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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	)	
SOUTHFORK SALMON,	)	OAH Case No.
Petitioners,	)	23-245-01
vs.	)	
	)	
IDAHO DEPARTMENT OF ENVIRONMENTAL	)	
QUALITY,	)	
Respondent,	)	
and	)	
	)	
PERPETUA RESOURCES IDAHO, INC.,	)	
Intervenor-Respondent.	)	
_____	)	

SPECIAL MEETING  
MAY 1, 2024  
BOISE, IDAHO

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

1           A P P E A R A N C E S  
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3       BOARD MEMBERS:  
4           MIKE BOWEN, Chair  
5           BETH ELROY  
6           JOHN R. MACMILLAN, Vice Chair (Remote)  
7           JOHN SIGLER (Remote)  
8           CLAYTON STEELE (Remote)  
9           PAT PURDY (Remote)  
10       ALSO PRESENT:  
11           ANN YRIBAR, ESQ.  
          Deputy Attorney General  
12           ELAINE GANINO  
13           Board Clerk  
14           PAULA WILSON  
          Board Coordinator  
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1           P R O C E E D I N G S  
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3       BOARD CHAIR BOWEN: It's Monday, May 1st, 2024,  
4 9:00 AM. This is Mark Bowen, Chairman of the Idaho Board  
5 of Environmental Quality.  
6       I call to order this special meeting of the  
7 Idaho Board of Environmental Quality. In addition to  
8 being a public meeting, we are also on the record on the  
9 matter of Air Quality Permit to Construct Issued to  
10 Perpetua Resources Idaho, Inc., agency case number  
11 0101-22-01, OAH case number 23-245-01.  
12       This special meeting is being held in the state  
13 office of the Department of Environmental Quality.  
14       For those present in the meeting room, please  
15 sign in on the sheet provided at the entrance.  
16       There won't be an opportunity for public comment  
17 today.  
18       Elaine, could you please take roll?  
19       BOARD CLERK GANINO: Yes, Mr. Chairman.  
20       Mark Bowen.  
21       BOARD CHAIR BOWEN: Here.  
22       BOARD CLERK GANINO: Dr. Randy MacMillan.  
23       Randy? He's there, I see him there. Randy?  
24 He's not responding. I'll go back and try him again.  
25       Beth Elroy.

1           I N D E X  
2  
3                                   Page  
4       Proceedings                   4  
5       Agenda Item Number 1  
6           Motion                   6  
7           Vote                   6  
8       Executive Session               7  
9           Motion                   7  
10          Vote                   8  
11       Agenda Item Number 2  
12           Motion                   9  
13           Discussion               10  
14           Vote                   18  
15       Closing                   18  
16           Motion                   18  
17           Vote                   19  
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1       BOARD MEMBER ELROY: Here.  
2       BOARD CLERK GANINO: John Sigler.  
3       BOARD MEMBER SIGLER: Here.  
4       BOARD CLERK GANINO: Clayton Steele.  
5       He's online also.  
6       BOARD MEMBER STEELE: Here.  
7       BOARD CHAIR BOWEN: There we go.  
8       BOARD CLERK GANINO: Pat Purdy.  
9       BOARD MEMBER PURDY: Here.  
10      BOARD CLERK GANINO: We'll go back to Randy  
11 MacMillan.  
12      VICE CHAIR MACMILLAN: Here.  
13      BOARD MEMBER BOWEN: There we go.  
14      VICE CHAIR MACMILLAN: I'm here.  
15      BOARD CHAIR BOWEN: We got you, Randy. Thanks.  
16      VICE CHAIR MACMILLAN: All right.  
17      BOARD CHAIR BOWEN: And Carol's not joining us;  
18 correct?  
19      BOARD CLERK GANINO: Correct.  
20      BOARD CHAIR BOWEN: Okay. All right. So the  
21 Board --  
22      BOARD MEMBER STEELE: Clayton Steele here.  
23      BOARD CHAIR BOWEN: Clayton, we've got  
24 everybody. Thank you.  
25      BOARD MEMBER STEELE: Okay. Thanks.

CORRECTED COPY

1 BOARD CHAIR BOWEN: The Board intends to take  
2 action at this meeting. No additional statements or oral  
3 argument will be taken at this meeting. A court reporter  
4 is present to record the Board's discussion.  
5 We will now move on to the agenda items. Agenda  
6 number 1 is the option for the Board to go into executive  
7 session. I will entertain a motion.  
8 BOARD MEMBER ELROY: I move the Board enter into  
9 executive session pursuant to IC 74-206(1)(f) to  
10 communicate with legal counsel for the public agency to  
11 discuss the legal ramifications of and legal options for  
12 pending litigation, or controversies not yet being  
13 litigated 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: We have a motion. Is there  
17 a second?  
18 VICE CHAIR MACMILLAN: Second.  
19 (Reporter clarification.)  
20 BOARD CHAIR BOWEN: Randy, Dr. MacMillan.  
21 We have a motion and a second. We'll now call a  
22 roll vote.  
23 Elaine.  
24 BOARD CLERK GANINO: Yes, Mr. Chairman.  
25 Mark Bowen.

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1 BOARD CHAIR BOWEN: Aye.  
2 BOARD CLERK GANINO: Dr. Randy MacMillan.  
3 VICE CHAIR MACMILLAN: Aye.  
4 BOARD CLERK GANINO: Beth Elroy.  
5 BOARD MEMBER ELROY: Aye.  
6 BOARD CLERK GANINO: John Sigler.  
7 BOARD MEMBER SIGLER: Aye.  
8 BOARD CLERK GANINO: Clayton Steele.  
9 He's online also.  
10 BOARD MEMBER STEELE: Aye.  
11 BOARD CHAIR BOWEN: There we go.  
12 BOARD CLERK GANINO: Pat Purdy.  
13 BOARD MEMBER PURDY: Aye.  
14 BOARD CHAIR BOWEN: The motion has carried. We  
15 will now move to executive session.  
16 Thank you.  
17 (Thereupon there was a brief recess.)  
18 BOARD CHAIR BOWEN: All right. I'll entertain a  
19 motion.  
20 BOARD MEMBER ELROY: I move that the Board  
21 resolve out of executive session and that the meeting of  
22 the minutes reflect that no action was taken during the  
23 executive session.  
24 BOARD CHAIR BOWEN: We have a motion.  
25 MS. YRIBAR: Clayton.

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1 BOARD CHAIR BOWEN: Do we have a second?  
2 BOARD MEMBER STEELE: Second.  
3 BOARD CHAIR BOWEN: We have a motion and a  
4 second. All in favor? I guess we'll take a roll call  
5 vote.  
6 Elaine, will you take a roll call, please?  
7 BOARD CLERK GANINO: Yes, Mr. Chairman.  
8 Mark Bowen.  
9 BOARD CHAIR BOWEN: Aye.  
10 BOARD CLERK GANINO: Dr. Randy MacMillan.  
11 VICE CHAIR MACMILLAN: 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. So we are  
21 back on the record after executive session.  
22 We're now on agenda item number 2, Amended  
23 Petition for Review of Preliminary Orders Filed in the  
24 Matter of Air Quality Permit to Consent -- Construct  
25 Issued to Perpetua Resources Idaho, Inc., Agency Case

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1 number 0101-22-01, OAH case number 23-245.  
2 This is an action item to discuss and adopt a  
3 final order prior to service of a written order within 56  
4 days of the March 14th, 2024 oral argument.  
5 I'll entertain a motion.  
6 BOARD MEMBER ELROY: I move based on the  
7 foregoing, the DEQ Board finds:  
8 Number one. DEQ acted responsibly in  
9 determining that Perpetua will have legal control of the  
10 Stibnite Road access route such that it could properly be  
11 excluded from consideration as ambient air.  
12 Number 2. DEQ acted responsibly in determining  
13 that Perpetua what will have physical and practical  
14 control of the Stibnite Road access route such that it  
15 could properly be excluded from the consideration as  
16 ambient air.  
17 Number 3. DEQ did not violate the air rules by  
18 allowing Perpetua to submit some plans after the PTC was  
19 issued.  
20 Number 4. The PTC includes enforceable  
21 conditions that will achieve 93.3 percent dust control.  
22 Number 5. There was insufficient evidence to  
23 support DEQ's evaluation of the ambient air  
24 concentration.  
25 The DEQ Board moves to remand this matter to the

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1 hearing officer for further factual development in  
2 accordance with the terms of this order.  
3 We further direct our legal counsel to draft a  
4 final order in accordance with the terms of our decision,  
5 and to serve it on the parties by Thursday, May 9th.  
6 BOARD CHAIR BOWEN: We have a motion. Do we  
7 have a second?  
8 BOARD MEMBER PURDY: Second by Pat Purdy.  
9 BOARD CHAIR BOWEN: We have a motion and a  
10 second. We will now have a general discussion. I'd open  
11 it to Board members to discuss any of the items, 1  
12 through 5.  
13 MS. YRIBAR: You want to just call on people?  
14 BOARD CHAIR BOWEN: Yeah, let's start.  
15 Dr. MacMillan, I'll start with you.  
16 VICE CHAIR MACMILLAN: Mr. Chairman, I do not  
17 believe DEQ's creation and application of a  
18 project-specific adjustment factor can be supported by  
19 Idaho's air quality rules. I believe DEQ has  
20 misinterpreted how the acceptable ambient concentration  
21 for carcinogens, the AACC, must be applied if it is to  
22 comply with our air quality rules.  
23 Further, and most disturbing to me, is that the  
24 creation of a project-specific adjustment factor suggests  
25 that there is a significant ignorance about cancer,

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1 became well versed in numerous aspects of cancer biology,  
2 including how cancer is initiated, how it -- how cancer  
3 is promoted, and how it progresses.  
4 The biological processes associated with cancer  
5 are the same whether the cancer occurs in humans, other  
6 mammals, fish, or mollusks.  
7 The AACCs that we see in Section 586 of our air  
8 quality rules are air emission concentration limits  
9 exclusively intended to minimize the risk of starting  
10 cancer. Cancer starts when a carcinogen such as arsenic  
11 is inhaled and causes mutation in cellular DNA. That  
12 mutation is inheritable, meaning it is passed from the  
13 mutate cell to daughter cells.  
14 Also, depending on various physiological  
15 variables, cancer can quickly or slowly lead to  
16 uncontrolled, neoplastic cell growth that is cancerous  
17 cell growth, and development of a tumor grossly  
18 recognized as cancer.  
19 One of the challenges of cancer as a human  
20 disease is that it is not readily recognized in its early  
21 stages. This should not be surprising when you consider  
22 that humans contain 10 to 100 trillion cells.  
23 Often it is only after considerable growth that  
24 a grossly or histologically recognizable cancer becomes  
25 evident. Sometimes it's not detected until a person

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1 carcinogens, and carcinogenesis.  
2 While DEQ experts correctly identified the AACC  
3 as the gold standard for minimizing cancer risk, they  
4 failed to recognize that the ACC -- the AACC  
5 fundamentally functions to limit the initiation of  
6 cancer, not only after 70 years, but every day of a  
7 person's life, starting at birth.  
8 By applying the, what I would call short-sighted  
9 project-specific adjustment factor to the Stibnite Gold  
10 Project, DEQ created a misleading risk analysis that  
11 greatly underestimates the actual cancer risk.  
12 With your permission, Mr. Chairman, I would like  
13 to explain further.  
14 BOARD CHAIR BOWEN: Go ahead, Dr. MacMillan.  
15 BOARD MEMBER MCMAHON: Mr. Chairman?  
16 BOARD CHAIR BOWEN: Yes, go ahead.  
17 BOARD MEMBER MCMAHON: By way of background, the  
18 Board should know that I have received considerable  
19 graduate education, was a senior research fellow  
20 conducting post-doctoral research, and spent considerable  
21 part of my career as a research comparative pathologist.  
22 Prior to entering a private enterprise here in Idaho, I  
23 was a professor of veterinary and aquatic animal  
24 medicine.  
25 During my training, teaching, and research, I

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1 feels ill, seeks medical attention, or dies.  
2 To reiterate, once cancer is initiated,  
3 neoplastic, uncontrolled cellular replication may occur  
4 relatively quickly, or it may take many years, perhaps  
5 more than 70 years for detection of a recognizable  
6 cancer.  
7 The take-home message is the cancer starts well  
8 before it is recognized. You don't need 70 years for it  
9 to appear. There are multiple variables that impact the  
10 initiation, promotion, and progression of cancer, such as  
11 age, immune status, comorbidities, and co-factors.  
12 The co-factor with the Stibnite Gold Project  
13 would be dust, particularly pm 2.5 or smaller particles,  
14 all of which contain arsenic.  
15 Inhaled dust can linger for extended periods in  
16 our lungs. Such dust is associated with a variety of  
17 pathologic processes that can amplify or enhance the  
18 development.  
19 But most germane in this contested case are  
20 carcinogen dose and duration. The greater the dose of  
21 carcinogen exposure, the greater is the chance of cancer  
22 initiation; the longer the duration of carcinogen  
23 exposure, the greater is the risk of developing cancer.  
24 Low dose exposure, as embodied in the AACC and  
25 applied daily for up to 70 years, would be expected to

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<p>1 limit cancer to only a one in one million chance.                  2 The higher dose, such as associated with this                  3 short-term project in a T-RACT acceptable concentrations,                  4 would be expected to limit cancer to one in 100,000                  5 chances, even after 70 years.                  6 DEQ concluded that the Stibnite gold project                  7 cancer risk exceeds the AACC associated risk and exceeds                  8 the T-RACT associated risk.                  9 The Idaho rules are not ambiguous. There is an                  10 acceptable risk associated with the AACC standard. There                  11 is an acceptable risk associated with DEQ-approved                  12 T-RACT projects, and there is an acceptable risk                  13 associated with the short-term project that is five years                  14 or less. There are no other acceptable risks identified                  15 in Idaho's air quality rules.                  16 DEQ's project-specific adjustment factor creates                  17 a new, higher level of cancer risk for 16 years. DEQ                  18 assumes 70 years is required for cancer to develop. That                  19 is an incorrect assumption.                  20 The AACC, the T-RACT, and short-term AACC                  21 emission exposure limits are actually daily limits that                  22 apply over a person's entire lifetime, regardless of how                  23 long they live. The acceptable cancer risk remains one                  24 in one million or one in 100,000. Higher carcinogen                  25 doses increase the cancer risk every day of a person's</p> <p style="text-align: right;">Page 14</p>	<p>1 new cancer risks.                  2 Thank you.                  3 BOARD CHAIR BOWEN: Thank you, Dr. MacMillan.                  4 Ms. Elroy, any comments?                  5 BOARD MEMBER ELROY: Yes. Dr. MacMillan very                  6 eloquently expressed my opinion as well.                  7 I will share with all of the parties of this                  8 case that the Board has extensive technical knowledge and                  9 experience associated with, as Randy explained, as well                  10 as decades of air permitting experience on this Board.                  11 So we do feel like due to the Board's expertise, it                  12 greatly helped us navigate through a very challenging                  13 contested case.                  14 I do want to call out the legal support that we                  15 received by the Deputy Attorney General Ann Yribar. Her                  16 legal expertise absolutely helped us also navigate                  17 through this case, and I do want to just say thank you to                  18 Ann and recognize her for her expertise and support in                  19 navigating us through this case.                  20 Thank you.                  21 BOARD CHAIR BOWEN: Thank you.                  22 Mr. Sigler, any comments?                  23 BOARD MEMBER SIGLER: Yes, this is John Sigler.                  24 I concur with Dr. MacMillan's summary and added                  25 comments. I think that very adequately and accurately</p> <p style="text-align: right;">Page 16</p>
<p>1 life. A higher daily dose for 16 years elevates the                  2 cancer risk even more.                  3 Application of the project-specific adjustment                  4 factor allows DEQ to ignore 16 years of higher cancer                  5 initiation risk. The PTC proposes to allow 16 years                  6 higher daily carcinogen doses, and disguises such doses                  7 using a non-rules-based mathematics. Use of the                  8 project-specific adjustment factor ignores 16 years of                  9 cancer initiation due to higher carcinogenic arsenic dose                  10 that is otherwise allowed by rule. The AACC, the T-RACT,                  11 and short-term project AACCs dictate an annual average                  12 compliance.                  13 DEQ further violates this compliance point by                  14 instituting a five-year rolling average compliance. Such                  15 a creative compliance point allows even further departure                  16 from our air quality goals, and specifically compliance                  17 with Section 161 of our air quality rules.                  18 And personally it grieves me to disagree with                  19 DEQ. I regard DEQ staff as a team of environmental                  20 heroes. They have a daunting task to protect our                  21 environment and, in particular, help the people, animals,                  22 and plants, while fostering financial success. But even                  23 heroes make mistakes.                  24 In my opinion, DEQ has misapplied the Idaho air                  25 quality rule, and they do not have authority to create</p> <p style="text-align: right;">Page 15</p>	<p>1 puts forward not only the review that's been done by the                  2 Board, but technical experts and the legal staff, that                  3 going forward we will have a solid foundation for                  4 providing the instructions that we're going to do here                  5 shortly.                  6 BOARD CHAIR BOWEN: Thank you.                  7 BOARD MEMBER SIGLER: That's all.                  8 BOARD CHAIR BOWEN: Thank you.                  9 Mr. Steele, any comments?                  10 BOARD MEMBER STEELE: No, I do not have any                  11 comments.                  12 BOARD CHAIR BOWEN: Thank you.                  13 Mr. Purdy, any comment? discussion?                  14 BOARD MEMBER PURDY: Sorry. Trying to find the                  15 unmute button.                  16 No, I do not have any comments. Thank you.                  17 BOARD CHAIR BOWEN: Thank you. I'd just like to                  18 add a general discussion to just --                  19 The Board would like to acknowledge the effort                  20 of all participants. There's been a tremendous amount of                  21 work on everybody's behalf on this. We understand how                  22 complicated and how much work has gone into this. We                  23 want to express gratitude for everybody's participation.                  24 I think everybody here is interested in the safety and                  25 health of the citizens of Idaho.</p> <p style="text-align: right;">Page 17</p>

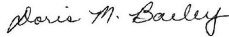
CORRECTED COPY

1 And I also would like to acknowledge and thank  
2 the work of our Attorney General, Ms. Yribar, her  
3 assistance.  
4 So with that, we have a motion and a second.  
5 Elaine, will you take the roll, please?  
6 BOARD CLERK GANINO: Yes, Mr. Chairman.  
7 Mark Bowen.  
8 BOARD CHAIR BOWEN: Aye.  
9 BOARD CLERK GANINO: Dr. Randy MacMillan.  
10 BOARD CHAIR BOWEN: Randy, you need to unmute.  
11 VICE CHAIR MACMILLAN: I was, but aye.  
12 BOARD CHAIR BOWEN: Thank you.  
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: Motion carried.  
22 We've reached the end of our agenda today. I'd  
23 entertain a motion to adjourn.  
24 BOARD MEMBER ELROY: So moved.  
25 BOARD CHAIR BOWEN: Do I have a second?

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1 BOARD MEMBER SIGLER: This is John. I second.  
2 BOARD CHAIR BOWEN: We have a motion and a  
3 second. All in favor say Aye.  
4 (AYES.)  
5 BOARD CHAIR BOWEN: Any opposed?  
6 (NO RESPONSE.)  
7 BOARD CHAIR BOWEN: Hearing none, we stand  
8 adjourned.  
9 (Proceedings concluded at 11:35 a.m.)  
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1 CERTIFICATE OF CERTIFIED SHORTHAND REPORTER  
2  
3 STATE OF IDAHO }  
4 } ss.  
5 COUNTY OF ADA }  
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 9th day of May, 2024.  
19  
20   
21 DORIS M. BAILEY  
22 CSR #SRL-1074, RPR, CRR  
23 Notary Public  
24 Post Office Box 2636  
25 Boise, Idaho 83701-2636

24 My Commission Expires: June 12, 2028  
25

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**[0101-22-01 - applied]**

<b>0</b>	<b>3</b>	<b>ability</b> 20:9,12	<b>agency</b> 1:5 4:10
<b>0101-22-01</b> 1:5	<b>3</b> 9:17	<b>absolutely</b>	6:10 8:25
4:11 9:1	<b>4</b>	16:16	<b>agenda</b> 3:4,10
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<b>100,000</b> 14:4,24	<b>6</b>	<b>accordance</b>	10:19,22 12:7
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<b>161</b> 15:17	<b>8</b>	<b>action</b> 6:2 7:22	<b>ambient</b> 9:11
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9:12	<b>93.3</b> 9:21	<b>added</b> 16:24	<b>amplify</b> 13:17
<b>2.5</b> 13:13	<b>9:00</b> 4:4	<b>addition</b> 4:7	<b>analysis</b> 11:10
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**[chair - development]**

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**[responding - thursday]**

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Idaho Rules of Civil  
Procedure

Rule  
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(e) Review by the Witness; Changes.

(1) Unless waived by the deponent and the parties, the deponent must be allowed 30 days after being notified by the officer that the transcript or recording is available in which (A) to review the transcript or recording; and (B) if there are changes in form or substance, to sign a statement listing the changes and the reasons for making them. (2) Changes indicated in the Officer's Certificate. The officer must note in the certificate prescribed by Rule 30 (f) (1) whether a review was requested and, if so, must attach any changes the deponent makes during the 30-day period. (3) Witness Failure to Sign. (A) In General, If the deposition is not signed by the witness within the 30-day period, the officer must sign it and state on the record the fact of the waiver of signature, or of the illness or absence



of the witness or the fact of the refusal to sign the deposition together with any reason given for not signing.

(B) Use of Unsigned Deposition. The deposition may be used as if it were signed, unless pursuant to Rule 32 (d)(4) the court determines that the reasons given for the refusal to sign require rejection of the deposition in whole or in part.

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