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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
MISSOULA DIVISION

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| MONTANA ENVIRONMENTAL INFORMATION CENTER,<br><br>Plaintiff,<br><br>vs.<br><br>UNITED STATES OFFICE OF SURFACE MINING, an agency within the U.S. Department of Interior, *et al.*,<br><br>Defendants.<br><br>and<br><br>SIGNAL PEAK ENERGY, LLC,<br><br>Defendant-Intervenors. | )<br>)<br>)<br>)<br>)<br>)<br>)<br>)<br>)<br>)<br>)<br>)<br>)<br>)<br>)<br>)<br>)<br>) | Case No. 9:15-cv-00106-DWM<br><br>SIGNAL PEAK ENERGY, LLC'S EMERGENCY BRIEF IN SUPPORT OF MOTION TO AMEND JUDGMENT, MOTION FOR REMEDIES HEARING, AND MOTION TO STAY INJUNCTION PENDING REMEDIES HEARING |

Defendant-Intervenor Signal Peak Energy, LLC, pursuant to Fed. R. Civ. Pro. 59(e), moves the Court to amend the remedy in this case by entering a more tailored injunction. Specifically, Signal Peak respectfully requests that the Court reconsider its decisions: (1) to vacate and set aside the challenged Mining Plan Environmental Assessment ("EA") and (2) to enjoin all mining of federal coal within the Amendment 3 permit boundary pending compliance with NEPA. Order at 64 (Doc. 60). A narrowly tailored injunction – for instance limiting displacing to only that amount necessary for development work and prohibiting the transportation or sale of federal coal – would both avoid the severe and imminent

harm to Signal Peak and its employees and address the Plaintiff's environmental concerns pending the Office of Surface Mining Reclamation and Enforcement review process on remand.

No party has presented legal arguments or factual evidence for the Court to weigh in determining a remedy tailored to meet the needs of this case. Consequently, the Court ordered a remedy without the benefit of evidence on the equitable factors set out by the U.S. Supreme Court in *Monsanto Co. v. Geertson Seed Farms*, 561 U.S. 139, 156-57 (2010) and its progeny in the Ninth Circuit. Signal Peak therefore respectfully requests that the Court stay its decisions to vacate the EA and to issue a permanent injunction, provide the parties with a briefing schedule and opportunity for an evidentiary hearing on the appropriate remedy, and reconsider a more narrowly tailored remedy after full consideration of the equitable factors.

## ARGUMENT

### I. STANDARD OF REVIEW

"In general, there are four basic grounds upon which a Rule 59(e) motion may be granted: (1) if such motion is necessary to correct manifest errors of law or fact upon which the judgment rests; (2) if such motion is necessary to present newly discovered or previously unavailable evidence; (3) if such motion is necessary to prevent manifest injustice; or (4) if the amendment is justified by an

intervening change in controlling law." *Allstate Ins. Co. v. Herron*, 634 F.3d 1101, 1111 (9th Cir. 2011) (citation omitted). "A court considering a Rule 59(e) motion is not limited merely to these four situations, however." *Id*. (citation omitted). "Since specific grounds for a motion to amend or alter are not listed in the rule, the district court enjoys considerable discretion in granting or denying the motion." *Id*. (citation omitted). Here, alteration of the Court's judgment as to remedy is necessary to correct errors of law and fact and to prevent manifest injustice. Because the Court has not weighed the relevant evidence regarding the equitable factors, its vacatur order and injunction are premature. Before crafting a remedy, the parties should be given an opportunity to present argument and evidence, and the Court must weigh the relevant equitable factors.

## II. THE COURT MUST WEIGH THE RELEVANT EQUITABLE FACTORS IN CRAFTING AN APPROPRIATE REMEDY.

The U.S. Supreme Court made clear in *Monsanto* that there is no presumption that an injunction should issue for a National Environmental Policy Act ("NEPA") violation. *Monsanto*, 561 U.S. at 157 ("No such thumb on the scales is warranted."). Rather, "[a]n injunction should issue only if the traditional four-factor test is satisfied." *Id*. (citing *Winter v. Natural Res. Defense Council, Inc*., 555 U.S. 7, 30-33 (2008)).

The Plaintiff bears the burden to "satisfy" the four-factor test "before a court may grant [a permanent injunction]." *Id*. at 156. The Plaintiff must demonstrate:

"(1) that it has suffered an irreparable injury; (2) that remedies available at law, such as monetary damages, are inadequate to compensate for that injury; (3) that, considering the balance of hardships between the plaintiff and defendant, a remedy in equity is warranted; and (4) that the public interest would not be disserved by a permanent injunction." *Id*. at 156-57 (quoting *eBay Inc. v. MercExchange, L.L.C.*, 547 U.S. 388, 391 (2006)). "It is not enough for a court considering a request for injunctive relief to ask whether there is a good reason why an injunction should *not* issue; rather, a court must determine that an injunction *should* issue under the traditional four-factor test set out above." *Id*. at 158 (emphasis in original).

To the extent injunctive relief is granted, it must also be "tailored to remedy the *specific harm alleged*." *Park Village Apartment Tenants Ass'n v. Mortimer Howard Trust*, 636 F.3d 1150, 1160 (9th Cir. 2011) (emphasis in original) (quotations and citation omitted). A district court abuses its discretion by issuing an "overbroad" injunction. *McCormack v. Hiedeman*, 694 F.3d 1004, 1019 (9th Cir. 2012) (citation omitted).

Further, vacatur of an agency's decision is not the presumptive remedy for a NEPA violation. *Cal. Cmtys. Against Toxics v. U.S. Envtl. Protection Agency*, 688 F.3d 989, 992 (9th Cir. 2012). "Whether agency action should be vacated depends on how serious the agency's errors are and the disruptive consequences of an interim change that itself may be changed." *Id*. (internal quotation and citation

omitted). Put differently, "courts may decline to vacate agency decisions when vacatur would cause serious and irremediable harms that significantly outweigh the magnitude of the agency's error." *League of Wilderness Defenders/Blue Mts. Biodiversity Project v. U.S. Forest Serv.,* 2012 U.S. Dist. LEXIS 190899, at *6 (D. Or. Dec. 10, 2012). *See also Beverly Hills Unified School Dist. v. Fed. Transp. Admin*., 2016 WL 4445770 (C.D. Cal. Aug. 12, 2016) (holding vacatur was not appropriate in case in which supplemental Environmental Impact Statement was ordered in light of disruptive consequences of delaying subway extension project).

In this case, Plaintiff requested vacatur of Office of Enforcement's decision and injunctive relief in its Complaint, but Plaintiff offered no evidence on the mandated remedy factors to demonstrate that vacatur or a permanent injunction should issue. *See* Complaint, Requests for Relief B and D (Doc. 1). The Federal Defendants and Signal Peak denied that Plaintiff was entitled to relief. *See* Office of Enforcement's Answer at 23 (Doc. 6); Signal Peak's Answer, Requests for Relief B and D (Doc 13). There is no presumption favoring entry of an injunction, *Monsanto*, 561 U.S. at 157, and the Court should not find that Plaintiff met its burden of establishing that an injunction is the proper remedy when the parties have not presented argument or facts on the subject. Before formulating a remedy the parties must be afforded the opportunity to present arguments or factual evidence on: (1) whether vacatur was appropriate in light of the seriousness of the

NEPA violations and the disruptive consequences of undoing the agency's decision, or (2) whether a more limited injunction should issue that could address the procedural injury at issue, the sufficiency of available remedies at law, the balance of hardships, or the public interest.

A bifurcated remedies process is not unusual and can be effective in ensuring a remedy that is tailored to address the specific errors identified by the Court in a manner that is equitable to all the parties. For instance, in *Western Watersheds Project v. Salazar*, Judge Winmill ordered separate briefing and held a separate hearing on the appropriate remedy after finding the Bureau of Land Management violated NEPA in approving certain resource management plans in Idaho and Wyoming. *See Western Watersheds Project v. Salazar* , 2012 WL 5880658 (D. Idaho Nov. 20, 2012) (granting in part and denying in part motion for permanent injunction). The Ninth Circuit too has recognized that after finding a NEPA violation, the question of the appropriate remedy is separate and requires determination after consideration of the four factors "on an appropriate record." *Western Watersheds Project v. Abbey*, 719 F.3d 1035, 1054 (9th Cir. 2013) (after finding NEPA violation on appeal, the Ninth Circuit remanded to the district court for consideration of the appropriate remedy). Separate briefing and an evidentiary hearing on remedies is precisely what Signal Peak requests and what the law demands.

## III. A STAY OF THE CURRENT INJUNCTION PENDING THE REMEDIES HEARING IS WARRANTED.

Considering that the parties have not presented argument or evidence on the appropriate remedy, that it is Plaintiff's burden to demonstrate that a permanent injunction should issue, and that the Court's Order does not address the prescribed equitable factors, Signal Peak requests that the Court stay its order of vacatur and permanent injunction pending the remedies hearing. In the absence of a stay, Signal Peak will be subject to imminent and severe harm. In a matter of weeks, the current injunction, if not stayed, will cause severe consequences to the mine and its employees, in an area of Montana that can ill-afford economic displacement. *See* Declaration of Bradley Hanson, attached as Ex. 1.[1] Signal Peak anticipates that once the Court reviews the remedy evidence, it will be able to tailor an alternative, more narrow injunction that would address the deficiencies cited in this Court's August 14, 2017 Order and, at the same time, avoid severe hardship to Signal Peak and its miners.

For instance, an order could limit Signal Peak to displacing only the federal coal necessary for development work. Ex. 1 ¶¶ 47–49. To the extent that development work yields a relatively small volume of federal coal, Signal Peak could stockpile all federal coal and store it, avoiding all coal train shipments and

[1] Bradley Hanson is the President and Chief Executive Officer of Signal Peak.

post-mining environmental impacts of federal coal mining pending Office of Enforcement's completion of additional NEPA review required by the Court's August 14, 2017 Order. Signal Peak intends to prove through its briefing, affidavits, and testimony, that a more narrowly tailored remedy would serve the parties as well as the public's interest.

## CONCLUSION

The Court should address the equitable factors prescribed by controlling case law prior to vacating the EA and enjoining mining of the federal coal within the Amendment 3 permit boundary. Accordingly, Signal Peak requests that the Court stay its August 14, 2017 remedies order, set an expedited briefing schedule on the appropriate remedy, set an expedited date for a hearing before the Court within three weeks of this motion, and reconsider the remedies in this case after full consideration of the equitable factors.

Dated this 11th day of September, 2017.

/s/ Brian Murphy
Brian Murphy

Attorney for Signal Peak Energy, LLC

# CERTIFICATE OF COMPLIANCE

The undersigned, Brian M. Murphy, certifies that this Brief complies with the requirements of Rule 7.1(d)(2). The lines in this document are double spaced, except for footnotes and quoted and indented material, and the document is proportionately spaced with Times New Roman font typeface consisting of 14 characters per inch. The total word count is 1,685, excluding caption and certificates of service and compliance. The undersigned relies on the word count of the word processing system used to prepare this document.

/s/ Brian M. Murphy

**CERTIFICATE OF SERVICE**

I, the undersigned counsel of record, hereby certify that on this 11th day of September, 2017, I filed a copy of this document electronically through the CM/ECF system, which caused all parties or counsel to be served by electronic means as more fully reflected on the Notice of Electronic Filing.

/s/ Brian Murphy

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