

**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.

**SECOND ORDER EXTENDING
DEADLINE TO ISSUE FINAL ORDER**

BACKGROUND

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 77-14378.¹ The Nez Perce Tribe, Save the South Fork Salmon, Inc., Idaho Conservation League, and USDA Forest Service² timely protested the Applications.

On April 10, 2024, Hearing Officer James Cefalo issued the *Preliminary Order Approving Applications* (“*Preliminary Order*”), which approved the Applications subject to the conditions stated on the simultaneously issued permit, transfer, and exchange approvals. *Preliminary Order*, at 30. Perpetua subsequently filed a petition for reconsideration of the *Preliminary Order* which the Hearing Officer denied on May 9, 2024.

On May 23, 2024, Perpetua filed *Perpetua Resources Idaho, Inc.’s Exceptions to Preliminary Order* (“*Exceptions*”) requesting the Director remove and amend certain conditions listed on the permit and approvals. *Exceptions*, at 33–34.

On June 6, 2024, Protestants the Nez Perce Tribe, Save the South Fork Salmon, and Idaho Conservation League filed *Protestants’ Joint Response in Opposition to Perpetua Resources’ Exceptions to Preliminary Order* (“*Joint Response to Exceptions*”) asking the Director to deny Perpetua’s *Exceptions*, and affirm the Hearing Officer’s *Preliminary Order* and order denying reconsideration. *Joint Response to Exceptions*, at 5, 47.

On July 26, 2024, the Director issued an *Order Extending Deadline to Issue Final Order* (“*Extension Order*”). The *Extension Order* extended the deadline for issuance of a final order on *Exceptions* to November 1, 2024. *Extension Order*, at 2.

¹ In this order, Applications 77-14378 (as amended), 85396, 85397, 85398 (as amended), and 85538 are collectively referred to as the “Applications.”

² The USDA Forest Service’s protests were later resolved via settlement and an order approving the withdrawal of their protests was issued on April 17, 2023.

On October 25, 2024, Perpetua filed a *Motion to Supplement the Administrative Record and to Amend Requested Relief* (“*Motion to Supplement & Amend*”) concurrently with a memorandum in support. In its motion, Perpetua requests the Director supplement the administrative record with a memorandum by the U.S. Department of the Army and a biological opinion by the National Marine Fisheries Service, both issued within the last three months. *Motion to Supplement & Amend*, at 1. Additionally, Perpetua seeks to amend the relief requested in the *Exceptions* to be consistent with the new biological opinion. *Id.* at 2.

On October 31, 2024, Protestants the Nez Perce Tribe, Save the South Fork Salmon, and Idaho Conservation League filed *Protestants’ Joint Response in Opposition to Perpetua’s Motion to Supplement the Administrative Record and to Amend Requested Relief* (“*Joint Response to Motion*”). The response asks the Director to strike Perpetua’s *Motion to Supplement & Amend* and memorandum in support and/or deny the motion and not take the filings into consideration when making a decision on *Exceptions*. See *Joint Response to Motion*, at 2, 18.

ANALYSIS

The Department’s Rule of Procedure 730.02.e requires the Director to issue a final order within fifty-six days of receipt of written briefs or oral argument regarding exceptions to a preliminary order, “whichever is later, unless extended for good cause.” IDAPA 37.01.01.730.02.e. Therefore, the Director was required to issue a final order in this case by August 1, 2024, unless “good cause” was shown to extend the deadline. See *id.* Good cause was found to exist to extend the deadline to November 1, 2024. *Extension Order*, at 2.

The Department’s Rule of Procedure 220.02.b gives parties 14 days from the date of service of a motion to file a response in a contested case. The movant is allowed an additional 7 days from the date of service of any response to file a reply brief. IDAPA 37.01.01.220.02.c. Consequently, Perpetua’s *Motion to Supplement & Amend* will not be ripe for the Director to consider until after the current deadline to issue a final order on *Exceptions*.

Perpetua seeks to add documents to the administrative record and amend the relief requested in the *Exceptions*. *Motion to Supplement & Amend*, at 1–2. The Director believes that to ensure a just and economical determination of all the issues presented in this contested case, Perpetua’s outstanding motion should be fully briefed, considered, and ruled on before issuing a final order on *Exceptions*. For that reason, the Director finds good cause exists again to extend the deadline to issue a final order. The Director estimates that an additional ten weeks is needed to issue a final order on *Exceptions* to allow enough time to reply to Perpetua’s motion, to rule on the motion, and for any ensuing amendments to the *Exceptions* and the *Joint Response to Exceptions* should the Director grant the *Motion to Supplement & Amend*. Accordingly, the Director will extend the deadline for issuing a final order to January 10, 2024.

ORDER

IT IS HEREBY ORDERED that the deadline for the Director to issue a final order on *Perpetua Resources Idaho, Inc. 's Exceptions to Preliminary Order* is EXTENDED to January 10, 2024.

Dated this 1st day of November 2024.



MATHEW WEAVER
Director


CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 1st day of November 2024, the above and foregoing, was served by the method indicated below, and addressed to the following:

<p>Kevin J. Beaton Wade C. Foster STOEL RIVES LLP 101 S. Capitol Blvd., Suite 1900 Boise, Idaho 83702 kevin.beaton@stoel.com wade.foster@stoel.com <i>Attorneys for Perpetua Resources Idaho, Inc.</i></p>	<p><input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input checked="" type="checkbox"/> Email</p>
<p>Michael A. Lopez NEZ PERCE TRIBE Office of Legal Counsel PO Box 305 Lapwai, ID 83540 mlopez@nezperce.org Amanda W. Rogerson WRIGHT ROGERSON PLLC PO Box 2321 Boise, ID 83701 amanda@wrightrogerson.com <i>Attorneys for the Nez Perce Tribe</i></p>	<p><input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input checked="" type="checkbox"/> Email <input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input checked="" type="checkbox"/> Email</p>
<p>Julia S. Thrower MOUNTAIN TOP LAW, PLLC 614 Thompson Avenue McCall, ID 83638 jthrower@mtntoplw.com <i>Attorney for Save the South Fork Salmon, Inc. and Idaho Conservation League</i></p>	<p><input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input checked="" type="checkbox"/> Email</p>

Courtesy copies sent via email to:

- ahaslam@midasgoldinc.com
- kathryn.conant@usda.gov
- mleah.woodard1@usda.gov
- nicholas.pino@usda.gov
- mark.rosebrough@usda.gov



 Megan Jenkins
 Executive Assistant