BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR PERMIT 77-14378 AND APPLICATIONS FOR TRANSFER 85396, 85397, AND 85398, AND APPLICATION FOR EXCHANGE 85538 IN THE NAME OF PERPETUA RESOURCES IDAHO, INC.	)	**ORDER DENYING PETITION FOR RECONSIDERATION**

On October 8, 2021, Perpetua Resources Idaho, Inc. ("Perpetua") filed Application for Permit 77-14378 and Applications for Transfer 85396, 85397, and 85398 with the Idaho Department of Water Resources ("Department"). On November 15, 2021, Perpetua filed Application for Exchange 85538 and an amendment for Application 85398 with the Department. On November 18, 2021, Perpetua filed an amendment for Application 77-14378. USDA Forest Service ("USFS"), Nez Perce Tribe ("NP Tribe"), Save the South Fork Salmon, Inc. ("SSFS"), and Idaho Conservation League ("ICL") filed separate protests against all five applications.

On March 1, 2023, Perpetua and the USFS filed a *Stipulation and Joint Motion to Approve Settlement and Dismiss Protest* ("Stipulation"). On April 17, 2023, the hearing officer issued an *Order Approving Settlement and Confirming Withdrawal of [the USFS] Protests.*

The Department consolidated the above-referenced contested cases for administrative hearing and conducted the hearing on December 11-15, 2023. On April 10, 2024, the hearing officer for the Department issued a *Preliminary Order Approving Applications* ("Preliminary Order"). The approvals for the various applications included many identical conditions restricting the diversion and use of water.

On April 24, 2024, Perpetua filed a timely *Petition for Reconsideration* ("Petition").[1] *See* IDAPA 37.01.01.730. Perpetua asked the hearing officer to modify two and remove three of the conditions on the water right approvals. On May 8, 2023, NP Tribe, SSFS, and ICL filed *Protestants' Joint Response in Opposition to Perpetua Resources' Petition for Reconsideration.* Rule 730 of the Department's Rules of Procedure (IDAPA 37.01.01) does not authorize the filing of responses to a petition for reconsideration.

This order addresses each of the five conditions challenged by Perpetua in the same order that the conditions were presented in the Petition. The five conditions are based on credible

[1] During the review of the Petition, the hearing officer discovered errors in page number references in two citations in the Preliminary Order. Even though the Preliminary Order stated that all citations would be to the pdf page rather than the page number shown on the document, two of the citations mistakenly refer to the page numbers shown on the documents. The citation for Finding of Fact 38 should be Ex. 246 at 70. The last citation for Finding of Fact 59 should be Ex. 201 at 6. These page number errors are minor, do not affect the overall decision, and do not warrant an amendment of the Preliminary Order.

technical evidence in the administrative record and were included on the permits to protect local public interest values in the East Fork of the South Fork Salmon River ("EFSFSR") watershed. Therefore, the hearing officer declines to make the modifications or removals proposed by Perpetua.

The approval documents for the various applications include some approval conditions that are the same and some that are not. Consequently, the condition numbering does not match from one approval to another. For the purposes of this order, and to be consistent with the Petition, the conditions will be identified according to the condition numbers used on Permit 77-14378.

Condition 10 / Condition 15

Conditions 10 and 15 were included on the approvals for ground water rights 77-7285 (Transfer 85397) and 77-14378. Condition 10 states: "The thirteen industrial supply wells located in Section 15, T18N, R09E, shall not exceed a combined monthly diversion volume of 31 acre-feet." This volume (31 acre-feet) is the approximate volume of water that would be diverted over 31 days at a diversion rate of 0.5 cubic feet per second (cfs).

Condition 15 states: "During all times when the right holder is diverting ground water under this right from any of the wells in Section 15, T18N, R09E, the right holder shall ensure a flow of at least 3.0 cfs in Meadow Creek from the existing fish passage barrier located above the confluence of Meadow Creek and Blowout Creek to the confluence of Meadow Creek and EFSFSR."

Condition 10 is based on credible technical evidence provided by Perpetua. A technical report summarizing the results of site-wide water balance modeling described the effects of pumping ground water in the Meadow Creek watershed. According to the report, "0.5 cfs was determined from the groundwater flow model as an amount that could be withdrawn without adverse impacts on Meadow Creek." Ex. 27a at 76.

As part of the Stibnite Gold Project, Perpetua proposes to reconstruct and line the Meadow Creek channel from a location approximately 700 feet upstream of the confluence with Blowout Creek downstream to the confluence with EFSFSR. Ex. 25b at 24. In addition, Perpetua proposes to reconstruct and line Meadow Creek and its tributary streams around the proposed tailings storage facility. *Id.* Based on maps offered into the record by Perpetua, there will be an unlined section of Meadow Creek, approximately one-half mile in length, in the same area where the thirteen industrial supply wells will be constructed. *Id.*; Stanaway Test., Tr. at 257-60. Pumping from the industrial supply wells could have an impact on this unlined section of Meadow Creek. *Id.*; *see also* Ex. 206 at 14 (describing a potential 1-to-1 impact on stream flow from ground water pumping). According to the ground water modeling report from Perpetua, 0.5 cfs could be pumped from the industrial supply wells without impacting the flow in Meadow Creek.

Perpetua argues that Condition 10 is redundant because Condition 15 already protects the base flow in Meadow Creek. *Petition* at 4. This argument is not consistent with the record.

Condition 15 only protects the base flow in Meadow Creek from the existing fish passage barrier, located just upstream of the confluence with Blowout Creek, to the confluence with EFSFSR. The unlined section of Meadow Creek is upstream of the existing fish passage barrier. Condition 10 serves a separate purpose from Condition 15 by preventing ground water pumping impacts to the unlined section of Meadow Creek through a monthly volume limit on pumping near the unlined section.

As noted in the Preliminary Order, when weighing the local public interest factors for an application or set of applications, the Department considers all the interactions between the proposed project and the public water resource. *Preliminary Order* at 19-20. The proposed project will have a significant impact on the hydrology of the Meadow Creek watershed. Perpetua proposes to line and reconstruct the main channel of Meadow Creek from the confluence with Blowout Creek to the confluence with EFSFSR. Ex. 25b at 24 (map depicting alterations). In addition, Perpetua proposes to reconstruct and line more than four linear miles of Meadow Creek and its tributaries upstream of the confluence with Blowout Creek, to route water around the tailing storage facility. *Id.* Further, Perpetua proposes to construct twelve new industrial supply wells and several dewatering wells to divert ground water from the Meadow Creek watershed. *Id.* All these actions could affect the flow in Meadow Creek, which currently provides habitat for ESA-listed species.

After the snowmelt run-off period ends, the flow in Meadow Creek drops to base flow conditions. Median base flows in Meadow Creek are between approximately 2.0 cfs and 3.0 cfs. Ex. 201 at 6. Because of the significant impact of the project on the hydrology of the Meadow Creek watershed, the hearing officer drafted a condition requiring Perpetua to maintain the upper end of the median base flow in Meadow Creek to pump ground water from the basin.

Perpetua proposes to replace Condition 15 with a condition restricting diversions under water right 77-14378 during times when the flow in Meadow Creek (based on a three-day average) drops below the daily average 95% exceedance flows for each month. *Petition* at 5. The Petition included a table of the 95% exceedance flows. *Id.* Perpetua's proposed condition would apply in any calendar year that the company diverts ground water under water right 77-14378. Although Perpetua's proposed condition provides a broader period of protection by maintaining stream flow in annual blocks of time, the flow targets proposed by Perpetua are the daily average 95% exceedance flows for each month rather than the median base flows used by the hearing officer.

There is nothing in statute or rule requiring the Department to use 95% exceedance flows as a benchmark when drafting conditions to protect local public interest elements. Using the upper end of the median base flow rather than the 95% exceedance flows offsets the significant impacts the project will have on the hydrology of the Meadow Creek watershed. Under Condition 15, during certain times of the year and in drought years, Perpetua may be required to augment the stream flow in Meadow Creek to facilitate ground water pumping under water rights 77-7285 and 77-14378.

Perpetua contends that Condition 15 should not be included on water right 77-7285 because the existing point of diversion for that right is already located in the Meadow Creek

watershed. Stated differently, Perpetua already has the authority to divert water right 77-7285 from the Meadow Creek watershed. As noted above, the Department must consider the entire project when evaluating the local public interest. Application for Transfer 85397 (for water right 77-7285) proposes to add twelve points of diversion to the right, significantly expanding the area of impact for the ground water pumping. Further, pumping ground water under water right 77-7285 is intended to benefit the entire mining project which includes the construction of a tailings storage facility in the Meadow Creek watershed, and the dewatering of the Hangar Flats area, which will substantially alter the hydrology of the Meadow Creek watershed. Therefore, it is appropriate to include Condition 15, which is intended to protect local public interest values in the entire Meadow Creek watershed, on water right 77-7285.

Perpetua notes that the IPDES (Idaho Pollutant Discharge Elimination System) outfall is located approximately 100 yards downstream of the existing fish passage barrier on Meadow Creek. Condition 15 establishes the Meadow Creek flow requirement from the existing fish passage barrier downstream to the confluence with EFSFSR. If Perpetua were to augment the stream flow in Meadow Creek, it would do so by injecting water at the IPDES outfall. The record does not include the details of the IPDES permit. It is not clear whether the IPDES permit allows the outfall to be moved around within a larger area or if it is confined to a specific location. Because of the ambiguity in the record about the actual location of the IPDES outfall, Condition 15 was drafted with reference to a specific location, the existing fish passage barrier.

The hearing officer relied on technical evidence offered by Perpetua to draft Conditions 10 and 15. Because Conditions 10 and 15 are based on credible technical evidence in the record, Perpetua's proposal to remove Condition 10 and modify Condition 15 should be denied.

Condition 13

Condition 13 states: "From June 30 to September 30, no water shall be diverted under this right unless there is at least 7.25 cfs passing the river pump point of diversion on the EFSFSR in the NESE, Section 3, T18N, R09E." Perpetua argues that the condition is inadequate because it establishes a flow rate rather than a flow depth to ensure fish passage. According to Perpetua, "without specifying the weir width, the 7.25 cfs rate does not necessarily ensure fish passage." *Petition* at 9. "For example, if the weirs are 30 inches wide, the depth at 7.25 cfs would be substantially less than 1.0 foot, which may not be protective of Chinook salmon passage." *Id.* "More important to Perpetua, a rectangle weir shape may not be the optimum shape for maintaining fish passage at low flows." *Id.* (citation omitted).

Perpetua's initial stream channel tunnel design included multiple alternatives for fish passage, including a fishway with 24-inch weir widths. Ex. 34 at 105; Ex. 46 at 8. In its initial request for technical assistance from the Idaho Department of Fish & Game ("IDFG") and the Idaho Governor's Office of Species Conservation ("OSC"), Perpetua noted that it planned to make revisions to the fishway design that would include "changing weir dimensions, likely to a narrower opening, limited by the need to accommodate Chinook salmon dimensional criteria (15-inch opening width and 12-inch water depth), or changing the distance between weirs to meet drop height criteria." Ex. 206 at 13.

In a subsequent memo to IDFG and OSC, Perpetua provided the results of flow modeling using a 15-inch width for the fishway weirs. Perpetua noted: "McMillen (2022) modeled a range of low flows (5 to 8 cfs) . . . assuming the fishway weir width would be reduced from the 2018 design of 24 inches to 15 inches, matching the NMFS [National Marine Fisheries Service] (2022) width criterion for Chinook salmon, the largest of the species of interest." Ex. 219 at 9. "[Computational fluid dynamics] modeling demonstrates that the simple modification of reducing the fishway weir notch width to 15 inches results in hydraulic conditions that are passable by Chinook salmon down to their 95 percent exceedance flow, and by the other three species of interest down to 5 cfs (well below their respective 95 percent exceedance flows)." *Id.* at 10.

Perpetua asserts that alternate weir geometries such as a U-shaped weir may provide a flow depth of one foot (required for safe passage of adult Chinook salmon) at lower flow rates. *Petition* at 9-10. Although that assertion may be true, the record contains no evidence about other weir geometries. It is unclear whether NMFS approves alternate weir geometries for pool and weir type fish ladders and, if so, what criteria are associated with such weirs. A hearing officer may only consider the evidence in the administrative record. The evidence in the record was primarily focused on 15-inch weir widths. During the hearing, witnesses for Perpetua and the protestants offered hours of testimony about flow rates through 15-inch rectangular weirs. A 15-inch width, which is the minimum width allowed under the NMFS guidelines, results in the lowest flows required to achieve the target flow depth of one foot.

As noted in the Preliminary Order, the statutory process for evaluating water right applications, set forth in Idaho Code § 42-203A, is not iterative. *Preliminary Order* at 28. The Department must decide to approve or deny an application based solely on the evidence in the administrative record. The bypass flow rate established through Condition 13 is based on credible technical evidence in the record. Outside of a passing reference to "[in]numerable alternate geometries," (Bosley Test., Tr. at 518) there is not enough evidence in the record to establish a different bypass flow rate for other weir types.

If the final design approved by the USFS for the stream channel and fishway tunnel employs something other than 15-inch rectangular weirs for the fishway, this would constitute a substantial change to the Modified Plan of Restoration and Operations and would require an amendment of permit and a re-evaluation of the local public interest, consistent with Condition 11 on Permit 77-14378.[2] The Department could adjust the 7.25 cfs bypass flow requirement as part of its re-evaluation of the local public interest.

The hearing officer relied on the technical evidence offered by Perpetua to draft Condition 13. Because Condition 13 is based on credible technical evidence in the record, Perpetua's proposal to modify Condition 13 should be denied.

[2] Condition 11 states: "The approval of this permit is in the local public interest based on the elements and actions described in the Modified Plan of Restoration and Operations, dated October 15, 2021. If the final plan of operations approved by the U.S. Forest Service differs substantially from the Modified Plan of Restoration and Operations, the permit holder shall file an application for amendment, updating the elements of the permit to reflect the final plan of operations and asking the Department to re-evaluate the local public interest of the project."

Condition 14

Condition 14 states: "From October 1 to June 29, no water shall be diverted under this right unless there is at least 5.00 cfs passing the river pump point of diversion on the EFSFSR in the NESE, Section 3, T18N, R09E." Perpetua argues that Condition 14 should be removed from the approvals "because adequate streamflow and fish habitat protection is provided by Condition 12."[3] *Petition* at 11. Perpetua asserts: "A flow of less than 5.0 cfs is adequate to preserve fish habitat and out-migration during this period [October 1 – June 29]." *Id.*

Condition 14 is based on technical reports offered by Perpetua. A technical memorandum prepared by McMillen Jacobs Associates ("MJA"), dated December 9, 2022, addresses fish passage in the proposed fishway. After a discussion of fish passage for adult Chinook salmon, the memo states:

> For smaller non-anadromous species such as Cutthroat trout, the flow depth criterion will be lower. Although passage criteria for these species do not govern the overall design, it is of interest to Project stakeholders what the lower limits of passability through the fishway for these and other species might be. To this end, the results presented above for the lowest flow case . . . may be instructive, whereby a total fishway flow of only 5 cfs leads to a weir flow depth of 0.72 feet, an average velocity of approximately 5.8 ft/s, and a hydraulic drop from pool to pool of approximately 0.64 feet.

Ex. 47 at 15 (emphasis added).

Perpetua provided this additional analysis of fishway flows to IDFG and OSC in a letter dated July 11, 2023, and summarized MJA's analysis as follows:

> A total fishway flow of 5 cfs leads to a weir flow depth of 0.72 feet (just over the bull trout and steelhead depth criteria), an average velocity of approximately 5.8 ft/sec (below bull trout burst speed and other species' sustained speed), and a hydraulic drop from pool to pool of approximately 0.64 feet. At a 2-foot hydraulic drop and 19 cfs flow rate, maximum velocities are less than 6.6 ft/sec (bull trout burst speed). Hence, [computational fluid dynamics] modeling demonstrates that the simple modification of reducing the fishway weir notch width to 15 inches results in hydraulic conditions that are passable by Chinook salmon down to their

[3] Condition 12 states:

> Net diversions from the EFSFSR and ground water under water rights 77-7122, 77-7285, 77-7293, and 77-14378 shall not cause more than twenty percent depletion to the unimpaired streamflow in the EFSFSR below its confluence with Sugar Creek when the unimpaired streamflow is less than 25 cfs. For purposes of this condition:
> a. Percent depletion is equal to net diversion divided by unimpaired streamflow.
> b. Net diversion is the sum of ground water and EFSFSR diversions minus the discharge of treated water to the EFSFSR and its tributaries.
> c. Unimpaired streamflow is defined as the gauged flow at Sugar Creek (USGS Gage #13311450) plus the gauged flow at EFSFSR above Sugar Creek (USGS Gage #13311250) plus the net diversion from EFSFSR and ground water under water rights 77-7122, 77-7285, 77-7293, and 77-14378.
> d. Calculations shall be based on three-day trailing averages of net diversions and gauged stream flows.

> 95 percent exceedance flow, and by the other three species of interest down to 5 cfs (well below their respective 95 percent exceedance flows).

Ex. 219 at 10 (emphasis added).

The hearing officer relied on these statements from MJA and Perpetua to establish the bypass flow of 5.0 cfs from October 1 to June 29. Perpetua contends that the only fish using the fishway between October 1 and June 29 would be out-migrating juvenile fish. *Petition* at 11. This contention is contrary to the evidence in the record. For example, adult steelhead may use the fishway in the spring. Ex. 29 at 33-34 ("If steelhead are present in the [Stibnite Gold Project] mine area, spawning is likely to occur from late April to end of May."). There are resident populations of westslope cutthroat trout in the project area. *Id.* at 34 ("[MWH Americas, Inc.] (2017) observed different size classes of [w]estslope cutthroat trout in headwaters of the EFSFSR subwatershed streams which suggest year-round residence and production from area streams."). In addition, there are resident populations of bull trout in the EFSFSR. Bosley Test., Tr. at 376; Keller Test., Tr. at 895, 912; Kinzer Test., Tr. at 1085-86, 1180. Condition 14 was drafted to ensure safe, timely, and effective passage for bull trout, steelhead, and westslope cutthroat trout during all times of the year.

Upon a closer examination of the evidence in the record, it appears the 5.0 cfs described in the 2022 MJA report relied on fish passage depths taken from a document produced by the California Department of Fish and Wildlife ("CDFW Standards"). Ex. 219 at 8 (table showing minimum depth criteria for various species from the CDFW Standards, listing the minimum depth for bull trout and steelhead as 0.7 ft) and 10 ("A total fishway flow of 5 cfs leads to a weir flow depth of 0.72 feet (just over the bull trout and steelhead depth criteria)"). The Preliminary Order held that the CDFW Standards cannot be used to evaluate passage through the proposed fishway. *Preliminary Order* at 22-24.

On reconsideration, the hearing officer could reject the 5.0 cfs threshold, because it is based on the CDFW Standards, and simply adopt a year-round 7.25 cfs bypass flow (preserving a one-foot depth of water over a 15-inch weir). *See* Ex. 246 at 70 (NMFS guidance recommends a one-foot depth for flow over fish ladder weirs). The NMFS guidance document recognizes, however, that "[t]he efficacy of any fish passage structure . . . is highly dependent on local hydrology, target species and life stage . . . and many other site-specific considerations." Ex. 246 at 17. Adult steelhead and bull trout require less water depth than adult Chinook salmon for safe passage through streams. Ex. 238 at 20. The same would be true for passage through fish ladder weirs. Evidence in the record about the species present at the fishway, the life stages of those species, and local hydrology support a fishway flow less than 7.25 cfs when adult Chinook salmon are not present. The 5.0 cfs described in the 2022 MJA report represents the best evidence in the record for the flow required to ensure safe, timely, and effective fish passage for bull trout, steelhead, and westslope cutthroat trout.

Like Condition 13, Condition 14 is based on flow rates through a fishway with 15-inch weir widths. As described above, there is substantial evidence in the record related to flow rates through 15-inch weirs.

Perpetua argues that Condition 12 is sufficient to protect fish passage during low flow periods in the EFSFSR, eliminating the need for Condition 14. Although Condition 12 does protect the EFSFSR from being dewatered during low flow periods, Condition 12, by itself, is not sufficient to guarantee a minimum bypass flow of 5.0 cfs in all conditions. Consider, for example, stream flows on February 8, 2019. On that day, the flow at USGS Gage No. 13311250 (EFSFSR above Sugar Creek near Stibnite, ID) was 7.48 cfs. Ex. 261 at 13. The flow at USGS Gage No. 13311450 (Sugar Creek near Stibnite, ID) was 6.81 cfs. Ex. 262 at 11. The total combined flow at the two sites was 14.29 cfs. Under Condition 12, Perpetua would be able to consume up to 2.86 cfs of water from the basin. If that entire amount were taken from the EFSFSR, it would result in a bypass stream flow of only 4.62 cfs.[4] This example confirms that Condition 14 is needed to ensure safe, timely, and effective fish passage under all flow scenarios in the upper EFSFSR watershed.

Condition 9

Condition 9 states: "The diversion of water directly from the East Fork of the South Fork Salmon River (EFSFSR), located in the NESE, Section 3, T18N, R09E, shall not exceed a maximum diversion rate of 4.50 cfs." Perpetua requests that Condition 9 be removed from the approvals because the diversion limit (4.5 cfs) was not presented as a voluntary limit by Perpetua and was only used for "planning and design." *Petition* at 13-14.

Condition 9 is based on the following evidence offered by Perpetua:

> The aim of the current Project is to supply raw water from EFSFSR to the Midnight Pond booster tank. It is assumed that [Perpetua] will procure a water right for a maximum withdrawal rate of 4.5 cfs from EFSFSR.

Ex. 34 at 124.

> This 1.0-foot allowance places the top of the cone screen at the anticipated water surface for the fish passage low flow, and marginally above the anticipated annual low flow water surface. This means that the whole area of the screen will be covered during the complete range of fish passage flows (95% exceedance to 5% exceedance), and the rated capacity for meeting the NMFS approach velocity criterion is approximately 10 cfs. This is well in excess of the <u>maximum withdrawal rate of 4.5 cfs</u>, and it is expected that approach velocities will be below 0.4 ft/s at all times.

Ex. 34 at 139 (emphasis added).

> As part of the site-wide water management plan, Perpetua plans to construct a contact water pond (Midnight Pond) upstream of the [Yellow Pine Pie] with a booster tank from which water will be pumped for either water treatment and

[4] Condition 12 requires three-day averaging when evaluating stream flows and calculating diversions. Because this example is simply intended to show a scenario where flow in the EFSFSR could drop below 5.0 cfs under Condition 12, it does not incorporate three-day averaging.

> discharge or use in the process plant. In times of site-wide water deficit, Perpetua intends to supplement the site water balance with as much as 4.5 cfs of raw water from the EFSFSR.

Ex. 47 at 2.

These documents provided by Perpetua show a clear intent to limit the EFSFSR diversion to 4.5 cfs. None of the witnesses from Perpetua repudiated these documents. In fact, Perpetua's witnesses confirmed the 4.5 cfs diversion limit. While discussing the water demands for the project, Terry Scanlan testified: "Now, to get there [to satisfy the water demands of the project], we see a peak diversion rate, based on the modeling, of 4.5 cfs to supply to the mill from freshwater sources. That doesn't mean that it's always going to be at four and a half. It's going to vary up to four and a half . . . ." Scanlan Test., Tr. at 139. An exchange with Perpetua's witness, Gene Bosley, during cross-examination reinforces this point:

> Q (Thrower): And you provided testimony that the East Fork, South Fork Salmon River point of diversion intake cannot even handle more than 4.5 cfs; is that correct?
>
> A (Bosley): That's right. You wouldn't get it all from there.
>
> Q (Thrower): So you also stated that Perpetua's modeling shows that they will not need to divert more than about 4.5 cfs instantaneously from that point of diversion, correct, on the East Fork, South Fork?
>
> A (Bosley): Yeah. That's during normal operations, and if we needed a full nine, we get it from a combination of that and the supply well field and whatever active dewatering we have at the time.

Bosley Test., Tr. at 538-39.

Because Condition 9 is based on substantial evidence in the administrative record, Perpetua's proposal to remove Condition 9 from the approvals should be denied.

Summary

Conditions 9, 10, 13, 14, and 15 are based on credible technical evidence in the record, primarily evidence offered by Perpetua. Perpetua raises a concern that the conditions, in combination, reduce the effective diversion rate of its water rights from 9.6 cfs to 5.0 cfs. *Petition* at 14. Given the evidence offered by Perpetua about its water demand and anticipated operations, this concern appears to be without merit. The peak demand for the ore processing mill is 9.7 cfs. Ex. 1g at 51-58; Scanlan Test., Tr. at 138-41. Much of the mill demand will be supplied from storage reservoirs and recycled water. *Id.* Perpetua estimates that only 4.5 cfs of the mill demand will come from freshwater supplies (diversions from ground water and EFSFSR). *Id.* 9.6 cfs represents the peak freshwater demand at the project site. Ex. 1g at 52. This peak freshwater demand will only occur on rare occasions and may not occur at all.

Scanlan Test., Tr. at 162. 4.3 cfs of the 9.6 cfs peak freshwater demand represents excess dewatering, which is ground water pumped in excess of water demands on site. Excess ground water pumped for dewatering will be treated and discharged into Meadow Creek. The discharge of treated water provides Perpetua considerable flexibility in its operations. Water released into Meadow Creek can be used to satisfy Condition 15 and Condition 13 or 14, depending on the time of year. If the flow thresholds of Conditions 13, 14 and 15 are satisfied, Perpetua would be free to divert the full 9.60 cfs under its water rights, with two caveats. First, Condition 10 limits the location of ground water pumping in the Meadow Creek watershed to protect the unlined section of Meadow Creek (upstream of the reach described in Condition 15). Second, consistent with Condition 9, Perpetua would be limited to a diversion rate of 4.5 cfs from the EFSFSR.

ORDER

IT IS HEREBY ORDERED that Perpetua's Petition for Reconsideration is DENIED.

Dated this 9th day of May 2024.

James Cefalo
Hearing Officer

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 9th day of May 2024, true and correct copies of the documents described below were served by email and by placing a copy of the same with the United States Postal Service, certified mail with return receipt requested, postage prepaid and properly addressed to the following:

Documents: Order Denying Petition for Reconsideration

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