

June 11, 2024

The Honorable Joe Manchin III
Chair
Committee on Energy and Natural Resources
U.S. Senate
304 Dirksen Senate Building
Washington, DC 20510

Re: Letter of Opposition to Senate Bills 4431, 4432

On behalf of the undersigned organizations and our millions of members, we write to express our strong opposition to S. 4431 (A bill to reinstate the Bull Mountains Mining Plan Modification, and for other purposes) and S. 4432 (A bill to allow certain Federal minerals to be mined consistent with the Bull Mountains Mining Plan Modification) introduced by Senator Steve Daines. We ask you to oppose these bills for the reasons discussed below.

Senate Bills 4431 and 4432 seek to benefit a criminal mining company—Signal Peak Energy, LLC—at the expense of ranchers, communities, the environment, the climate, the public, the rule of law, and our national environmental policy.

I. Signal Peak Energy Is a Criminal Mining Company.

Signal Peak Energy—the company that is undermining the ranches and communities of the Bull Mountains in central Montana and seeks to benefit from S. 4431 and S. 4432—is currently on federal criminal probation for willfully lying to federal mine regulators about serious injuries to workers and for willfully dumping toxic mine waste into an area intended to supply replacement water for people harmed by the mine.¹

In addition to its current criminal probation, Signal Peak, its former executives, and its owners have an arm-length rap sheet of criminal activity and non-compliance with environmental and worker safety laws. The company's lawlessness was chronicled in the New York Times: [A Faked Kidnapping and Cocaine: A Montana](#)

¹ Judgment, *United States v. Signal Peak Energy, LLC*, No. 21-CR-79 (Jan. 31, 2022); Offer of Proof, *United States v. Signal Peak Energy, LLC*, No. 21-CR-79 (Oct. 5, 2021).

[Mine's Descent Into Chaos - The New York Times \(nytimes.com\)](#). An assistant U.S. Attorney for Montana has called the mine a “den of thievery.”² In the past five years, Signal Peak, its executives, and employees have been convicted or pled guilty to embezzlement, money laundering, drug trafficking, and illegal gun possession.³

Signal Peak’s one-third owner, FirstEnergy Corp., is also currently on federal criminal probation (pursuant to a deferred prosecution agreement) for what the U.S. Attorney for the Southern District of Ohio has called “likely the largest bribery and money-laundering scheme ever in the state of Ohio.”⁴ In its deferred

² Phoebe Tollefson, *Ex-mine Exec Stole \$20M from Signal Peak, Former Mine CEO also Involved*, Billings Gazette (June 23, 2020), https://billingsgazette.com/news/state-and-regional/crime-and-courts/ex-mine-exec-stole-20m-from-signal-peak-former-mine-ceo-also-involved/article_1f3726cd-51f1-5a6c-ba53-4085cae364c2.html.

³ *See, e.g.*, Amended Judgment, *United States v. Price*, No. CR 18-85 (D. Mont. Dec. 23, 2020) (wire fraud, money laundering, false statements); Judgment, *United States v. Ruble*, No. CR 19-60 (D. Mont. Oct. 29, 2019) (wire fraud); Judgment, *United States v. Musgrave*, No. CR 19-159 (D. Mont. June 22, 2022) (conspiracy to commit false statements in mine records); Judgment, *United States v. Luciano*, No. CR 19-86 (D. Mont. Oct. 23, 2020) (possession with intent to distribute cocaine); Judgment, *United States v. Irwin*, No. CR 19-47 (D. Mont. Feb. 10, 2020) (felon in possession of firearms). *see also* Charles Boothe, *Another Pleads Guilty in Larry Price Jr. Laundering Scheme*, Bluefield Daily Telegraph (July 5, 2020), available at https://www.bdtonline.com/news/another-pleads-guilty-in-larry-price-jr-laundering-scheme/article_6b0d0268-be63-11ea-aab7-434ad1aa61d7.html (detailing scheme and prosecutions); *Von Saher v. Norton Simon Museum of Art at Pasadena*, 592 F.3d 954, 960 (9th Cir. 2010) (court may take judicial notice of newspaper articles as evidence of public discussion, without definitively establishing truth of facts in articles).

⁴ Marty Schladen, *Ohio House Speaker, Four Others Arrested Amid Massive Dark-Money Pay-to-Play Allegations*, Ohio Capital Journal (July 21, 2020), available at <https://ohiocapitaljournal.com/2020/07/21/ohio-house-speaker-four-others-arrested-amid-massive-dark-money-pay-to-play-allegations/>; *see also* Johnson, *How a \$60 Million Bribery Scandal Helped Ohio Pass the ‘Worst Energy Policy in the Country,’* Grist (Jan. 26, 2022), available at <https://grist.org/politics/how-a-60-million-bribery-scandal-helped-ohio-pass-the-worst-energy-policy-in-the-country/>.

prosecution agreement, FirstEnergy admitted spending over \$60 million to bribe legislators and energy regulators to roll back the state’s clean energy law and subsidize its power plants.⁵ Indicative of the magnitude of its criminal conduct, FirstEnergy agreed to pay a fine of \$230 million for its actions.⁶ The indictments related to FirstEnergy and its sprawling bribery scheme have continued unabated into 2024.⁷

Signal Peak’s second one-third owner, Wayne M. Boich, was involved in the FirstEnergy scandal, providing the seed funding for one of the dark money organizations at the center of the Ohio scandal, though Boich has not yet been indicted for his involvement.⁸

Signal Peak’s final one-third owner, Gunvor Group Ltd., an international commodities trader registered in Cyprus, pled guilty in U.S. federal court in March 2024 to violating the Foreign Corrupt Practices Act in a scheme to bribe officials in Ecuador to obtain oil in that country.⁹ As part of its criminal sentence, the company was ordered to a criminal penalty of approximately \$661 million dollars.¹⁰ One reason for the staggering fine was Gunvor’s history of criminal

⁵⁵ Deferred Prosecution Agreement attach. A at 1–43, *United States v. FirstEnergy Corp.*, 21-CR-86 (S.D. Ohio July 22, 2021).

⁶ *Id.*

⁷ *E.g.*, AP, *Fired FirstEnergy Execs Indicted in \$60M Ohio Bribery Scheme*, EnergyWire (Feb. 13, 2024), available at <https://subscriber.politicopro.com/article/eenews/2024/02/13/fired-firstenergy-exec-indicted-in-60m-ohio-bribery-scheme-00140969>.

⁸ Deferred Prosecution Agreement attach. A at 25, 30, 39, 41, *United States v. FirstEnergy Corp.*, 21-CR-86 (S.D. Ohio July 22, 2021) (detailing involvement of “CEO of Company C” in scheme, including as source of seed money for “Dark Money Group”). The press identified Boich as the “CEO of Company C.” Randy Ludlow, *Householder Case: “Company C” CEO Wayne Boich Gave Cash to HB 6 ‘Dark Money’ Groups*, Columbus Dispatch (Aug. 5, 2020), available at <https://www.dispatch.com/story/news/politics/state/2020/08/05/householder-case-lsquo-company-crsquo-ceo-wayne-boich-gave-cash-to-hb-6-lsquodark-moneyrsquo-groups/112806486/>.

⁹ Judgment, *United States v. Gunvor*, No. 24-CR-85 (Apr. 3, 2024).

¹⁰ *Id.*

bribery of government officials to obtain fossil fuels. In 2019, Gunvor agreed to a fine of \$95 million by Swiss prosecutors for bribery and corruption to obtain access to petroleum reserves in Congo.¹¹ Equally troubling, the United States State Department and Treasury have both stated that Gunvor has been connected to Vladimir Putin. State Department cables “relayed allegations that Gunvor ‘is just a front for “massive corruption.””¹² Energy expert Matthieu Auzanneau has similarly written: “If we are to believe an old rumor, denied but nevertheless spread through the heart of American diplomacy (and then via Wikileaks), ... the Russian president [Putin] took a cut from each barrel exported from Russia, through the Swiss trading company Gunvor, which was once headed by a former KGB colleague.”¹³ News reports suggest that Gunvor may be further helping Russian crude oil reach world markets, despite U.S. sanctions over the Russian invasion of Ukraine.¹⁴

Signal Peak has also repeatedly violated its environmental obligations at the Bull Mountains Mine. Most notably, the company has repeatedly violated those obligations that require it to collect or analyze data required to show compliance with the law.

In August 2019, Montana DEQ issued a notice of non-compliance and order of abatement to Signal Peak for “willfully violat[ing] the law by intentionally not complying with ... weekly spring monitoring requirements” causing an

¹¹ Julia Payne, *Gunvor Must Pay \$95 Million for Congo Oil Corruption: Swiss Prosecutors*, Reuters (Oct. 17, 2019), available at <https://www.reuters.com/article/us-gunvor-grp-congo-corruption-idUSKBN1WW0Z9>.

¹² Christopher Matthews and Andrew Grossman, *U.S. Money-Laundering Probe Touches Putin’s Inner Circle*, Wall Street Journal (Nov. 5, 2014).

¹³ Matthieu Auzanneau, *Oil, Power, and War: A Dark History* 527 (2018); *see also* Public Eye, *Gunvor in Congo* (2017) (detailing connections between Gunvor and Putin and noting that, while Gunvor has publicly “kept denying having any connection with the Kremlin,” Gunvor representatives were simultaneously “using this very same connection to persuade the Congolese authorities to engage in dealings with them”).

¹⁴ Julia Simon, *Despite U.S. Sanctions, Oil Traders Help Russian Oil Reach Global Markets*, NPR (Apr. 22, 2022).

“irreversible loss of monitoring data.”¹⁵ The Montana Department of Environmental Quality (DEQ) acknowledges Signal Peak’s “history of monitoring violations in general.”¹⁶ Signal Peak’s failure to monitor has allowed the company to evade reclamation of water resources potentially damaged by the mine. Recently, consultants of Signal Peak admitted that they had *never* complied with the mine’s rigorous permit requirements for assessing whether mining had impacted springs.¹⁷ In the past year, Signal Peak has violated pollution limits under the federal Clean Water Act 156 times, including at least one instance of significant noncompliance.¹⁸ DEQ has sent five violation letters to Signal Peak in the past year alone.¹⁹

Signal Peak has an abysmal record of mine safety. In addition to lying to mine safety regulators about work-place injuries, since the mine opened in 2010, it has incurred at least 1700 violations, according to the Mine Safety and Health Administration (MSHA).²⁰ Of these violations, approximately 180 were considered significant and substantial violations.

In short, Signal Peak Energy, its executives, and its owners have demonstrated an utter contempt for the law in their operations at the Bull Mountains Mine and elsewhere. They have also demonstrated a contempt for the environment and their workers. They should not be rewarded by further exempting them from the law pursuant to the provisions of S. 4431 and S. 4432.

¹⁵ DEQ, Notice of Noncompliance (Aug. 22, 2019).

¹⁶ *Id.*

¹⁷ Transcript at 769, 786-87, 893, *In re Bull Mountains Mine*, No. BER 2016-07 (Mont. Bd. of Env’t Rev. August 21, 2020).

¹⁸ EPA, Enforcement and Compliance History Online, https://echo.epa.gov/trends/loading-tool/reports/effluentexceedances?permit_id=MT0028983.

¹⁹ EPA, Enforcement and Compliance History Online, <https://echo.epa.gov/detailed-facility-report?fid=110017361335>.

²⁰ Mine Safety and Health Administration, Mine Data Retrieval System, <https://www.msha.gov/data-and-reports/mine-data-retrieval-system>.

II. Signal Peak’s Operations at the Bull Mountains Mine Have Not Been Subject to an Environmental Impact Statement.

Senate Bills 4431 and 4432 seek to permit—without any environmental scrutiny—large-scale and extremely destructive underground longwall mining of federal coal at the Bull Mountains Mine. This mining of federal coal was halted because the operation had not been subject to an environmental impact statement under the National Environmental Policy Act (NEPA) and because the mine’s operations are destroying water resources in the Bull Mountains that ranchers depend on for the livelihoods.

The Ninth Circuit Court of Appeals reversed the U.S. Office of Surface Mining’s determination that only insignificant impacts would result from a 7,000-acre expansion of the Bull Mountains Mine, containing 176 million tons of coal. *350 Montana v. Haaland*, 50 F.4th 1254 (9th Cir. 2022). The Court explained that “the coal from this project is expected to generate more GHG emissions than the single largest source of GHG emissions in the United States.” *Id.* at 1259.

On remand from the Ninth Circuit, the District of Montana determined that the mining plan allowing Signal Peak to mine federal coal should be vacated because the environmental impacts of the mine expansion have not been disclosed in an EIS. *350 Montana v. Haaland*, No. CV 19-12-M-DWM, 2023 WL 1927307, at *5 (D. Mont. Feb. 10, 2023). The court noted how the mine has harmed local ranchers by damaging the water they depend upon:

Signal Peak’s subsistence mining has harmed local ranching interests by creating fissures in the ranchland. Additionally, Signal Peak’s mining operation causes damage to local ranchers’ water resources, including in one instance, damaging working water wells. Local ranchers fear that Signal Peak’s longwalls have already caused potentially irreversible damage to ranching in the Bull Mountains.

Id.

Demonstrating the utter failure by regulators to take a hard look at the environmental harm caused by the massive mine, multiple tribunals—including federal and state adjudicators—have concluded that environmental impacts of air pollution, greenhouse gas emissions, and harm to water have not been lawfully studied and disclosed to the public. *Mont. Env’t Info. Ctr. v. U.S. Office of Surface Mining*, 274 F. Supp. 3d 1074 (D. Mont. 2017) (climate impacts); *In re Bull*

Bull Mountains Mine, No. BER 2013-07 SM (Mont. Bd. Env't Rev. Jan. 14, 2016) (hydrology impacts). This ongoing failure—which S. 4431 and 4432 would only exacerbate—has resulted in real harm to landowners and the environment. The Bull Mountains Mine is one of the largest underground coal mines in the United States. It is one of the largest sources of greenhouse gas emission in the United States. Its mining operations have devastated water resources in the Bull Mountains, which have severely harmed family ranches in the area. A close look at the harm that will result from longwall mining of federal coal is precisely what is needed, for ranchers, for communities, for the public, and for the environment. The leap-without-looking approach of S. 4431 and S. 4432 is a recipe for unmitigated disaster.

Importantly, Signal Peak Energy is not blameless in the inadequacies of the prior environmental reviews of its mine. On the contrary, Signal Peak is largely responsible for the inadequate environmental review of its mine. The company successfully lobbied the U.S. Bureau of Land Management (BLM) to forego preparation of an EIS for its federal coal lease for the mine in 2009.²¹ At the time, BLM warned Signal Peak that if its environmental assessment (EA) proved inadequate, it would just result in a delay in approval of the mine. Signal Peak expressly told BLM that it recognized the risk and wanted to move forward without an EIS. Since then, Signal Peak has aggressively lobbied both federal and state regulators to curtail their environmental reviews of its mine, which in turn resulted in multiple decisions overturning those reviews. *Mont. Env't Info. Ctr. v. U.S. Office of Surface Mining*, 274 F. Supp. 3d 1074 (D. Mont. 2017) (climate impacts, air impacts, rail impacts); *In re Bull Mountains Mine*, No. BER 2013-07 SM (Mont. Bd. Env't Rev. Jan. 14, 2016) (hydrology impacts).

Ultimately, Signal Peak is the architect of its own predicament. Having pressured regulators to curtail their environmental reviews of its massive mine, Signal Peak should not be given a free pass to mine without any environmental review. That is not good public policy and it is not just.

If S. 4431 and 4432 are enacted, the critical EIS that is being prepared for the massive AM3 expansion of the Bull Mountains Mine would become moot and unnecessary. And sixteen years after large scale longwall mining began in the Bull Mountains, the public would still be without an EIS disclosing the impacts of the operation.

²¹ BLM Meeting Notes (Mar. 2009).

III. Signal Peak Is a Bad Neighbor and a Bad Corporate Actor.

Senate Bills 4431 and 4432 seek to provide a special dispensation to a corporate actor that is on criminal probation and that has been both a bad neighbor to residents of the Bull Mountains and people of Montana. Since the Bull Mountains Mine began operations in 2008, the company has directly or indirectly forced multiple ranchers off the land and out of the Bull Mountains. Ranchers have run sustainable cattle operations in the Bull Mountains for generations. The Bulls provide important summer range for cattle because of the relative abundance of water from perched groundwater aquifers and springs in the range and the high quality forage in the mountain meadows and pastures. The Bull Mountains Mine, however, has caused extensive subsidence in the Bull Mountains, which has torn the landscape and, in numerous cases, dewatered springs and wells. This damage to the land along with the strongarm tactics of Signal Peak (SLAPP suits, bullying, and harassment) caused at least one longtime ranch family to sell its operations. In another instance, Signal Peak cancelled the lease of a rancher on Signal Peak's land, forcing the rancher to end his ranching operations.

By forcing ranchers out of the Bull Mountains, Signal Peak has been able to avoid assessing harm to springs and wells. This is certainly due in part to the fact that state regulators, Montana DEQ, have not required Signal Peak to reclaim damaged water resources if the waters are not being used for ranching. Accordingly, recently Signal Peak cancelled the grazing lease of another family ranch and has sought to force the family from its own land for the express reason that Signal Peak did not want to continue to reclaim damaged water supplies.

Signal Peak has sued multiple people who ranch above the mine and is currently in active litigation with other ranch operations. The company is simply a bad actor and a bad neighbor. The law should not condone corporate actors who ignore the law and crush everyday Americans who cross their paths.

Signal Peak has also aggressively avoided paying taxes that benefit the State of Montana and local communities. The company has obtained millions of dollars in tax breaks from the Montana legislature, despite opposition from Musselshell County Commissioners who explained that county services had already been "cut to the bone."²² Just this year, while earning windfall profits from record coal

²² Mike Dennison, *Tax Break for Roundup-area Coal Mine Stuffed into Bill in Final Days*, Billings Gazette (Apr. 28, 2011), available at

prices, Signal Peak applied for and received an additional \$2 million abatement from local taxes.²³

Senate Bills 4431 and 4432 confuse the best interests of Signal Peak Energy with the best interests of the public. Signal Peak's actions show a company that acts aggressively to further its own interests, *at the expense* of the people who live and work in the Bull Mountains, the people who live in Musselshell County and Yellowstone County, and the people of Montana and beyond who are impacted by the environmental degradation and harm from its mine.

Notably, Signal Peak Energy does not need the federal coal that is the subject of S. 4431 and 4432 to operate. State regulators have approved an expansion of the mine onto new state and private lands that will permit the company to operate through 2024, and Signal Peak is pursuing another expansion onto other non-federal lands that will further extend operations well into 2025.

Senate Bills 4431 and 4432 are a good deal for Signal Peak Energy and its criminal owners. But these bills are a raw deal for ranchers, communities, the environment, the climate, the public, and the rule of law. While they elevate Signal Peak to act above the law, these bills undermine the national environmental policy of NEPA and they will permit Signal Peak to undermine the Bull Mountains. We strongly recommend that you oppose these bills.

Our groups thank you for your attention to these important issues and look forward to working with the Committee to improve these bills. We appreciate your consideration of our recommendations.

*https://billingsgazette.com/news/state-and-regional/montana/taxbreak-for-roundup-area-coal-mine-stuffed-into-bill-in-final-days/article_995244c5-f6f7-5087-9d50-da3a5e057ebb.html; Mike Dennison, *Tax Break for Roundup-area Coal Mine Stuffed into Bill in Final Days*, Billings Gazette (Apr. 28, 2011), available at https://billingsgazette.com/news/state-and-regional/montana/musselshell-county-turns-down-coal-mine-taxbreak/article_52aa5180-1215-11e0-9c79-001cc4c03286.html.*

²³ Amy Nile, *Yellowstone County Oks Multi-million Dollar Tax Break for Coal Mine Near Roundup*, Billings Gazette (Apr. 2, 2024), https://billingsgazette.com/news/local/business/roundup-coal-minegets-tax-break/article_11b70974-f137-11ee-88a9-6bb8058b0019.html.

Sincerely,

350 Montana

Center for Biological Diversity

Earthjustice

Montana Environmental Information Center

Montana Health Professionals for a Healthy Climate

Park County Environmental Council

Sierra Club

Western Environmental Law Center

WildEarth Guardians