

SIGNAL PEAK ENERGY, LLC

July 18, 2025

The Honorable Bruce Westerman
Chairman
U.S. House Natural Resources Committee
1324 Longworth House Office Building
Washington, D.C. 20215

**Re: Signal Peak Energy, LLC's Support for Reforms to Restore Common Sense
to the National Environmental Policy Act**

Dear Chairman Westerman:

Signal Peak Energy, LLC ("Signal Peak") is writing in support of reforms to the National Environmental Policy Act ("NEPA") that has become a major roadblock to mineral and other critical infrastructure and project development in the United States. Signal Peak would like to commend the Committee's efforts to examine how NEPA works in the real world and understand how it has been weaponized by environmental groups to delay, and often kill, projects. As Justice Kavanaugh put it in the recent *Seven County Infrastructure Coalition v. Eagle County* case, NEPA has become a tool to "paralyze" agency decision-making, aided by decisions in the lower courts that have demanded more process and more analysis, reaching far beyond the realm of the agency's jurisdiction.

There is no better example of NEPA's overreach than Signal Peak's experience in permitting and litigating the validity of the environmental review for the Bull Mountains No. 1 Mine in central Montana.

The Mine Permit. The Bull Mountains Mine is an underground coal mine. The mineral ownership at the mine is a mix of federal, state, and private coal in a checkerboard pattern, and it is impossible to safely and economically mine without access to all the coal. In 2011, Signal Peak bought federal coal leases at the Bull Mountains Mine. And in 2015, after a 4-year NEPA review, the Office of Surface Mining Reclamation and Enforcement ("OSMRE") approved federal coal mining across most of the mine area. Those four years of review, however, were just the start of what has ultimately been over 13 years of litigation and environmental review in a seemingly endless cycle.

Ten Years of Litigation and Four NEPA Documents. In litigation challenging the 2015 permit, the court found three purported NEPA errors all relating to far-away downstream impacts of transport the coal away from the mine by rail and eventually combusting the coal in Asia. OSMRE redid the NEPA analysis to include detailed discussion of those effects and reauthorized mining in 2018. Environmental groups sued and yet again, the court found fault—now OSMRE's new analysis of rail shipment was apparently wrong because it did not consider a worst case scenario of train derailments. In 2020, OSMRE redid the NEPA analysis a third time

to address train derailments. In 2022, the Ninth Circuit Court of Appeals found still another alleged error in the NEPA document—OSMRE's new analysis of combustion emissions was still not good enough. But this time, to heighten the stakes, in February 2023, the district court vacated the mine permit, meaning Signal Peak could no longer mine federal coal under its valid leases until the NEPA errors could be fixed.

In February 2023, OSMRE embarked on its fourth NEPA review for the same permit. This time, rather than preparing a less process- and time-intensive Environmental Assessment, OSMRE decided it would prepare an Environmental Impact Statement ("EIS") and told the court it could be done in 13 months. It was not done in 13 months. Instead, in February 2024, OSMRE's EIS schedule projected a final EIS in February 2026, with a final Record of Decision in May 2026, over three years after OSMRE had initiated the EIS process. In the meantime, Signal Peak would have to bide its time without access to the majority of the mine.¹

Signal Peak NEPA Deadline Case. With federal coal off-limits, Signal Peak undertook costly efforts to permit non-federal coal on the fringes of the mine. As available non-federal coal reserves dwindled, and facing likely layoffs of its 300 miners, Signal Peak had no choice but to sue the agency under the new NEPA deadlines added under the Fiscal Responsibility Act of 2023. 42 U.S.C. § 4336b(g).

Despite Congress's efforts to press agencies into efficient review, even that suit, Signal Peak's saw limited success because OSMRE and the court were able to exploit ambiguities in the statute to keep Signal Peak at bay. OSMRE argued that it did not matter at all that it had released a schedule that was not in keeping with the two-year deadline—Signal Peak could not sue until the two-years were up because, according to OSMRE, it could always speed up the process to meet the deadline if it chose to. Unfortunately, the court agreed with OSMRE, saying that Signal Peak's claims were not ripe until two years had passed, even though OSMRE clearly had no intention of meeting the deadline.

Though not decided by the court, OSMRE also argued that the trigger for the two-year deadline was not until the agency issued a formal notice of intent ("NOI") in the Federal Register, despite Congress's direction that the deadline would be triggered by the sooner of the NOI or the agency's decision that an EIS was necessary. In Signal Peak's case, the agency had stated in open court in December 2022 that it intended to prepare an EIS. Finally, and perhaps of gravest concern, OSMRE took the position that the two-year deadline was meaningless in light of the agency's ability to "consult" with Signal Peak and grant itself unlimited extensions.

Approval Under Alternative Procedures. In May 2025, with half of its mining crew idled, the mine in imminent danger of closure, and an EIS still several months off, Signal Peak decided it could wait no longer. It applied for and the Department of the Interior determined it

¹ A timeline of the Bull Mountain Mine permit process and litigation is included for convenience at the end of this letter.

would apply alternative NEPA procedures to speed the EIS process. Signal Peak received its Final EIS, Record of Decision, and reauthorization to mine federal coal on June 3, 2025. But this will not be the end of Signal Peak's NEPA story—environmental groups are sure to file suit challenging OSMRE's latest authorization and Signal Peak expects to yet again enter the revolving door of NEPA litigation. There is no end in sight.

Signal Peak hopes its experience at the Bull Mountain Mine can serve as a catalyst for constructive process on NEPA reform. As the only company to litigate a case under the new NEPA deadlines, there are some immediate fixes that would ensure agencies abide by Congress's requirements for reasonable timelines.

- The trigger for NEPA's two-year deadline should be tightened. It is too easy for agencies to play games with and delay a "determination" that an EIS is required. Instead, two years should run from the date on which an application or other request for agency authorization is complete, similar to the trigger specific to completion of right-of-way requests that is already in the statute. *See* 42 U.S.C. § 4336a(g)(1)(A).
- Agencies should not have unilateral power to extend NEPA deadlines. *See* 42 U.S.C. § 4336a(g)(2). Currently, an agency can extend the deadline "in consultation with the applicant." Instead, extensions should require applicant consent.
- Congress should clarify that an applicant can petition a court for relief at any time the agency fails to act in accordance with the deadline—i.e., if the agency releases an EIS schedule that exceeds the deadline or fails to take action that would be reasonably necessary to complete the EIS within the deadline—regardless of whether the deadline has passed. *See* 42 U.S.C. § 4336a(g)(3). A petition process to enforce a two-year deadline is meaningless when available only after the agency has failed miserably to meet it.

Unfortunately, Signal Peak's experience of the NEPA process is not unique. The initiative and oversight of this Committee along with further NEPA reforms to tighten the process and enforce Congressional timelines will have great benefit for projects across the country.

Thank you for your consideration. I am happy to discuss these comments at your convenience.

Respectfully,



Parker J. Phipps
CEO, Signal Peak Energy, LLC

Signal Peak NEPA and Litigation Timeline

- 2011 – Signal Peak secures federal oil and gas leases at Bull Mountain No. 1 Mine
- 2015 – OSMRE completes **First** Environmental Assessment and authorizes mining
- 2017 – U.S. District Court finds NEPA errors, orders stockpiling of federal coal (no sales) until additional NEPA review is complete
- 2018 – OSMRE completes **Second** Environmental Assessment and reauthorizes mining
- 2020 – U.S. District Court finds NEPA error, but does not enjoin federal coal mining
- 2020 – OSMRE completes **Third** Environmental Assessment
- 2022 – Ninth Circuit Court of Appeals finds NEPA error
- Feb. 2023 – U.S. District Court vacates the mine permit in remedy hearing based on Ninth Circuit decision
- Early 2023 – OSMRE begins **Fourth** environmental review in form of an EIS and anticipates a Final EIS in 13 months
- Feb. 2024 – OSMRE's EIS schedule projects a final EIS in Feb. 2026, at least a year after the two-year NEPA deadline
- Feb. 2024 – Signal Peak petitions U.S. District Court for relief under 42 U.S.C. § 4336a(g)
- May 2025 – While NEPA deadline challenge is ongoing, Signal Peak applies to DOI for expedited NEPA procedures
- June 3, 2025 – DOI issues Final EIS, Record of Decision, and reauthorizes the mine plan for the fourth time