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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

SNAKE RIVER WATERKEEPER, an Idaho non-profit corporation, Plaintiff, v. J.R. SIMPLOT COMPANY, a Nevada corporation; and SIMPLOT LAND AND LIVESTOCK CO., a Nevada corporation, Defendants.	Case No. 1:23-cv-00239-DCN **SNAKE RIVER WATERKEEPER'S RESPONSE IN OPPOSITION TO MOTION TO DISMISS (DKT. 83) AND REPLY IN SUPPORT OF MOTION TO REOPEN DISCOVERY (DKT. 78)**

TABLE OF CONTENTS

TABLE OF AUTHORITIES

I. INTRODUCTION

The functionally identical Consent Judgments in Owyhee (Dkt. 77-1) and Elmore (Dkt. 77-2) counties (collectively, the "Consent Judgment") between the Idaho Department of Environmental Quality ("DEQ") and Idaho State Department of Agriculture ("ISDA") (collectively, "the State") that Defendants J.R. Simplot Company and Simplot Livestock Co. (collectively, "Simplot") claim moot and preclude this action highlight the problem Plaintiff Snake River Waterkeeper's ("SRW") citizen suit was intended to address: a powerful corporate discharger operating one of the nation's largest feedlots for years without regulation or enforcement by the state.

When SRW's federal suit threatened real accountability, Simplot did not fix the problems—it ran to the State and orchestrated a rushed state enforcement action hoping to preempt this case. The resulting Consent Judgment imposes penalties with no economic benefit analysis, defers virtually all remediation for years, and relies on vague, high-threshold triggers and polluter-directed monitoring. It does not resolve the ongoing violations alleged in either the original or the First Amended Complaint.

Simplot's Motion to Dismiss fails on every ground. First, the Consent Judgment does not moot SRW's claims for injunctive and declaratory relief under the Clean Water Act. Simplot cannot meet *Laidlaw*'s "absolutely clear" standard, and, even under the lower "realistic prospect" test Simplot urges, SRW prevails. The parties lack veracity in this instance, the process was reactive and defendant-driven, and the resulting settlement is a deferred planning exercise where violations are likely to continue. SRW's RCRA claims and claims for civil penalties survive. Second, claim preclusion does not apply because SRW was not a party to the state actions and the State did not adequately represent its interests. Third, at a minimum, disputed facts regarding the genesis, diligence, and adequacy of the State enforcement action require reopening discovery before any dispositive ruling. The Court should deny Simplot's Motion to Dismiss in full and grant SRW's Motion to Reopen Discovery.[1]

II. SRW'S CLAIMS FOR INJUNCTIVE AND DECLARATORY RELIEF UNDER THE CLEAN WATER ACT REMAIN LIVE.

The Consent Judgment does not moot SRW's claims. Simplot cannot satisfy its heavy burden under the governing mootness standard, and even under the lower standard it urges, SRW prevails. Simplot has a lengthy track record of noncompliance and the State a history of non-enforcement, and the present settlement is an indefinite planning document full of vague triggers and loopholes. Together, these facts demonstrate more than a realistic prospect that violations will continue. Recent sampling by SRW, discussed below, highlights the ongoing problem. At a minimum, disputed facts require reopening discovery before any mootness ruling.

A. The Court Should Apply the "Absolute Certainty" Standard from *Laidlaw*, Not the "Realistic Prospect" Test from *ECO v. Dallas*.

Simplot argues that SRW's CWA claims are moot under the "realistic prospect" test articulated in *Environmental Conservation Organization v. City of Dallas*, 529 F.3d 519 (5th Cir. 2008). This Court should decline to adopt that out-of-circuit standard for three independent reasons. But even if the Court were to apply it, SRW prevails.

1. The "Realistic Prospect" Test Is Fundamentally in Tension with Laidlaw.

The Supreme Court in *Friends of the Earth, Inc. v. Laidlaw Environmental Services (TOC), Inc.* established a single, stringent standard for mootness in citizen suit cases: a defendant must demonstrate that "it is *absolutely clear* the allegedly wrongful behavior could not reasonably be expected to recur." 528 U.S. 167, 189 (2000) (emphasis added). *Laidlaw* made no

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[1] If Simplot prevails on its Motion to Dismiss, SRW reserves the right to move for an award of reasonable attorneys' fees and costs in bringing this action.

distinction between cases involving a government enforcement action and those not. The Court's analysis turned entirely on whether the defendant had carried its heavy burden—not on who else might be regulating the defendant.

ECO's "realistic prospect" test effectively inverts this burden, shifting it to the citizen plaintiff to demonstrate that violations will continue notwithstanding the consent decree. *Ms. Wheelchair Cal. Pageant, Inc. v. Starline Tours of Hollywood, Inc.*, No. CV 11-2620, 2014 WL 12967512, at *2 (C.D. Cal. Mar. 6, 2014) (declining to apply *ECO* test, holding that "the Ninth Circuit has not adopted this test, and the Fifth Circuit's reasoning placing the burden on the plaintiff has been questioned."). Nothing in *Laidlaw*, or any subsequent Supreme Court or Ninth Circuit case, supports this burden-shifting. The existence of a consent decree is simply evidence that a defendant may use in attempting to carry its own burden under *Laidlaw*—it does not transform the plaintiff into the party who must prove the case is not moot. Adopting the *ECO* test would allow defendants to moot citizen suits through consent decrees of their own making, undermining the CWA's explicit preference for robust citizen enforcement. *See* 33 U.S.C. § 1365; *Adkins v. VIM Recycling, Inc.*, 644 F.3d 483, 499 (7th Cir. 2011) ("Congress enacted the citizen-suit provisions of RCRA and other environmental laws because the world is not ideal, because government agencies face many demands on their resources, because administrations and policy priorities change, and because regulatory agencies are subject to the phenomenon known as 'agency capture.'") (citation omitted).

2. *The* ECO *Test Was Designed for Federal Consent Decrees Supervised by the Presiding Court—Not State Court Judgments.*

Even on its own terms, the *ECO* test does not apply here. The *ECO* court's rationale rested on the fact that the consent decree was entered by a federal court—the same court supervising the citizen suit—and was being actively enforced by the EPA. *ECO*, 529 F.3d at 528

("Far from voluntary, the City's compliance . . . has been compelled by an EPA enforcement action and the resulting court-approved consent decree. Further, the actions that allegedly moot ECO's suit are actions of third parties (the EPA and a federal court), not those of the City."). *San Francisco Herring Association v. Pacific Gas & Electric Co.* ("*SF Herring*"), likewise applied the *ECO* test to a consent decree entered by the same federal court presiding over the citizen suit—a court that retained ongoing supervisory jurisdiction over compliance. No. 14-cv-04393-WHO, 2019 U.S. Dist. LEXIS 234523, at *16 (N.D. Cal. July 26, 2019) ("I do not find that there is a realistic prospect that the CWA violations alleged in the complaint will continue *despite my supervision*.") (emphasis added).

Here, by contrast, the Consent Judgments were entered in Idaho state courts—the Elmore County District Court and the Owyhee County District Court—entirely separate tribunals with no connection to this federal proceeding. Dkts. 77-1, 77-2. This Court cannot enforce those judgments, cannot modify their terms, and has no supervisory role over compliance. The institutional rationale for deferring to the consent decree—that the presiding court can ensure compliance—is entirely absent. This case is thus more like other cases in the Ninth Circuit where, even where an agency's regulatory action may have mooted a suit, the party asserting mootness still bears the heavy burden of persuading the court that the case is moot. *See, e.g., Tinoqui–Chalola Council of Kitanemuk & Yowlumne Tejon Indians v. U.S. DOE*, 232 F.3d 1300, 1303–04 (9th Cir. 2000) (requiring the defendant to prove mootness where an agency's action may have rendered the case moot); *Cmtys. for a Better Env't v. Tosco Refining Co., Inc.,* 2001 WL 114441, at *5, 2001 U.S. Dist. LEXIS 1161, at *13 (N.D. Cal. Jan. 26, 2001) (defendant carries the heavy burden to prove mootness in a CWA case even where an agency's regulatory action may have rendered the case moot). Under those circumstances, and the circumstances here, the *ECO* test's foundational premise does not hold, and this Court should apply *Laidlaw*'s standard directly.

3. This Case Is More Akin to Voluntary Cessation Because Simplot Invited the State Lawsuit.

The *ECO* test applies when cessation is "involuntary"— "compelled by an EPA enforcement action." *ECO*, 529 F.3d at 528. The premise is that a defendant subject to genuine third-party government enforcement has less ability to resume violations than one that simply decided on its own to stop. But that premise collapses when the defendant itself orchestrated the government enforcement action, as is the case here.

Discovery and internal DEQ communications produced in response to SRW's public records requests tell a damning story: it was *Simplot* that initiated the State's lawsuit, as DEQ Supervisor Heidi Caye acknowledged in her November 14, 2024, email: "Simplot has not yet asked DEQ to enforce against them, which would need to happen prior to the state pursuing the civil case." Dkt. 65-2 at 2. In other words, the state enforcement did not occur because the State independently identified violations and decided to act. It occurred because Simplot asked for it, with the explicit goal of trying to thwart this federal case.

This is the inverse of the *ECO* scenario. There, "the actions that allegedly moot ECO's suit are actions of third parties (the EPA and a federal court), not those of the City." *ECO*, 529 F.3d at 528; *Env't Conservation Org. v. City of Dallas*, 307 F. App'x 781, 783–85 (5th Cir. 2008) (per curiam) (noting that the EPA contacted the City first and that the specific violations originated in a City spreadsheet leaked to ECO). Similarly, in *Comfort Lake v. Dresel Contracting, Inc.*, the state agency began its enforcement action before the citizen plaintiff sent its notice of intent and diligently prosecuted that action. 138 F.3d 351, 357 (8th Cir. 1998). Here, the actions that allegedly moot SRW's suit are actions that Simplot itself solicited and helped design. A defendant cannot escape the *Laidlaw* standard by manufacturing its own government enforcement action.

4. Even Applying the "Realistic Prospect" Standard, SRW Prevails.

For the avoidance of doubt, the analysis below demonstrates that SRW easily satisfies even the lower "realistic prospect" standard. "Realistic" does not mean "certain" or even "likely"—it means plausible and non-speculative. *See ECO*, 529 F.3d at 529. Each of the arguments below establishes a realistic prospect of continuing violations, which would also meet *Laidlaw*'s more demanding "absolutely clear" standard.

B. The Parties, Process, and End Result All Establish a Realistic Prospect of Future Violations.

Simplot operates one of the nation's largest feedlots without a Clean Water Act discharge permit, and it will continue to do so for years even with the Consent Judgment, as the individual IPDES permit it seeks is part of a complex permitting process that will take significant time to complete. Prouty Decl. (Dkt. 83-2) ¶ 19. During this time period, Simplot's violations of the Clean Water Act will continue unabated, as SRW's most recent sampling shows. These violations persisted under the watch of Simplot's own senior environmental officer, and Simplot responded to this litigation not by acknowledging wrongdoing, but by stonewalling discovery and orchestrating a state enforcement action designed to thwart the citizen action. Simplot's recurrent violations of federal law are only possible because the State of Idaho was asleep at the wheel: it conducted repeated inspections without ever documenting a single violation, never took a water sample, and admitted in writing that the violations underlying the Consent Judgment were "not actually observed." The process that produced the Consent Judgment was completed in weeks, under explicit pressure from this federal case, without independent investigation. And the Consent Judgment itself is a deferred planning document—a promise to monitor, to apply for a permit, and to consider action later—that leaves Simplot operating without a permit, in violation of federal law, and allowing groundwater contamination to continue unaddressed for years to come.

1. The Consent Judgment Does Not Stop Unpermitted Discharges.

As a preliminary matter, the Ninth Circuit's recent decision in *Coastal Environmental Rights Found. v. Naples Restaurant Group, LLC*, 158 F.4th 1052 (9th Cir. 2025) forecloses a finding of mootness as to SRW's Clean Water Act claim. In that case, a citizen enforcer brought a singular Clean Water Act claim: defendant's fireworks display unlawfully discharged pollutants without the requisite NPDES permit. *Id*. at 1056. After litigation commenced, the defendant obtained a permit for future discharges associated with its fireworks displays. *Id*. In an earlier decision, the Ninth Circuit held the issuance of the NPDES permit mooted the plaintiff's claim for relief, *id.* at 1060, and then later made the same conclusion as to Plaintiff's claim as to civil penalties. *Id*. at 1064. The Court reasoned: "when [plaintiff's] only claim is that [defendant] violated the Clean Water Act by discharging fireworks without an NPDES permit, Naples's acquisition of a permit makes it clear that this violation is not reasonably expected to recur." *Id*.

In this case, SRW brings a singular Clean Water Act claim: Simplot discharges pollutants into navigable waters from the Grand View Feedlot without the requisite prior authorization through a NPDES permit. FAC (Dkt. 56-1) ¶ 5. To date, Simplot has no such NPDES permit nor any other authorization to discharge pollutants from the Grand View Feedlot. Under *Coastal Environmental Rights Found.*, SRW's Clean Water Act claim for injunctive relief and civil penalties cannot be moot absent the issuance of such a permit. And even then, there remain significant deterrent effects by imposing civil penalties against a routine environmental violator like Simplot. *Id*. (civil penalty claim not moot where penalties "have a deterrent effect[,]" and citing with approval the Court's earlier decision in *S.F. BayKeeper, Inc. v. Tosco Corp.*, 309 F.3d 1153, 1155 (9th Cir. 2002)).

2. Both Simplot and the State Have a Long History of Ignoring Violations.

"[T]he likelihood of recurrence of challenged activity is more substantial when the cessation is not based upon a recognition of the initial illegality of that conduct." *Armster v. U.S. Dist. Ct. for Cent. Dist. of Cal.*, 806 F.2d 1347, 1359 (9th Cir. 1986) (citing *Walling v. Helmerich & Payne*, 323 U.S. 37, 43 (1944)); *see also Blue Ocean Pres. Soc'y v. Watkins*, 767 F. Supp. 1518, 1525 (D. Haw. 1991).

Simplot has never recognized the illegality of its conduct. Quite the contrary: it has consistently sought to minimize, dispute, and obfuscate the violations SRW has documented. This Court has already noted that Simplot's emphatic assertions that no run-on occurred at the Feedlot—despite its prior representations of the opposite to the EPA—were "puzzling." Dkt. 33 at n.27. Moreover, Simplot's Vice President of Environmental and Regulatory Affairs, Alan Prouty, declares that he has "served in that capacity for over 25 years" and is "intimately familiar with the Company's environmental obligations, as well as the principal measures it has taken and plans to take" at the Grand View Feedlot. Prouty Decl. (Dkt. 83-2) ¶ 1. Yet the violations SRW has documented and alleged—unpermitted discharges of manure-laden water to the Snake River and its tributaries as documented by independent water quality sampling, unlined runoff channels operating without IDEQ approval, systemic over-application across thousands of acres of soils rated "very limited" for manure application, the absence of any diversion structures to control run-on from upgradient BLM lands, and groundwater contamination with nitrate levels more than twice the EPA's maximum contaminant level—persisted under his watch for decades.

Other than a November 2017 effluent spill, which was impossible to overlook because effluent ran onto a neighbor's field, Simplot took no action to address any of the violations identified in SRW's Complaint or its November 2024 Notice of Intent prior to SRW initiating this litigation. Declaration of Charles M. Tebbutt, filed herewith ("Tebbutt Decl.") ¶ 2. The Consent Judgment does not reflect a defendant that has recognized its obligations and shown a newfound commitment to compliance. They reflect a company that acted only when forced to, and only to the minimum extent necessary to forestall this litigation.

The State's track record is no better. ISDA conducted numerous inspections of the Grand View Feedlot and never once documented any violations outside the 2017 incident. Tebbutt Decl. ¶ 3. All of the violations that the State now claims it is working to address had been happening for years, if not decades, under its watch as well. A history of regulatory inaction by the State, combined with Simplot's consistent failure to recognize or remediate its violations, establishes precisely the kind of realistic prospect of recurrence that *ECO* contemplates. The question is not whether Simplot has made promises; it is whether those promises are *credible* and can be credibly enforced. The record answers that question.

3. The Consent Judgment Process Was Rushed, Reactive, and Defendant-Driven.

Internal DEQ communications reveal that the state enforcement action was not the product of independent regulatory investigation. It was solicited by Simplot, driven by the timeline of this federal litigation, and completed in weeks without independent sampling or verification of the violations. As noted above, this is fundamentally different from the *ECO* scenario, where the EPA itself was the driver of enforcement. *See ECO*, 529 F.3d at 528 (emphasizing that the EPA, not the defendant, initiated and controlled the enforcement action).

The contrast in this case is stark. While Simplot was "pushing" the State to conduct an inspection (Dkt. 65-3 at 4: September 26, 2024, email from DEQ Director Byrne: "I know

Simplot is going to be pushing for [site inspection] as early as possible[.]"), it was simultaneously opposing and delaying SRW's own Rule 34 inspection efforts—claiming that SRW's drilling equipment would "spook" the cattle, even though satellite imagery reveals Simplot using bulldozers within 30 feet of cattle and driving trucks literally feet away from them. *See* Dkt. 45 at 9–10. Simplot was not interested in independent verification of conditions at the Feedlot, but delay.

The State's own Director admitted that the violations underlying the Consent Judgment were "not actually observed violations but rather allegations based upon 'information or belief.'" Dkt. 78-6 at 3. Simplot lauds the "comprehensive" two-day inspection by the State in November 2024, Dkt. 83-1 at 12, but the State never took a single water or soil sample, either then or at any time thereafter—even though water and soil sampling is fundamental to both CWA and RCRA enforcement, as demonstrated by this Court citation to SRW's extensive sampling in denying Simplot's prior Motion to Dismiss. *See* Dkt. 33; Tebbutt Decl. ¶ 6. The *Greater Yellowstone* case that Simplot cites highlights this deficiency, because there, the State was involved from the beginning and *did* perform sampling. *See Greater Yellowstone Coal. v. Larson*, 641 F. Supp. 2d 1120, 1135 (D. Idaho 2009) ("The Court finds it very persuasive that [IDEQ] . . . was involved from the beginning of the project [and] assisted with sampling and interpreting results. . . ."). SRW, by contrast, has taken numerous samples across multiple years, and as recently as April 2026 documented additional *E. coli* contamination at the same locations where prior violations were found. Tebbutt Decl. ¶ 4. The reason the State had only "information and belief" allegations, and not "observed" violations, is because it *did not look for any*. The resulting Consent Judgment reflects the State's lack of a genuine assessment of the severe environmental problems and the remediation required.

4. The Consent Judgment Is Substantively Inadequate.

The product of this rushed, reactive process is a Consent Judgment that fails to actually stop the principal violation SRW alleges; reflects ignorance of actual conditions at the Feedlot; defers virtually everything of substance and imposes no meaningful near-term obligations; and delegates all key investigative actions to *Simplot*—the entity that the State is supposed to regulate. Specifically with regard to the CWA violations, and setting the RCRA violations aside for Section IV below:

- **The IPDES permit process is years away.** As mentioned above, the Consent Judgment requires Simplot to apply for an IPDES permit—not to obtain one. *Id.* § IV.11.c.i. A draft permit is anticipated in late 2026; a final permit is not expected until 2027 at the earliest. *See* Prouty Decl. (Dkt. 83-2) ¶ 19. During the entire interim period, every discharge from the Feedlot remains unpermitted—the precise problems SRW alleges. In the FAC, SRW asserts one Clean Water Act cause of action: discharge of pollutants from the feedlot to Waters of the United States. On these facts, there isn't just a realistic prospect that violations will continue–they are continuing today and will do so for a substantial time to come.

- **Everything is deferred.** The full Monitoring Plan is not due until 180 days after the effective date. Actual sampling does not begin until the plan is approved by the State. There is no interim sampling requirement, no baseline data requirement, and no requirement to use SRW's existing sampling data as a starting point. *Id.* § IV.11.d.i, § IV.11.d.iii.b.a.

- **The monitoring network lacks specifics.** The Consent Judgment specifies no minimum number of monitoring wells, no required locations, depths, or placement criteria, and no surface water monitoring locations. Key locations—the Middle Line Canal, runoff channels, direct discharge points—are not mentioned.

- **The Consent Judgment does not require sampling tied to SRW's evidence.** SRW's Notice of Intent and sampling data document specific contamination at specific locations. The Consent Judgment ignores this evidence entirely, imposing a future monitoring obligation untethered to the documented violations. *Id.* § IV.11.d.ii–iii; FAC (Dkt. 56-1) ¶¶ 81–91.

- **The State delegates all investigative and corrective measures to Simplot.** The Consent Judgment positions Simplot as the entity responsible for investigating and correcting itself. The Consent Judgment states, "Within 180 Days of the Effective Date, Simplot shall prepare, and submit to the State for approval, a Groundwater and Surface Water Monitoring Plan . . ." *Id.* § IV.11.d.i. Simplot—not the State—drafts the monitoring plan; Simplot thus determines which monitoring locations to use, what parameters to sample for, sampling frequency, and analytical methods, while the State's role is limited to approval or disapproval of Simplot's submission. Similarly, Simplot both collects the data for its annual reports and performs the risk assessment: The [annual] report will also discuss if soil analysis . . . demonstrates that phosphorus or nitrate levels pose a high potential risk to waters of the United States. *Id.* § IV.11.g.ii.b.v–vi. Simplot also performs its own infrastructure evaluation. *Id.* § IV.11.e. Finally, Simplot recommends its own corrective actions: "Simplot will review the previous annual monitoring period's results and provide the State with the outcome of any recommendations or corrective actions proposed, for the State's review and approval. The responsibility *lies with Simplot* to determine appropriate actions, subject to State approval." *Id.* § IV.11.d.iii.c.a (emphasis added).

Simplot thus asks this Court to conclude that there is no realistic prospect for future violations, when virtually the entire responsibility for ensuring the same falls on the shoulders of the very entity with a proven track record of both violations and obfuscation.

- **The Consent Judgment penalty does not deter future violations.** A penalty that fails to capture the economic benefit of noncompliance does not deter future violations—it simply prices noncompliance as a cost of doing business. *See Laidlaw*, 528 U.S. at 185–86 (civil penalties serve deterrence interests); *see also Idaho Conservation League v. Magar*, No. 3:12-cv-00337-CWD, 2015 WL 632367, at *7 (D. Idaho Feb. 13, 2015) (citing *Idaho Conservation League v. Atlanta Gold Corp*., 879 F. Supp. 2d 1148 (D. Idaho 2012)). Where a defendant retains the financial benefit it gained from avoiding compliance costs, there is a realistic prospect that the same calculus will lead to the same conduct in the future.

The $334,000 civil penalty imposed by the state Consent Judgment is facially inadequate to recapture Simplot's economic benefit of noncompliance. Simplot is an $11 billion company that has operated the Grand View Feedlot—one of the largest feedlots in the country, with approximately 150,000 head of cattle—without an NPDES or IPDES permit since 2012. FAC (Dkt. 56-1) ¶ 42. The costs Simplot avoided over that period—permit application and compliance costs, lagoon lining, nutrient management infrastructure, groundwater monitoring, and engineering controls—dwarf the $334,000 penalty.

The contrast with other enforcement actions is striking. The EPA itself settled a separate enforcement action against Simplot for $1.5 million, which this Court noted was "consistent with the deterrent aims of the statutes on which this claim is based." *United States v. J.R. Simplot Co*., No. 1:23-cv-00322-DCN, 2024 U.S. Dist. LEXIS 193720, at *10 (D. Idaho Oct. 22, 2024). In addition, a private individual was penalized $150,000 for 42 days of recreational mining without a permit. *Idaho Conservation League v. Poe*, No. 1:18-cv-353-REP, 2022 WL 4536465, at **7, 10 (D. Idaho Sep. 28, 2022). The inadequacy of the penalty here is not merely a matter of degree; the EPA's 2018 Memorandum of Agreement with Idaho DEQ expressly requires calculation of economic benefit of noncompliance as a component of any penalty. *See* Dkt. 78-4. The internal DEQ communications make clear that no such calculation was ever performed—the penalty amount was developed in a matter of weeks, under pressure from this federal lawsuit, without independent verification of the violations. *See* Dkts. 78-4–7 (internal agency communications). A penalty calculated without an economic benefit analysis, under those circumstances, cannot credibly be said to have eliminated Simplot's financial incentive to violate the law.

By contrast, in *SF Herring*, the court found the CWA claims moot in part because the consent decree imposed a $4.2 million penalty via SEP payments—an amount that plausibly punished PG&E for its past violations and deterred future ones. *SF Herring*, 2019 U.S. Dist. LEXIS 234523, at *19. No comparable showing can be made here.

In sum, the process that produced the Consent Judgment and the Consent Judgment itself both demonstrate that the parties cannot be trusted to resolve SRW's claims on their own. The rushed timeline, the absence of independent sampling, the defendant-driven process, the deferred and vague obligations, and the absence of adequate penalty all establish a realistic prospect that violations will continue unabated.

C. At a Minimum, the Court Should Reopen Discovery.

Both *ECO v. Dallas* and *SF Herring* were decided on summary judgment—after the parties had a full opportunity to develop the factual record on mootness. The Second Circuit's decision in *Atlantic States Legal Foundation, Inc. v. Eastman Kodak Co.*, 933 F.2d 124 (2d Cir. 1991), is instructive on this point. There, faced with a consent decree entered after the citizen suit was filed, the court declined to rule on mootness and instead remanded for further factual development:

> Based on the present record, therefore, we cannot state with certainty whether Atlantic States has a basis for asserting that, notwithstanding Kodak's agreements with governmental authorities, there is a realistic prospect that Kodak will

> continue to violate the Clean Water Act as alleged in the complaint. We therefore remand for a determination of that issue. If the district court concludes that such violations are in fact continuing or, that, after giving some deference to the judgment of the state authorities, the terms of the settlement are such that a realistic prospect of continuing violations exists, Atlantic States may continue to pursue relief under the Clean Water Act.

Id. at 128.

The same approach is warranted here. SRW's Motion to Reopen Discovery (Dkt. 78-1) identifies specific categories of evidence—recent sampling results, implementation status of Consent Judgment obligations, Simplot's internal compliance planning, and financial records bearing on economic benefit—that are directly relevant to the mootness inquiry. Simplot's request to stay discovery while its motion to dismiss is pending would allow it to benefit from its own obstruction: having resisted discovery throughout this litigation, it now seeks to prevent SRW from obtaining the evidence needed to rebut its mootness claims. The Court should deny the stay and permit discovery to proceed before ruling on mootness.

III. SRW'S CLAIMS FOR CIVIL PENALTIES REMAIN LIVE.

Even if the Court were to conclude that SRW's claims for injunctive relief were mooted by the Consent Judgment—they are not—SRW's claim for civil penalties independently survives. *See Laidlaw*, 528 U.S. at 185–86. Civil penalties under the CWA serve two distinct purposes: punishment for past violations and deterrence of future ones. *See* 33 U.S.C. § 1319(d). A settlement that fails to serve either purpose does not moot the civil penalty claim. In *SF Herring*, the court found civil penalties moot, but only because the $4.2 million in SEP payments would "sufficiently punish PG&E for its past conduct and deter PG&E from future violations of the CWA." *SF Herring*, 2019 U.S. Dist. LEXIS 234523, at *19. Again, no comparable showing can be made here. The Consent Judgment imposed approximately $334,000 in civil penalties—a fraction of what the CWA would provide for the violations SRW has documented. The penalties did not purport to punish Simplot for its past conduct or to deter future violations. Under the *SF Herring* court's own reasoning, a settlement that neither punishes nor deters cannot moot a civil penalty claim.[2]

Simplot relies on *Coastal Environmental Rights Foundation v. Naples Restaurant Group, LLC*, 158 F.4th 1052 (9th Cir. 2025), for the proposition that civil penalty claims are mooted when violations are not reasonably expected to recur. But *Naples* is far narrower than Simplot represents. The *Naples* court's mootness finding rested on a single, dispositive fact: the defendant had obtained a permit that expressly authorized the specific discharge at issue. *Id.* at 1056. The court was explicit:

> Naples has carried its 'heavy burden' to show that—with its newly obtained permit that expressly 'authorize[s] discharges from public firework displays'—it can no longer violate the Act by discharging pollutants *without a permit*.

Id. at 1060 (emphasis in original). The violation—discharging without a permit — was rendered logically impossible by the permit's own terms. That is not this case. Simplot has no IPDES permit. It has only applied for one. Every discharge from the Grand View Feedlot during the multi-year permitting process remains unpermitted—the precise violation SRW alleges. Under *Naples*'s own reasoning, the violation cannot be "absolutely clear" to not recur when the defendant still lacks the permit that would authorize the discharges.

IV. SRW'S RCRA CLAIMS REMAIN LIVE.

The Consent Judgment does not resolve SRW's RCRA imminent-and-substantial-endangerment claim. 42 U.S.C. § 6972(a)(1)(B). In addition to the previously briefed failure to be an action in federal court as required by the plain language of the statute, Dkt. 65 at 4–5

[2] The test *Comfort Lake* adopted for whether a state action moots civil penalties is whether the state's action constituted diligent prosecution. 138 F.3d at 357. For the reasons discussed in Section V.C–D below, Simplot's actions do not meet that threshold, and thus SRW's civil penalties claim also remains live under *Comfort Lake*'s reasoning.

(incorporated here by reference), SRW's claim focuses on present groundwater contamination, lagoon seepage, confinement pen leakage, and ongoing manure overapplication—conditions that create an imminent and substantial endangerment to health and the environment. The Consent Judgment's deferred, conditional, and discretionary approach to groundwater issues falls far short of eliminating that endangerment.

The Consent Judgment conditions any meaningful corrective action—including potential lining of the Process Wastewater Pond—on a State determination that groundwater monitoring shows "significant degradation" or results that "exceed[] state groundwater standards which pose a threat to existing or projected future beneficial uses of groundwater." Dkt. 77-1 § IV.11.d.iv.b. No numerical standards (such as EPA maximum contaminant levels for nitrates or other contaminants already documented in SRW's Notice of Intent) are incorporated. The trigger is subjective, the threshold high and discretionary, and actual corrective measures, if any, remain years away. This is a fundamentally lower and more deferential standard than RCRA's "imminent and substantial endangerment" test. Under RCRA, SRW need not wait for the State to agree that groundwater standards have been exceeded in a manner that "poses a threat to beneficial uses." The statute authorizes citizen suits to address present and ongoing endangerment *right now*. 42 U.S.C. § 6972(a)(1)(B). The State itself has already signaled that immediate lining of the lagoons is "not required under state law." *See* Dkt. 78-1 at 15; Tebbutt Decl. ¶ 5, Ex. C. However, what is not required under state law may nonetheless be necessary under RCRA. The State remains free to conclude that existing contamination does not meet its state-law discretionary triggers—and still be wrong under federal law. The State's admission that it is only going to enforce *state* law by itself creates a realistic prospect of continuing violations of federal law.

Compounding the problem, the State has resisted even low-risk, quick-to-implement interim measures. It has expressed concerns about "arbitrary and capricious" monitoring wells, even though such wells could be installed with minimal disruption and would yield immediately useful data about current groundwater conditions. Tebbutt Decl. ¶ 5, Ex. C; Erickson Decl. (Dkt. 45-1) ¶¶ 8–14, 18–21. This resistance to basic, interim fact-finding further underscores that the Consent Judgment is not designed to promptly address the existing endangerment SRW has documented. The multi-year gap between the effective date and any potential corrective action, combined with the vague and high triggers, the absence of numerical standards, and the State's deference to Simplot's proposed monitoring network, leaves a realistic prospect—indeed, a near-certainty—that RCRA violations and endangerment will continue unabated. Unlike the comprehensive federal consent decree in *ECO v. Dallas*, this document does not eliminate the current, ongoing risk to groundwater.

Finally, Simplot's assertion that once a CWA permit is issued, SRW's RCRA claim evaporates because permitted discharges are excluded from RCRA's "solid waste" definition is meritless. SRW already provides a response to this argument in its Response to Motion to Stay, Dkt. 66 at 19 (incorporated herein), which Simplot repeatedly ignores. SRW's statement reflects the holding in *Ecological Rights Foundation v. PacifiCorp*, which denied a motion to dismiss RCRA claims for discharges that the plaintiff was also claiming violated the CWA because the facility had no permit. 738 F. Supp. 3d 1239, 1256 (N.D. Cal. 2024) ("At the motion to dismiss stage, it is sufficient to observe that the Facility is not presently subject to any CWA permits as a point source, such that PacifiCorp's motion on this ground must be denied.").

In other words, a facility lacking a permit is sufficient for allowing claims to proceed under both RCRA and the CWA for the same discharge. The notion that this means that *having* a permit means *no* RCRA liability is possible reflects a basic failure in logic on Simplot's part: if Condition A is sufficient for Condition B, it does not follow that the absence of Condition A is sufficient for the absence of Condition B. Indeed, courts have also foreclosed that result. *See, e.g.*, *Cmty. Ass'n for Restoration of Env't Inc. v. Wash. Dairy Holdings LLC*, No. 1:19-CV-3110-TOR, 2019 WL 13117758, at *7 (E.D. Wash. Oct. 24, 2019) ("Since NPDES authorizes discharges to surface water but not to groundwater, the alleged groundwater discharges at issue in this case are not necessarily excluded from RCRA liability.").

V. SIMPLOT'S CLAIM PRECLUSION ARGUMENT FAILS.

Simplot's claim preclusion argument fails because SRW was neither a party to the Consent Judgment nor in privity with the State. Under Idaho law, which governs the preclusive effect of the state judgments, claim preclusion requires identity of parties or their privities, and Simplot cannot satisfy the privity requirement. Idaho courts look to federal principles—including adequate representation—when assessing privity. *See Carter v. Gateway Parks, LLC*, 168 Idaho 428, 437–38, 483 P.3d 971, 980 (2020). The State did not adequately represent SRW's interests here. The state enforcement action was taken nearly two years after SRW commenced action and was collusive, reactive, and rushed; it lacked independent investigation, water sampling, or any economic benefit analysis; and it produced a low-penalty and deferred-relief consent judgment that does not reflect diligent prosecution of the violations SRW documented. Treating the State as SRW's privy under these circumstances would render the diligent prosecution bar in the CWA and RCRA meaningless—an impermissible end-run around Congress's statutory scheme.

A. Governing Law: Idaho Claim Preclusion Principles Apply, But Federal Adequate-Representation Standards Govern the Privity Inquiry.

Under the full faith and credit statute, 28 U.S.C. § 1738, federal courts give state court judgments the same preclusive effect that the rendering state's courts would give them. *Holder v.*

Holder, 305 F.3d 854, 864 (9th Cir. 2002); *Matsushita Elec. Indus. Co. v. Epstein*, 516 U.S. 367, 373 (1996). Accordingly, the preclusive effect of the Owyhee and Elmore County Consent Judgments is governed by Idaho law.

Under Idaho law, claim preclusion requires: (1) identity of parties or their privies; (2) the same claim or cause of action; and (3) a final judgment on the merits. *Carter*, 168 Idaho at 436; *Ticor Title Co. v. Stanion*, 144 Idaho 119, 124 (2007). Simplot does not dispute that SRW was not a party to the state court proceedings. Its entire claim preclusion argument therefore rises or falls on whether SRW was in privity with the State of Idaho.

Idaho courts in turn look to federal principles when assessing privity in this context. *See Carter*, 168 Idaho at 437–38 (citing *Taylor v. Sturgell*, 553 U.S. 880 (2008) and federal adequate-representation doctrine). *Carter* begins from the foundational premise that privity presumptively does not exist against parties that were not part of prior proceedings: "[a] judgment or decree among parties to a lawsuit resolves issues as among them, but it does not conclude the rights of strangers to those proceedings." *Id.* at 437 (quoting *Martin v. Wilks*, 490 U.S. 755, 762 (1989)). An exception exists only "when, in certain limited circumstances, a person, although not a party, has his interests adequately represented by someone with the same interests who is a party." *Id.* (quoting *Wilks*, 490 U.S. at 762 n.2).

Carter incorporates the *Taylor v. Sturgell* framework, under which a nonparty may be bound by a prior judgment only in six limited categories, two of which Simplot invokes here: (1) adequate representation by a party with aligned interests, and (2) a special statutory scheme expressly foreclosing successive litigation by nonlitigants. *See Taylor*, 553 U.S. at 894–95; *Okanogan Highlands All. v. Crown Res. Corp.*, No. 2:20-CV-00147-MKD, 2025 WL 394952, at *3, 2025 U.S. Dist. LEXIS 20014, at *7–8 (E.D. Wash. Feb. 4, 2025), *motion for* *relief from judgment denied sub nom. Okanogan Highlands All. v. Crown Res. Corp.*, No. 2:20-CV-00147-MKD, 2025 WL 1096249 (E.D. Wash. Mar. 11, 2025). *Holder* adds one further qualification of particular importance here: even where state res judicata principles would otherwise apply, federal courts may depart from them where "the implementation of federal statutes representing countervailing and compelling federal policies justifies departures from a strict application" of general res judicata principles. *Holder*, 305 F.3d at 864 (internal quotations and citation omitted). The CWA's explicit authorization of citizen suits—and the policy underlying that authorization—constitutes precisely such a countervailing federal policy. *See* 33 U.S.C. § 1365; *Citizens Legal Env't Action Network, Inc. v. Premium Standard Farms, Inc.*, No. 97-6073-CV-SJ-6, 2000 WL 220464, at *11–12, 2000 U.S. Dist. LEXIS 1990, at *41–42 (W.D. Mo. Feb. 23, 2000) ("*CLEAN*").

B. Privity Requires Adequate Representation—Which, in the CWA Context, Means Diligent Prosecution.

The CWA's citizen suit provision bars citizen suits where the EPA or State "has commenced and is diligently prosecuting" a civil or criminal action. 33 U.S.C. § 1365(b)(1)(B). This statutory framework—which Congress enacted alongside the citizen suit authorization — provides the definitive measure of what "adequate representation" means in the CWA context. *CLEAN* offers the most persuasive authority on this point. There, the court held that diligent prosecution and privity are coextensive in CWA citizen suits: "PSF's constitutionally protected interest in the finality of its first lawsuit depends upon a statutory question: whether the law regards the second plaintiff as identical to the first. And that depends upon what the State 'diligently prosecuted'—if anything." *CLEAN*, 2000 U.S. Dist. LEXIS 1990, at 41–42. The court further identified specific indicia of non-diligence, including inadequate penalties: "PSF may have paid no penalties for the purportedly 'resolved' violations." *Id.* at 49. Low or absent penalties, the court held, are evidence that the state did not diligently prosecute—and therefore that no privity exists.

The *CLEAN* framework is the correct one, and the statutory text of CWA Section 1365 itself confirms it. Before a citizen suit may be barred, two independent thresholds must be satisfied: (1) the State must have "commenced" a civil or criminal action before the citizen brought suit, *and* (2) that action must be one the State "is diligently prosecuting." 33 U.S.C. § 1365(b)(1)(B). These are conjunctive requirements—both must be met. A State action that was commenced nearly two years after the initial citizen suit but not diligently prosecuted does not bar a citizen suit under the plain text of the statute. That statutory determination, in turn, provides the definitive measure of what "adequate representation" means for privity purposes in the CWA context. If a citizen plaintiff may proceed where the State's prosecution is not diligent—as the CWA expressly provides—then it would be an absurdity to hold that a non-diligent prosecution nonetheless generates privity sufficient to bar the citizen plaintiff from court once a consent judgment is entered. To allow privity to arise from non-diligent prosecution would render the word "diligent" meaningless: a citizen plaintiff would be allowed to proceed on a finding that the state action is not diligent, only to be kicked out of court once that non-diligent prosecution produced a consent judgment. That cannot be what Congress intended.

United States v. Pacific Gas & Electric Co., 776 F. Supp. 2d 1007 (N.D. Cal. 2011), confirms the framework. There, the court found preclusion only after concluding that "the record does not demonstrate that the United States did not diligently prosecute its claims." *Id.* at 1029. The court also applied the rule that a consent decree is presumptively valid only if it is "the product of 'good faith, arms-length negotiations.'" *Id.* at 1025 (quoting *United States v. Oregon*, 913 F.2d 576, 581 (9th Cir. 1990)). Where the record raises questions about good faith—as it does here—that presumption does not apply. *Id.* ("the district court must ensure that the agreement is not . . . a product of collusion." (internal quotations and citation omitted)).

Simplot relies on *Alaska Sport Fishing Association v. Exxon Corp.*, 34 F.3d 769 (9th Cir. 1994), for the proposition that there is a presumption that the state will adequately represent the interests of its citizens. That presumption is, however, rebuttable. In *Friends of Milwaukee's Rivers v. Milwaukee Metropolitan Sewerage District*, the Seventh Circuit explicitly rejected the proposition that a state *always* acts in a *parens patriae* capacity relative to its citizens, stating, "[res judicata to an earlier citizen suit] presumes that the agency was acting in its *parens patriae* role as a representative of the public . . . the State is subject to the exceptions enumerated in [the Restatement of Judgments] . . . [to be in privity], the state's subsequently-filed government action must be a diligent prosecution." 382 F.3d 743, 759 (7th Cir. 2004). Simplot also quotes *United States v. ITT Rayonier, Inc.*, but self-servingly omits the critical qualifying language that precedes that quoted statement: "*In some contexts*, the relationship between governmental authorities as public enforcers of ordinances and private parties suing for enforcement as private attorneys general is close enough to preclude relitigation." 627 F.2d 996, 1003 (9th Cir. 1980) (emphasis added). The "in some contexts" qualifier is not boilerplate—it is the holding. The question is whether this is one of those contexts. As demonstrated below, it is not.

C. There Is No Privity Because the State Did Not Diligently Prosecute SRW's Claims.

The record in this case—much of which has already been developed through SRW's public records requests and is reflected in the Motion to Reopen Discovery (Dkt. 78-1) and quoted above—establishes that the State did not diligently prosecute the claims at issue. Every indicia of diligence identified in the case law is absent here.

1. The State Never Independently Investigated the Violations.

Diligent prosecution begins with an independent investigation. A state that enters a consent judgment without conducting an independent investigation has not prosecuted anything — it has ratified a settlement negotiated by the defendant. That is what happened here.

ISDA conducted numerous inspections of the Grand View Feedlot over the years and never once documented a single violation, other than an effluent overflow that spilled onto a neighbor's field. Tebbutt Decl. ¶¶ 2–3. The State never took a water sample—not during its inspection, not during the penalty negotiations, and not before entering the Consent Judgment. The violations underlying the Consent Judgment therefore were, by the State's own admission, "not actually observed violations but rather allegations based upon 'information or belief.'" Dkt. 78-6 at 3 (quoting DEQ Director Byrne). The State's Director further admitted that it would be "difficult for DEQ to come up with a defensible penalty amount" precisely because the violations had never been independently verified. *Id.*

SRW, by contrast, has taken numerous samples across multiple years, and as recently as April 2026 documented *E. coli* contamination at the same locations where prior violations were found—contamination that post-dates the Consent Judgment and evidences Simplot's continuing violations of the CWA's strict discharge prohibition. 33 U.S.C. § 1311(a); Tebbutt Decl. ¶ 4. The State's enforcement action was premised on SRW's evidence, not its own. A state that relies entirely on a citizen plaintiff's evidence to support its enforcement action, while simultaneously using that action to preclude the citizen plaintiff from court, cannot credibly claim to have adequately represented the citizen's interests.

2. The State Did Not Act Independently—It Acted at Simplot's Request.

The internal DEQ communications produced in response to SRW's public records requests reveal that the State did not decide independently to enforce against Simplot. It was

Simplot that initiated the enforcement action. As DEQ Supervisor Heidi Caye acknowledged in her November 14, 2024 email: "Simplot has not yet asked DEQ to enforce against them, which would need to happen prior to the state pursuing the civil case." Dkt. 65-2 at 2. The State did not act because it identified violations and determined enforcement was warranted. It acted because Simplot asked it to.

The timeline confirms that the process was driven by the schedule of this federal litigation, not by the State's independent assessment of the public interest. As late as June 18, 2025, DEQ staff had "not developed a penalty dollar amount" and were "unaware of any penalty development." Dkt. 78-5 at 2. On July 1, 2025, Director Byrne stressed the need to "stay out in front of this issue and the other case in federal court" and "finalize the settlement in very short order" because "there is a chance the federal court could act in the coming days." Dkt. 78-7 at 3.

A state enforcement action that was solicited by the defendant, completed under pressure from a federal lawsuit, and designed to preempt that lawsuit is not "diligent prosecution" in any meaningful sense of that phrase. It is a defendant-orchestrated maneuver dressed in regulatory clothing. As *PG&E* held, preclusion is available only where the prior proceeding was the product of "good faith, arms-length negotiations." 776 F. Supp. 2d at 1025 (quoting *Oregon*, 913 F.2d 576, at 581). A genuine good-faith, arms-length negotiation is one in which the State is extracting the heaviest concessions the evidence and law will support from the regulated party. The presence here of an independent variable—pressure from SRW's pending federal litigation—is fundamentally inconsistent with that objective. When the State is negotiating not only to resolve Simplot's violations but also to extinguish SRW's independent federal claims, it is no longer bargaining solely for the public interest, but for Simplot's litigation interests as well. That conflict of purpose is itself evidence that the negotiation was not arms-length in any meaningful sense. Moreover, the DEQ communications reveal that the State was acting as SRW's adversary, not representative: Director Byrne's communications reflect an explicit awareness of SRW's federal claims and an explicit objective of foreclosing them. A party that is deliberately engineering an outcome adverse to SRW's ability to litigate cannot be said to have represented SRW's interests. That is the opposite of privity.

3. The Consent Judgment Requires Years of Monitoring Before Any Corrective Action is Taken.

A consent judgment that defers meaningful remediation through open-ended study periods, while violations continue unabated, is not diligent prosecution. *Ohio Valley Env't Coal., Inc. v. Hobet Mining, LLC*, 723 F. Supp. 2d 886, 912 (S.D. W. Va. 2010) (government action "aimed at reducing, not eliminating, violations are insufficient to indicate a diligent prosecution" because such actions are "a stalling tactic rather than a compliance strategy" (quoting *Friends of Milwaukee's Rivers*, 382 F.3d at 764)). The Consent Judgment is precisely that kind of instrument. Simplot is not required to take corrective action to address pollutant discharges to surface waters until after it has: (1) designed its own Groundwater and Surface Water Monitoring Plan within 180 days; (2) conducted quarterly sampling under that self-designed plan for three full years; (3) prepared and submitted annual reports summarizing its own data and made its own risk assessments; and (4) waited for the State to determine, based solely on Simplot's self-reported data, whether Simplot's proposed corrective action is warranted. *See* Dkt. 77-1 §§ IV.11.d.iii–iv. Even then, if monitoring reveals surface water quality exceedances, the Consent Judgment merely requires Simplot to "request a modification" to its IPDES permit—a permit that does not yet exist and will not exist until at least 2027. *Id.* § IV.11.d.iv.a; § IV.11.c.i.

This framework guarantees that violations will continue for years without consequence, while the machinery of regulatory process slowly churns. The *Hobet* court found non-diligence on precisely analogous facts: there, the state agency extended compliance deadlines by two and a half years, imposed only minimal stipulated penalties, and failed to provide a clear remedial plan—all while violations continued. 723 F. Supp. 2d at 911–12. The court held that "the approximately two and a half year delay in the compliance deadline reduces the likelihood that a solution to the [pollution] problem will be found as soon as possible," and that the "minimal penalties for violations of the company's interim limits substantially reduce[d] [the violator's] incentive to find a viable treatment technology in a timely manner." *Id.* at 911. The same logic applies here with even greater force: the Consent Judgment imposes no interim compliance deadlines, no meaningful penalties for continuing violations or means to determine violations, and no corrective action obligation that is triggered by anything other than Simplot's self-reported data after three or more years of monitoring.

SRW has already documented, through independent water sampling conducted outside the Consent Judgment's monitoring regime, that pollutants from Simplot's operations are reaching surface waters in violation of the CWA. The existence of documented violations—violations the State's monitoring regime was not designed to detect and has not addressed—confirms that the Consent Judgment is not "capable of requiring compliance with the Act" and is not "in good faith calculated to do so." *Hobet*, 723 F. Supp. 2d at 907 (citing *The Piney Run Pres. Ass'n v. Cnty. Comm'rs of Carroll Cnty., MD*, 523 F.3d 453, 459 (4th Cir. 2008)). Where a citizen plaintiff can point to "specific facts that would support an inference that [the violator] will continue to engage in violations," the prior government action cannot preclude the citizen suit. *Id.* at 904. That is the case here.

Simplot's citation of the Consent Judgment's recital that the Consent Judgment was "fair, reasonable, and in the public interest"—as evidence of privity between the State and SRW—is exactly the sort of "potentially self-serving statement[] of a state agency and the violator" about which a court should be skeptical. Dkt. 83-1 at 30, Dkt. 77-1 at 8; *Hobet*, 723 F. Supp. 2d at 906 (quoting *Friends of Milwaukee's Rivers*, 382 F.3d at 760). The record of dealings between the parties themselves, and the result thereof, is the proper basis of that determination.

4. The Penalty Confirms Non-Diligence.

The $334,000 civil penalty imposed by the Consent Judgment further confirms that the State did not diligently prosecute the violations. A penalty that fails to recapture the economic benefit of noncompliance does not deter future violations it simply prices noncompliance as a cost of doing business. *See Friends of the Earth, Inc. v. Laidlaw Envtl. Servs. (TOC), Inc.*, 890 F. Supp. 470, 497 (D.S.C. 1995) (failure to calculate or recover economic benefit was "strong evidence" of non-diligent prosecution).

Here, the State conducted no economic benefit analysis. The penalty was negotiated in weeks, under pressure from this federal litigation, without independent verification of the violations or sampling. Internal DEQ communications make clear that no such calculation was performed. This stands in stark contrast to cases in which courts have found diligent prosecution. *See, e.g.*, *id.* at 491–92. A defendant that retains the substantial financial benefit of years of unpermitted operation has every incentive to continue the same conduct. The inadequate penalty, like the rushed process and deferred remedies that preceded it, demonstrates that the State did not adequately represent SRW's interests or the public interest. Preclusion is therefore inappropriate.

5. Simplot Misrepresents the Holding in Laidlaw.

Simplot's characterization of *Laidlaw*, 890 F. Supp. 470 (D.S.C. 1995), is materially misleading. In that case, the court denied the defendant's motion to dismiss the citizen suit and found the state agency's prosecution was not diligent. *Id*. at 489–97. Simplot cites a footnote for the narrow proposition that the state complaint having been "drafted by defendant and filed at defendant's request to bar citizen suit did not demonstrate lack of diligence." Dkt. 83-1 at 36. But the court expressly rejected that leap: "Such a finding [of no collusion] does not, however, mean that DHEC's action was diligent prosecution for purposes of section 505(b)(1)(B)." *Laidlaw*, 890 F. Supp at 489 n.14. The court instead found lack of diligence based on the state's failure to calculate or recover economic benefit of noncompliance—precisely the defect present in the Consent Judgment here. *Id.* at 497.

D. SRW's Federal RCRA Claims Are Not the "Same Claim" as Those Resolved in the Consent Judgment.

Even if privity existed (it does not), claim preclusion would still fail because SRW's RCRA claims are not the "same" as the claims resolved in the Consent Judgment. Under Idaho law, claim preclusion requires identity of claims—that is, the claims must arise from the same transaction or series of transactions and could and should have been litigated in the prior action. *Carter*, 168 Idaho at 438. The state actions resolved only claims brought by the State of Idaho under Idaho environmental statutes and permits. They did not, and could not, adjudicate SRW's distinct federal claims under RCRA's imminent-and-substantial-endangerment provision, 42 U.S.C. § 6972(a)(1)(B).

RCRA imposes a different and more protective standard than the vague, high-threshold triggers in the Consent Judgment (e.g., "significant degradation" or results that "pose a threat to … beneficial uses of groundwater"). The Consent Judgment largely defers meaningful corrective action for years and conditions it on future discretionary state findings. In contrast, SRW's RCRA claim alleges present and ongoing endangerment to groundwater from lagoon leakage, confinement pen leakage, and manure over-application—conditions the state action does not resolve. Federal courts have recognized that state law resolutions and permits do not preclude RCRA groundwater claims, which address harms and standards outside the scope of typical state

NPDES or solid-waste enforcement. *See Cmty. Ass'n for Restoration of the Env't*, No. 1:19-CV-3110-TOR, 2019 WL 13117758, at *7.

Because the federal RCRA claims involve different legal standards, different factual focus (groundwater endangerment), and different relief, they are not precluded by the state judgments.

E. SRW's Decision Against Intervening Does Not Establish Claim Preclusion.

SRW did not intervene in the state court actions for practical and strategic reasons that underscore, rather than undermine, the lack of privity and adequate representation. The state enforcement actions were not independent regulatory proceedings — they were reactive measures initiated and accelerated by Simplot itself after SRW had already filed this federal suit and served its Notice of Intent. Simplot was simultaneously pushing the State to act quickly while opposing SRW's own efforts to inspect the facility in this case. Intervening in a proceeding that Simplot was orchestrating on an expedited timeline would have required SRW to divert resources into a parallel state-court fight whose terms were already being shaped by the defendant.

Moreover, SRW had no obligation to intervene to preserve its statutory right to pursue a federal citizen suit. Congress created the citizen-suit provisions precisely because government enforcement is sometimes inadequate or influenced by the regulated entity. *See Adkins*, 644 F.3d at 499 (7th Cir. 2011) ("Congress enacted the citizen-suit provisions of RCRA and other environmental laws because the world is not ideal, because government agencies face many demands on their resources, because administrations and policy priorities change, and because regulatory agencies are subject to the phenomenon known as 'agency capture.'") (citation omitted). Requiring citizens to intervene in every state enforcement action—especially one that appears designed to preempt federal claims—would effectively nullify the diligent prosecution bar and the private right of action. SRW's decision to focus its resources on this federal proceeding, where it has already obtained a denial of Simplot's motion to dismiss and can seek meaningful injunctive relief and penalties under federal standards, was both reasonable and consistent with the statutory scheme.

F. At a Minimum, the Court Should Reopen Discovery on Diligence and Economic Benefit.

Even if the Court were inclined to credit Simplot's view of the existing record, disputed facts regarding the diligence of the State action—particularly the economic benefit of noncompliance that Simplot avoided over years of unpermitted operation—preclude dismissal. Determining whether a penalty is adequate to demonstrate diligent prosecution necessarily requires some understanding of the costs the violator avoided. Neither SRW nor the State (as far as SRW knows) has had the opportunity to obtain Simplot's internal compliance cost data, avoided-expenditure records, or full implementation details of the Consent Judgment. Without that information, the Court cannot conclusively determine whether the $334,000 penalty (or the Consent Judgment as a whole) reflects diligent prosecution. SRW's Motion to Reopen Discovery (Dkt. 78-1) identifies precisely these categories of evidence. The Court should grant that motion and allow factual development before resolving Simplot's preclusion (or mootness) arguments.

VI. THE COURT SHOULD REOPEN DISCOVERY.

The need for further discovery is already underscored in the sections above. Simplot dismisses the internal DEQ communications showing it "pushing" the State for enforcement as "speculative" and "self-serving." Dkt. 83-1 at 28. This characterization is both inaccurate and ironic. The emails are contemporaneous records produced in response to SRW's public records requests. They are not speculation—they are direct evidence of the timeline, motivation, and control Simplot exercised over the state action. Simplot's attempt to shield the full context of those communications from scrutiny only underscores why discovery is necessary.

Simplot cannot have it both ways: it has resisted SRW's Rule 34 inspection and other discovery throughout this litigation, then it asks the Court to accept its sanitized version of events and dismiss SRW's claims on an incomplete record. Courts decline to resolve diligence, mootness, or preclusion issues on such a limited record. *See Atlantic States*, 933 F.2d at 128 (remanding for further factual development on whether a consent decree eliminated any realistic prospect of continuing violations). SRW's Motion to Reopen Discovery (Dkt. 78-1) targets exactly the evidence needed: the actual implementation (or lack thereof) of Consent Judgment obligations, Simplot's internal cost-avoidance and compliance records (directly relevant to economic benefit and diligence), and additional communications bearing on the genesis and independence of the state action. Allowing discovery will not be unduly burdensome—much of it will overlap with the site inspection and document production Simplot has long opposed. But it is essential to test Simplot's claims that the Consent Judgment was the product of diligent, arms-length enforcement rather than a defensive maneuver. The Court should deny Simplot's Motion to Dismiss (or at least defer ruling) and grant SRW's Motion to Reopen Discovery.

VII. CONCLUSION

For the foregoing reasons, the Consent Judgment does not moot SRW's claims for injunctive and declaratory relief, does not bar its claims for civil penalties, and does not preclude its claims under the doctrine of res judicata. Simplot cannot satisfy *Laidlaw*'s stringent standard, and it fares no better under the lower "realistic prospect" standard it urges. Disputed material facts regarding the genesis, diligence, and effectiveness of the State action further preclude dismissal at this stage. The Court should therefore deny Simplot's Motion to Dismiss in its entirety and grant SRW's Motion to Reopen Discovery so that the parties may develop a complete factual record on these issues.

Respectfully submitted this 29th day of June, 2026.

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