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BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF IDAHO

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

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On May 9, 2024, the Board of Environmental Quality (BEQ) issued a document styled as a Final Order. The Final Order affirmed the hearing officer’s dismissal of four claims of error, but concluded that “DEQ did not act reasonably and in accordance with law when it analyzed the ambient arsenic air concentrations for the SGP.” (Final Order of 5/9/24, at p. 23.) More specifically, BEQ concluded that (1) “DEQ did not act reasonably in using a five-year rolling average for T-RACT that was not properly supported by permit conditions;” (2) “there was insufficient evidence to support the T-RACT analysis limiting the non-West End Pit production limit;” and (3) “DEQ did not act reasonably and in accordance with law when it applied the 16/70

calculation to the ambient arsenic air concentration analysis” (collectively, the “Remaining Issues”).) (*Id.* at pp. 18, 19, 21.)

After some post-Final Order motion practice, on June 12, 2024, BEQ issued its Order on Petitions for Reconsideration and/or Clarification of Final Order. That Order remanded the matter to OAH with instructions to provide the parties with “an opportunity to supplement and develop a full factual record on the arsenic issue....” (Order of 6/12/24, at p. 7.) Otherwise, BEQ declined to provide additional instructions, clarifications, or limitations regarding the conduct of the remaining administrative proceedings.

On July 2, 2024, the parties and hearing officer convened via Zoom for a status and scheduling conference to discuss the nature, scope, and timing of the proceedings on remand. At the conference, the parties and hearing officer generally agreed to the following:

1. The Remaining Issues are highly technical in nature, such that expert testimony is required to assist the hearing officer as the trier of fact.
2. The parties prefer to utilize expert witness declarations to develop their testimony prior to a hearing on the merits instead of written discovery, expert witness disclosures, and depositions pursuant to Idaho Rules of Civil Procedure 26, 30, 33, and 34.
3. Sequentially, DEQ should file the first expert witness declarations. All of the parties’ status reports of July 1, 2024 suggested August 9, 2024 as the deadline for DEQ’s filings, though at the status conference, DEQ indicated an additional week may be helpful. (In a subsequent email, counsel for DEQ indicated he will be unavailable August 14 to 23, 2024.)
4. Perpetua should have an opportunity to file the second round of declarations, in case

it wishes to supplement or clarify anything in DEQ's declarations. All three status reports suggested August 23, 2024 as the deadline for Perpetua's filings.

5. The Petitioners should then file its own expert witness declarations, responding to the DEQ and Perpetua filings. In their status reports, DEQ and Perpetua suggested September 6, 2024 as Petitioners' deadline. Petitioners' status report suggested September 13, 2024 for their deadline, though the specific context at the time was for objections and motions to strike, as the status report was filed before the discussion of the need for expert witness testimony at the conference.
6. Even though DEQ's expert witness declarations will inform and affect the subsequent filings by Perpetua and the Petitioners to a certain extent, BEQ's orders are sufficiently detailed regarding the nature of the Remaining Issues for those parties to consult with and retain expert witnesses prior to DEQ's filings.
7. The parties and hearing officer set aside October 17, and 18, 2024 as the dates for a hearing on the merits, with the understanding that they will revisit those dates after DEQ has filed its declarations.
8. The parties declined to establish the related dates and deadlines leading up to a hearing on the merits at the conference. Instead, they expressed a preference for the hearing officer to do his best to establish those dates and deadlines in the forthcoming scheduling order.
9. Due to the highly technical nature of the Remaining Issues, it seems unlikely that further dispositive motion practice is warranted.

Based upon the above understandings and related email exchanges, the hearing officer hereby establishes the following dates and deadlines to govern the remainder of these administrative

proceedings:

Tuesday, August 13, 2024: Deadline for DEQ to file expert witness declarations explaining the basis for DEQ's decision-making regarding the Remaining Issues.

Friday, August 30, 2024: Deadline for Perpetua to file expert witness declarations, to the extent necessary to supplement or clarify any aspects of DEQ's expert witness declarations.

Wednesday, September 4, 2024, at 3:30 p.m.: Status and scheduling conference among parties and hearing officer to revisit the remaining deadlines and hearing dates in light of the declarations filed thus far, and whether they should establish deadlines to exchange witness lists and exhibits in advance of the hearing on the merits. (For now, the hearing officer assumes those issues will be relatively clear from the declarations filed.)

Friday, September 20, 2024: Deadline for the Petitioners to file responsive expert witness declarations and any motions in limine, motions to strike, or any other procedural motions related to the conduct of the hearing on the merits (collectively, "Procedural Motions").

Friday, September 27, 2024: Deadline for DEQ and Perpetua responses to Procedural Motions filed by the Petitioners.

Friday, October 4, 2024: Deadline for DEQ and Perpetua to file any Procedural Motions.

Friday, October 11, 2024: Deadline for (1) pre-hearing statements, summarizing the testimony each party will adduce at the hearing on the merits and how it relates to the Remaining Issues; and (2) Petitioners' response to Procedural Motions filed by DEQ or Perpetua.

Tuesday, October 15, 2024, 10:30 a.m.: Pre-hearing conference to discuss the upcoming hearing on the merits and any related procedural matters.

Thursday, October 17, 2024: Day 1 of hearing on the merits (location TBD).

Friday, October 18, 2024: If necessary, Day 2 of hearing on the merits (location TBD).

Friday, October 25, 2024: Deadline for post-hearing statements, identifying key testimony from the hearing on the merits and how it relates to the Remaining Issues.

Tuesday, November 26, 2024: Target date for written decision regarding the Remaining Issues.

In addition to the above dates, the hearing officer provides the following reminders and additional instructions:

There shall be no page limits on the expert witness declarations. Any other filings referenced above (Procedural Motions, responses thereto, pre-hearing statements, post-hearing statements) shall be limited to 10 pages of content, exclusive of the first page and the certificate of service. If a party wishes to exceed these page limits, that party shall email the hearing officer in advance of the filing (copying the other parties), with a request to that effect and a brief explanation.

Expert witness declarations should establish the witness's qualifications to opine on the Remaining Issues and should lay the proper foundation for any opinions offered as to the Remaining Issues.

While the deadlines for Procedural Motions and responses thereto are relatively tight, because the hearing officer (not a jury) is the finder of fact, he assumes any such filings will be relatively limited and targeted.

Parties who wish to reschedule any of the conferences or hearings established herein shall confer with the other parties regarding their availability and provide the hearing officer with three alternative mutually agreeable sets of dates and times from which to choose.

Dated this 8th day of July, 2024.



Dylan Lawrence  
Hearing Officer

## CERTIFICATE OF SERVICE

I hereby certify that on this 8th day of July, 2024, I caused to be served a true and correct copy of the foregoing by the following method to:

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