**UNITED STATES DISTRICT COURT**
**FOR THE DISTRICT OF COLUMBIA**

SIGNAL PEAK ENERGY, LLC,

Plaintiff,

v.

DEBRA A. HAALAND, et al.

Defendants.

Civil Action
No. 1:24-cv-00366-TSC

**PROPOSED MOTION TO DISMISS**

## INTRODUCTION

Intervenor-Defendants Montana Environmental Information Center, 350 Montana, Sierra Club, and WildEarth Guardians (together, "Conservation Groups") move to dismiss Plaintiff Signal Peak Energy, LLC's Complaint for lack of jurisdiction.

Signal Peak asserts that federal agencies and officers (together, "Federal Defendants") violated a deadline to complete an environmental impact statement (EIS) for the Amendment 3 (AM3) expansion of Signal Peak's Bull Mountains Mine.[1] Signal Peak bases its claim on recent amendments to the National Environmental Policy Act (NEPA) via the Fiscal Responsibility Act of 2023 (FRA), Pub. L. No. 118-5, 137 Stat. 10, 43 U.S.C. § 4336a(g)(1), (2). However, while these amendments include a general two-year timeline for federal agencies to complete an

[1] Federal Defendants are the Secretary of Interior Debra Haaland, the Department of Interior, Acting Deputy Secretary of Interior Laura Daniels-Davis, Principal Deputy Director of the Office of Surface Mining Reclamation and Enforcement Sharon Buccino, and the U.S. Office of Surface Mining Reclamation and Enforcement.

EIS, the amendments also afford agencies discretion to unilaterally extend this timeline if—after consultation with the applicant—the agency determines additional time is necessary to complete the EIS. 42 U.S.C. § 4336a(g)(2).

The fatal flaw in Signal Peak's lawsuit is that it prematurely seeks to enforce a deadline months before it passes. Even if one were to assume the coal company's asserted deadline of December 2024 is correct, seven months remain before any violation may occur. And the December 2024 deadline may *never* occur because Federal Defendants, in their discretion, may extend it. Under any calculation, therefore, Signal Peak's claim is unripe and should be dismissed.

## BACKGROUND AND PROCEDURAL HISTORY

Signal Peak's Complaint follows decades in which Signal Peak's Bull Mountains Mine—an underground longwall coal-mine—has degraded groundwater and surface conditions in the Bull Mountains, impacting area ranchers, whose families have subsisted in the Bull Mountains for generations. *See 350 Montana v. Haaland*, No. CV-19-12, 2023 WL 1927307, at *5 (D. Mont. Feb. 10, 2023) (finding that "Signal Peak's subsistence mining has harmed local ranching interests by creating fissures in the ranchland" and "caus[ing] damage to local ranchers' water resources, including in one instance, damaging working water wells"); *see also* Judgment, *United States v. Signal Peak Energy, LLC*, No. 21-CR-79 (Jan. 31, 2022) (fining Signal Peak $1 million and sentencing the company to three years of probation for illegally disposing of toxic mine waste and lying to mine-safety regulators).

On multiple occasions, federal courts have found that Federal Defendants failed to adequately analyze and describe the harmful environmental effects of the AM3 expansion of Signal Peak's coal mine. *350 Montana v. Haaland*, 50 F.4th 1254, 1269–70 (9th Cir. 2022); *350 Montana v. Bernhardt*, 443 F. Supp. 3d 1185, 1195 (D. Mont. 2020), *aff'd in part*, *rev'd in part*, 50 F.4th at 1273; *Mont. Env't Info. Ctr. v. U.S. Office of Surface Mining*, 274 F. Supp. 3d 1074, 1090–104 (Mont. 2017). State tribunals have, in turn, determined that Montana regulators also failed to lawfully assess environmental harm from the AM3 expansion. *In re Bull Mountains Mine*, No. BER 2013-037 SM, at 87 (Mont. Bd. of Env't Rev. Jan. 14, 2016) (holding that regulators failed to determine whether AM3 would violate water quality standards and record did not demonstrate that mine would prevent material damage to water resources).

Although Signal Peak has operated the Bull Mountains Mine since 2008 (*see* Compl. ¶ 48, ECF No. 2), Federal Defendants have yet to complete an EIS for any portion of the mine, and have instead, under constant pressure from Signal Peak, conducted only piecemeal analyses in a series of Environmental Assessments (EAs).[2] These fragmentary analyses have never taken a comprehensive hard look at the mine and its cumulative and incremental impacts as required by NEPA.

[2] *E.g.*, *350 Montana*, 50 F.4th at 1269–70; *Mont. Env't Info. Ctr.*, 274 F. Supp. 3d at 1090–104; *see also Mont. Env't Info. Ctr. v. U.S. Off. of Surface Mining,* No. CV 15-106, 2017 WL 5047901, at *4 (D. Mont. Nov. 3, 2017) (noting instances where Signal Peak privately pressured regulators to rush and forego detailed environmental analyses).

In October 2022, the Ninth Circuit found that Federal Defendants' most recent approval of the AM3 expansion violated NEPA. *350 Montana*, 50 F.4th at 1271–72. On remand, in December 2022, Federal Defendants informed the presiding judge that they intended to prepare an EIS. Hrg. Tr. at 31:13–16, *350 Montana v. Haaland*, No. CV 19-12 (Dec. 2, 2022). The district court subsequently vacated the AM3 approval. *350 Montana*, No. CV 19-12, 2023 WL 1927307, at *6 (D. Mont. Feb. 10, 2023). On August 7, 2023, Federal Defendants issued a formal Notice of Intent to prepare an EIS for the AM3 expansion in the Federal Register. 88 Fed. Reg. 52,205, 52,205 (Aug. 7, 2023). On February 7, 2024, Signal Peak filed the instant action, alleging that Federal Defendants violated the FRA's newly enacted NEPA provisions by preparing a schedule pursuant to which the EIS process would not be complete by December 2024. Compl. ¶¶ 113–22, ECF No. 2.

As noted, the FRA amendments establish a general timeline of two years for the completion of an EIS from, as relevant here, the earlier of: "the date on which such agency determines that section 4332(2)(C) of this title requires the issuance of an environmental impact statement" or "the date on which such agency issues a notice of intent to prepare the environmental impact statement for such action." 42 U.S.C. §4336a(g)(1)(A)(i), (iii). The provisions grant the lead agency discretion to "extend [the] deadline" following "consultation with the applicant" if it "determines it is not able to meet the deadline." *Id.* § 4336a(g)(2). An applicant may obtain judicial review of "an alleged failure by an agency to act in accordance with an applicable deadline." *Id.* § 4336a(g)(3)(A). The FRA amendments allow courts to

establish a "schedule and deadline for the agency to act as soon as practicable." *Id.* § 4336a(g)(3)(B).

Signal Peak does not allege that the two-year deadline has passed. Instead, it alleges that Federal Defendants violated the FRA amendments by failing to "act in accordance with [the] applicable deadline" by establishing a timeline for the EIS process that extends beyond two years. Compl. ¶ 118, ECF No. 2 (alteration in original). By Signal Peak's own calculation, the earliest that the two-year period could elapse is in December of 2024—more than seven months from now. While Signal Peak acknowledges that Federal Defendants retain discretion to extend the two-year timeline following consultation with the applicant, *id.* ¶ 28, the coal company fails to cite any provision requiring such consultation to occur as soon as an agency believes it may need additional time to complete an EIS.

## STANDARD OF REVIEW

Ripeness is a jurisdictional requirement, which "excludes cases not involving present injury" from a court's jurisdiction. *Wyo. Outdoor Council v. U.S. Forest Serv.*, 165 F.3d 43, 48 (D.C. Cir. 1999). Thus, the appropriate standard of review is dictated by the subject-matter jurisdiction defense articulated in Federal Rule of Civil Procedure 12(b)(1). "On a motion to dismiss for lack of subject matter jurisdiction …, the plaintiff bears the burden of establishing that the court has jurisdiction." *Ctr. for Biological Diversity v. Jackson*, 815 F. Supp. 2d 85, 89 (D.D.C. 2011) (citing *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561 (1992)). In evaluating such a motion to dismiss, the court accepts as true the factual allegations contained

in the complaint and should "review the complaint liberally while accepting all inferences favorable to the plaintiff." *Id.* However, in conducting this analysis, the court gives the plaintiff's factual allegations closer scrutiny than would apply when resolving a motion asserting failure to state a claim under Rule 12(b)(6). *Id.*; *D.C. Ret. Bd. v. United States*, 657 F. Supp. 428, 431 (D.D.C. 1987).

**ARGUMENT**

Signal Peak alleges Federal Defendants violated the two-year deadline that will expire, at the earliest, at least seven months from now. Signal Peak's claim is unripe.

The ripeness doctrine, a threshold inquiry of justiciability, is designed "to prevent the courts, through avoidance of premature adjudication, from entangling themselves in abstract disagreements over administrative policies, and also to protect the agencies from judicial interference until an administrative decision has been formalized and its effects felt in a concrete way by the challenging parties." *Nat'l Park Hosp. Ass'n v. Dep't of Interior*, 538 U.S. 803, 807–08 (2003) (quoting *Abbott Labs. v. Gardner*, 387 U.S. 136, 148–49 (1967)). A claim is unripe for judicial review if it depends on "contingent future events that may not occur as anticipated, or indeed may not occur at all." *Trump v. New York*, 592 U.S. 125, 131 (2020) (quoting *Texas v. United States*, 523 U.S. 296, 300 (1998)). An unripe claim "must be dismissed." *Cause of Action Inst. v. U.S. Dep't of Just.*, 999 F.3d 696, 703 (D.C. Cir. 2021).

Here, Signal Peak's claim is dependent on two hypothetical occurrences that have not yet, and may not ever, come to pass. First, Signal Peak's claim requires this Court to speculate that Federal Defendants will not make up for lost time to complete the remand process within the two-year period allotted. *See* 42 U.S.C. § 4336a(g)(1)(A). Federal Defendants dispute such speculation, explaining that, "[w]ith time, these issues may be resolved, and the NEPA process may proceed more quickly than anticipated." Mot. to Dismiss, ECF No. 10 at 12. Second, Signal Peak's claim further speculates that the two-year period will expire without Federal Defendants consulting with Signal Peak and extending the deadline for completion of the EIS, as expressly provided by the statute. 42 U.S.C. § 4336a(g)(2). For both of reasons, Signal Peak's claim is unripe and must be dismissed.

Justiciability requirements, like ripeness, are based on the case-or-controversy requirement of Article III of the U.S. Constitution. *DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332, 335 (2006) ("The doctrines of mootness, ripeness, and political question all originate in Article III's 'case' or 'controversy' language, no less than standing does.") Like standing, ripeness requires "an injury in fact be certainly impending." *Nat'l Treasury Emps. Union v. United States*, 101 F.3d 1424, 1427 (D.C. Cir. 1996). Signal Peak can claim no such injury because the applicable deadline has not elapsed. Any future injury is at least seven months away and thus is not certainly impending, but speculative, because the deadline may be lawfully extended by Federal Defendants.

As with other doctrines of justiciability, ripeness also has a prudential element. *In re Aiken Cnty.*, 645 F.3d 428, 434 (D.C. Cir. 2011) ("The ripeness doctrine, even in its prudential aspect, is a threshold inquiry that does not involve adjudication on the merits and which may be addressed prior to consideration of other Article III justiciability doctrines."). Acting in its prudential capacity, courts must "balance the interests of the court and the agency in delaying review against the petitioner's interest in prompt consideration of allegedly unlawful agency action." *Id.* (internal quotation omitted). In conducting this balancing, courts consider "the fitness of the issues for judicial decision," which in turn implicates whether the issues are purely legal, whether those issues would "benefit from a more concrete setting, and whether the agency's actions are sufficiently final." *Id.* (citing *Abbott Labs.*, 387 U.S. at 149; *CTIA–The Wireless Ass'n v. FCC*, 530 F.3d 984, 987 (D.C. Cir. 2008), and *Atl. States Legal Found., Inc. v. EPA*, 325 F.3d 281, 284 (D.C. Cir. 2003)).

Here, because the deadline has not elapsed and Signal Peak has suffered no injury, a "more concrete setting" is necessary for this Court to exercise its jurisdiction. Where, as here, the challenged action (or inaction) may "never have its effects felt in a concrete way by the challenging part[y]," the balance weighs against a finding that the issue is fit for a judicial decision. *Aiken County*, 645 F.3d at 434.

In *Ohio Forestry Ass'n v. Sierra Club*, 523 U.S. 726, 733 (1998), the Supreme Court adopted a three-factor test for ripeness, considering:"(1) whether delayed review would cause hardship to the plaintiffs; (2) whether judicial intervention

would inappropriately interfere with further administrative action; and (3) whether the courts would benefit from further factual development of the issues presented." Here, as in *Ohio Forestry*, the application of those factors leads to an identical conclusion: this case is not ripe for review.

First, Signal Peak has not yet suffered any injury, and the company may never suffer any injury if Federal Defendants either complete the remand process within the two-year timeframe or lawfully extend the deadline in consultation with Signal Peak. Thus, delayed review will not cause Signal Peak hardship. Signal Peak may not mine federal coal in the AM3 permit area "unless and until OSMRE [the U.S. Office of Surface Mining Reclamation and Enforcement] completes the AM3 EIS and the Assistant Secretary of Land and Minerals Management re-approves the mining plan." Compl. at ¶ 69, ECF 1. While Signal Peak may be in a hurry to resume its destructive coal mining operations, the outcome of the EIS is not foreordained. As Federal Defendants point out, "the only cognizable interest that Signal Peak has in this case is a procedural interest in having OSMRE issue an EIS in compliance with NEPA, as amended by the FRA." Mot. to Dismiss, ECF 10 at 10. Because Federal Defendants have not violated—and may never violate—the NEPA timelines from the FRA amendments, Signal Peak has no present injury and is in no danger of imminent "hardship" should this Court decline to exercise jurisdiction.

Second, judicial intervention at this stage would disrupt Federal Defendants' ongoing EIS process midstream and almost certainly curtail public participation in that process. *See* 40 C.F.R. § 1506.11(d) (public is entitled to "at least 45 days" to

review and comment on a draft EIS). This further weighs against this Court's exercising jurisdiction under *Ohio Forestry*. Indeed, Federal Defendants and Conservation Groups have at least an equal interest in ensuring that the agency's NEPA analysis is carried out in accordance with *all* of NEPA statutory provisions, including the extendable deadline imposed by the FRA amendments. The fundamental purposes of NEPA are, after all, *inter alia* to "prevent or eliminate damage to the environment and biosphere" and secure a "healthful environment" for all people, 40 U.S.C. §§ 4321, 4331(c), by providing for detailed disclosure of environmental impacts, robust public participation, and careful consideration of environmental impacts in agency decision-making. *Sierra Club v. U.S. Army Corps. of Eng'rs*, 803 F.3d 31, 36 (D.C. Cir. 2015). As Federal Defendants point out in their motion to dismiss, the lengthy history of controversy and litigation over their NEPA analyses for this coal mine provides them a strong incentive to ensure that they "produce[] a thorough and carefully analyzed EIS that accounts for all recent statutory and regulatory changes to NEPA as well as intervening caselaw." Mot. to Dismiss, ECF No. 10 at 11. That same history demonstrates the Conservation Groups' strong interest in full—not curtailed—participation in this environmental review and administrative decision-making process, which would also likely be disrupted by Signal Peak's premature lawsuit.

Third, further factual developments would benefit the Court by establishing whether Federal Defendants can expedite their process to meet the two-year deadline or, in their discretion, extend the deadline after consulting with Signal

Peak. 42 U.S.C. § 4336a(g)(2).[3] Here, Federal Defendants may consult with Signal Peak before the expiration of the two-year period and agree upon a date for completing the EIS process. If consultation occurs and the two cannot agree, the FRA amendments give Federal Defendants discretion to set a new deadline that affords the agency "only so much additional time as is necessary to complete such environmental impact statement." *Id.* Either scenario would benefit the Court: the first by eliminating the need for judicial review, and the second by providing a firm, agency-determined deadline for completion of the EIS.[4] Signal Peak's Complaint acknowledges the extensive communication between Federal Defendants and Signal Peak with respect to the EIS timeline. Compl. ¶¶ 71, 72, 79, 84, 98, 99, 101, 102, 105, ECF No. 2. This demonstrates that Federal Defendants have diligently

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[3] The legislative history of the FRA reinforces the discretionary nature of this provision, with one senator observing that this provision functionally removes any hard deadline and in effect grants agencies "an infinite amount of time" to complete an EIS, if the agency "declares [the EIS] complex." 169 Cong. Rec. S1868-01, S1872 (June 1, 2023).

[4] "Consultation" does not give the applicant veto power over the agency's discretionary authority to "extend such deadline." *See, e.g.*, *Calumet Shreveport Ref., L.L.C. v. EPA*, 86 F.4th 1121, 1139 (5th Cir. 2023) (holding, where Clean Air Act required EPA to consult with Department of Energy on application of certain exemptions, EPA had discretion to determine what constituted consultation and court "decline[d] to graft extra-textual procedural requirements onto that consultation requirement"); *Oregon Nat. Desert Ass'n v.* Rose, 921 F.3d 1185, 1188–89 (9th Cir. 2019) (finding consultation requirement in Steens Act does not create veto power; it was sufficient for agency to provide information to advisory council and discuss project with council); *Paulina Lake Historic Cabin Owners Ass'n v. U.S.D.A. Forest Serv.*, 577 F. Supp. 1188, 1192 (D. Or. 1983) (consultation requirement in National Historic Preservation Act does not create veto authority); *Comm'r v. John A. Wathen Distillery Co.*, 147 F.2d 998, 1001 (6th Cir. 1945) (explaining generally that "[t]here is no suggestion that consulting implies obtaining consent").

informed Signal Peak about the progress and anticipated completion of the EIS, as well as the reasons necessitating additional time for review. Further development of the administrative process would allow Federal Defendants to determine a firm deadline for completion of the EIS, which, if not met, would be enforceable by the Court. *Ohio Forestry Ass'n*, 523 U.S. at 733.

**CONCLUSION**

Signal Peak's effort to rush an EIS for the AM3 expansion represents another chapter in the company's long history of curtailing public and government scrutiny of the Bull Mountains Mine. This Court should shut the book and end the saga. Federal Defendants have violated no deadline. This case is not ripe for review.

Accordingly, Conservation Groups respectfully request that this Court dismiss Signal Peak's lawsuit because it is unripe.

Dated this 6th day of May, 2024.

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