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MONTANA THIRTEENTH JUDICIAL DISTRICT COURT  
YELLOWSTONE COUNTY

BULL MOUNTAINS LAND ALLIANCE,  
NORTHERN PLAINS RESOURCE  
COUNCIL, and MONTANA  
ENVIRONMENTAL INFORMATION  
CENTER,

Plaintiffs,

v.

MONTANA DEPARTMENT OF  
ENVIRONMENTAL QUALITY,

Defendant.

Case No. \_\_\_\_\_

**COMPLAINT FOR  
DECLARATORY RELIEF**

## INTRODUCTION

1. This case marks the latest—but certainly not the only—deficient environmental review allowing Signal Peak Energy, LLC, to expand its underground coal-mining operation at the Bull Mountains Mine, approximately thirty miles north of Billings, Montana. At issue is the Montana Department of Environmental Quality’s (DEQ) August 1, 2024, environmental assessment (EA) under the Montana Environmental Policy Act (MEPA) evaluating the impacts of the Amendment 6, or “AM6,” mine expansion—which adds 12.7 million tons of economically recoverable coal, to the existing mine permit. All coal mined under the AM6 permit will be transported and burned for energy production.

2. Although MEPA generally requires that EAs include an evaluation of the impacts, including “cumulative and secondary impacts” on the physical environment and human population, ARM 17.4.609(3)(d), (e), DEQ’s EA failed to meaningfully evaluate the environmental impacts of the AM6 expansion, including impacts to water quantity, wildlife, unique resources and cultural and historical sites, greenhouse gas pollution, agriculture, worker safety, and the community’s inevitable transition from coal mining to other, more sustainable sources of revenue. DEQ’s assessment of the significance of these impacts and its determination not to prepare an Environmental Impact Statement (EIS) also violated MEPA. As a result, DEQ permitted Signal Peak to expand its coal mine significantly and cause corresponding environmental harm that the agency has not yet fully considered.

3. To remedy DEQ's unlawful conduct, Plaintiffs request that the Court declare the AM6 EA unlawful and order DEQ to complete the analysis required by MEPA.

### **JURISDICTION AND VENUE**

4. Plaintiffs bring this action pursuant to the Uniform Declaratory Judgments Act, MCA §§ 27-8-201, -202, and the Montana Environmental Policy Act, MCA § 75-1-101, *et seq.*

5. Venue is proper in this District because the Bull Mountains Mine and AM6 expansion are located, in part, in Yellowstone County. MCA §§ 25-2-126(2), 75-1-108.

### **PARTIES**

6. Bull Mountains Land Alliance is a nonprofit organization founded in 1969 by landowners to protect family farms and ranches from the threat of coal mining. Bull Mountains Land Alliance members live, work, and recreate in areas harmed by the Bull Mountains Mine expansion. Accordingly, Bull Mountains Land Alliance's members are adversely affected by DEQ's approval of the Bull Mountains Mine expansion and will be injured by its implementation. Bull Mountains Land Alliance brings this action on its own behalf and on behalf of its affected members.

7. Northern Plains Resource Council is a grassroots conservation and family agriculture nonprofit organization based in Billings, Montana. Northern Plains organizes Montana citizens to protect water quality, family farms and ranches, and Montana's unique quality of life. Northern Plains is dedicated to

providing the information and tools necessary to give citizens an effective voice in decisions that affect their lives. Northern Plains formed in 1972 over the issue of coal mining and its impacts on private landowners, as well as the environmental and social impacts of mining and transporting coal. Northern Plains members live, ranch, and recreate adjacent to or above land and water resources impacted by the Bull Mountains Mine, and their livelihoods depend entirely on clean air and water, a healthy climate, native soils and vegetation, and lands that remain intact. Accordingly, Northern Plains members are adversely affected by DEQ's approval of the Bull Mountains Mine expansion and will be injured by its implementation. Northern Plains brings this action on its own behalf and on behalf of its affected members.

8. Montana Environmental Information Center (MEIC) is a nonprofit organization founded in 1973 with approximately 10,000 members and supporters in Montana and throughout the United States. MEIC is dedicated to the preservation and enhancement of the natural resources and natural environment of Montana and to the gathering and disseminating of information concerning the protection and preservation of the human environment. MEIC works to educate its members and the general public concerning their rights and obligations under local, state, and federal environmental protection laws and regulations. MEIC is also dedicated to assuring that federal officials comply with, and fully uphold, the laws of the United States that are designed to protect the environment from pollution. MEIC and its members have intensive, long-standing recreational, aesthetic,

scientific, professional, and spiritual interests in the responsible production and use of energy, the reduction of greenhouse gas pollution to ameliorate our climate crisis, and the land, air, water, and communities impacted by climate change. MEIC members live, work, and recreate in areas that will be adversely impacted by the Bull Mountains Mine expansion.

9. The legal violations alleged in this complaint will cause direct injury to each Plaintiff's organizational interests and the health, recreational, property, and aesthetic interests of its members. First, the challenged decision will injure the plaintiff organizations and their members' procedural interests, as it was not supported by the analysis and disclosure that MEPA requires and on which Plaintiffs rely.

10. Second, the challenged decision will harm Plaintiffs' members' health, welfare, property, recreational, and aesthetic interests by damaging the land, wildlife, water, air, and climate. Plaintiffs' members are concerned and harmed by the toxic particles that blow off the mine's gob pile that blows over their land. Their appreciation of the natural beauty of the Bull Mountains is harmed by sight of the structures the mine has built throughout the area. They are concerned and harmed by the impacts to livestock, wildlife, and people from subsidence cracks caused by the mine and dewatering of crucial water resources. They have witnessed and been harmed by the dewatering of natural springs in the area by the mine and the destruction of their ranch land and water.

11. Plaintiffs' members are harmed to see the land, including land within the proposed expansion, damaged by subsidence fractures. They enjoy watching wildlife in the Bull Mountains, but the mine's destruction of water resources harms the wildlife they like to watch. They are concerned to witness how the mine has destroyed water resources and, rather than reclaim the water, Signal Peak has tried to force people from their lands. Water is the most precious resource in the Bull Mountains. Plaintiffs' members wish to live the rest of their lives in the Bull Mountains, surrounded by natural beauty and wildlife. The mine's impacts make them question whether they will be able to continue to live in the Bull Mountains. These are actual and concrete injuries caused by DEQ's failure to comply with MEPA that would be redressed by the relief requested in this complaint.

12. Plaintiffs' members who do not live in the Bull Mountains have visited the area for decades and have deep ties to the areas impacted by the mine. They enjoy the natural beauty of the Bull Mountains, including the vistas of island mountain ranges and the vast eastern plains. They enjoy the vitality of the range, which is dependent on the springs and wetlands scattered throughout the Bull Mountains. They dislike that the mine has reduced access to the Bull Mountains, eliminating some of their preferred hikes and views. They have witnessed destruction of water resources by the mine and inadequate reclamation. They are worried that continued mining, including the Bull Mountains Mine expansion at issue here, will harm the hydrology of the entire region. If Signal Peak Energy continues its destruction of the Bull Mountains, they will reduce the time they

spend in the area. They will not be able to bear witnessing further destruction. These are actual and concrete injuries caused by DEQ's failure to comply with MEPA that would be redressed by the relief requested in this complaint.

13. Defendant DEQ is the agency charged with issuing permits for coal mining and reclamation operations, MCA §§ 82-4-205(2), -221, -225, and with evaluating the environmental impacts of proposed projects under MEPA, MCA § 75-1-201. DEQ prepared and issued the challenged AM6 expansion of Surface Mining Permit C1993017 for the Bull Mountains mine.

## **BACKGROUND**

### **I. THE MONTANA ENVIRONMENTAL POLICY ACT**

14. The Montana Environmental Policy Act is an essential piece of the statutory framework the Legislature has adopted to implement the Constitution's environmental protections. In the words of the statute, MEPA "provide[s] for the adequate review of state actions in order to ensure" that their "environmental attributes are fully considered by the legislature in enacting laws to fulfill constitutional obligations," and that "the public is informed of the anticipated impacts in Montana of potential state actions." MCA § 75-1-102(1).

15. The effectiveness of MEPA stems largely from the preparation and review of "environmental impact statements," or "EISs." Under the statute, state agencies are required to "include in each recommendation or report on proposals for projects, programs, and other major actions of state government significantly

affecting the quality of the human environment” a “detailed statement” that evaluates, among other things:

- the environmental impact of the proposed action;
- (B) any adverse effects on Montana’s environment that cannot be avoided if the proposal is implemented;
- (C) alternatives to the proposed action ...
- (E) the relationship between local short-term uses of the Montana human environment and the maintenance and enhancement of long-term productivity;
- (F) any irreversible and irretrievable commitments of resources that would be involved in the proposed action if it is implemented ....

MCA § 75-1-201(1)(b)(iv).

16. The statute’s focus on proposed actions—and pre-decisional review—is a vital part of its design. As the Montana Supreme Court has acknowledged, “MEPA’s procedural mechanisms help bring the Montana Constitution’s lofty goals into reality by enabling fully informed and considered decision making, thereby minimizing the risk of irreversible mistakes depriving Montanans of a clean and healthful environment.” *Park Cnty. Env’t. Council v. DEQ*, 2020 MT 303, ¶ 70, 402 Mont. 168, 477 P.3d 288.

17. While an environmental impact statement need only be prepared under MEPA if a proposed action would “significantly affect[] the quality of the human environment,” it is not always clear when this threshold has been met. MCA § 75-1-201(1)(b)(iv). The Department of Environmental Quality’s MEPA regulations accordingly provide for the preparation of a shorter “environmental assessment,” or “EA,” whenever there is a need “to determine the need ... [for] an EIS through an

initial evaluation ... of the significance of impacts associated with a proposed action.” ARM 17.4.607(2)(c), (3)(a). In assessing a proposal’s potential significance, the agency is required to consider a broad set of factors, including the “severity, duration, geographic extent, and frequency of occurrence” of the project’s impacts; the “growth-inducing or growth-inhibiting aspects of the impact[s], including the[ir] relationship or contribution ... to cumulative impacts”; the “quantity and quality of each environmental resource or value that would be affected, including the uniqueness and fragility of those resources or values”; and the “importance to the state and to society of each environmental resource or value that would be affected.” ARM 17.4.608(1). An EA, moreover, must evaluate a proposed action in context by considering its “cumulative and secondary impacts ... on the human population in the area to be affected.” ARM 17.4.609(3)(e).

## **II. THE BULL MOUNTAINS AND THE EPONYMOUS MINE**

18. The Bull Mountains form the hydrologic divide between the Musselshell River to the north and the Yellowstone River to the south. The Bull Mountains are initial foothills of the Rocky Mountains. From the summit of the highest point—Dunn Mountain—it is possible to view the Big and Little Snowy Mountains, the Crazy Mountains, and the Beartooth Mountains to the west, and the Pryor Mountains and Big Horn Mountains to the south. The Bull Mountains are known as a sacred area to the Crow and other tribes. Tribes with ancestral ties to the Bull Mountains include the Crow, Blackfeet, Sioux, Northern Cheyenne, Assiniboine, Gros Ventre, Shoshone, and Arapaho.

19. Coal mining has occurred in the Bull Mountains for over a century. Montana regulators have repeatedly recognized that this mining has followed a boom-and-bust development cycle. Montana regulators predicted that operations at the Bull Mountains Mine would follow the same boom-and-bust pattern, creating short term economic gains, followed by long-term negative impacts to the community and environment.

20. Signal Peak owns and operates the Bull Mountains Mine, located in the Bull Mountains north of Billings and south of Roundup. The Bull Mountains Mine is an underground, longwall mining operation, which allows the mine roof to collapse or subside as the mining process advances. The subsidence causes splitting and depression of the surface land above the mining operation. Subsidence from the mine has dewatered springs and wells and caused extensive fracturing of the land surface in the Bull Mountains, which harms Plaintiffs' members' interests.

21. Signal Peak first obtained its mining permit—Surface Mining Permit C1993017—in 2008. Since that time, it has sought and obtained several mine expansions, though these have repeatedly been found unlawful.

22. Most recently, the Ninth Circuit Court of Appeals and the Federal District Court for the District of Montana found that the mine's prior expansion into federal coal—the "AM3" expansion—was premised on an environmental review that failed the minimum standards of MEPA's federal analogue, the National Environmental Policy Act. The federal courts determined that the federal Office of Surface Mining and Enforcement failed to disclose the potentially significant

climate implications of mining, transporting, and burning coal from the Bull Mountains Mine. See *350 Montana v. Haaland*, 50 F.4th 1254 (9th Cir. 2022); *350 Montana v. Haaland*, No. CV 19-12-M-DWM, 2023 WL 1927307 (D. Mont. Feb. 10, 2023). As the Ninth Circuit observed, there is “no dispute that [greenhouse gases] cause global warming and have had dramatic effects on the environment. The only question is the extent to which this particular project’s [greenhouse gases] will add to the severe impacts of climate change.” *350 Montana*, 50 F.4th at 1266. The Ninth Circuit found that the Office of Surface Mining unlawfully “hid the ball” about the significance of the mine expansion’s climate impacts, which was “deeply troubling” given the magnitude of the emissions, the “dramatic” effects of climate change, and its “profound” consequences. *Id.* at 1266, 1269–70, 1275.

23. As a result of Signal Peak’s “reliance on Mine Expansion approvals pursuant to invalid EAs” and to prevent environmental harm under those EAs—including “potentially irreversible damage to ranching in the Bull Mountains”—the federal district court vacated the federal approval of the AM3 expansion on February 10, 2023. *350 Montana*, 2023 WL 1927307, at \*3–5.

### **III. THE AM6 EXPANSION AND CHALLENGED EA**

24. Without the ability to mine federal coal pending the Office of Surface Mining’s environmental review on remand from the federal court, on November 7, 2023, Signal Peak turned to DEQ to request a permit amendment allowing it to develop a new panel for longwall mining of state-owned coal.

25. DEQ conducted scoping and issued a draft EA purporting to evaluate the environmental impacts of the proposed AM6 expansion. On May 28 and again on July 16, 2024, Plaintiffs submitted comments on the draft EA observing, among other things, that the EA failed to undertake the requisite meaningful analysis of direct, secondary, and cumulative impacts of mining to water quantity, wildlife, unique resources and cultural and historical sites, greenhouse gas pollution, agriculture, worker safety, and the community's ultimate transition from coal mining. Plaintiffs further commented that DEQ failed to prepare an EIS despite numerous potentially significant impacts.

26. Notwithstanding these critiques from Plaintiffs and other members of the public, DEQ published a Final EA on August 1, 2024, with little additional analysis, and approved the AM6 expansion.

#### **IV. IMPACTS TO WATER QUANTITY IN THE BULL MOUNTAINS**

27. Plaintiffs' public comments on the environmental impacts of AM6 include questions about Signal Peak's ability to replace water drained from the Bull Mountains by the mine (i.e., water from groundwater above the mine and the coal aquifer that the company is removing). Plaintiffs included the expert review from Professor Payton Gardner, Ph.D., which performed a quantitative analysis and explained that the record could not—as a matter of sound science—justify that Signal Peak is able to replace damaged water resources:

Current mine drainage from shallower groundwater is around 1000 gpm, and model forecasted drainage is over 800 gpm for over 50 years (Water and Environment Technologies, 2024b). If even a fraction of

this drainage water needed to be mitigated, far more than 6 gpm will need to be pumped from the sandstone aquifer. Given this probabilistic analysis of drawdown from a single well, and the fact the mitigation water could be needed for many shallow groundwater wells and springs due to mining it is highly unlikely that the lower aquifer can be expected to supply more than a few pumping wells at all, and very unlikely mitigation would occur without very significant adverse effects to existing users of this aquifer both within and outside of the mine boundary. The PHC simply states that this confined sandstone has adequate water, without any quantifiable calculation, which is not scientifically justifiable, and likely incorrect.<sup>1</sup>

28. Plaintiffs cited two additional expert reports (from hydrologists Mark Hutson and Mike Meredith) that also raised questions about Signal Peak’s ability to replace water drained by the mine; two studies from the eastern United States indicating that longwall mining causes long term harm to water resources; and an early draft study of the Bull Mountains Mine that predicted the mine would drain water above the mine.

29. DEQ responded to Dr. Gardner in two parts, but neither directly addressed his concern. First, the agency stated that existing monitoring wells indicate that the deep aquifer can support “multiple” existing wells:

Water level data from deep underburden monitoring wells near multiple private users that have been using the deep underburden for decades indicate that the deep underburden can support multiple wells and withdraw[al]s (see CHIA Table 8-1 and Figure 8-1). If the deep underburden is used for permanent mitigation, the density of wells in any given area would be less than what is currently being supported by some subdivisions adjacent to the permit area (see CHIA Figure 9-11).<sup>2</sup>

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<sup>1</sup> Gardner Study at 5 (2024).

<sup>2</sup> DEQ, Resp. to Cmts. at A-17.

Second, DEQ stated that the water reclamation needs for AM6, considered in isolation from other reclamation needs, would be small:

The CHIA lists all known water rights within the cumulative impact area in Tables 8-1, 8-2, and 8-3. Water rights were also cataloged in the mine's baseline tables and in the PHC. No water rights (springs, wells, or instream dams) outside of the permit boundary are predicted to require mitigation from cumulative AM6 mining impacts on hydrology (see PHC page 314-5-83); the mine is designed to prevent material damage to water quantity at [sic] the water resources listed in the aforementioned tables. Inside the permit boundary, no wells were identified as requiring mitigation due to cumulative AM6 mining (see PHC page 314-5-80). Three springs with water rights for stock water were identified in the CHIA as potentially being cumulatively affected by AM6 mining within the permit boundary. The total water rights flow from these three springs is estimated at 2.5 gpm, and all three water rights are held by Signal Peak Energy or an entity associated with Signal Peak Energy. Nearby existing groundwater rights such as GWIC # 324229 and 18316, both completed in the deep underburden, are currently used for stock water. GWIC # 324229 has a listed yield of 4 gpm. From the historic record of water rights and GWIC wells, the deep underburden in this area has demonstrated that the deep underburden can provide stock water yield in sufficient quantity to mitigate water quantity at these the [sic] three springs if mitigation is required.<sup>3</sup>

30. Neither response grapples with Dr. Gardner's concern that—based on Signal Peak's own Groundwater Modeling Report—the mine's cumulative impacts are draining and will continue to drain water from the Bull Mountains at *huge* volumes (hundreds of gallons per minute) for decades, which the deep aquifer cannot support. That the deep aquifer can support “multiple” existing wells and potentially additional withdrawals of less than 5 gpm does not indicate that the

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<sup>3</sup> DEQ, Resp to Cmts. at A-18.

deep aquifer can supply hundreds of gallons per minute of *additional* replacement water for decades, as Dr. Gardner explains.

31. Moreover, DEQ's unsupported statement—that existing wells indicate the “deep underburden can support multiple wells and withdraw[al]s”—runs counter to the evidence before the agency. Signal Peak's Probable Hydrological Consequences document states that four of five monitoring wells in the deep aquifer have shown declines in the past decade or less (in some cases measurable declines after only two years of monitoring), despite relatively insignificant withdrawals.

32. In fact, DEQ's response to comments admits water levels are *already* declining in the deep aquifer monitoring wells and that the agency does not know why.

33. Thus, the record does not indicate that the already declining deep aquifer can support substantial *additional* withdrawals to mitigate the water that is being drained by the mine.

34. DEQ's determination that the cumulative impacts to water resources would be insignificant is unsupported.

35. DEQ's insignificance determination relied on its conclusion that Signal Peak “would repair/mitigate damage from subsidence to springs, wells, ponds, and streams.”<sup>4</sup>

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<sup>4</sup> EA at 53.

36. But, as noted, Dr. Gardner demonstrated that the deep aquifer simply cannot replace the huge volumes of water that the mine is draining from the Bull Mountains.

## V. THE CUMULATIVE IMPACTS OF MINING ON WILDLIFE

37. Plaintiffs' public comments repeatedly raised concerns about the impacts to wildlife from springs dewatered by mining. The 1992 EIS for the mine stated that wetlands associated with springs and seeps that make up only 0.1% of the land in the Bull Mountains are "important" to "local ecosystems" by providing "watering points for wildlife ... and habitat diversity."<sup>5</sup> Plaintiffs noted that multiple springs deemed critical to wildlife lost water coincident with mining and raised concerns that DEQ was not requiring interim mitigation of water resources either on Signal Peak's property or to support wildlife. Plaintiffs noted that wildlife monitoring reports in the Bull Mountains indicated a general decline in ungulate populations in the area and requested DEQ to use the "abundance of quantitative data" it possess on wildlife to evaluate and disclose impacts of mining on wildlife.<sup>6</sup> In light of these concerns, Plaintiffs' comments asked DEQ directly to "[p]lease clarify that: DEQ does not require interim mitigation of water resources for wildlife; [and] DEQ does not require interim mitigation for property owned by [Signal Peak] ...."<sup>7</sup>

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<sup>5</sup> Mont. Dep't of State Lands, Meridian Minerals EIS at III-19 (1992).

<sup>6</sup> MEIC Cmts. at 61 (July 16, 2024).

<sup>7</sup> *Id.* at 40.

38. DEQ failed entirely to address these concerns about the cumulative impact of mine dewatering on wildlife.

39. DEQ's EA, which dedicated a single page to wildlife, failed entirely to address the impacts of spring dewatering on wildlife.

40. DEQ's response to comments similarly ignored Plaintiffs' concerns about spring dewatering impacting wildlife and instead discussed its belief that certain endangered bat species are not present in the Bull Mountains—a non-sequitur.

41. DEQ refused to respond to Plaintiffs' request for clarification about whether the agency requires interim mitigation of water resources for wildlife.

42. However, in response to a comment from Plaintiff Northern Plains Resource Council, DEQ admitted that “[t]he mine is not required to provide wildlife water supplies inside the permit area during mining.”<sup>8</sup>

43. Nowhere did DEQ discuss how this policy—of not providing replacement water to support wildlife within the 16,000-acre permit area—would affect wildlife in the area.

44. DEQ further refused to address whether multiple springs, previously identified as important to wildlife, had been dewatered, on the basis that the AM6 expansion would not impact these springs.

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<sup>8</sup> Resp. to Cmts. at C-63.

45. Of course, wildlife in the Bull Mountains do not confine themselves to individual permit areas, but rely on the springs scattered throughout the range, as the 1992 EIS explained.

46. And DEQ admitted that the impacts to wildlife of AM6 would “add to cumulative impacts associated with mining.”<sup>9</sup> DEQ did not discuss the cumulative impacts of refusing to provide water to wildlife over a 16,000-acre area.

## **VI. IMPACTS TO TRIBAL CULTURAL RESOURCES AND FAILURE TO CONSULT WITH INTERESTED TRIBES**

47. Plaintiffs submitted comments noting prior reports that numerous tribes have aboriginal ties to the Bull Mountains, including the Crow, Blackfeet, Gros Ventre, Sioux, Northern Cheyenne, Assiniboine, Shoshone, and Arapaho. Sensitive sites in the Bull Mountains for these tribes include “vision quest sites, large rock features, rock art sites, burials, ceremonial structures and dance grounds” and “mountain peaks or springs.”<sup>10</sup> Plaintiffs noted that adverse effects to Native American resources would include impacts to peaks, rock art, and springs. Plaintiffs further noted the 1992 EIS’s conclusion that impacts of coal mining to Tribal cultural resources may be “unmitigated,” “irretrievable,” and “have the potential to become significant.”<sup>11</sup> Plaintiffs explained that representatives of the Northern Cheyenne, Crow, Shoshone, Fort Peck Sioux, and Pine Ridge Sioux had

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<sup>9</sup> EA at 55.

<sup>10</sup> Mont. Dep’t of State Lands, Meridian Minerals EIS at III-45 (1992).

<sup>11</sup> MEIC Cmts. at 9-10 (July 16, 2024) (citing Mont. Dep’t of State Lands, Meridian Minerals EIS at III-49 (1992)).

previously objected to the much smaller mine proposed in the 1990s by Meridian Minerals, due, among other things, to impacts to springs.<sup>12</sup> Plaintiffs then asserted that the strong connection of multiple tribes to the Bull Mountains, which could be “irretrievabl[y]” and “significant[ly]” impacted, warranted preparation of an EIS.

48. In its EA, DEQ cited historical and cultural investigations conducted in the Bull Mountains, including a recent survey in 2023 that identified a prehistoric petroglyph of a “V-neck warrior motif” within the mine expansion area.<sup>13</sup>

49. DEQ stated that it is in “ongoing” consultation with the Crow and Blackfeet to determine if any sites constitute traditional cultural properties and if they have other concerns.<sup>14</sup>

50. DEQ further stated that Signal Peak was developing a mitigation plan for the pictograph, which may be destroyed by subsidence.

51. Regarding cumulative impacts, DEQ’s analysis, contained in one sentence, stated that AM6 would “add to existing impacts” from mining, but provided no further discussion.<sup>15</sup>

52. Later in the EA, DEQ noted that the “Crow and other [unidentified] Tribal groups” consider the “general area” a “sacred area” and that a “famous Crow

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<sup>12</sup> *Id.* at 10; Mont. Dep’t of State Lands, Meridian Minerals EIS at F-48 (1992).

<sup>13</sup> EA at 35; Ferguson and McElroy at 7-1 (2023).

<sup>14</sup> EA at 35.

<sup>15</sup> *Id.* at 36.

leader, Two Leggings, is known to have performed vision quests in the Bull Mountains.”<sup>16</sup>

53. DEQ concluded that impacts to Tribal cultural resources would not be significant and would not warrant preparation of an EIS because, among other things, “a mitigation plan ... is required to be approved and implemented prior to mining.”<sup>17</sup>

54. DEQ’s response to Plaintiffs’ comment about sensitive Tribal sites other than the pictograph was:

DEQ has fully evaluated all cultural resources associated with AM6 and has consulted with SHPO and interested Tribes on the adequacy and efficacy of the review and applied mitigations to Historic Properties as per State Law and MSUMRA.<sup>18</sup>

55. DEQ did not address the expressed Tribal interests in non-art sites—such as springs and peaks.

56. DEQ’s statement that it “consulted with ... interested Tribes” is at best misleading and incomplete.

57. While DEQ stated that it is in “ongoing” consultation with the Crow and Blackfeet, the agency does not disclose any consultation with other interested Tribes, such as the Gros Ventre, Sioux, Northern Cheyenne, Assiniboine, Shoshone, and Arapaho.

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<sup>16</sup> *Id.* at 45.

<sup>17</sup> *Id.* at 56.

<sup>18</sup> Resp. to Cmts. at C-154, A-29.

58. The totality of DEQ’s cumulative effects analysis of cultural resources was a single perfunctory sentence: “Cumulative effects to historic properties from the proposed action would add to existing impacts from historic and current mining and agriculture.”<sup>19</sup>

59. DEQ failed to consult with all interested Tribes.

60. This is especially concerning because the cultural inventory prepared for AM6 recognized the interest of multiple other Tribes—“Shoshones, Lakota (western, or Teton Sioux), Nakota (central, or Yanktonai Sioux), Northern Cheyenne, Blackfeet, Gros Ventre, Arapaho, Kiowa, and probably others”—and expressly “*recommended* ... consultation with interested Native American cultural representatives.”<sup>20</sup>

61. Inexplicably, DEQ failed to consult with the majority of the identified interested Tribes, including many of those that had previously expressed opposition to the mine.

62. DEQ’s non-significance determination also failed to complete and disclose required mitigation measures to protect cultural resources.

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<sup>19</sup> EA at 36.

<sup>20</sup> Ferguson & McElroy, Class III Cultural Resource Inventory, at 3-2, 9-3 (2023) (emphasis added). The cultural inventory noted that “site density” for cultural sites “is much higher along the Yellowstone/Musselshell divide than in lower landforms” because of the “[r]esource distribution” and “view shed.” *Id.* at 9-3.

63. DEQ’s non-significance determination was based on the agency’s conclusion that the Bull Mountains—including the AM6 area—“does not contain unique or fragile resources.”<sup>21</sup>

64. This directly contradicts DEQ’s assertion that the “general area is known to the Crow and other Tribal groups as a *sacred area*.”<sup>22</sup>

65. DEQ failed to explain the inconsistency in stating that the area is somehow “sacred” but not “unique.”

## **VII. DEQ’S ANALYSIS OF GREENHOUSE GAS EMISSIONS WAS LIKELY ARBITRARY AND CAPRICIOUS**

66. Plaintiffs also commented, along with others, about DEQ’s failure to adequately discuss the direct, secondary, and cumulative impacts of greenhouse gas emissions (GHGs) associated with the mine expansion. Plaintiffs described the significant impacts occurring and projected to occur, both globally and in Montana, as a result of climate change.

67. DEQ conducted a perfunctory analysis of GHGs, quantifying the total emissions associated with the vehicles used to mine the coal (13,690 metric tons CO<sub>2</sub>e), stating that the “impacts of climate change throughout the south-central portion of Montana may include changes in flooding and drought, rising temperatures, and the spread of invasive species,” and then dismissing the

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<sup>21</sup> Resp. to Cmts. at C-200; EA at 56.

<sup>22</sup> EA at 45 (emphasis added).

significance of the emissions as only “0.31% of Montana’s annual emissions from the Industrial sector.”<sup>23</sup>

68. DEQ failed to consider the emissions associated with combusting the coal that is mined—approximately 18 million metric tons of CO<sub>2</sub>e.<sup>24</sup>

69. DEQ did not dispute that all coal from the mine will be burned or that it could calculate the resultant GHG emissions (nearly 18 million metric tons of CO<sub>2</sub>e).

70. Instead, DEQ asserted that its “review of Scope 1 [i.e., direct] emissions is consistent with the agency not evaluating downstream effects of other types of impacts.”<sup>25</sup>

71. DEQ also issued a one-sentence discussion of climate change impacts.

72. Plaintiffs and commentators provided DEQ with abundant information about the grave ecological, social, and economic impacts and threats of climate change to Montana.

73. DEQ provided no justification for ignoring this data and offering only one sentence of analysis about the extensively studied, harmful climate impacts already occurring in Montana.

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<sup>23</sup> EA at 48.

<sup>24</sup> Resp. to Cmts. at C-10.

<sup>25</sup> Resp. to Cmts. at C-11.

## VIII. IMPACTS TO AGRICULTURE

74. DEQ's analysis of impacts to agriculture was also inconsistent.

Multiple commenters noted that Signal Peak was damaging water supplies and forcing ranchers out of the Bull Mountains simply because it found reclamation of water resources difficult. Plaintiffs further commented that DEQ's policy of only requiring Signal Peak to provide interim water replacement for ranching, not wildlife, was incentivizing the coal company to force ranchers off the land to evade reclamation of water resources.

75. DEQ's EA denied any direct, secondary, or cumulative impacts to ranching, stating that "livestock use would continue during mining" and that "[d]irect impacts on agricultural activities in the area are not expected."<sup>26</sup> DEQ further stated that "[s]ubsidence features have not impacted livestock production" and that "[c]umulative impacts on agricultural activities and production ... are not expected."<sup>27</sup> In response to comments, DEQ noted "land use disputes between Signal Peak and lessee. If the lease is cancelled, this may result in ending historical uses of the land. The disagreements between Signal Peak and the lessee are not the result of DEQ's permitting of this amendment but instead the result of third-party negotiations, to which DEQ is not a party."<sup>28</sup>

76. The EA and response to comments are inconsistent.

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<sup>26</sup> EA at 38-39.

<sup>27</sup> *Id.* at 39.

<sup>28</sup> Resp. to Cmts. at C-91.

77. In the former, DEQ stated that “livestock use would continue during mining,”<sup>29</sup> and that mining has not had and will not have any impact on ranching. In the latter, when confronted with contrary evidence, DEQ admitted the continued mining “may result in ending historical uses of the land.”<sup>30</sup>

78. If Signal Peak has determined that ranching cannot occur in the Bull Mountains consistent with mining, and Signal Peak is forcing ranchers out of the Bull Mountains, that is an impact that DEQ should have examined and disclosed rather than ignore reality by stating that ranching would continue during mining.

79. Moreover, Plaintiffs noted that Signal Peak itself has determined that reclamation of damaged water resources is too expensive, “inconvenient,” and “unsustainable.”<sup>31</sup>

80. DEQ provided no substantive response.

81. Finally, DEQ failed to address comments noting that Signal Peak’s decisions to force ranchers off their property were enabled and facilitated by DEQ’s actions. For example, Plaintiffs noted that DEQ’s decision to reduce Signal Peak’s water replacement obligations without informing a local rancher caused a “meaningful net-loss of usable water” to the rancher.<sup>32</sup>

82. DEQ ignored and did not respond to this concern.

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<sup>29</sup> EA at 39.

<sup>30</sup> Resp. to Cmts. at C-91.

<sup>31</sup> *Id.* at C-125.

<sup>32</sup> *Id.* at C-64.

83. Plaintiffs also commented that DEQ’s policy of not requiring interim water replacement for wildlife use (but only for livestock use) had incentivized Signal Peak to try to force ranchers from the Bull Mountains. Under DEQ’s policy, if there are no ranchers in the Bull Mountains, Signal Peak has no reclamation obligations.

84. DEQ provided no substantive response.

**IX. SIGNAL PEAK’S VIOLATIONS OF WORK-PLACE SAFETY STANDARDS AND HARM TO MINERS.**

85. DEQ also failed to disclose or consider Signal Peak’s long history of violations of worker safety laws. Instead, DEQ concluded, based on no evidence, that no significant impacts to worker safety would occur because Signal Peak “must comply with state and federal safety and health regulations.”<sup>33</sup>

86. Plaintiffs’ comments noted that Signal Peak has been cited for “1,600 mine safety violations,” “122 accidents,”—including one that caused a fatality—and has been convicted in federal court of lying to federal regulators about multiple mine-safety violations.<sup>34</sup> Plaintiffs also noted dangers to miners from black lung disease.

87. In response, DEQ did not address Plaintiffs’ concerns beyond stating that Signal Peak “will be required to meet all applicable [Mine Safety and Health Administration] rules.”<sup>35</sup>

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<sup>33</sup> EA at 57.

<sup>34</sup> MEIC Cmts. at 11, 13, 55-56 (July 16, 2024).

<sup>35</sup> Resp. to Cmts. at C-155.

88. DEQ also entirely ignored Plaintiffs' concerns about black lung disease.

## **X. MINE CLOSURE AND COMMUNITY TRANSITION**

89. DEQ failed to address Plaintiffs' concerns about mine closure and future community transition away from economic dependence on Signal Peak and the Bull Mountains Mine.

90. Plaintiffs' comments noted that the State's 1992 EIS for the proposed Meridian Minerals Mine acknowledged that inevitable mine closure would lead to "major and negative impacts over the long term" to "public sector fiscal conditions."<sup>36</sup> Plaintiffs also noted the conclusion of the Montana Board of Environmental Review in 2016 that the mine's ultimate closure "threatens significant economic harm in the long-term."<sup>37</sup> Plaintiffs identified opportunities for transition planning and sources for transition funding created by recent federal legislation.

91. DEQ, however, refused to address either the impacts of mine closure or opportunities for community transition, stating: "The speculative future events discussed herein [in the comments] regarding the 'inevitable' closure of the mine are

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<sup>36</sup> Mont. Dep't of State Lands, Meridian Minerals EIS at iv (1992), *quoted in* MEIC Cmts. at 57 (July 16, 2024).

<sup>37</sup> MEIC Cmts. at 57 (July 16, 2024) (citing *In re Bull Mountains Mine*, No. BER 2013-07 SM (Mont. Bd. of Env't Rev. 2016)).

beyond the scope of the permitted mine activity and thus, beyond the scope of MEPA.”<sup>38</sup>

92. DEQ’s assertion that mine closure is “speculative” and “beyond the scope of MEPA” is inconsistent with DEQ’s other statements and runs counter to the evidence in the record.

93. The EA notes that the purpose of the current expansion is to allow mining to continue, given the federal district court’s decision to vacate the federal mining plan for the mine.<sup>39</sup> That is, the purpose of this expansion is to avoid a mine shutdown.

94. DEQ acknowledged that in the no action alternative, employment, population, and taxes would “decrease when coal production ceases.”<sup>40</sup>

95. Thus, DEQ’s EA recognized that the cessation of mining is not speculative, but within the scope of the EA.

96. As such, DEQ’s refusal to discuss methods and resources to mitigate the impacts of mine closure was inconsistent and arbitrary.

**CAUSE OF ACTION  
(Inadequacy of Environmental Assessment—Violation of MEPA, MCA § 75-1-201 and ARM 17.4.607–620)**

97. The preceding paragraphs are incorporated here by reference.

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<sup>38</sup> Resp. to Cmts. at C-156.

<sup>39</sup> EA at 2 (“As an interim measure to provide continued mining capacity at the site, the proposed plan for AM6 includes an expansion to develop one additional panel for longwall mining.”).

<sup>40</sup> *Id.* at 39, 40, 44.

98. Under MEPA, DEQ was required to “take a ‘hard look’” at the direct, cumulative, and secondary impacts of the Bull Mountains Mine AM6 expansion before permitting Signal Peak to commence mining. *See, e.g., Clark Fork Coal. v. DEQ*, 2008 MT 407, ¶ 47, 347 Mont. 197, 197 P.3d 482; ARM 17.4.609(3)(d). The agency’s environmental assessment, however, falls short of this requirement.

99. First, DEQ acted arbitrarily and unlawfully in failing to adequately assess the impacts of the AM6 expansion to water quantity, wildlife, unique resources and cultural and historical sites, greenhouse gas pollution and climate, agriculture, worker safety, and the community’s ultimate transition from economic dependence on coal mining. DEQ repeatedly, arbitrarily, and unlawfully refused to respond, or failed to meaningfully respond, to public comments expressing concerns about these impacts. DEQ’s EA and response to comments were also inconsistent on multiple critical points. MCA § 75-1-201; ARM 17.4.608, 609.

100. Second, DEQ acted arbitrarily and unlawfully in failing to prepare an EIS, despite the potentially significant impacts that will be caused by the AM6 expansion, including impacts to water quantity, wildlife, unique resources and cultural and historical sites, greenhouse gas pollution, agriculture, worker safety, and the community’s ultimate transition from coal mining. MCA § 75-1-201; ARM 17.4.608, 609, 610.

101. To uphold the protections of MEPA, this Court should invalidate DEQ’s challenged environmental assessment and decision and require the agency to thoroughly evaluate the environmental impacts of the AM6 expansion.

## REQUEST FOR RELIEF

1. Plaintiffs respectfully request that this Court:
2. Declare that DEQ violated the Montana Environmental Policy Act and the agency's MEPA regulations by failing to adequately evaluate the direct, secondary, and cumulative effects of authorizing the Bull Mountains Mine AM6 expansion;
3. Declare that DEQ acted arbitrarily and unlawfully in granting Signal Peak's application for the Bull Mountains Mine AM6 expansion without first completing an adequate environmental review;
4. Grant Plaintiffs such additional relief as the Court may deem just and proper.

Respectfully submitted this 27th day of September, 2024.

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