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**UNITED STATES DISTRICT COURT
DISTRICT OF IDAHO**

IDAHO CONSERVATION LEAGUE; and
GOLDEN EAGLE AUDUBON SOCIETY,

Plaintiffs,

vs.

U.S. FOREST SERVICE,

Federal Defendant,

and

IDAHO COPPER CORPORATION,

Intervenor-Defendant.

Case No: 1:25-cv-329-AKB

**PLAINTIFFS' SEPARATE STATEMENT
OF UNDISPUTED FACTS**

The 2023 CuMo Exploration Project

1. The 2023 CuMo Exploration Project (the “Project”) is a 6-year mineral exploration project in the Boise National Forest, including 4 years of exploratory drilling and 2 years of reclamation. AR-1756. The Project proponent, Idaho Copper Corporation (“Idaho Copper”), seeks to delineate copper and molybdenum mineral deposits at the site. AR-1764.

2. The Project site is in Boise County, Idaho, approximately five miles northeast of Pioneerville and 14 miles north of Idaho City. AR-1756. The Project area comprises 2,917 acres, of which 2,617 acres (about 90%) are National Forest lands. *Id.* The Project site is mountainous and forested with many streams and riparian corridors running through it. *See* AR-1746 (photo); AR-890 (surface water map). The site is in the headwaters of Grimes Creek, a tributary of Mores Creek, which is a tributary to the Boise River at Lucky Peak Reservoir. AR-927. The Boise River flows through Idaho’s Treasure Valley and is a source of drinking and agriculture water for this most populous part of the state. *See* AR-4742.

3. Numerous at-risk species of plant, fish, and wildlife have habitat at the Project site. AR-1802, 1826, 1857–59. Sacajawea’s bitterroot, a Forest Service-designated “sensitive species,” grows at the site, which is home to about a third to half of the known population of this rare plant. *See* AR-1802. Among other sensitive species of wildlife, flammulated owl and northern goshawk observations in or next to the Project area indicate these species are present and have nesting habitat in the area. AR-1163, 1176. Columbia spotted frog, another sensitive species, have been recorded along Grimes Creek in the Project area. AR-1204. Upper Grimes Creek, including at the Project site, support what may be the only remaining population of bull trout in the Mores Creek watershed. AR-934. Bull trout, which are listed as “threatened” under the federal Endangered Species Act, are barely hanging on there. *Id.*, AR-925.

4. Under the Project, Idaho Copper would construct up to 8.9 miles of new “temporary” mining roads and use 5.5 miles of existing “temporary” mining roads. AR-1756. Idaho Copper would construct up to 122 drill sites and drill up to 250 holes. *Id.* Up to 72.3 acres of National Forest lands could be cleared to construct road and drill pads and other infrastructure at the site. *Id.* Each year, Project activities could occur from April 15 to December 15. AR-1773. Up to four drill rigs could run 24 hours per day, every day during drilling operations. *Id.*

5. The Project is “results driven,” meaning the exact locations of new roads, drill sites, and drill holes would be progressively identified based on the results from prior holes drilled. AR-1756. Thus, the Forest Service asserted that “predicting the exact sequence of remaining events, road locations/alignments, and when any hole might be drilled or at what orientation is difficult.” AR-1765. Each year, Idaho Copper will submit an annual operating plan to the Forest Service for review and approval. *Id.*

6. The 2023 CuMo Exploration Project is similar to and shares the same site as the 2007 CuMo Exploration Project, which was twice approved by but only partially carried out because those approvals were vacated and remanded by this Court. *See* AR-1754–56, 1758–59.

Approvals and Remands of the 2007 CuMo Exploration Project

7. Mining company Mosquito Gold submitted a Plan of Operations to the Forest Service seeking approval of the 2007 Project. *See* AR-1754–56. The 2007 Project was first approved in February, 2011, when the Forest Service issued a Decision Notice and Finding of No Significant Impact (“DN/FONSI”), based on an Environmental Assessment (“EA”). *See id.* The 2007 Project included constructing 10.2 miles of road, constructing 137 drill sites, and drilling up to 259 explorations holes over five years. AR-1759. Plaintiffs filed suit, and in 2012, this Court vacated and remanded the DN/FONSI and EA for further analysis concerning drilling

impacts to groundwater. *See* AR-1754, 1756. Before the remand, Mosquito Gold constructed 1.8 miles of temporary road, constructed six drill sites, and drilled nine exploration holes. AR-1754.

8. In 2014, the Grimes Fire burned 923 acres of the Project site. AR-1755. Fire officials constructed dozer- and hand-constructed fire lines through the Project area, including through occupied Sacajawea's bitterroot habitat. AR-534.

9. In 2015, the Forest Service issued a Supplemental EA and a new DN/FONSI, approving the 2007 Project again, with some additional baseline groundwater analysis. AR-4092. Plaintiffs filed suit, and in 2016, this Court vacated and remanded the Supplemental EA and DN/FONSI because the Forest Service did not reestablish baseline Sacajawea's bitterroot conditions after the fire and firefighting at the site. *See* AR-1754, 1756.

10. In 2016, another fire (the Pioneer Fire) burned 1,578 acres of the Project area. AR-1756. The Forest Service began work on a second Supplemental EA for the 2007 Project, which went out for public comment in 2018. *Id.* The Supplemental EA utilized Sacajawea's bitterroot surveys conducted in 2017 in portions of Project site. *Id.* *See also* AR-484–85. This environmental analysis was never completed, and the 2007 Project was never approved again or completed. *See* AR-1754–56.

Forest Service Approval of the 2023 CuMo Exploration Project

11. Idaho Copper assumed control of the mining claims in 2023 and submitted a Plan of Operations, requesting approval of the 2023 CuMo Exploration Project. AR-1754. On October 10, 2023, the Forest Service sent a scoping letter describing the Project and soliciting comment. AR-4690. The Forest Service received comments from 695 parties. AR-1870. Plaintiffs submitted comments, urging the Forest Service to prepare in depth environmental impact statement ("EIS") instead of a shorter EA, to conduct new and comprehensive Sacajawea's

bitterroot surveys, to protect Sacajawea’s bitterroot, and to prohibit unnecessary incursions in riparian conservation areas (“RCAs”). AR-4726–76.

12. On May 29, 2024, the Forest Service announced a 30-day public comment period on a Draft EA. AR-4826. The Forest Service received 1,237 comments. AR-1870. Plaintiffs submitted comments, again urging the Forest Service to conduct Sacajawea’s bitterroot surveys, protect Sacajawea’s bitterroot and RCAs, and prepare an EIS, among other issues. AR-4831–99.

13. In September 2024, the Forest Service issued the Final EA and a Draft DN/FONSI, initiating an objection period. AR-5032. Plaintiffs submitted timely objections, again warning the Forest Service that it lacked comprehensive and up-to-date information about Sacajawea’s bitterroot; failed to protect RCAs and Sacajawea’s bitterroot; failed to comply with forest plan provisions; and was required to prepare an EIS. AR-5633–90.

14. On March 13, 2025, the Deputy Regional Forester issued a written response to objections, denying Plaintiffs’ objections. AR-5694. However, the Deputy Regional Forester instructed the Forest Service to provide additional rationale in its final Decision Notice as to why it was appropriate to rely on the 2017 Sacajawea’s bitterroot surveys and how the Project complies with Forest Plan standards MIST04, MIST08, and MIST09. AR-5695. Those standards direct the Forest Service to take steps to protect RCAs from mining activities. AR-2178–79.

15. One day later, on March 14, 2025, the Forest Service signed the DN/FONSI, approving the Project based on the EA. AR-1877–92. The final DN/FONSI included only a few additional sentences mentioning Sacajawea’s bitterroot, MIST04, MIST08, and MIST09. *See id.*

Riparian Conservation Areas

16. As the Forest Plan for the Boise National Forest explains: “Riparian zones are among the biosphere’s most complex ecological systems and also among the most important for

maintaining the vitality of the landscape and its rivers.” AR-2619 (citation omitted). RCAs include riparian corridors, wetlands, intermittent and perennial streams, and other areas that help maintain the integrity of aquatic ecosystems by (1) influencing the delivery of coarse sediment, organic matter, and woody debris to streams, (2) providing root strength for channel stability, (3) shading the stream, and (4) protecting water quality. AR-2623. “Aquatic and riparian systems are easily affected by land management activities on surrounding hillslopes.” AR-2619.

17. In the EA, the Forest Service acknowledged that “RCAs encompass riparian ecosystems, including streams, wetlands, and other habitats crucial for maintaining water quality and supporting diverse biotic communities.” AR-1817. The EA also states: “Stream crossings are generally a concern for surface water hydrologic resources because delivery distances from the road to a waterbody are short at crossings.” AR-1822.

18. In response to public comments raising concerns about adverse impacts of Project activities in RCAs and about Forest Plan requirements to protect RCAs, the Forest Service prohibited Idaho Copper from locating drill pads in RCAs. AR-5017; AR-1187; AR-1399. But for roads, the Forest Service authorized the construction of up to five stream crossings and associated roads in RCAs, so long as Idaho Copper deems them necessary. AR-5004; AR-1399.

19. Even though the Project is “results driven” and could change as it proceeds, Idaho Copper has already proposed specific roads it plans to construct. AR-4639, 4654. Maps show these proposed roads include multiple stream crossings and stretches of road in RCAs in the headwaters of Charlotte Gulch; and includes at least one (or more) crossing and multiple road incursions in RCAs along Pinch Creek, including road segments through mapped wetlands. AR-890 (map showing proposed roads and RCAs); AR-16 (map showing proposed road and Charlotte and Pinch gulches). Where other streams in the Project boundary are seasonal or

intermittent, Charlotte Gulch and Pinch Creek are two of just three perennial (continuously flowing) streams at the Project site. AR-1029.

20. When it approved the Project, the Forest Service never evaluated or decided which of any of the RCA incursions proposed by Idaho Copper and shown in the maps it was approving, and never considered whether there were alternatives to each of these RCA incursions; instead, the agency stated that through the annual operating plan process, Idaho Copper will consider all practicable alternatives before impacting RCAs and will keep any RCA road incursions to the minimum necessary. AR-1353.

Sacajawea's Bitterroot

21. Sacajawea's bitterroot (*Lewisia sacajawean*a or "LESA") is a Forest Service designated "sensitive species" endemic to central Idaho mountains. AR-1802. Only 42 occurrences of the species have been documented, all in six counties in Idaho. *Id.* Each occurrence is estimated to have on average about 713 to 1,294 individual plants. *Id.* In total, it is estimated that there are 26,336 to 37,283 plants across its entire range. In 2017, surveys covering parts of the Project site documented 13,735 Sacajawea's bitterroot plants. *Id.*

22. In the EA, the Forest Service acknowledged that Project activities, including constructing, maintaining, and using roads and drill pads, can harm Sacajawea's bitterroot by directly damaging plants, disturbing seed banks; by compacting soils, causing erosion, and altering moisture regimes; generating fugitive dust that can impede photosynthesis and alter soil compaction; and through introducing and spreading of non-native plants. AR-1805.

23. Within a 40-foot buffer zone of occupied Sacajawea's bitterroot habitat, the Forest Service found Project activities proposed by Idaho Copper would risk direct adverse effects to 5.4 acres (9.4%) where 515 known individuals (3.7% of the 2017 population) are

found. AR-1806 (EA). A 70-foot buffer zone where the Forest Service found direct or indirect effects could occur includes an additional 3.5 acres and 544 individuals. *Id.* The Forest Service acknowledged “[f]urther effects could also occur in areas not yet surveyed but identified as potential habitats (up to 10 acres of 2.5% of modeled potential habitat . . .).” *Id.*

24. The EA purports that by implementing mitigation measures, “Project effects could be limited to 135 individuals or less than 1% of the known population.” *Id.*

25. The EA’s discussion of Sacajawea’s bitterroot is based on the Botanical Resources and Non-native Plants Biological Evaluation and Technical Report (the “Botanical Report”) that the Forest Service prepared for the Project. AR-475–550.

26. The Botanical Report admits: “Little is known about the response of Sacajawea’s bitterroot to disturbance.” AR-489. “Sacajawea’s bitterroot is a cryptic species that resides most of the year in underground life stages, such as living seeds and root structures that are not readily identifiable to the human eye.” AR-490. “[A]t the species level, Sacajawea’s bitterroot would be considered at risk of not withstanding or recovering from stochastic events.” AR-531. “Little is known about Sacajawea’s bitterroot reproductive biology and recruitment success,” the Report states. *Id.* “The species exhibits a low level of representation through low genetic diversity and may be unable to adapt as quickly to changing environments,” and “[a]s a species, Sacajawea’s bitterroot has a low level of redundancy, given the number of occurrences and lack of connectivity.” AR-532. The Botanical Report notes that “[r]esearch has yet to determine a threshold of the number of individuals the occurrence [at the Project site] may withstand before eroding its ability to recover.” *Id.*

27. Sacajawea’s bitterroot were first observed in the Project area in 2005. AR-484. In 2011 and 2012, surveys and monitoring were performed in an effort to document the full extent

of the plant's population in part of the Project area. *Id.* In 2015, 45 acres of pre-disturbance surveys were conducted in 45 acres of the Project area where some of the 2007 project activities were to occur; but those surveys "did not extent beyond the proposed work boundaries or document the full extent of the population." *Id.*

28. In 2017, surveys were conducted for Sacajawea's bitterroot in some, but not all, areas of suitable Sacajawea's bitterroot habitat at the Projects site. *See* AR-485, 520, 527 (map of modeled potential habitat); AR-886 (map of surveys). Limited additional surveys occurred in 2021 and 2022, they covered only a very small fraction of the Project site, did not verify the status of Sacajawea's bitterroot in any of the previously surveyed areas from 2017, and did not survey other never-before-surveyed areas of suitable habitat at the Project site. *See* AR-485–86, AR-527. The Botanical Report acknowledged that the data from the 2021 and 2022 surveys "focused on select locations and were not comprehensive surveys of the entire population." AR-484. Thus, the Botanical Report states that "[t]he 2017 baseline data sets are the most recent and complete population datasets available that reflect existing conditions." AR-484. "For the Sacajawea's bitterroot effects analysis, I rely primarily on the 2017 Sacajawea's bitterroot baseline data sets . . . and potential habitat modeled in 2016." AR-483.

29. In response to the Objection Reviewing Officer's direction to provide rationale for relying on the 2017 surveys, the Forest Service added to the DN/FONSI: "For Sacajawea's bitterroot, baseline surveys collected in 2017 and supplemented by botanical clearance surveys in 2021 and 2022 represent the most recent dataset available and is appropriate when considering the life history of the species and lack of substantial change from stochastic events or project work in the time since the surveys (EA Section 3.2 and Botanical Resources and Non-native Plants Resource Report)." AR-1888 [DN/FONSI].

30. The Botany Report admits that there is “lag time between an action and a biological response” for plants like Sacajawea’s bitterroot AR-481. “For example, the emergence of non-native plant individuals may occur several years following an action that introduce non-native plant seeds or propagules to a location. A location may experience several growing seasons before the seeds or plan propagules experience the right environmental conditions for germination and establishment.” *Id.* Thus, for the purposes of considering the Project’s effects to Sacajawea’s bitterroot and other plants, the Report considered the 4 to 6 years when the Project is underway plus 5 years after operations cease. AR-480–81.

31. A Forest Service ecologist visited the site in 2022 to perform a qualitative, ocular assessment of plant recovery in the fire-fighting lines constructed in 2014 and 2016 through Sacajawea’s bitterroot habitat at the Project site. AR-2814 [2022 field report]. That assessment did not include the other areas burned by fires; rather, it just assessed the fire-fighting lines. *Id.* The ecologist observed Sacajawea’s bitterroot in “the 2014 Grimes dozer and hand lines in a few locations . . . but did not count or document their locations.” *Id.* The ecologist did not report observing any Sacajawea’s bitterroot in the 2016 Pioneer fire dozer line. *See* AR-2814–15. The ecologist’s assessment concludes, “I was unable to determine if the Sacajawea’s bitterroot population has fully recovered from the fire line construction disturbances.” AR-2815. The Botany Report also admits that even with this 2022 assessment, the agency “does not have pre-disturbance information on numbers of individuals present and is unable to determine if Sacajawea’s bitterroot has fully recovered from the fire line construction.” AR-535.

32. The EA states: “The botanical resources and non-native plants effects analysis assumed available data sets adequately depicted existing conditions and the proponent would complete botanical surveys prior to operation as described in the mitigation measures.” AR-1801

[EA]. The Botany Report states that its analysis was based on “the assumption that all mitigation measures . . . will be successfully implemented, and results will be as intended”; “the assumption that available data sets are a sufficient depiction of the existing conditions to determine the potential for occurrences and the potential for impacts to occur”; and “the assumption that the proponent will complete botanical clearance surveys in a timely manner as described.” AR-491.

33. Without mitigation measures, the Botany Report concluded: “Potential direct impacts to Sacajawea’s bitterroot would be high in probability and high in intensity.” AR-520. For impacts it had data to quantify, the Report determined the Project “may impact up to 1,059 individuals or 7.7 percent of the population and up to 10 acres or 2.5 percent of modeled potential habitat that has yet to be surveyed.” *Id.* Later, the Report concluded that “the mitigation measures would reduce impacts to a loss of vigor or reproductive success of multiple individuals that may recover in the expected 3- to 5-year temporal timeframes and no more than the direct loss of 135 individuals or less than 1 percent of the population.” AR-539.

34. Later, where it provides rationales for why Sacajawea’s bitterroot impacts would be acceptable, the Report uses these same numbers (135 individuals and 1 percent of population) but without acknowledging that they pertain only to direct effects and only to those direct effects which the agency had sufficient information to qualitatively assess, stating: “Sacajawea’s bitterroot-specific mitigation measures would reduce direct and indirect effects from approximately 8.9 to less than 1 percent of the population. The overall impact would be reduced from 3–4.5 percent to less than 1 percent of the species.” AR-540. The EA and DN/FONSI then rely on these same numbers (135 individuals and 1% of population) as purportedly addressing direct and indirect effects, without acknowledging they are limited to just a subset of direct effects. AR-1809; AR-1888.

Dated February 20, 2026

Respectfully submitted,

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