of a -- or cut its operations by a lot. Instead of 11 producing 180,000 tons per day of materials, what if 12 those were scaled back to just two-thirds, so 120,000 13 tons per day? 14 When this modeling was performed, a huge cut of 15 the amount of operations -- so there's going to be a lot 16 less driving around and a lot less dust potentially being 17 generated -- and then just a tiny reduction in the 18 effectiveness of controlling dust from those roads, again 19 dropping from 93.3 percent dust control to 90 percent 20 dust control. 21 That modeling that's in the records shows that 22 the project would not comply with the NAAQS for coarse 23 particulate matter. That's not in dispute. That's in 24 the record. That's at REC 0691 through 0692 where DEQ 25 describes this, and then there's 0693, further</p> <p style="text-align: right;">Page 58</p>	<p>1 operate and control the Stibnite Road project with 2 respect to access management. 3 Access management is another important issue; it 4 relates to what Ms. Thrower just discussed about the 5 appropriate ambient air boundary. Instead of whether and 6 how the public access is being managed, does bear on 7 whether DEQ used the appropriate ambient air boundary for 8 this project. 9 In the permit the access management plan is 10 required to: 11 1. Identify the boundary and access points, 12 and specify measures to discourage public access. 13 And 2. It's also supposed to identify access 14 points that will be monitoring -- that will be monitored, 15 the frequency they'll be patrolled, and the methods that 16 will be used to discourage access. 17 Again, these are descriptions and specifications 18 and plans about the project that have not yet been 19 developed, not submitted for public comment, but DEQ 20 approved the permit anyway without having that 21 information. 22 And again, that's not in accordance with the Air 23 Rules of Section 202 that clearly require that kind of 24 information to be provided by the applicant, and Air 25 Rules 209 which require the public to be able to comment</p> <p style="text-align: right;">Page 60</p>
<p>1 information about that for a couple of pages. 2 So again, just a small reduction in how 3 effectively they control dust in the roads, even coupled 4 with a huge drop in production going on at the mine will 5 result in the NAAQS being violated. 6 So this is a super important issue. And the 7 idea that the details in these plans could just be 8 developed later, after the project's been approved by 9 DEQ, after the public's already submitted public 10 comments, does not comport with the Air Rules, Sections 11 202 and 209. 12 These are the type of required information that 13 the applicant needs to provide before a permit is issued, 14 and the type of information that needs to go before the 15 public, and DEQ's analysis of what's in those plans and 16 whether it's good enough also needs to go before the 17 public, and that was not done here. 18 The same is true of the access management plan. 19 This is permit condition 2.7. Like the other plans, this 20 is a plan, again it's the accent management plan -- 21 access management plan. And Rule 202 requires plans to 22 be submitted by the applicant during the permitting 23 process. 24 And that plan includes information, 25 specifications, and descriptions of how Perpetua will</p> <p style="text-align: right;">Page 59</p>	<p>1 about that information and DEQ's analysis of it before 2 the permit is issued. 3 BOARD MEMBER STEELE: So I've got a comment. 4 So, you know, IDAPA has rules for fugitive dust. And 5 within those rules, you know, you have to comply with 6 that. And there is a permit condition for that in the 7 permit to comply with the fugitive dust rules. It could 8 also be looked at that these plans are in addition to 9 that to help ensure that those fugitive dust rules are 10 complied with. Have you looked at it that way? 11 Because this is a very common practice for DEQ 12 to issue a permit and require a plan to be developed at a 13 later date to help ensure compliance with other permit 14 conditions. 15 MR. HURLBUTT: And so that may or may not be 16 appropriate with complying with the IDAPA provisions that 17 are specific to fugitive dust control. 18 But whether or not that's true, it's not 19 appropriate to do this when you've got an issue, such as 20 compliance with the National Ambient Air Quality 21 Standards. 22 And again, that part of Statement of Basis that 23 I pointed out with the modeling where just a tiny 24 increase in fugitive dust control could mean that the 25 NAAQS are violated shows that this is the kind of</p> <p style="text-align: right;">Page 61</p>

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<p>1 situation where you need to have that kind of information 2 considered before and evaluated by the Board. 3 And that's supported by two cases that we've 4 cited in our briefing and discussed. These are two 5 Federal Court of Appeals cases, Clean Water Act cases 6 dealing with what's required to have meaningful public 7 comment when a pollution permit is being issued, what 8 things need to be put before the public, or which things 9 could be saved for later. 10 This is the Environmental Defense Fund case that 11 had to do with small municipal storm water discharges and 12 permits for those. The EPA set up a program where 13 instead of setting forth criteria for each small 14 municipality to meet that would be subject to public 15 comment, they were going to let the municipalities 16 develop their own plans to meet six criteria EPA had 17 identified later as to how they would reduce discharges. 18 That got challenged in court. The Ninth Circuit 19 Court of Appeals held that the plans that those 20 communities were going to come up with were the kind of 21 substantive information about how the facilities would be 22 operated to reduce discharges that's required to be 23 subject to public comment and can't be shielded from 24 public comment 25 BOARD MEMBER PURDY: So your issue is</p> <p style="text-align: right;">Page 62</p>	<p>1 review. 2 The 2nd Circuit disagreed with that and said 3 that without meaningful public comment, those need to be 4 submitted to the public before issuing those permits. 5 The same situation here: the fugitive dust 6 control plan, the haul road capping plan, and the access 7 management plan, they all contain substantive and 8 important details about how Perpetua will control dust 9 and manage access at the site, so they cannot be shielded 10 from public review prior to DEQ issuing -- and need to be 11 available prior to DEQ issuing any permit. 12 And the last thing I'll note on this issue about 13 the plans being deferred: The recent EPA letter from 14 March 12th -- which I don't know if you've all had a 15 chance to review -- but it raises some serious concerns 16 about things that have yet to be put forth to the public 17 for comment. 18 On page 2 of the letter EPA notes that -- 19 yeah, requests that certain plans do be made available to 20 the public, and I'll just quote here. Near the end of 21 the letter EPA says, quote, 22 "Moving forward, we expect that all 23 information relied upon to issue permits 24 by the State of Idaho's permitting 25 program be made available for public</p> <p style="text-align: right;">Page 64</p>
<p>1 specifically around your fear that there will be a lack 2 of public comment opportunity during the development of 3 these four plans? Has DEQ established that they're not 4 going to allow public comment on those plans? 5 MR. HURLBUTT: The permit as currently written 6 does not allow for public comment on those plans. It 7 calls for Perpetua to submit those plans to DEQ, and it 8 says DEQ will review and then approve them. There's no 9 period afforded for public comment. 10 But I will also note that public comment after 11 the permit has already been issued, while I suppose 12 slightly better than no public comment, would still not 13 comply with the Air Rules requirements under Section 202 14 and Section 209 that we discussed. Meaningful public 15 comment has to happen before the final decision's been 16 made on the permit. 17 BOARD MEMBER PURDY: But they're not allowed to 18 begin operation until those plans are in place and fully 19 approved. 20 MR. HURLBUTT: Correct. And in the 2nd Circuit 21 in the Waterkeeper case that we cite, similar to the 22 Environmental Defense Fund case, this involved large 23 CAFOs. The EPA proposed that nutrient management plans 24 that specified how pollution was going to be managed on 25 these sites could be submitted later without public</p> <p style="text-align: right;">Page 63</p>	<p>1 review at the time that draft permits 2 are made available for public comment," 3 end quote. 4 For whatever reason, EPA seems to be willing to 5 give DEQ a pass here and let DEQ to move forward with 6 these late plans without public comment for Perpetua's 7 permit. 8 But EPA is signaling here, I think, that it's in 9 alignment with what we're saying that the rules actually 10 require this information to be put forth earlier in the 11 process to allow for meaningful public comment, and that 12 it expects Idaho to do so in the future. 13 So we would ask you to set aside and remand the 14 permit with directions that DEQ require these plans to be 15 submitted; that they be subjected to public comment along 16 with DEQ's analysis of those plans and their adequacy 17 before making any final decision on the permit. 18 Any other questions about the plans before I 19 move on to dust control? 20 So the last issue -- I think this is the third 21 of four issues in our brief. But the last issue being 22 argued now is DEQ's assumption that Perpetua will achieve 23 93.3 percent dust control. And our argument to that is 24 that it's arbitrary and capricious. 25 Again, I'm going to say this again, and I</p> <p style="text-align: right;">Page 65</p>

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<p>1 already talked about it, but this Appendix B, the 2 modeling report and the analysis that was done shows that 3 just a tiny reduction in dust control, Perpetua doesn't 4 meet that 93.3. Even if they scale back their operations 5 a ton and they are generating way less dust, they would 6 be violating the NAAQS for particulate matter. So only 7 slightly less dust control to cause NAAQS violations. 8 The target is for Perpetua to meet this 93.3 9 percent, but the permit lacks any enforceable conditions 10 to ensure Perpetua will actually achieve such a high 11 level of dust control. 12 The permit does have some conditions related to 13 dust control. And DEQ might be able to reasonably assume 14 that the project will result in a, you know, pretty good 15 dust control based on that, but there's nothing in there 16 that's really tied to achieving 93.3 percent as opposed 17 to say 90 percent or 85 percent. 18 Again, just getting back to the Air Rules, Air 19 Rules Section 203 provides that DEQ can't issue a PTC 20 unless it first determines that the facility, quote, 21 "...would not cause or significantly contribute to a 22 violation of any Ambient Air Quality Standards." 23 Here DEQ acknowledged that throughout the 24 record -- and we cite this a lot in our briefing -- that 25 achieving this 93.3 percent is critical to achieving</p> <p style="text-align: right;">Page 66</p>	<p>1 actually being achieved, or there is no testing to see at 2 startup kind of what dust control levels are being 3 achieved. 4 If there were those things, then you might be 5 able to have some kind of actual limit on 93.3 percent. 6 It's not in there. 7 What the permit does have is the facility dust 8 control plan and haul road capping plan that we've 9 already talked about a little bit, and some other 10 provisions related to fugitive dust. 11 But none of those things are tied specifically 12 to meeting 93.3 percent as opposed to, say again, 90 13 percent, which is a pretty high level of control and 14 would not satisfy the NAAQS. 15 BOARD MEMBER STEELE: So you say that it's 16 arbitrary and capricious, yet there's quite a bit of 17 record for where that 93.3 percent came from. 18 And, you know, the range, you know, from a 19 conservative standpoint, 90 percent was used for dust, 20 for the dust suppressant; it could have been 94, 95, it 21 could be up to like 98 percent just for the dust 22 suppressant alone. And with the water, the control 23 efficiency could be 75 to 95 percent. So, I mean, in 24 theory there could be up to a 99 percent control, 99.1, 25 something like that.</p> <p style="text-align: right;">Page 68</p>
<p>1 NAAQS compliance; that it's a very high and aggressive 2 level standard, and it will automatically require 3 quote -- well, yeah, DEQ states in the record that it 4 will be, quote, "Challenging to consistently and 5 continuously achieve the targeted level of fugitive dust 6 control," end quote. That's REC 0431. 7 DEQ modeling staff said, quote, that they, 8 "Recommend the permit requiring aggressive implementation 9 of measures to achieve above 93 -- to control 93 percent 10 control efficiency," end quote. That's at REC 0691. 11 Elsewhere in the record they say that, "Vigilant 12 inspection and monitoring will be required to achieve 13 that." 14 But again, the permit doesn't actually require 15 meeting 93.3 percent or greater dust control. There's no 16 requirement in the permit itself to meet that. 17 There are two tables in the permit that have the 18 number 93.3 in it, those are not emission limits or 19 enforceable conditions of the permits, those are just 20 listed targets and talking about the different things 21 going on at the facility. 22 And even if those listing of 93.3 in those 23 tables were to be considered some kind of limit in the 24 permit, there's nothing enforceable about it. There is 25 no monitoring to see what level of dust control is</p> <p style="text-align: right;">Page 67</p>	<p>1 So to say that it's arbitrary and capricious, I 2 mean -- I mean, I guess I'd like you to elaborate about 3 why. 4 MR. HURLBUTT: Sure. 5 BOARD MEMBER STEELE: Like what -- where's the 6 better information that DEQ could rely on to make this 7 decision? 8 MR. HURLBUTT: So we're not saying that it was 9 arbitrary and capricious for DEQ to conclude that it 10 might be possible to achieve 93.3 percent control. And I 11 think a lot of information in the record you're talking 12 about shows that DEQ, in its technical expertise, can 13 decide that that is an achievable level of control that 14 could be accomplished here. 15 What is arbitrary and capricious is to conclude 16 that that will be controlled here, because the permit 17 lacks specific conditions tied to actually achieving that 18 as opposed to, say again, 90 percent, which is still a 19 really high level of control, but it's not actually 20 adequate to comply with Ambient Air Quality Standards. 21 None of the things in the permit are tied to that. 22 There's been mention of this 10 percent opacity 23 monitoring; looking around, seeing with your eyes what it 24 looks like; if it looks like it's a little too dusty, 25 then corrective actions need to be taken. That's great</p> <p style="text-align: right;">Page 69</p>

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<p>1 and that's fine, but there's nothing in the record that 2 shows how that relates to achieving 93.3 percent as 3 opposed to 92 or 91 or 80 percent dust control. 4 It's a good practice -- that's great that 5 they're doing it -- but our key point is that even if 6 Perpetua comes up with some pretty good plans; submits 7 them to DEQ; DEQ thinks they look pretty good; signs off 8 on them; moves forward with the project; achieves a high 9 level of dust control; that high level of dust control 10 might be 93.3 percent, it might be 88 percent, it might 11 be 95 percent. 12 DEQ can't approve a project though unless it 13 determines that the project, based on its operations and 14 the limits in the permit, will comply with the air 15 quality standards. And so it was arbitrary and 16 capricious to do that here. 17 DEQ can say this has a shot at achieving 93.3 18 percent, and might meet it, but that's not what's 19 required. DEQ has to find that it will not cause a 20 violation of air quality standards. 21 There might be a lot of other situations where a 22 permit is for a facility and it's not teetering on the 23 edge of non-compliance like this one is. In other 24 situations having a ballpark target for dust control 25 might be fine because there's more wiggle room.</p> <p style="text-align: right;">Page 70</p>	<p>1 VICE CHAIR MACMILLAN: Okay. 2 MR. HURLBUTT: Yeah. 3 BOARD MEMBER STEELE: So this might be a 4 question I'll need to ask the DEQ. But Schilling in his 5 declaration, he did, there's a quote in here that he said 6 that the permit -- that the modeling group recommended 7 that the permit require aggressive implementation 8 measures to achieve above 93 percent control efficiency 9 for fugitive particulates from the roadways. 10 You're saying it's your belief the permit does 11 not require that, it does not require that compliance? 12 MR. HURLBUTT: It does not. I mean, the 13 fugitive dust control plan requires Perpetua to come up 14 with a plan for how they're going to determine how often 15 to apply materials, which types, and what amounts. And 16 again -- and I'm happy to assume that they'll do a pretty 17 good job of that, but again, how they're going to achieve 18 93.3 instead of some other lesser amount. 19 BOARD MEMBER STEELE: Okay. 20 MR. HURLBUTT: I guess the one last thing I'd 21 say on the 93.3 percent control is that, again, the 22 reason I think the recent EPA letter helps support this, 23 on the first page, the bottom paragraph, EPA raises 24 concerns about the fugitive dust control plan and says at 25 one point, quote,</p> <p style="text-align: right;">Page 72</p>
<p>1 But again -- and I know I've already mentioned 2 this four times, I'm going to mention it a fifth time -- 3 the modeling that's in the record shows that just even if 4 they cut their operations by a whole third, this tiny 5 change in dust control efficiency is modeled to cause 6 NAAQS violations. 7 And the permit doesn't have anything that 8 precisely leads to 93.3 percent dust control. The 9 project could move forward and be operating and causing 10 NAAQS violations every day, and no one would know any 11 better, and they'd be in perfect compliance with their 12 project, potentially achieving 90 percent dust control. 13 VICE CHAIR MACMILLAN: So, Bryan, I was just 14 wondering if anybody -- do miners have an idea just how 15 much -- without any control, how much dust would actually 16 be generated? I didn't see that in any of the documents. 17 And the reason I ask that, unless you know how much you 18 begin with, how do you know if there's a 10 percent 19 reduction or zero percent reduction? 20 MR. HURLBUTT: I think they do know or they have 21 estimates. This modeling starts from, assuming they're 22 driving around this much and generating this much dust, 23 then they say okay, if we control different things by 24 different amounts, then what are the results? And I 25 don't -- yeah. So they do start with that.</p> <p style="text-align: right;">Page 71</p>	<p>1 "The EPA understands that not all 2 details of an approvable plan can be 3 known in advance. But without permit 4 conditions requiring the source to 5 demonstrate that the plan will achieve 6 the required level of control, IDEQ may 7 have limited ability to reject or 8 require improvements to a plan that 9 falls short." 10 And this matches our main point that even if 11 they submit a pretty good plan and DEQ signs off on it 12 and they follow that plan to a T, IDEQ is not going to 13 actually have the ability to enforce a 93.3 percent dust 14 control because they're never going to know whether 15 Perpetua is actually achieving that, and there is nothing 16 in the permit to ensure that it is. 17 So with that, we would ask that you set aside, 18 remand the permit for DEQ to either add additional permit 19 conditions, modify the amount of operations that are 20 allowed, or otherwise take action to ensure that the PM 21 10 NAAQS will be complied with before issuing any permit. 22 BOARD CHAIR BOWEN: Thank you. Any other 23 questions? 24 (No response.) 25 BOARD CHAIR BOWEN: Okay. Thank you very much.</p> <p style="text-align: right;">Page 73</p>

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1 MR. HURLBUTT: Thank you.
 2 BOARD CHAIR BOWEN: We appreciate it.
 3 Now, with the hour, what's the will of the
 4 Board? Are you willing to move into the respondents'
 5 arguments, or do you want to take a break?
 6 All right. Do we need a motion to take a break?
 7 MS. YRIBAR: Yeah.
 8 BOARD CHAIR BOWEN: All right. I'll entertain a
 9 motion to break for lunch.
 10 VICE CHAIR MACMILLAN: I move we break for
 11 lunch.
 12 BOARD MEMBER SIGLER: I second it.
 13 BOARD CHAIR BOWEN: Everyone in agreement say
 14 aye.
 15 BOARD MEMBER PURDY: How long?
 16 BOARD CHAIR BOWEN: Half an hour.
 17 It's been moved and seconded. All in favor?
 18 (AYES.)
 19 BOARD CHAIR BOWEN: Any opposed?
 20 (No response.)
 21 BOARD CHAIR BOWEN: Thank you. We're adjourned
 22 for lunch.
 23 (Thereupon the luncheon recess was taken at
 24 11:55 a.m.)
 25

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1 AFTERNOON SESSION
 2 --oOo--
 3 (Thereupon the afternoon session resumed at
 4 12:32 p.m.)
 5 BOARD CHAIR BOWEN: Okay. We'll call the
 6 meeting back to order and we're now on record.
 7 Carol, can you hear us?
 8 BOARD SECRETARY MASCARENAS: Yes, I can.
 9 BOARD CHAIR BOWEN: Great. Thank you.
 10 Now, let's hear from the respondents DEQ and
 11 then Perpetua. You've each got 30 minutes.
 12 MS. YOUNG: You ready for me?
 13 BOARD CHAIR BOWEN: We're all ready. The floor
 14 is yours.
 15 MS. YOUNG: And thank you for taking a lunch.
 16 I'm sure nobody wanted to listen to me while hungry, so I
 17 appreciate that.
 18 Again, thank you for hearing this appeal today.
 19 My name is Hannah Young. I represent the Department of
 20 Environmental Quality. I'm their lead DAG and I'm
 21 representing DEQ today.
 22 I do again just want to underscore that it
 23 really is an exceptional effort by the Board to read all
 24 of the materials and spend the time preparing, so we
 25 really appreciate your efforts here today.

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1 I want to begin by discussing this permit from a
 2 really high level. As you're now aware from reading the
 3 voluminous record and the many, many filings, this permit
 4 has been highly scrutinized internally and externally.
 5 And, as a result, the permitting process has been complex
 6 and lengthy. In fact, it took nearly three years.
 7 Development of this permit also included three public
 8 comment periods, two public informational meetings, four
 9 permit iterations and, in general, just a level of
 10 examination that has been unmatched.
 11 The efforts by DEQ demonstrate its desire to not
 12 only engage with the public but to issue a permit that is
 13 protective and legally defensible.
 14 Now, if you were to only hear from the
 15 petitioners today or only read their briefing in the
 16 matter, you would be left with a disingenuous impression
 17 of this permit. They use words in their brief like
 18 rushed, partial, incomplete, vague, to describe the
 19 permit and the process, and they also make claims that
 20 DEQ is precluding the public from participating and from
 21 viewing the permit, and nothing could be farther from the
 22 truth. In fact, DEQ has engaged with these same
 23 petitioners during all three public comment periods and
 24 during the informational meetings, responding to the same
 25 claims they've made today if you look at the response to

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1 comments documents. And early in the process, DEQ even
 2 made changes to the permit based on their comments that
 3 were reasonable and made sense. So we're listening.
 4 As I said, the record relating to this permit is
 5 large: It contains emails, correspondence, guidance
 6 documents, public comments, public response to comments
 7 document. In fact, just the last response to comment
 8 document was 85 pages alone. There are three draft
 9 permits. Of course the -- I forget if it's 400- or
 10 500-page Statement of Basis and the permit itself.
 11 Upon review of the record you will find, I am
 12 confident, that there is not a single part of this permit
 13 this has not been considered, studied, and examined by
 14 DEQ. And the parts that are not in the permit that the
 15 petitioners would like to be there have similarly been
 16 studied, examined, and debated.
 17 You know, ultimately DEQ is here defending its
 18 decision to issue that permit, just like they've done to
 19 the public; to the EPA as we've seen through these
 20 letters being introduced; to the hearing officer, and
 21 now, of course, to you all at the Board.
 22 Issuing permits is DEQ's job, and DEQ continues
 23 defending this permit it issued because it's a good
 24 permit written by the experts at DEQ.
 25 Many of the permitting decisions are discussed

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<p>1 in the declarations of bureau chief Mike Simon and 2 atmospheric scientist Kevin Schilling which I know those 3 declarations have already been referenced so far. 4 Together those two gentlemen have a combined 60 years of 5 experience in the air permitting and air quality world. 6 There are a lot of other highly skilled, highly qualified 7 DEQ staff persons that were involved in this permit, 8 including Ms. Floyd, the air quality division 9 administrator who's been at DEQ for 24 years. 10 Now, petitioners don't like some of DEQ's 11 decisions, and that's fine. I would say that not liking 12 some of our decisions is inevitable, quite frankly. But 13 dislike is not the legal standard, and rightfully so. 14 The important legal standard is that DEQ was 15 reasonable, acted in accordance with the law, used lawful 16 procedure, and acted in a way that was not arbitrary, 17 capricious, or an abuse of discretion. And clearly DEQ 18 has met that standard. 19 Finally, one last aspect I'd like to discuss 20 from a high level, and then I promise I'll turn to the 21 discrete issues. And that is that if the Board today 22 finds that DEQ erred on any of the issues raised, then 23 the Board would be changing how the DEQ does business and 24 how DEQ writes permits. 25 Mr. Steele has sort of taken the wind out of my</p> <p style="text-align: right;">Page 78</p>	<p>1 very thoughtful, very well written decision that covers 2 all of the issues that you're hearing today. And so I 3 would urge you to rely on the hearing officer's decision 4 which, of course, is in the record, and to also uphold 5 his decision that DEQ acted reasonably and in accordance 6 with the law. 7 I know these arguments have been fully briefed, 8 you've heard about them, I'll do my best not to belabor 9 them. And, of course, please ask, you know, any 10 questions. 11 So the first issue is the access route. 12 Petitioners obviously do not agree with DEQ's decision to 13 preclude the Stibnite access route from the ambient air 14 boundary. 15 There are two points I want to emphasize here: 16 And the first is that DEQ was absolutely 17 reasonable and acted within its authority when it relied 18 upon Perpetua's assertion that it will have the authority 19 to exclude the general public and only allow guests of 20 the mine. 21 Section 123 of the Air Rules provides, 22 "All documents, including 23 applications for permits to construct, 24 must contain a certification by a 25 responsible official, and that</p> <p style="text-align: right;">Page 80</p>
<p>1 sails a little bit to this point in that he raised that 2 there are a lot of customary practices here that DEQ used 3 in writing this permit. And I don't bring this up to say 4 that, you know, this is the way it's always been done so 5 this is the way we should do it, no. 6 What I'm saying is that DEQ made no exceptions 7 for Perpetua; they cut no corners; they used their 8 standard, custom permitting practices that they relied 9 upon their professional judgment in making, and in 10 adhering to those professional judgments in issuing the 11 permit today. 12 So with that, I will now turn to the four 13 specific issues brought forward in this petition: The 14 Stibnite Access Road, the submission of project plans, 15 the 93.3 dust control, and arsenic emissions from the 16 roads. 17 As to all four of those issues, the hearing 18 officer who first heard this matter found that DEQ -- 19 found in DEQ and Perpetua's favor, and determined that we 20 acted reasonably and in accordance with law. 21 And I recognize that today you are reviewing 22 this matter de novo; in other words, you don't have to 23 defer to what the hearing officer decided. 24 That being said, the hearing officer thoroughly 25 considered this matter for over a year, and he issued a</p> <p style="text-align: right;">Page 79</p>	<p>1 certification must state that based on 2 information and belief, the statements 3 and information in the document are 4 true, accurate, and complete." 5 In the permit application Perpetua stated it 6 will have full control over the mine site and the ability 7 to not just control, but exclude, the general public. 8 Here again is an example of DEQ following its 9 typical process in relying on the assertions made by a 10 permittee, and that makes, I think, particular sense in 11 light of the certification requirement that's in the 12 rules. 13 To decide that DEQ was unreasonable here is to 14 now say that DEQ is required to investigate or fact check 15 every assertion made by a permittee. And I think it's 16 obvious that they simply do not have the time or 17 resources for that sort of undertaking. 18 I would also add that this scenario, wherein a 19 permittee does not own the entire facility/property, is 20 not uncommon. We often see facilities (sic) that do not 21 own their entire property but lease neighboring property, 22 maybe they need an easement or an access agreement to 23 part of the property. And all DEQ does in those 24 situations, just like it did here, was get a 25 representation that the permittee does or will have</p> <p style="text-align: right;">Page 81</p>

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<p>1 control over that property. We cannot possibly look at 2 those lease agreements or look at those access agreements 3 and make a claim that that's valid. We're not going to 4 insert ourselves in that type of examination, and we're 5 not a third-party arbitrator, like a court ultimately, or 6 a Board. And so we're not going to involve ourselves. 7 So this is, like I said, it's very common practice. 8 And here, despite what petitioners have said -- 9 and I know Perpetua will speak at this more at length -- 10 but we have not been presented with any actual evidence 11 that Perpetua will not have control of the mine site and 12 the ability to preclude access at the time the mine is 13 operational. Until and unless DEQ is presented with that 14 evidence, DEQ continues to reasonably rely on Perpetua's 15 assertions. 16 The permit itself also contains numerous 17 conditions actually requiring Perpetua to have control 18 over the route and the ability to preclude access, which 19 I know was brought up earlier. So condition 2.7 requires 20 a host of things like security escort vehicles, 21 guardhouses, locked gates, warning signs, registration of 22 guests, et cetera, which -- in the access management 23 plan, which must include specific measures Perpetua will 24 use to discourage public access. 25 If Perpetua does not meet those permit</p> <p style="text-align: right;">Page 82</p>	<p>1 have to wear a dosimeter; I need to sign a release or 2 liability form; I need to wear a hard hat and the right 3 type of shoes in certain areas. But I'm certainly not an 4 INL employee or one of their contractors. 5 And to unpack this even further. If I'm driving 6 down Highway 20, which I often do, I'm a member of the 7 general public driving on Highway 20. But the moment I 8 turn onto their facility, I become a guest of that 9 facility. And if I wasn't a guest and I was not allowed 10 to be there, I would certainly be asked to leave. And if 11 I didn't, I would be subject to both civil and criminal 12 trespass. And if I didn't follow the required protocols 13 while on-site, I would also be required to leave. This 14 would be true if the Board were to visit INL; this would 15 be true if a group of school children were visiting the 16 INL. 17 And I only provide this as an example that it's 18 very common for DEQ to permit a facility knowing that 19 there may be guests allowed on-site. And those guests 20 are not considered members of the general public. So 21 when they're on-site, just like when I'm at INL, I'm not 22 being protected as if I'm within the ambient air; I'm not 23 being protected from potential -- I mean, INL has a Title 24 5, or I don't know if it's a Title 5, they have an air 25 permit of some sort -- I would not be receiving the NAAQS</p> <p style="text-align: right;">Page 84</p>
<p>1 conditions and, in other words, does not exclude the 2 general public, they will be violating their permit, and 3 their permit will need to be modified or they can be 4 subject to an enforcement action. 5 The second point I want to make is that DEQ 6 properly used its discretion and did act in conformance 7 with both DEQ and EPA guidance. Both guidances state, 8 "It's appropriate to exclude areas from ambient air where 9 there are measures in place to exclude the general 10 public." 11 Now, petitioners claim, as you just heard, that 12 DEQ did not act in conformance with that guidance, and 13 they seem to, I would say, oversimplify the guidance and 14 say there are only general public and those directly 15 associated with the facility, and that's just not true. 16 So I'd like to give you an example, if you'll 17 indulge me. If I visit a facility, which I am often to 18 do in this role, say the Idaho National Lab, because I'm 19 on a guided tour, which happens frequently, or perhaps in 20 my role as representing DEQ. When I am not -- when I am 21 on-site, I am not a member of the general public, but I 22 did receive permission -- right? -- to be on-site. I'm 23 there for a limited purpose; I cannot go anywhere I 24 please; I'm expected to meet safety requirements while 25 I'm on-site; I can only be in certain locations; I often</p> <p style="text-align: right;">Page 83</p>	<p>1 protections while I'm on-site that I would be if I left. 2 I'm not a member of the public, but I'm not associated 3 with the facility. 4 So again, this example is just to highlight that 5 this is not uncommon, and it's absolutely in conformance 6 with guidance. 7 So in summary, DEQ has thoroughly considered 8 this issue, and while petitioners don't agree with this 9 decision, it is supported by the record and it is 10 reasonable. 11 BOARD SECRETARY MASCARENAS: Mr. Chair, I have a 12 question. 13 BOARD CHAIR BOWEN: Yes, Carol. 14 BOARD SECRETARY MASCARENAS: I, not being 15 familiar with the INL myself, I have thought about that 16 scenario and how we control things, how things are 17 controlled there. 18 But what about the aspect of, at the INL they 19 can restrict access and control. It goes to the 20 plaintiff's argument, there's two parts that need to be 21 met, control and then the exclusion of access, and surely 22 INL can also prevent access to the facility. Could you 23 respond to that aspect of the argument? 24 MS. YOUNG: Yes, Chairman and Ms. Mascarenas. I 25 hope I'm understanding your question correctly.</p> <p style="text-align: right;">Page 85</p>

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<p>1 But yes, just like INL, Perpetua will be 2 required to not only control access while it's on site, 3 but preclude the general public, which I would say they 4 do. 5 And if you've been to the national lab you know 6 that it's a highly secure site with, you know, guards, et 7 cetera, at guard towers when you enter. And if you're 8 not allowed to be there for that specific purpose, if you 9 do not do things like sign the liability waiver, et 10 cetera, then you're not allowed on-site. 11 So it's not just controlling what you're doing 12 while you're there, but it's also precluding you from 13 entering the site period unless you've met whatever 14 requirements. 15 And I understand it's not a perfect analogy. No 16 site will be perfectly analogous to another because INL 17 has all sorts of national security concerns and other 18 things. But it's, again, just to highlight that this is 19 not an uncommon situation for there to be more than just 20 general public at the facility. 21 BOARD CHAIR BOWEN: So just a follow-up question 22 to that. So if a member of the public rolls up to the 23 gate and says, "I want to pass through," are they going 24 to be able to pass through if they desire as a guest of 25 the facility, or are they restricted from entering the</p> <p style="text-align: right;">Page 86</p>	<p>1 BOARD MEMBER STEELE: Is it DEQ's intention to 2 do that? 3 MS. YOUNG: Oh, absolutely. Absolutely. And I 4 would also take issue to some extent with some of the 5 language in this letter. For example, they say that, 6 "There must be measures to maintain continuous monitoring 7 of the public's movement"; they're not the public, 8 they're not the general public. 9 EPA is not as familiar with this site, this 10 facility as DEQ is, so that's fine. But they're not 11 considered the public. The plan will require, as well as 12 I'd say the permit itself requires that their -- that 13 their movements be monitored and tracked. So absolutely 14 that's the requirement. 15 And now that you've mentioned it, Mr. Steele, 16 their letter also notes that DEQ's decision here was, as 17 quoted, "Generally consistent with EPA's revised policy 18 on exclusions from ambient air." 19 BOARD CHAIR BOWEN: And just one follow-up. 20 Let's say the permit goes through the NEPA process with 21 U.S. Forest Service, and they determine or their 22 stipulation is that you must provide public access 23 through the site. What happens to the permit if they 24 make a general ruling like that? What's the status of 25 the permit?</p> <p style="text-align: right;">Page 88</p>
<p>1 site? 2 MS. YOUNG: I think that question is probably 3 best answered by Perpetua, so I'll defer to them if 4 that's all right, but -- 5 BOARD CHAIR BOWEN: Okay. 6 MS. YOUNG: -- my understanding is that they 7 will be allowed to enter if they meet the various 8 requirements, and they will no longer be a member of the 9 general public. I hope that answers your question. 10 BOARD CHAIR BOWEN: So the assumption is that 11 control will be granted to Perpetua? 12 MS. YOUNG: Oh, absolutely. Perpetua has to 13 have that level of control and that ability, otherwise 14 they're violating their permit. 15 BOARD CHAIR BOWEN: Okay. 16 BOARD SECRETARY MASCARENAS: Thank you. 17 MS. YOUNG: Yes. Thank you. 18 BOARD MEMBER STEELE: So to follow up on that a 19 little bit. The petitioners refer to the EPA letter that 20 there was mention that EPA still has some concerns, but 21 then they go on to say in the last sentence of that first 22 paragraph on the second page, whatever approved plan that 23 gets developed, there should be something in that plan 24 that maintains, you know, basically control. 25 MS. FLOYD: Right.</p> <p style="text-align: right;">Page 87</p>	<p>1 MS. YOUNG: Yes, that would be a change in 2 circumstances; right? And not to throw Perpetua under 3 the bus here, but that's a little bit of the risk that 4 they took by applying for the process while the NEPA 5 process was still ongoing. 6 You know, but the bottom line -- and I don't 7 want to -- Mr. Pooser will talk about this much more 8 eloquently than I -- but the importance of the mine plan 9 and why a lot, not just this piece, is riding on the mine 10 plan. If the mine plan's not approved, then there's no 11 project anyway so then they don't need an air permit 12 anyways, right? 13 But if it were to be approved with that caveat 14 that they would have to be -- general public on that 15 road, for example, that would change the analysis, and 16 we'd probably have to go back to the drawing board on the 17 permit. 18 VICE CHAIR MACMILLAN: Mr. Chairman. 19 BOARD CHAIR BOWEN: Yes. 20 VICE CHAIR MACMILLAN: What kind of inspections 21 or monitoring does DEQ typically provide or have happen 22 at mines? I can speak to fish farms, I know something 23 about that. But a mine that's as big as this one, how do 24 you measure compliance with the permit? 25 MS. YOUNG: Sure. I think with any facility</p> <p style="text-align: right;">Page 89</p>

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<p>1 there's sort of the standard ways that you measure 2 compliance. 3 One of them is that the permit itself contains a 4 number of quite rigorous reporting and recordkeeping 5 requirements for things specific to access. So DEQ needs 6 to see those records and they need to, you know, see that 7 Perpetua is keeping track of that information. 8 The other standard way is that DEQ learns, for 9 example, that these permit conditions aren't being 10 followed is when DEQ is on site conducting inspections, 11 which they will be. We often get complaints from folks 12 notifying us, which then DEQ has a requirement to 13 follow-up on those complaints and verify the veracity of 14 those. 15 And then we often see a lot of self-reports 16 where the facility is letting us know, you know, they've 17 had a -- not a good example here -- but an exceedance or 18 whatever the case may be. 19 Here the Forest Service, for example, being a, 20 you know, land manager, and keeping us well apprised of 21 the NEPA process, I think DEQ feels also comfortable that 22 that party is going to be keeping us informed about 23 what's going on on-site as well. 24 But I think the two primary ways that DEQ will 25 be checking on compliance here are those robust</p> <p style="text-align: right;">Page 90</p>	<p>1 required plans after permit issuance. 2 And again I want to start by noting that this is 3 common practice for DEQ, as I think Mr. Steele actually 4 already mentioned that this was common practice. And 5 again, if the Board were to find that that was not an 6 allowed practice, every single permitting program at DEQ 7 would have to change how it does business. And this 8 practice really does make sense given the complex 9 realities of permitting various industries. 10 As Mike Simon testified in his declaration, 11 which is in the record, 12 "It is common for the permit program 13 to require certain plans, such as an O&M 14 manual or fugitive dust control plan, to 15 be prepared by the permittee post-permit 16 issuance. This allows the permittee to 17 prepare a specific plan or manual based 18 on the actual equipment purchased and 19 installed, the manufacturer's 20 instructions and recommendations, as 21 well as the operational characteristics 22 of the facility after construction is 23 completed." 24 And I want to note that it's not just common 25 practice, but it is common practice because the permit</p> <p style="text-align: right;">Page 92</p>
<p>1 recordkeeping requirements and the inspections that 2 occur. 3 And just like with any facility, DEQ simply does 4 not have the resources to be on-site 100 percent of the 5 time, that's just an impossibility. But when they are 6 on-site, which happens frequently, they find, you know -- 7 if they find violations -- which they do -- then those 8 would need to be dealt with accordingly 9 VICE CHAIR MACMILLAN: So as follow-up then, I 10 guess the key point is there's a routine inspection 11 process that DEQ has -- 12 MS. YOUNG: Absolutely. 13 VICE CHAIR MACMILLAN: -- of mines, and so 14 there's some confidence that you would catch misdeeds, 15 for example -- and maybe misdeeds is not the right 16 word. 17 MS. YOUNG: Sure. 18 VICE CHAIR MACMILLAN: But errors in judgment or 19 something. 20 MS. YOUNG: Absolutely, and that happens 21 regularly. 22 VICE CHAIR MACMILLAN: All right. Thank you. 23 MS. YOUNG: Yes. Thank you. 24 The second topic for consideration by the Board 25 is the decision to allow Perpetua to submit permit</p> <p style="text-align: right;">Page 91</p>	<p>1 itself contains the conditions and details necessary to 2 ensure compliance with the rules. The plans do not do 3 that. The plans are not what -- are not what are telling 4 us that the rules are met; the permit does that. But the 5 plans provide those operational details that flush out -- 6 flesh out how those permit conditions may be met. I like 7 to think of it as the permit is the what, and the plans 8 are a little bit of the how. 9 So an example: Section 2 of the permit contains 10 eight separate conditions related to the control of 11 fugitive dust. Condition 2.1 describes the reasonable 12 precautions Perpetua must take. And 2.1 alone contains 13 six substantive requirements. 14 Condition 2.6 then requires Perpetua to develop 15 a fugitive dust control plan. And condition 2.6 itself 16 contains 12 substantive requirements of what must be 17 further addressed in the plan. 18 So it's -- you know, it was brought up earlier 19 of whether this was, whether things might have been 20 arbitrary or capricious by DEQ. I think an obvious way 21 DEQ might have been arbitrary and capricious is if they 22 said prepare a fugitive dust plan that will control 23 fugitive dust period. That's not what happened here. 24 There's a lot of specificity in the permit that dictates 25 what must be in that plan, and that's, I think, very</p> <p style="text-align: right;">Page 93</p>

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<p>1 critical here. 2 BOARD MEMBER PURDY: Does that -- sorry to 3 interrupt. 4 Does that include the 93 plus percent control? 5 MS. YOUNG: Absolutely. And I can turn to that 6 now or I can address -- 7 BOARD MEMBER PURDY: No, it's okay. 8 VICE CHAIR MACMILLAN: So Mr. Chairman. I will 9 anyway. 10 So the petitioner has pointed out that the DEQ 11 rule requires plan submission -- 12 MS. YOUNG: Right. 13 VICE CHAIR MACMILLAN: -- as part of the permit 14 application. 15 MS. YOUNG: Right. 16 VICE CHAIR MACMILLAN: So how -- how do we get 17 around that? 18 MS. YOUNG: And I know that Perpetua was going 19 to speak to this too, but I'll address it also. 20 And I would say that the language that they're 21 relying upon, 402.01, I disagree with their reading of 22 the rule, for one. The rule section states: 23 "Required information. Site 24 information, plans, descriptions, 25 specifications, and drawings showing the</p> <p style="text-align: right;">Page 94</p>	<p>1 The hearing officer -- I lied, sorry, this is my 2 last point. 3 The hearing officer in his decision also stated 4 that there is no prohibition in the rules that would not 5 allow DEQ to require plans to be submitted later, and in 6 fact, the permit -- the rule language gives DEQ wide 7 discretion in what types of information can be in a 8 permit, and what types of permit conditions, such as the 9 condition to submit a plan. So there's wide discretion 10 there too. 11 BOARD MEMBER PURDY: I made a note during the 12 petitioners' presentation that they referenced Section 13 202 multiple times. 14 MS. YOUNG: Yes. 15 BOARD MEMBER PURDY: And I don't remember if 16 that was an EPA or an Idaho Code section? 17 MS. YOUNG: Yeah, that's the rule. And I think 18 that that 202 section is about the permit conditions that 19 DEQ has discretion to include, though I could be 20 misremembering. 21 BOARD MEMBER STEELE: It's the application. 22 MS. YOUNG: Yeah. 23 (Unreportable simultaneous cross-talk.) 24 BOARD MEMBER PURDY: It's that the application 25 had to be all open to public comment and --</p> <p style="text-align: right;">Page 96</p>
<p>1 design of the stationary source facility 2 or modification, the nature of the 3 amount of emissions, and the manner in 4 which it will be operated and 5 controlled." 6 It seems to me that that list of what's required 7 site information, plans, descriptions, specifications, 8 and drawings is regarding to showing the design of the 9 stationary source, which the plans and specifications for 10 the design of the source are absolutely required early 11 on. 12 I also want to note a little bit of 13 inconsistency in petitioners' argument in that their 14 latest reply that they filed they say that they 15 understand that the operation and maintenance manual that 16 DEQ is requiring -- which is a plan -- is okay; it's okay 17 that that comes later, they just don't like the other 18 plan. That's a very inconsistent approach and 19 application of the rule in my mind. And -- 20 I'm sorry, I thought I saw a hand raised. 21 But the last point I want to make a point of is 22 the EPA letter, to the extent that they're relying upon 23 that, also signals that it's fine to use plans, and they 24 talk about information being made available to the public 25 after those plans are approved by DEQ.</p> <p style="text-align: right;">Page 95</p>	<p>1 MS. YOUNG: Oh, okay. Sorry, the 209 section 2 was public comment. Thank you. 3 So I'm happy to turn to that too. So actually, 4 thank you for that lovely segueaway, because my second 5 point is that petitioners are claiming that this practice 6 of having plans being submitted later deprives the public 7 from meaningful involvement which, again, I take serious 8 issue with. And that section of the rule 209 simply says 9 that, "The public should be allowed an opportunity to 10 comment on the draft permit." An opportunity. 11 Here they have had three, because there have 12 been three draft permits that have all gone out for 13 public comment, so that obviously has been met. And 14 there's nothing in there saying that those plans need to 15 be required to be set out for public comment, which, 16 again, EPA seems to agree with in that they're saying 17 that information like a plan should be available to the 18 public. Which, since we're subject to the Public Records 19 Act anyways, are absolutely available to the public at 20 any time. 21 But all that's to say that what Section 209 of 22 the Air Rules requires is that the permit, the draft 23 permit be allowed to be commented on. That's what 24 occurred here. 25 And I would further argue that there's nothing</p> <p style="text-align: right;">Page 97</p>

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<p>1 in the plans that the petitioners haven't already had the 2 opportunity to comment on because, like I said, the true 3 substantive requirements are in the permit, and they've 4 had an opportunity to engage with DEQ on that. 5 The permit says that they're going to use a 6 chemical suppressant. We've talked about the control for 7 the chemical suppressant. We've talked about the need 8 for it to be applied. There's a plethora of conditions 9 related to that. The plan might say the exact hours that 10 the chemical suppressant needs to be applied; based on 11 the manufacturer's label will give you an actual 12 application rate, say every four hours, whatever, but the 13 plan -- the facility hasn't been constructed yet, so they 14 haven't purchased that chemical. That's the kind of 15 detail. 16 And so as far as what the rules are requiring, 17 and the rules wanting the public to be able to engage 18 with the permit, I would say that's absolutely being 19 satisfied here. 20 BOARD MEMBER PURDY: Thank you. 21 MS. YOUNG: Thank you. 22 So I think I've covered this issue well, I'll 23 move on to the -- and I will note that there were a 24 couple of cases that the petitioners referenced, and I'm 25 going to defer to my esteemed counsel to address those</p> <p style="text-align: right;">Page 98</p>	<p>1 relevant here and that speak to this level of control, 2 which, again, the 93.3 is not an emissions limit, it's a 3 control efficiency. So measuring it and saying 93.3 4 percent is going to be met is asking for an absolute; 5 it's asking for something that DEQ simply could not 6 provide. If you remanded the permit to DEQ and said we 7 need confirmation that 93.3 percent is going to be met 8 based on, you know, something that the petitioners are 9 asking for, that's an absolute. But absent some sort of 10 long-term study on-site, that information is not going to 11 be able to be provided. 12 But the permit condition, if those are met, then 13 DEQ has a very high level of confidence that the 93.3 14 will be met because that 93.3 percent was not pulled from 15 a hat, but is based on the method, standards, and data 16 relied upon by EPA. And you'll see it referenced in the 17 record at AP 42, that's the name of the guidance document 18 that determines the control efficiency. 19 But back to the permit conditions. So 20 conditions 2.1, 2.2, and 2.6, amongst others, require 21 Perpetua to apply water and chemicals to the roads to 22 control dust. 23 And as noted earlier in the conversation, DEQ 24 chose a very conservative number of 90 percent in the 25 range, the most conservative number that comes from AP 42</p> <p style="text-align: right;">Page 100</p>
<p>1 for you. 2 The third issue is that petitioners contend DEQ 3 lacked a reasonable basis in determining that the project 4 can achieve 93.3 dust control from the haul road. 5 And again, if you hear only from the petitioners 6 here or read only their brief, you would be left with a 7 disingenuous impression that DEQ is not confident that 8 this level of control will be met based on the permit 9 conditions. And as we heard from petitioners, you may 10 even be left with the impression that dust control is 11 difficult or outdated. Again, not true. And, in fact, 12 as was brought up, DEQ has rules for the reasonable 13 control of dust. 14 This is nothing new. There are a lot of 15 facilities that DEQ requires a fugitive dust plan, and 16 that require that, you know, this type of issue be dealt 17 with. 18 So I want to briefly note that in petitioners' 19 reply, and it was sort of brought out during the 20 conversation earlier, that petitioners agree at this 21 point that the 93.3 control is achievable. So I won't 22 get into the calculation of how that was done. But they 23 seem to take issue with the adequacy of the permit 24 conditions for meeting the 93.3 percent control. 25 So there are several permit conditions that are</p> <p style="text-align: right;">Page 99</p>	<p>1 in the 90 to 99 percent control efficiency for the 2 chemicals. 3 Condition 2.2 requires Perpetua to monitor the 4 frequency and methods used to control fugitive dust at 5 least once every 12 hours. 6 2.4 requires daily, facility-wide inspections 7 and hauling activities to ensure that the control 8 efficiency is achieved. There is corollary recordkeeping 9 requirements related to that, which DEQ will, of course, 10 be reviewing. 11 And condition 2.5 mandates that fugitive dust 12 control measures be applied to haul roads on a frequency 13 such that visible emissions from vehicle traffic do not 14 exceed 10 percent opacity. And if emissions do exceed 15 that level, Perpetua must take immediate corrective 16 action until fugitive dust is achieved. 17 And I think it was Mr. Simon who noted in his 18 declaration that these daily inspection and haul road 19 opacity requirements are more stringent than any other 20 permit DEQ has issued. 21 So petitioners have used the term aggressive 22 when it comes to these conditions, and we can call it 23 aggressive if you will, that's fine, but it's certainly 24 not a novel approach. 25 DEQ is well versed in controlling fugitive dust.</p> <p style="text-align: right;">Page 101</p>

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<p>1 I talked about the AP 42 that they used and relied upon 2 in determining that if these permit conditions are met, 3 then this control efficiency will be achieved. 4 And again, you know, those conditions may seem 5 stringent or they may seem aggressive, but DEQ only puts 6 permit conditions in a permit with the expectation that 7 the permittee will comply. So if the permittee does what 8 it's required to do, complies with the permit, then 9 confidence by the experts at DEQ who have analyzed all of 10 this information is very, very high that the 93.3 percent 11 will be met. 12 BOARD CHAIR BOWEN: Hannah, a follow-up question 13 here. I think one of the claims that petitioners made is 14 that the permit lacks enforceable criteria. One of the 15 things that I read in the record is this issue of 16 opacity. 17 Can you translate for the lay folks of us what 18 that actually looks like on the ground as far as what 19 enforcement looks like relative to the criteria? 20 MS. YOUNG: Yeah. Absolutely. And as a 21 former -- or also a layperson to layperson, I'll do my 22 best. Again, the experts at DEQ, their declarations and 23 their Statements of Basis are really critical here. 24 But my understanding is that DEQ will also be 25 on-site to do these, you know, when they're doing their</p> <p style="text-align: right;">Page 102</p>	<p>1 BOARD SECRETARY MASCARENAS: Mr. Chair, if I can 2 add to that question? 3 BOARD CHAIR BOWEN: Sure. 4 BOARD SECRETARY MASCARENAS: In particular, 5 seeing that the fact that the criteria or the 93.3 6 percent within our table lacks enforceability. 7 MS. YOUNG: So I'm hoping I heard the question 8 right; it sounds like you're sort of asking the same 9 thing. 10 Again, it's not an emission limit, it's a 11 control efficiency. And DEQ will determine that that 12 93.3 percent has been met if the permit conditions have 13 been met. 14 All of the permit conditions, including the ones 15 which are just an example of what's in the permit, if 16 those are not met, then DEQ does not have confidence and 17 would consider the control efficiency of 93.3 percent to 18 not have been met. 19 So it's imperative on Perpetua to meet these 20 conditions. And if they meet these conditions, 21 confidence is very high, again based on AP 42, the data, 22 the studies, et cetera, that the 93.3 percent is being 23 met. 24 BOARD MEMBER PURDY: So mathematically maybe 25 it's a they must do A plus B plus C, and if they do those</p> <p style="text-align: right;">Page 104</p>
<p>1 inspections and determining opacity, just like Perpetua 2 will be required to do. 3 And DEQ staff have actually been trained on 4 determining opacity. So they have a level of training 5 that says this is -- this is 10 percent, you know, this 6 is that threshold. And they have to go to training -- I 7 think the training is done by EPA -- and they look at 8 different dusty conditions, and they actually get trained 9 on how to do that. And so they have a level of 10 confidence with the 10 percent number that, you know, 11 they could identify that. 12 It's actually, in my mind, a pretty low 13 threshold in that if you're seeing dust, you need to do 14 something about it. 15 And I also want to note that all of this is 16 actually quite conservative when you consider the winter 17 months when there shouldn't be any dust and, you know, 18 the rainy days. And just the consistent application of 19 water and chemicals, you shouldn't really be seeing dust. 20 BOARD CHAIR BOWEN: So what -- overall what's 21 the general response to the assertion that there's no 22 enforceability to the 93.3? There's nothing in the 23 permit that's enforceable? What's your response to that, 24 in general? 25 MS. YOUNG: I mean, again --</p> <p style="text-align: right;">Page 103</p>	<p>1 things, it will equal 93.3 greater air control 2 efficiency. So they're not measuring the right side of 3 the equation, they are measuring the, Are you doing A? 4 Are you doing B? Are you doing C? 5 MS. YOUNG: I couldn't have said it better 6 myself. 7 BOARD MEMBER PURDY: Within the permit 8 conditions -- 9 MS. YOUNG: Absolutely. 10 BOARD MEMBER PURDY: -- you would do that. 11 MS. YOUNG: Absolutely. 12 BOARD MEMBER STEELE: Another analogy would be 13 like if you have a dust scrubber, and you have 14 particulates coming in, you can't pay money to always 15 have that be measured at the outlet, but you can monitor 16 flow and pressure drop. And if those are always being 17 met, you're going to be -- 18 BOARD MEMBER PURDY: You have confidence in the 19 reading. 20 MS. YOUNG: Exactly. It's a control efficiency, 21 right, and so it's a perfect example. Okay. 22 So I have no idea where I'm at on time, my 23 apologies, but I will move onto my final issue, if I may. 24 BOARD CHAIR BOWEN: You have about five 25 minutes.</p> <p style="text-align: right;">Page 105</p>

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1 MS. YOUNG: Perfect. Right on track.
2 Lastly, petitioners have alleged that DEQ
3 created a project-specific adjustment factor to
4 artificially dilute the ambient arsenic concentrations
5 attributable to the project. And ultimately here
6 petitioners are claiming that DEQ acted outside the scope
7 of the rules.
8 And I really only have one point to make here
9 and that is that DEQ did act in conformance with the
10 rules.
11 You know, I think ultimately petitioners
12 misunderstand DEQ's analysis. And to be fair, it is a
13 technical analysis and it relies on a number of rule
14 sections. And again, as I just said, you know, I am not
15 an atmospheric scientist, I'm not a scientist of any
16 sort, so I will do my best to sort of emphasize the
17 points I would like you all to be thinking about. But I
18 would encourage you to read the section of Kevin
19 Schilling's declaration where he talks about this
20 analysis for, you know, really the best authority as to
21 this point.
22 But again I want to emphasize that DEQ's
23 approach does fit squarely within the Air Rules, and I
24 would absolutely take issue with the claim that there's
25 been an artificial dilution.

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1 So first DEQ started with the AACC, the
2 applicable acceptable ambient concentration, in 586 which
3 provides that lifetime cancer risk of one in one million
4 for arsenic.
5 DEQ then performed a T-RACT analysis that's
6 specifically allowed in the rules, Section 210.12.C. And
7 that further refined the acceptable health risk to one in
8 100,000.
9 Now, what petitioners dislike is that during
10 that modeling and analysis, DEQ used specific
11 information -- which they don't normally have -- which is
12 the 16-year life of the mine to refine its analysis, as
13 the AACC assumes that the project will be going for 70
14 years. And that's fine.
15 When most facilities are constructed you think
16 it's permanent, you have no idea how long it's going to
17 operate, so you're just assuming it's going to operate
18 for someone's lifetime. Here we know that it's not going
19 to operate for more than 16 years. And, in fact, if they
20 were to change their mind, they would run into issues
21 with what has been permitted here.
22 And that 16 years, that 16-year life of mine was
23 the most relevant data, and it was the best information,
24 and it was inputted to come up with the most accurate
25 projections.

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1 Now, petitioners would like that specific
2 process to be set forth in rule; that's an impossibility.
3 The point of modeling and the point of these engineering
4 analyses are to use the methods and data that are
5 relevant to that specific project, and that's what DEQ
6 did. That's all they did. They didn't further divide by
7 70 the life of the mine. They further refined the AACC
8 to a calculation of 16 over 70, and they applied that.
9 Which essentially all that's doing is saying we know it's
10 not going to operate for 70 years, we know it's going to
11 operate for 16.
12 And built into that there are a lot of
13 conservative assumptions, which is very common in
14 modeling and those analyses, or so I'm told.
15 And ultimately DEQ was required to demonstrate
16 that the project's arsenic emissions would not injure or
17 unreasonably affect human health or animal life or
18 vegetation as required by the rules in Section 161 and
19 203.
20 And DEQ feels very confident that they met that
21 standard based on the rules and based on their modeling
22 analyses.
23 And again, I am happy to do my best to answer
24 questions as to that point, but I would again point you
25 to the experts at DEQ who are much more well versed in

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1 this, and also to point out that the hearing officer
2 found that as to this point DEQ provided un rebutted
3 expert testimony, and the petitioners have not done that.
4 They have not brought forward any experts who have taken
5 specific issue with how that modeling was done and with
6 how those various inputs were set forth in the analysis.
7 So with that, I would simply like to reemphasize
8 that petitioners simply dislike or disagree, as a matter
9 of opinion, the decisions made by DEQ, but they have
10 failed to prove at every turn that DEQ committed any
11 errors in its thorough and diligent preparation of this
12 permit; they failed to demonstrate that DEQ acted
13 unreasonably; that they violated any Constitutional or
14 statutory provision or an excess of authority or used
15 unlawful procedure or were arbitrary or capricious or an
16 abuse of discretion.
17 And, in fact, the opposite. I hope what I've
18 demonstrated here to you today is that with every single
19 issue DEQ has a thoughtful and reasoned basis for the
20 decision that it made.
21 So again, I would thank you for your thoughtful
22 consideration of this matter. And if there are any
23 questions, I'm happy to do my best to answer those.
24 BOARD MEMBER MCELROY: Mr. Chairman.
25 Thank you for walking us through those four

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1 points. I do have a question on the second point, and I
 2 apologize for not asking it when you were talking through
 3 it, we just moved so quickly to the third one.
 4 MS. YOUNG: Yeah. Sorry. Yeah. Absolutely.
 5 BOARD MEMBER MCELROY: The point regarding the
 6 submittal of plans in the application, and in Section
 7 2.02 it talks about the site information plans, da da da,
 8 showing the design of the stationary source -- which
 9 makes sense. But then the back half of that sentence
 10 ends with, "...and the manner in which it will be
 11 operated and controlled."
 12 And so help us understand, in this case the
 13 fugitive dust control plan would be the method that you
 14 control those, the fugitive emissions. So how do we not
 15 meet that back half of the sentence in the application by
 16 not submitting the fugitive dust plan?
 17 MS. YOUNG: Yeah. Absolutely. And I don't want
 18 to get too technical in statutory analysis here, but I
 19 would read that final comma and "and" as a standalone
 20 provision, "The manner in which it will be operated and
 21 controlled" as a stand-alone requirement, which DEQ
 22 absolutely has in the permit, "the manner in which it
 23 will be operated and controlled."
 24 And a lot of those permit conditions we haven't
 25 talked about today because they're not being challenged.

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1 There's a lot of operational requirements in the permit.
 2 But I think that the word "plan" doesn't necessarily
 3 relate to that final "and."
 4 BOARD MEMBER MCELROY: I'm asking -- that's the
 5 application procedures.
 6 MS. YOUNG: Oh, right, of the application.
 7 BOARD MEMBER MCELROY: Yeah, in that section
 8 it's talking about what's required in the application.
 9 MS. YOUNG: Right. I'm sorry.
 10 BOARD MEMBER MCELROY: And in the back half of
 11 that statement, "And the manner in which it will be
 12 operated and controlled --"
 13 MS. YOUNG: Yes, I'm --
 14 BOARD MEMBER MCELROY: -- in the application.
 15 So that's what I'm trying to resolve, if that's in the
 16 plan that's not submitted.
 17 MS. YOUNG: Yeah. And I apologize for speaking
 18 over you, but I understand your question better now.
 19 And similarly, I think the same thing applies
 20 that what they're required to demonstrate in that section
 21 that you've just read, that piece in the application that
 22 needs to be met, which is "The manner in which it will be
 23 operated and controlled," not the plans related to that
 24 sort of final phrase, you know.
 25 So it's a little bit of a matter of

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1 interpretation of how DEQ would interpret that rule
 2 section, which DEQ is afforded great deference in
 3 interpreting its own rules.
 4 But I don't see that as requiring the --
 5 Perpetua to submit the plans at that point in time
 6 related to the manner in which it will be operated and
 7 controlled. I think they do need to demonstrate,
 8 obviously, the manner in which it will be operated and
 9 controlled, but requiring them to have a lot of those
 10 details that we talked about during the application is
 11 just an impossibility.
 12 BOARD CHAIR BOWEN: Thank you. Okay. Any
 13 questions?
 14 BOARD MEMBER STEELE: Yeah, one.
 15 So with respect to arsenic, you know,
 16 petitioners talked about the unreasonable risks to public
 17 health and Yellow Pine was mentioned. In the modeling
 18 analysis, was there any demonstration that the arsenic
 19 concentrations all the way, 10 miles out to like a Yellow
 20 Pine, would impact like a human habitation?
 21 MS. YOUNG: Right. So what the modeling was
 22 required to demonstrate is that there would not be an
 23 unacceptable risk to human health at the boundary of the
 24 mine and beyond. And that was demonstrated.
 25 BOARD MEMBER STEELE: Okay. Thanks.

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1 BOARD CHAIR BOWEN: Okay. Thank you.
 2 MR. POOSER: Would it be possible to take a
 3 little break, just a little five-minute break?
 4 BOARD CHAIR BOWEN: Oh, sure.
 5 (Thereupon there was a brief recess.)
 6 BOARD CHAIR BOWEN: Okay. Ready to reconvene.
 7 We'll now hear from Perpetua. You've got 30
 8 minutes. If you'd state your name again for the record,
 9 please?
 10 MR. POOSER: Yeah, Christopher Pooser
 11 representing Perpetua.
 12 Thank you, Mr. Chairman and members of the
 13 Board.
 14 I don't intend to repeat what Ms. Young has so
 15 eloquently stated. Obviously we agree with DEQ, we agree
 16 with her defense of the permit, but I will be kind of
 17 covering some of the same ground, and I wanted to give
 18 you the perspective from Perpetua as well as answer any
 19 questions that you may have.
 20 So I asked Paula to pull up this map just so you
 21 can kind of get an idea of kind of where the project is.
 22 Can you turn that, Paula?
 23 MS. WILSON: Well, yes.
 24 MR. POOSER: One more. Getting there.
 25 MS. WILSON: Is this still the right document?

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<p>1 MR. POOSER: Yeah, it is, it just needs to be 2 turned. And then scroll. There you go. 3 MS. YOUNG: There you go. 4 MR. POOSER: So I wanted to give the Board, I 5 think everybody knows generally where the location is. 6 You can see kind of McCall kind of in the upper left; 7 Cascade is kind of in the lower left, and then you can 8 see Yellow Pine which is about 10 miles to the west of 9 the project at the top. And just to kind of give you an 10 idea of kind of where the project sits. And it's in a 11 very remote-like location. 12 And this project is a combination of a patented 13 mine claims, which Perpetua owns and controls, and it 14 also includes unpatented mine claims which are on public 15 lands, National Forest Service lands. 16 And this is a good project. I mean, it's going 17 to produce precious metals; it's going to produce 18 antimony -- if I can say that word right -- and it's, 19 antimony is, domestically is very rare, and it's used for 20 the country's national security, it's important for our 21 country's national security. 22 And this site was mined for decades. People may 23 be familiar with it. It was abandoned. And Perpetua has 24 been pursuing this project for many years, and Perpetua 25 is actually already on-site and is doing pre-permitting Page 114</p>	<p>1 permit process took 1,032 days. 2 So the result -- I mean, the result of this 3 rigorous and thorough process was a rigorous and thorough 4 permit. 5 And so I'll go ahead and take the issues in the 6 order that Ms. Young spoke to: So starting with the 7 access road, moving onto the operational work plan, 8 talking about the 93.3 percent, and then finally the 9 arsenic averaging. 10 With respect to the access road, this concerns 11 the ambient air boundary for the facility. And the 12 question that's really been posed to the Board is whether 13 or not DEQ abused its discretion in finding that Perpetua 14 had the legal right to control the site and to preclude 15 the general public, and also kind of the practical 16 ability to exclude the general public access. 17 And with respect to the legal control, 18 petitioners allege that Perpetua does not have the legal 19 right to exclude the general public to the -- over the 20 access road. And that is an assumption that is based on 21 their assumption that the Forest Service is requiring 22 public access through the site under the mine plan, and 23 that Perpetua can't close this road. And that is just 24 simply not the case. It's untrue and it's not supported 25 by the record that's before you today. Page 116</p>
<p>1 work primarily related to cleaning up the water quality 2 that's on the site. 3 And Perpetua's ultimate goal is to leave this 4 project and the site better, better than how it found it. 5 And so the permit that's before you today is one 6 of many permits that Perpetua has to obtain for the site. 7 There's already been, you know, discussion about the mine 8 plan. Perpetua needs approval from the Forest Service 9 for the mine plan for it to actually have the project. 10 Perpetua is required to get Clean Water Act 11 permits. 12 It's required to get permits related to kind of 13 financial assurances. 14 It's required to get dam safety permits. 15 And that's just to kind of name a few of the 16 regulatory processes that Perpetua is required to go 17 through to make this project a reality. 18 Ms. Young kind of touched on the timeline as far 19 as the permit development here, and it was nearly three 20 years. And I only kind of point that out because this 21 was a rigorous and thorough process over that three-year 22 period. 23 Ms. Floyd talked about, in her declaration, how 24 the typical permit to construct of a mine or source like 25 this one that has public comment takes 150 days. This Page 115</p>	<p>1 And I'd like to give you just a little bit of 2 context behind the mine plan. As I mentioned, this 3 project is a kind of patchwork of patented and unpatented 4 mining claims. And to control the site, Perpetua has to 5 have Forest Service approval of its mine plan. 6 And once Perpetua obtains approval from the 7 Forest Service for the mine plan, it will be authorized 8 to operate in accordance to the mine plan. 9 And one of the key aspects of this mine plan is 10 the creation of the operational boundary for the project. 11 And the operational boundary, which is essentially 12 established for safety and operational reasons, but 13 Perpetua will have the authority, once that operational 14 boundary is established, to control access to that 15 operational boundary, and it will give Perpetua the legal 16 right to exclude public access to their operational 17 boundary, and that includes the access road. 18 So let me back up a little bit kind of on the 19 timeline with respect to the mine plan. So Perpetua 20 initially submitted the mine plan to the Forest Service 21 in 2016. And that -- in the proposal that it submitted, 22 there was no access road. Perpetua has no need for this 23 road. It has no purpose whatsoever to its operations. 24 And some residents, particularly Yellow Pine residents, 25 voiced concerns about that, because traditionally they Page 117</p>

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<p>1 had been able to go past the site. 2 And Perpetua was asked to consider whether there 3 was some accommodation that could be made with respect to 4 the concerns that the Yellow Pine residents had made. 5 And so what Perpetua did is propose this access road. It 6 wants to be a good neighbor; it wanted to be responsive 7 to some of the concerns of the residents. 8 And as proposed in the mine plan, Perpetua will 9 have legal authority to control and to exclude the public 10 over the access road. We'll have full control and the 11 ability to preclude public access on this road. 12 And so, in essence, I mean, the access would be 13 provided to only those who kind of wish to take a 14 shortcut kind of through the project, so they're going 15 through for a limited reason. And they have to agree to 16 the conditions of access. 17 And so Perpetua is, you know, setting those 18 conditions for safety concerns, for operational concerns. 19 And the people that want to move across the site, which 20 is not the general public but this very kind of select, 21 this select few, are going through at Perpetua's 22 discretion. Perpetua can exclude access to the site. In 23 fact, it can actually close the site for years during 24 construction, during operations; it can close the site 25 for, you know, any kind of concerns about inclement</p> <p style="text-align: right;">Page 118</p>	<p>1 the project itself. 2 And so the petitioners, their assumption that 3 the Forest Service is requiring this public access is 4 just simply not true. 5 Perpetua has proposed this access as part of the 6 mine plan, and once it has approval of the mine plan, it 7 will have that ability to control that operational 8 boundary and exclude the public from the operational 9 boundary, and that includes the access road. 10 And another point I'd like to make is that 11 ultimately this is the petitioner's burden of proof in 12 this proceeding. And the only factual support that 13 they've actually raised that Perpetua will not have legal 14 control, will not be able to preclude access are two 15 memos that are in the record that were prepared for the 16 Forest Service. And they actually state exactly the 17 opposite. And I kind of point those out. 18 One is called the Stantec memo, and it's at 19 record 2558. 20 And there's another more lengthy air quality 21 report that also references the access road, and that is 22 at record 2684. 23 And both of these documents just simply report 24 what is in the mine plan. And they -- 25 Both of these documents acknowledge that</p> <p style="text-align: right;">Page 120</p>
<p>1 weather, safety concerns; it has that ability to shut off 2 access to the access road. 3 BOARD CHAIR BOWEN: We have a question. Go 4 ahead. 5 BOARD MEMBER STEELE: So if that control road is 6 shut off, how do folks access those areas? How do they 7 get to Yellow Pine and things like that? 8 MR. POOSER: So if you see Yellow Pine, so just 9 to the, you know, just to the west. 10 BOARD MEMBER STEELE: Yeah. 11 MR. POOSER: If you drop down and you come down 12 and there's a black road that kind of goes, it's marked 13 in black that kind of goes to the right, that road kind 14 of ties into the existing Burntlog Road, and then people 15 can pass through that way. 16 BOARD MEMBER STEELE: Okay. 17 MS. FLOYD: Can you see that? 18 BOARD MEMBER STEELE: Yes. 19 MR. POOSER: So again, kind of under the mine 20 plan that Perpetua has proposed to the Forest Service, it 21 is trying to establish this operational boundary. And 22 the importance of that operational boundary is that it is 23 an ambient air boundary for the purposes of a permit. So 24 Perpetua needs to get that -- needs to get that approved, 25 needs to get that approval. And it is obviously vital to</p> <p style="text-align: right;">Page 119</p>	<p>1 Perpetua will have legal control of its operational 2 boundary under the mine plan. 3 Both of these documents acknowledge that the 4 access road can be justifiably excluded from the 5 project's ambient air. 6 And both documents also acknowledge that EPA has 7 agreed that the access road is excluded from the ambient 8 air. 9 And I'd like to point out that, you know, 10 there's been some discussion about the EPA letter and the 11 EPA reference to still having kind of concern about 12 whether or not Perpetua has a legal right to exclude 13 access. And I would encourage you to look at those pages 14 because they refer -- because -- back up just a second. 15 Again, this ambient air boundary was extremely 16 important to the project. Perpetua needed to know early 17 on that that access road was not going to be considered 18 ambient air. And so once it was asked to kind of 19 consider the access road in the mine plan, it approached 20 DEQ and it asked DEQ early on if they could reach some 21 kind of understanding of how this access road could be 22 accommodated under the Air Rules. And that, in turn, led 23 DEQ to communicate with EPA. 24 And so when you look at those documents, they're 25 specifically referencing EPA's statement that it was good</p> <p style="text-align: right;">Page 121</p>

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<p>1 with DEQ's evaluation of the access road, and that it 2 would not be included in ambient air. 3 So it's a little disingenuous for EPA to kind of 4 come back at this late time and raise this issue based on 5 its prior representation. 6 VICE CHAIR MACMILLAN: So will the hauling 7 trucks be using the access road? 8 MR. POOSER: No. The access road's, it's a 9 completely different thing. Again, Perpetua doesn't need 10 the road. It has no operational value whatsoever. 11 And so they'll be building this road, you know, 12 for this limited, for this limited purpose, but it's 13 complete separate from the mine operations itself. 14 VICE CHAIR MACMILLAN: Well I can just imagine 15 somebody in a pickup or something meeting one of those 16 big, huge, gigantic -- 17 MR. POOSER: Yeah, that's not the case. Yeah, 18 not the case. 19 And so I think kind of at the end of the day 20 this is more like a challenge in sequencing. I mean, 21 Perpetua needs to get Forest Service approval for the 22 mine plan; it needs to get approval from DEQ for its air 23 quality permit; it needs to go through all the other 24 regulatory processes that it's required to go through in 25 order to permit the project. And the fact of the matter</p> <p style="text-align: right;">Page 122</p>	<p>1 compliance with EPA guidance, and Perpetua has the legal 2 right to control, Perpetua has the legal right to exclude 3 the general public, and the access is actually 4 controlled, and unsupervised access is prohibited. 5 I can take any questions you have on the access 6 road. 7 BOARD MEMBER STEELE: So real quick on that memo 8 on the REC 2558, the memo from -- to Brenda with the 9 Forest Service, is that correct, from Eric Clark? 10 MR. POOSER: Correct. 11 BOARD MEMBER STEELE: So you said that the 12 operational boundary would be the ambient air boundary? 13 MR. POOSER: Correct. 14 BOARD MEMBER STEELE: So the understanding is 15 DEQ has an ambient air boundary, but the Forest Service 16 plans, whatever that operational boundary is, is going to 17 be the ambient air boundary? 18 MR. POOSER: Yes. 19 BOARD MEMBER STEELE: Could that change from 20 what it is right now? 21 MR. POOSER: Well, let me understand that 22 question. So everything that DEQ did to evaluate the air 23 impacts from the facility and whether or not they were 24 NAAQS compliance was based on operational boundary, which 25 is the ambient air boundary. And so if there was some</p> <p style="text-align: right;">Page 124</p>
<p>1 is is that Perpetua can't begin construction until it has 2 the mine plan. And it's expecting the mine plan to be 3 issued in the last quarter of this year. And once it has 4 the mine plan, then it will have the authority that it 5 needs to undergo the project, and it will have the 6 authority that it needs to begin construction. 7 The second aspect of the access road that Ms. 8 Young handled very, very well, Perpetua does have 9 obviously the practical ability to control access and to 10 exclude the general public. And the permit is quite 11 clear about what Perpetua has to do to actually exclude 12 the general public. And it will have, you know, guard 13 shacks, it will have boundaries. Nobody is going to just 14 drive through the project. That simply cannot happen. 15 What happens is if people do choose to kind of 16 go through the project, they have to come up, they have 17 to stop, they're going to have to go through a safety 18 briefing, they're going to have to agree to kind of the 19 conditions of passing the site. And then Perpetua will 20 monitor this entire process. It's required to have 21 surveillance, and so it -- and then the travelers that 22 are going through, they have to check in and they also 23 have to check out, and they can't stop. There's -- it's 24 just a pass-thru. All it is is just a pass-thru. 25 So ultimately DEQ's decision here was it's in</p> <p style="text-align: right;">Page 123</p>	<p>1 change to that ambient air boundary, there would have to 2 be, most likely, a different analysis done. 3 BOARD MEMBER STEELE: But the operational 4 boundary itself has been set and is currently what the 5 ambient air boundary is? 6 MR. POOSER: So the operational boundary will be 7 set, so it will be established by the mine plan once the 8 Forest Service approves the mine plan. 9 BOARD MEMBER STEELE: Okay. 10 MR. POOSER: And that will set the operational 11 boundary, which is what Perpetua relied on for its 12 application for the permit. 13 And, you know, to reiterate, Perpetua was very 14 clear in application materials that it, that it will have 15 approval, and that it was basing its analysis of the air 16 quality impacts in the compliance with the NAAQS based on 17 the mine plan being approved and the operational boundary 18 being set. 19 BOARD MEMBER STEELE: So if for some reason that 20 operational boundary is different, Perpetua will have to 21 come back to the DEQ? 22 MR. POOSER: I think theoretically. I mean, 23 theoretically. Because, again, the operational -- the 24 operational boundary is the ambient air boundary. 25 BOARD MEMBER STEELE: Yeah.</p> <p style="text-align: right;">Page 125</p>

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<p>1 MR. POOSER: So if somehow it expanded, I would 2 say they probably would not have to, you know, undergo 3 any permit changes; I can't speak if it somehow shrinks. 4 But the mine plan that is in front of the Forest 5 Service right now, which is -- again which Perpetua 6 expects to be approved later this year, that is what the 7 air ambient boundary and operational boundary is. 8 BOARD MEMBER STEELE: Okay. Thank you. 9 MR. POOSER: Let me address the work plan. 10 These are operational work plans. And petitioners argue 11 that DEQ has violated the Air Rules with these 12 operational work plans, and they kind of -- there's 13 talk -- they talk about three different rule violations. 14 One, they're talking about how these plans 15 should have been submitted with Perpetua's application 16 materials -- and I'd like to get to Ms. Elroy's question 17 in a second. 18 And they've also argued that these plans need to 19 be fully developed at the time the permit is issued. 20 And then they also have arguments that these 21 permits or these plans have to be subject to public 22 comment. 23 And I think this begins at Rule 202 as was 24 discussed earlier. And again, this is talking about a 25 new stationary source and what the application materials</p> <p style="text-align: right;">Page 126</p>	<p>1 information. Again, we've -- Ms. Elroy's talked about 2 sort of the three -- the three different categories, if 3 I'm reading this right. 4 So I think what the petitioners have really kind 5 of sort of focused on is the first provision which talks 6 about the site information, the plans, descriptions, 7 specifications, and drawings showing the design of the 8 stationary source facility, their modification. And, you 9 know, its opposition to these operational work plans are 10 not plans under this rule. They are not plans that are 11 showing the design of the stationary source; they are 12 operational work plans. 13 And then the other -- the other components of 14 the application is the nature and amount of emissions, 15 and then the manner in which it will be operated and 16 controlled. 17 And that was the question that you had, Ms. 18 Elroy. And I think there's kind of two responses to 19 that: 20 One is what I mentioned earlier, that it's DEQ 21 that's using its discretion on determining what is 22 actually necessary in the permit application so it can 23 actually develop the permit. 24 And kind of aligned with that point is that DEQ 25 is developing a permit. These work plans are permit</p> <p style="text-align: right;">Page 128</p>
<p>1 are for a new stationary source such as the project. And 2 I think it's important to read the, kind of the 3 introductory language that's in 202. And it talks about: 4 "The applications for permit to 5 construct must be made using forms 6 furnished by the department. 7 "The application shall be certified 8 by the responsible official in 9 accordance with Section 123 -- 123, and 10 shall be accompanied by all information 11 necessary to perform any analysis and to 12 make any determinations required by 13 Sections 200 to 228." 14 And that language is very important there 15 because DEQ is actually determining what information is 16 necessary as, you know, per the rules. 17 And I think if you look back at the permit 18 chronology, you will note that DEQ actually deemed the 19 application incomplete a number of times, and Perpetua 20 was required to submit some supplemental information and 21 updated information with respect to the permit. And so 22 DEQ is exercising its authority fully under Rule 202 to 23 ensure that the, that the permit and application was 24 fully complete. 25 And then when you move on to the required</p> <p style="text-align: right;">Page 127</p>	<p>1 conditions. So it's kind of difficult to understand how 2 a permit condition should be part of the original 3 application materials. 4 And so Perpetua would surely have, you know, 5 identified the roads as fugitive dust sources, and it 6 would have proposed, you know, controls, and how those 7 would be operated and how those would be controlled, but 8 there's no permit -- there's no permit conditions yet. 9 And again, these plans were all permit conditions. And 10 so there's no requirement whatsoever that these plans be 11 submitted as part of the application materials. 12 BOARD MEMBER STEELE: Is there a requirement for 13 them to even be developed? 14 MR. POOSER: I think that's up to DEQ's 15 discretion. I mean, they have the ability -- they have 16 obviously the discretion and ability to build out this 17 permit and determine what the conditions are. 18 And you'll see in our permit that there are four 19 plans that have to be developed based on the actual 20 operation of the facility. 21 Does that answer your question? 22 BOARD MEMBER STEELE: Yeah. I mean, I guess 23 where I'm going with it is there's really no regulatory 24 requirement for each one of those specific plans to be 25 developed, it's really been up to DEQ's discretion to</p> <p style="text-align: right;">Page 129</p>

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<p>1 help determine compliance with the permit that these 2 plans will help ensure compliance with? 3 MR. POOSER: I'm not familiar with an Air Rule 4 that specifically requires the development of a 5 particular plan. I think it's a case-by-case, permit 6 specific. But clearly DEQ has the discretion to develop 7 these permit requirements and to put these plans in the 8 permit. 9 BOARD MEMBER STEELE: Okay. 10 BOARD MEMBER MCELROY: Thank you for walking 11 through that. And just to make it clear in my head. As 12 I look at those three buckets, that third bucket and the 13 manner in which it will be operated and controlled, if I 14 understand you correctly, Perpetua, they included in 15 their air application when they identified the fugitive 16 emissions associated with, for example, the road, they 17 concluded that they would control it with the dust 18 suppressant, or they included some reference in their air 19 application what they were going or what they were 20 proposing to do to operate and control it? Is that how 21 you close the whole loop? 22 MR. POOSER: Yes, I think that's correct. It's 23 been a while since I looked at the application itself to 24 see if that's specifically in there. I would assume it 25 was because, you know, the haul roads are a big emissions</p> <p style="text-align: right;">Page 130</p>	<p>1 reference for it. 2 BOARD MEMBER MCELROY: Thank you, Mr. Pooser, 3 that was very helpful. 4 MR. POOSER: So that kind of leads to the next 5 allegation that petitioners have made with respect to 6 that these have to be -- these plans have to be submitted 7 to public comment. 8 And when you look at Rule 209 specifically it 9 talks about, it says, 10 "The department's proposed action, 11 together with information submitted by 12 the applicant, and the DEQ's analysis of 13 the information." 14 And as Ms. Young aptly explained, the content of 15 these plans is very detailed within the permit itself, 16 and those were subject to public comment. 17 And as far as any concern about public comment, 18 Ms. Young addressed that from DEQ's perspective. And I 19 think this -- the way DEQ's policy kind of treats these 20 operational work plans, it makes complete sense. And 21 as -- 22 One of the examples she gave was that the 23 fugitive dust control plan, for example, requires this 24 chemical dust suppressants, and it requires the chemical 25 dust suppressants be used and applied consistent with</p> <p style="text-align: right;">Page 132</p>
<p>1 source on the project, and so DEQ would -- I mean, I'm 2 sorry, Perpetua -- and I'm assuming, it's been a while 3 since I read the application -- would propose how these 4 are going to be controlled. 5 And it's very common, as we already kind of 6 talked about, for chemical dust suppressant and water to 7 be used together to control fugitive dust. And it's 8 actually in the rules itself. 9 BOARD MEMBER MCELROY: Okay. 10 MR. POOSER: And so I think Perpetua would have 11 proposed that. 12 BOARD MEMBER MCELROY: So that's exceptionally 13 helpful considering that there are four issues that we're 14 talking about on these plans, and it's one of the four. 15 And I'm hearing you use words like "I think" and "I 16 assume." 17 Is there any way, Mr. Chairman, that we can get 18 validation, yes, that was part of the application? 19 Because then to me it's one of the four issues that 20 checks the box. 21 BOARD CHAIR BOWEN: I'm assuming we'd have to go 22 back to the record ourselves unless we can ask somebody 23 to research that. 24 MS. YRIBAR: I can provide a reference for you. 25 BOARD CHAIR BOWEN: You can provide us a</p> <p style="text-align: right;">Page 131</p>	<p>1 manufacturer's instructions and recommendations. 2 And when Perpetua is developing its permit 3 application, it doesn't know what chemical dust 4 suppressant it's going to use. It's not that far in the 5 process. Even when the permit is actually issued, it 6 doesn't know what chemical dust suppressant it's going to 7 use. And so -- and that is -- and that is important 8 because there's many, many manufacturers of chemical dust 9 suppressant, and they have different instructions and 10 different recommendations. 11 And what Perpetua is required to do under the 12 permit is to kind of put that detail into the fugitive 13 dust plan, you know, explain how it is to be mixed; how 14 it is to be applied; what are the application rates; when 15 to apply it; how to use it in different weather 16 conditions. All of that will depend on the particular 17 chemical dust suppressant that it uses. 18 Another example, like in the fugitive dust plan, 19 is the speed limits. Perpetua is supposed to post and 20 limit maximum speeds on the haul roads. And that is 21 dependent upon the actual construction of the haul roads. 22 It depends on the grade, how many turns are there? 23 So things like this cannot be -- cannot be 24 submitted as part of the application, they're not even 25 known when the permit is issued before they even have</p> <p style="text-align: right;">Page 133</p>

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1 permission to construct, they only come later. And so it
 2 is completely reasonable to have some of the detail, have
 3 the framework and the permit is subject to public
 4 comment, and then have the detail kind of come in later.
 5 And so I think, you know, at the end there's
 6 just nothing in the Air Rules themselves that required
 7 these pre-construction operating plans to be fully
 8 developed at the application stage or at the permit
 9 issuance stage.
 10 VICE CHAIR MACMILLAN: Question.
 11 MR. POOSER: Yes.
 12 VICE CHAIR MACMILLAN: And this doesn't pertain
 13 to PTC, but when you use those dust suppressants, so it
 14 tamps down the dust, where does the dust go then? My
 15 question really pertains to water quality. Does DEQ
 16 then, when they are considering -- and I have no -- it's
 17 not a point source, I don't think.
 18 But from a water quality perspective, do those
 19 suppressants go into the water and potentially affect
 20 water quality?
 21 MR. POOSER: I don't know the answer to that
 22 question.
 23 VICE CHAIR MACMILLAN: But DEQ, I would assume,
 24 would?
 25 MS. YOUNG: If I may, Mr. Chairman, answer the
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1 question. I don't know that --
 2 VICE CHAIR MACMILLAN: Sure.
 3 MS. YOUNG: I know that this was something that
 4 has been discussed. It's certainly not in front of the
 5 Board today, however, but it's -- it is certainly
 6 something that DEQ is aware of.
 7 I'm barely an air attorney, I'm definitely not a
 8 Clean Water Act attorney, and so I don't know the details
 9 of that, but I do know it's on the agency's radar.
 10 VICE CHAIR MACMILLAN: Thank you.
 11 MR. POOSER: Yeah. And I would assume that this
 12 is part of the manufacturer's, you know, recommendations
 13 and specifications.
 14 VICE CHAIR MACMILLAN: Right. Right.
 15 MR. POOSER: That's going to address that issue
 16 as well.
 17 BOARD MEMBER PURDY: Yes. Those products are
 18 going to have directions for use and application rates
 19 and application timing and what are going to be required
 20 to control --
 21 VICE CHAIR MACMILLAN: I would imagine so.
 22 BOARD MEMBER PURDY: -- their run-off.
 23 MR. POOSER: Yeah. Yeah. And how you apply it,
 24 if you apply it in certain weather conditions, et
 25 cetera.
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1 BOARD MEMBER PURDY: When you can and cannot
 2 apply it.
 3 MR. POOSER: Yes. Right. Yes. So let me turn
 4 to the fugitive dust emissions on the unpaved haul roads
 5 which is the issue with respect to the 93.3 percent.
 6 So as has been discussed, the permit establishes
 7 a 93.3 percent control efficiency for fugitive dust. And
 8 this is specific to the haul roads. These unpaved haul
 9 roads.
 10 And it's important to note -- I think Ms. Young
 11 kind of -- and I just want to reiterate what she said --
 12 is this is control efficiency, it's not a permit limit.
 13 I mean, haul roads are not emissions sources that can be
 14 measured. You can't put a stack on a road. You can't
 15 measure the fugitive dust that's coming off a road.
 16 And so the way that DEQ has dealt with this is
 17 established a control efficiency which it used for its
 18 modeling, and then it needs to ensure that the permit can
 19 achieve that 93.3 percent.
 20 And so there's really kind of two questions that
 21 the petitioners initially brought up in this contested
 22 case petition:
 23 And they were whether or not DEQ had kind of
 24 abused its discretion, number 1, in its choice of 93.3
 25 percent.
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1 And then the second question was really kind of
 2 the determination of the control analyses that were in
 3 the permit were sufficient to actually achieve the 93.3
 4 percent.
 5 The first question about DEQ's sort of choice of
 6 the 93.3 percent has already been addressed as Mr.
 7 Hurlbutt kind of acknowledged that they're not contesting
 8 that any longer.
 9 And again, there's been previous discussion
 10 about the EPA documentation that shows below, like on
 11 chemical dust suppressant between 90 and 98 percent, and
 12 water between 75 and a hundred percent.
 13 And so there really is no question that 93.3
 14 percent is achievable for a project like this, and that
 15 DEQ was completely reasonable in making that
 16 determination.
 17 And then that leads to the next question, and I
 18 think this has been addressed enough already. But it
 19 really is kind of like, you know, all of these permit
 20 conditions, as they add up in DEQ's determination, its
 21 decision that all of these different permit conditions
 22 add up to ensure that this 93.3 percent control
 23 efficiency can be achieved if all those conditions are
 24 met.
 25 And so the petitioners seem to want to look at
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<p>1 each one of these permit conditions in isolation, 2 individually, and you just simply can't do that. I mean, 3 and there was some mention during the argument that 4 there's just -- that none of the conditions in the permit 5 tied to the 93.3 percent, and that's just not -- that's 6 just not true. 7 When you look at the fugitive dust plan in 8 particular, and the requirements for the control of 9 fugitive dust with chemical dust suppressants, water, et 10 cetera, and then you also have -- and you also have a lot 11 of different dust -- fugitive dust control that Ms. Young 12 kind of highlighted. And then you even have -- 13 The permit even goes further than that in 14 something that hasn't been talked too much thus far is 15 the production limits that are in the permit. There are 16 life of mine production limits that limit how much daily 17 hauling and excavation can be done at the site. 18 And that is another way that DEQ limited the 19 fugitive dust emissions coming from the haul roads is by 20 limiting how many, you know, essentially trucks can be on 21 these roads at any one time in its production. 22 In addition, there's been a discussion about the 23 haul road capping plan, and it has silt limits. The DEQ 24 required that the road material has to have a maximum of 25 4 percent silt. And Perpetua is required to monitor that</p> <p style="text-align: right;">Page 138</p>	<p>1 And I was in the back and couldn't see who made 2 the comment, but there was a comment made about exposure 3 time is kind of critical for TAPs -- and it is. And this 4 is a 70-year -- this is a 70-year exposure time is kind 5 of what we're dealing with. 6 And so when you look at the Air Rules, they 7 allow for that adjustment that Ms. Young talked about. 8 When there's T-RACT and that risk, and that acceptable 9 risk comes in, it's kind of lowered to one in 100,000. 10 And again based on a 70-year continuous exposure, chronic 11 exposure. 12 And so, you know, DEQ, we think they were 13 completely appropriate in evaluating if this risk was 14 acceptable here. And it refined its analysis based on 15 the 16-year life of the mine. 16 And, as I mentioned, there's production limits 17 in the permit, and those are based on the life of the 18 map -- they're based on the life of the mine. Perpetua 19 only has so much ore to produce. And so regardless if 20 the mine operates for 16 years or 70 years, the 21 production limit caps the amount of arsenic emissions 22 because there's only so much ore to be had. 23 And so in that sense this does not dilute 24 emissions at all; the emissions are what -- the emissions 25 are based on the available ore on the site.</p> <p style="text-align: right;">Page 140</p>
<p>1 sample and to ensure that the roads meet that -- meet 2 that requirement. 3 And then you have all the many monitoring and 4 daily monitoring and daily recordkeeping requirements of 5 the permit. 6 How am I doing on time? 7 BOARD CHAIR BOWEN: Right about 10 minutes to 8 wrap up. 9 MR. POOSER: Okay. I'm doing good then. 10 So the last issue is this arsenic averaging. 11 And I don't have a ton to say about this. I think that 12 Ms. Young said it very, very well. I think it's 13 addressed very eloquently in the hearing officer's 14 determination and Mr. Schilling's declaration. But I 15 think there's some important points that I think need to 16 be considered here. 17 And we're talking about the AACC. And from my 18 own education, the acceptable ambient concentration for 19 carcinogen with respect to arsenic, and that is based on 20 -- that number that is in Section 586 is based on a one 21 in one million determination. It's a determination that 22 one in a million is an acceptable risk based on a 23 lifetime exposure of arsenic. And so what that means is 24 that there's a continuous exposure for 70 years; so every 25 minute of every day for 70 years there is exposure there.</p> <p style="text-align: right;">Page 139</p>	<p>1 And so in looking at the 70-year exposure DEQ 2 model, the highest annual arsenic emissions from the 3 project for the 16 years, and then it took into account 4 the fact that there was going to be 54 years of no 5 arsenic emissions, and we thought that was completely 6 reasonable under the analysis and the rules that DEQ 7 used. 8 And there was a question about the impact, kind 9 of how far out the arsenic exposure goes. And there's 10 a -- I'd like to give you a site so you can actually see 11 kind of on the map what the impacts of the arsenic is 12 from the modeling that was done. 13 And Paula, I don't know if you can pull this up, 14 but it's number, document number 36. 15 MS. WILSON: Okay. Hang on a sec. Okay. There 16 is document 36. 17 MR. POOSER: And then if you go to page 353 of 18 the PDF. 19 MS. WILSON: Is this the page you want? 20 MR. POOSER: Yeah, that's it. 21 So this kind of, just sort of illustrates where 22 there was one sort of problem area that DEQ is evaluating 23 the risk for. But you can kind of see how far out the 24 arsenic goes based on the maximum -- the maximum risk 25 they were using for this analysis.</p> <p style="text-align: right;">Page 141</p>

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1 BOARD MEMBER STEELE: So where is Yellow Pine
2 compared to this?
3 MR. POOSER: So it would be --
4 BOARD MEMBER STEELE: The upper left corner?
5 MR. POOSER: Yeah, it would be 10 miles to the
6 west.
7 BOARD MEMBER MCELROY: What was the AACC for
8 arsenic? Just to put the table into perspective.
9 MR. POOSER: 2.0002. It's one in a million so I
10 think it's .002, or .002 --
11 UNIDENTIFIED SPEAKER: Yeah.
12 MR. POOSER: Yeah, for the one in 100,000. So I
13 just wanted to provide that because I know the question
14 had been asked twice.
15 So with that, I'll conclude my remarks.
16 BOARD CHAIR BOWEN: Okay. Any other comments,
17 questions?
18 (No response.)
19 BOARD CHAIR BOWEN: Okay. Thank you very much.
20 We are prepared for a 10-minute rebuttal if you'd like to
21 take that?
22 MS. THROWER: All right. Thank you,
23 Mr. Chairman. I think we'll follow the same format as we
24 did the first go-round.
25 So I'll address the ambient air issues. You

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1 know, DEQ said that it's reasonable to rely on Perpetua's
2 assertions, application certified, they signed it and
3 everything, that they're excluding the public, general
4 public and only allowing guests of the mines. It's
5 because they've labeled everybody as guests of the mine.
6 I mean, it is -- it's, you know, unreasonable. And
7 anybody that goes there for any reason, even if they, to
8 go through that road to access public land, even if they
9 went there not even knowing they were going to pass
10 through an active mine site, they're supposed to be
11 considered guests of the mine?
12 I mean, this is -- this is Perpetua's way of
13 getting around not being able to exclude that road or to
14 exclude that road from ambient air protections because it
15 is a road that is to remain open for public use to access
16 public land.
17 You know, these people don't have any intent on
18 visiting the mine; they won't be allowed to visit the
19 mine. As I said, they might not even know that they were
20 going to be passing through an active mine site.
21 You know, we're not asking DEQ to go out
22 necessarily and do investigations of Perpetua's legal
23 authority to exclude the public from here, but we are
24 asking them to look at the entire record and all the
25 evidence in there.

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1 And there are statements about how this road is
2 going to be open, it is part of the -- inconsistent with
3 the U.S. Forest Service travel management plan as a
4 public road to access public recreation site.
5 You know, to the extent that DEQ just ignored
6 all of that, that is unreasonable, that's arbitrary and
7 capricious.
8 If we look at the Administrative Procedures Act,
9 an agency is supposed to make decisions based on all the
10 evidence in the record. Again, we're not saying go out
11 and get titles to this or that or whatever, but there's
12 evidence in the record that this road is to remain open
13 for public use. So, you know, they couldn't close it;
14 they couldn't exclude the public completely, so they
15 labeled everyone as guests of the mine.
16 I don't think that the INL example is really --
17 you know, it's not really relevant here. And I
18 understand situations, there's probably not an exact
19 situation like this, every situation is going to be, have
20 to be evaluated on a case-by-case basis. But Ms. Young,
21 you know, talks about visiting INL on-site wearing a hard
22 hat, wearing a dosimeter.
23 You know, as far as we know, as far as we
24 understand from the access management plan or what was,
25 you know, in the record regarding a potential access

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1 management plan, all we know is people are going to sign
2 a paper saying they're guests of the mine. I don't even
3 know if they're going to really understand and realize
4 that they are going to be breathing in a lot of
5 particulate matter and a lot of arsenic.
6 You know, I think there's a, you know, sort of a
7 sense, I think, from the DEQ and Perpetua about, well,
8 you know, people are just going to be passing through
9 here, you're not going to breathe this for a long time.
10 But the Clean Air Act, I mean, you know, it -- that's the
11 purpose of the Clean Air Act is to provide these
12 protections to the public even if you're just passing
13 through a road.
14 I mean, there's facilities where there's -- and
15 I'm not super familiar with INL but, you know, there's
16 facilities, and I assume this is one, that, you know,
17 there's a highway and maybe there's facilities on both
18 sides, and both of those facilities have an ambient air
19 boundary, but the highway is excluded from the ambient
20 air boundary, it has ambient air protections. So I don't
21 think the INL example is quite on point here.
22 I wanted to go back a little bit. I'm not going
23 to have Ms. Wilson pull up the map, but there's a lot
24 of -- even Google gets it wrong so, you know, it's a
25 complicated area. There's, you know, it's not paved

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<p>1 roads; it's a, you know, it's public land; there's a lot 2 of rivers and mountains and all sorts of things going 3 around there, so it's hard to get the layout of the roads 4 and the access and everything there. So I'm going to 5 refer you to our opening brief that we filed before this 6 Board on page 17 and 18 which is REC 3476 and 3477. And 7 then I'm going to go through some of the statements from 8 the hearing officer's decision about access to that site 9 and sort of the layout of the land.</p> <p>10 Currently this is not a shortcut; this is the 11 only way to get from the north entry to the south entry 12 to public lands to recreational sites for people. That 13 is -- well, sorry. I take that back. That is -- that 14 will be the only way for people to get to that area if 15 you exclude them from the rest of the ambient air 16 boundary. There is a road on the north side of the 17 ambient air boundary that is a circuitous route that can 18 get to these recreational sites, but that would go 19 through the ambient air boundary and that will be closed 20 to the public. So, you know, it's not a shortcut. This 21 is the only way that people in Yellow Pine can and will 22 be able to get to these other recreational sites is going 23 straight through the mine site.</p> <p>24 Again, it was mentioned that these people are 25 there for a limited reason; yes, they are there for a</p> <p style="text-align: right;">Page 146</p>	<p>1 areas that are right outside of that ambient air 2 boundary.</p> <p>3 So, you know, when we start talking about, oh, 4 well, you know, it doesn't matter that there's not a lot 5 of people there; it does to them and it does to the Clean 6 Air Act. The Clean Air Act doesn't distinguish, like, 7 well, okay, we can apply these rules if we're in the city 8 versus these rules; we'll have a little bit laxer rules 9 if we only think, you know, a hundred people live there 10 or something like that. That's not how the Clean Air Act 11 works. The Clean Air Act is there to provide protection 12 to everybody in the public, whether you're in a rural 13 area, whether you're in the city.</p> <p>14 And not to mention all the Nez Perce Tribe 15 members that routinely use that area for hunting, fishing 16 and gathering and spiritual activities.</p> <p>17 I wanted to mention the EPA letter. It was 18 mentioned, I believe, by Perpetua that, hey, this 19 discusses that they're okay with the access road.</p> <p>20 But if you look at their letter, they're talking 21 about the ambient air boundary. So I discussed this 22 about how, you know, that Perpetua has to have physical 23 or some sort of other barriers to preclude people from 24 the ambient air boundary. And that is what EPA is 25 discussing that they are okay with, and they are --- and</p> <p style="text-align: right;">Page 148</p>
<p>1 limited reason to pass through to use the public land. 2 They're not there as a guest of the mine; they're not 3 there to visit the mine; they're not there to, you know, 4 eat lunch at the mine; they're not there to, you know --</p> <p>5 I mean, you know, I think EPA's policies and 6 DEQ's guidance recognizes that there are certain people 7 that would normally maybe be part of the public that 8 aren't the public that are visiting the mine, like 9 invitees, people bringing deliveries, you know, contract 10 workers, things like that. Sure, those people are 11 excluded from the general public. But people passing on 12 this road just to get to public lands are not guests of 13 the mine.</p> <p>14 There's been discussion about, you know, there's 15 not a lot of people out here; you know, the general 16 public is very few. Well, I mean, if you consider 17 everyone as guests of the mine, there is no general 18 public, this is true. But, you know -- and Yellow Pine 19 is far away.</p> <p>20 But I want to make the point that this is an 21 important recreational area for people. People go there 22 and they spend a lot of time there in the summer. They 23 spend -- our standing declarations, I'll refer you back 24 to those -- some people spend a lot of time hiking, 25 backpacking, fishing, camping with their kids, at just in</p> <p style="text-align: right;">Page 147</p>	<p>1 they think that that meets the policy, but that is not 2 including the access route.</p> <p>3 BOARD CHAIR BOWEN: Two minutes.</p> <p>4 MS. THROWER: Okay. So arsenic. Ms. Young said 5 the permit is customary. This is -- it's customary for 6 them to dilute arsenic emissions. There was page 42 of 7 our brief, footnote 6, there's references there to memos 8 between DEQ staff about their concerns, about looking for 9 legal counsel on this issue of whether they can dilute 10 the arsenic by seven years instead of doing a real 11 average annual emission standard.</p> <p>12 There was talk about specific information, that 13 they have specific information that this mine is only 14 going to occur for 16 years for emissions, rather than 15 the AACC assumes that a facility is going to operate for 16 70 or more years.</p> <p>17 There are specific processes set out in the 18 rules for specific information. For example, the rules 19 have a short-term exception. Section 210.15 allows a 20 facility to have a 10-foot bump, just like with T-RACT, 21 but a 10-foot bump in the AACC if your facility is 22 operating for less than five years.</p> <p>23 The other option is that you use annual average 24 emissions. There's no other rule for project-specific 25 adjustments.</p> <p style="text-align: right;">Page 149</p>

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<p>1 BOARD CHAIR BOWEN: Would you wrap up? 2 MS. THROWER: Okay. When DEQ passed these 3 rules, they made that cancer assessment, you know. What 4 DEQ here is saying is that they think that being exposed 5 to a high concentration of emissions for 16 years is the 6 same as low concentrations of emissions for 70 years. 7 They haven't made that cancer risk assessment. 8 This was an atmospheric scientist declaration by Kevin 9 Schilling that basically just provided the same rationale 10 for the project-specific adjustment that was in the 11 response to comments that we don't agree with. And 12 there's no additional cancer risk assessment that says 13 that that was appropriate for them to do. 14 And with that, I will turn it over to my 15 colleague. 16 BOARD CHAIR BOWEN: Okay. Thank you. 17 MR. HURLBUTT: Thank you. All right. So first 18 on allowing Perpetua to submit plans later after the 19 permit has been approved, I just want to touch on a few 20 things that came up. 21 The first one is I think I heard both DEQ and 22 Perpetua suggest, how could they possibly come up with 23 these plans now? That would be ridiculous, it's just too 24 much detailed information and it's too burdensome. 25 The whole permit, the permit application, the</p> <p style="text-align: right;">Page 150</p>	<p>1 that absolutely that will be in the plan. 2 If you look at permit condition 2.7 which lays 3 out what needs to be in the access management plan, it 4 says, among other things, "Public access to the facility 5 may be monitored by the use of security escort vehicles 6 or other things." 7 And this gets to the underlying problem here. 8 We don't yet know what's in the access management plan. 9 Our clients, other members of the public, EPA have not 10 been able to comment on what's actually in the access 11 management plan because it hasn't been developed yet, and 12 it's not going to be submitted for public comment. This 13 permit has already been approved without these kinds of 14 important details being before the public and being 15 subject to their comments. 16 Again, there could be the kind of monitoring of 17 public through the site, but there's no requirement in 18 the permit that that actually be included. 19 Next is interpreting Section 202 about what 20 needs to be required in an application. Ms. Elroy had a 21 good point about 202 saying site information, plans, 22 descriptions, specifications, and drawings, and that 23 those relate to the facility; they also relate to the 24 nature and amount of emissions; they also relate to the 25 manner in which things will be controlled; you can't weed</p> <p style="text-align: right;">Page 152</p>
<p>1 Statement of Basis is full of all kinds of complicated, 2 complex, technical, specific details about tons of 3 aspects about this mine, and the idea that they couldn't 4 come up with how frequently and in what amounts they're 5 going to apply dust controls, or how they're going to 6 actually access -- manage access at the site is just 7 absurd, and the operational boundary is a good example of 8 that. 9 During Mr. Pooser's talk the operational 10 boundary was up there. Perpetua explained how they 11 decided on this operational boundary a long time ago. I 12 think deciding on that boundary was probably way more 13 complicated than coming up with plans for how they're 14 going to control dust, how they're going to control 15 access management and things like that that are in these 16 required plans that have not yet been submitted. 17 Related to that, the EPA letter talks about the 18 access management plan. And I heard Ms. Young say that 19 absolutely the access management plan is going to track 20 public access through the site. 21 EPA in its letter recommended that the plan 22 include some kind of continuous monitoring, "Maintain 23 continuous monitoring of the public's movements through 24 the site," and DEQ is saying absolutely that will be in 25 the plan. I don't know what basis there is for saying</p> <p style="text-align: right;">Page 151</p>	<p>1 those out of there. And of course not every single 2 detailed specification can reasonably be included in an 3 application; it's what are the important ones that need 4 to be in there. 5 And that's where, as Mr. Pooser pointed out, at 6 the beginning of Section 202 it says that the application 7 must include, quote, "All information necessary to 8 perform any analysis or make any determination required 9 under Sections 200 through 227." 10 So those are the determinations that DEQ has to 11 make that this project will comply with National Ambient 12 Air Quality Standard; will comply with arsenic TAPs; will 13 comply with other standards. 14 So no, unimportant details that don't go towards 15 whether this is going to comply with air quality 16 standards might not need to be part of the plan's 17 information, description, specifications. 18 But if that information is important and 19 actually goes towards whether this permit will comply 20 with air standards, they absolutely need to be included. 21 And so that would include here dust control. 22 I'm going to mention this for the sixth time in 23 the record, if they do not meet their dust control by 24 just a tiny bit, the project will violate the NAAQ. And 25 until we see application rates and timing and frequency</p> <p style="text-align: right;">Page 153</p>

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<p>1 of dust control measures, there's no way DEQ could have 2 done the analysis it needed to do to make its 3 determination that this project will comply with the PM 4 10 NAAQ. That's the kind of information that needs to be 5 put before the public. That's what those two federal 6 appellate court decisions that I referenced support. 7 I guess with that I'll turn to the 93.3 percent 8 issue unless anyone has questions about the plan? I 9 sense that everyone is pretty ready to get out of here. 10 Just two points on meeting the 93.3 percent dust 11 control target. As I pointed out, there is nothing that 12 specifically ties any of these permit conditions to 13 actually achieving 93.3 as opposed to some slightly 14 lesser amount like 90 percent or 85 percent. I didn't 15 hear DEQ's attorney or Perpetua's attorney point to 16 anything that does that. There's sort of the sense that, 17 well, there's a lot of things in here, and if you 18 consider them all together, that's enough to hit 93.3 19 percent. And that's just, that's not true. 20 Those things are enough to think that this is 21 probably going to do a pretty good job at dust control, 22 it's not going to come in at, you know, 5 percent dust 23 control or something terrible like that. But there's 24 just no basis for saying that, well, yeah, this will hit 25 93.3.</p> <p style="text-align: right;">Page 154</p>	<p>1 boundary monitoring around the site. 2 Additionally, there could just be changes to 3 what's done. There are other sources of fugitive dust 4 that could be limited. The operations could be limited. 5 There's not -- there are things that could be done to 6 ensure that the project will comply with the NAAQS that 7 have not been done now. 8 And unless there's any further questions, I 9 thank you. 10 BOARD CHAIR BOWEN: Thank you. 11 Thank you to everybody that's presented. 12 Appreciate it. 13 Is it the desire of the Board to enter into 14 executive session? I'll entertain a motion. 15 VICE CHAIR MACMILLAN: Yes, sir. Mr. Chairman, 16 I move the Board enter into an executive session pursuant 17 to Idaho Code 74-206(1)(f) to communicate with legal 18 counsel for the public agency to discuss the legal 19 ramifications of and legal options for pending litigation 20 or controversies not yet being litigated but imminently 21 likely to be litigated. 22 I request that a roll call vote be taken and 23 that the vote -- and that vote be recorded in the minutes 24 of this meeting. 25 BOARD CHAIR BOWEN: Thank you. Do I hear a</p> <p style="text-align: right;">Page 156</p>
<p>1 What provisions in the permit are any different 2 than if they were trying to hit 90 percent dust control, 3 or 85 percent dust control, or 98 percent dust control? 4 Everything that's in the permit is just pretty good 5 practices for pretty good dust control that will probably 6 do a pretty good job. But this idea that they're going 7 to hit 93 and barely meet the NAAQS is not supported by 8 what's in the permit or anything in the record. 9 And then the final thing on 93.3 percent. DEQ 10 suggested that, gosh, there's just nothing we could do 11 about this, they're asking for something impossible here. 12 But there are things that could be done about it. 13 Source testing is something that's commonly done 14 to see how a particular pollution control might work. 15 There could be ways to test at initial 16 operations how the dust control is actually going, to see 17 if it's coming in at 93.3 percent. 18 And then there's also the available practice in 19 the Air Rules of having ambient air boundary monitoring. 20 This is in Section 211 of the rules. DEQ can require 21 ambient air boundary monitoring. That would be a 22 backstop that could confirm that based on everything DEQ 23 and Perpetua says will happen will achieve 93.3 percent 24 and would not cause a NAAQS violation, that will confirm 25 that that is actually happening if there was ambient air</p> <p style="text-align: right;">Page 155</p>	<p>1 second? 2 BOARD MEMBER MCELROY: Second. 3 BOARD CHAIR BOWEN: Elaine, would you take a 4 roll call vote, please? 5 BOARD CLERK GANINO: Yes, Mr. Chairman. 6 Mark Bowen. 7 BOARD CHAIR BOWEN: Aye. 8 BOARD CLERK GANINO: Dr. Randy MacMillan. 9 VICE CHAIR MACMILLAN: Aye. 10 BOARD CLERK GANINO: Carol Mascarenas. 11 BOARD MEMBER MASCARENAS: Aye. 12 BOARD CLERK GANINO: Beth Elroy. 13 BOARD MEMBER ELROY: Aye. 14 BOARD CLERK GANINO: John Sigler. 15 BOARD MEMBER SIGLER: Aye. 16 BOARD CLERK GANINO: Clayton Steele. 17 BOARD MEMBER STEELE: Aye. 18 BOARD CLERK GANINO: Pat Purdy. 19 BOARD MEMBER PURDY: Aye. 20 BOARD CHAIR BOWEN: Motion carries. We adjourn 21 to executive session. Thank you. 22 Thanks, everybody. 23 (Thereupon the Board convened into 24 executive session off the record.) 25 BOARD CHAIR BOWEN: Randy, do we have a motion?</p> <p style="text-align: right;">Page 157</p>

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1 VICE CHAIR MACMILLAN: Mr. Chairman, I move that
 2 the Board resolve out of the executive session and that
 3 the meeting of the minutes reflect that no action was
 4 taken during executive session.
 5 BOARD CHAIR BOWEN: Thank you.
 6 We have a motion, do we have a second?
 7 BOARD MEMBER SIGLER: Second.
 8 BOARD CHAIR BOWEN: We have a motion and a
 9 second.
 10 Elaine, would you take a roll call vote, please?
 11 BOARD CLERK GANINO: Yes, Mr. Chairman.
 12 Mark Bowen.
 13 BOARD CHAIR BOWEN: Aye.
 14 BOARD CLERK GANINO: Dr. Randy MacMillan.
 15 VICE CHAIR MACMILLAN: Aye.
 16 BOARD CLERK GANINO: Carol Mascarenas.
 17 BOARD MEMBER MASCARENAS: Aye.
 18 BOARD CLERK GANINO: Beth Elroy.
 19 BOARD MEMBER ELROY: Aye.
 20 BOARD CLERK GANINO: John Sigler.
 21 BOARD MEMBER SIGLER: Aye.
 22 BOARD CLERK GANINO: Clayton Steele.
 23 BOARD MEMBER STEELE: Aye.
 24 BOARD CLERK GANINO: Pat Purdy.
 25 BOARD MEMBER PURDY: Aye.

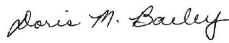
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1 BOARD CHAIR BOWEN: Motion carries. We're back
 2 in session.
 3 The first order of business is a five-minute
 4 break. We'll be right back.
 5 (Thereupon there was a brief recess.)
 6 BOARD CHAIR BOWEN: Okay. Call this meeting
 7 back to order. I want to certainly thank everybody for
 8 the effort that's been put into this. We have -- as a
 9 Board we've heard a lot, there's a lot to consider.
 10 Any comments from the Board?
 11 (No response)
 12 BOARD CHAIR BOWEN: Without that, I will
 13 entertain a motion.
 14 VICE CHAIR MACMILLAN: Mr. Chairman, I move the
 15 Board take the issue as presented, the amended petition
 16 for review of preliminary order, under advisement, and
 17 issue a written final order within 56 days of today's
 18 hearing.
 19 BOARD CHAIR BOWEN: We have a motion. Do we
 20 have a second?
 21 BOARD MEMBER MCELROY: Second.
 22 BOARD CHAIR BOWEN: We have a motion and a
 23 second.
 24 Elaine, will you take a roll call vote, please?
 25 BOARD CLERK GANINO: Yes, Mr. Chairman.

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1 Mark Bowen.
 2 BOARD CHAIR BOWEN: Aye.
 3 BOARD CLERK GANINO: Dr. Randy MacMillan.
 4 VICE CHAIR MACMILLAN: Aye.
 5 BOARD CLERK GANINO: Carol Mascarenas.
 6 BOARD MEMBER MASCARENAS: Aye.
 7 BOARD CLERK GANINO: Beth Elroy.
 8 BOARD MEMBER ELROY: Aye.
 9 BOARD CLERK GANINO: John Sigler.
 10 BOARD MEMBER SIGLER: Aye.
 11 BOARD CLERK GANINO: Clayton Steele.
 12 BOARD MEMBER STEELE: Aye.
 13 BOARD CLERK GANINO: Pat Purdy.
 14 BOARD MEMBER PURDY: Aye.
 15 BOARD CHAIR BOWEN: The motion is carried.
 16 With that, we're ready to adjourn. Do we have a
 17 motion to adjourn?
 18 VICE CHAIR MACMILLAN: So moved.
 19 BOARD CHAIR BOWEN: Do we have a second?
 20 BOARD MEMBER SIGLER: Second.
 21 BOARD CHAIR BOWEN: All in favor?
 22 (AYES.)
 23 BOARD CHAIR BOWEN: Thank you. We are
 24 adjourned. Thank you very much.
 25 (Proceedings concluded at 3:43 p.m.)

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1 CERTIFICATE OF CERTIFIED SHORTHAND REPORTER
 2
 3 STATE OF IDAHO }
 } ss.
 4 COUNTY OF ADA }
 5
 6 I, DORIS M. BAILEY, CSR NO. SRL-1074, a
 7 Certified Shorthand Reporter, certify:
 8 That the proceedings were transcribed by me or
 9 under my direction, to the best of my ability;
 10 That the foregoing is a true and correct
 11 transcription of all proceedings, to the best of my
 12 ability;
 13 That I am not a relative or employee of any
 14 attorney or party;
 15 I further certify that I am not financially
 16 interested in the action.
 17 IN WITNESS WHEREOF, I set my hand and seal this
 18 19th day of March 2024.
 19
 20
 21 
 DORIS M. BAILEY
 CSR #SRL-1074, RPR, CRR
 Notary Public
 Post Office Box 2636
 Boise, Idaho 83701-2636
 24 My Commission Expires: June 12, 2028
 25

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[achieves - agree]

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