

William W. Mercer  
Holland & Hart LLP  
401 N. 31st Street, Suite 1500  
P.O. Box 639  
Billings, Montana 59103-0639  
Telephone: (406) 896-4607  
Email: wwmerc@hollandhart.com

John C. Martin  
Holland & Hart LLP  
25 South Willow Street, Suite 200  
P.O. Box 68  
Jackson, Wyoming 83001  
Telephone: (307) 739-9741  
Fax: (307) 739-9744  
Email: jcmartin@hollandhart.com

ATTORNEYS FOR SIGNAL PEAK ENERGY, LLC

**MONTANA THIRTEENTH JUDICIAL DISTRICT COURT  
YELLOWSTONE COUNTY**

SIGNAL PEAK ENERGY, LLC,

Plaintiff,

vs.

MONTANA ENVIRONMENTAL INFORMATION  
CENTER; STATE OF MONTANA BOARD OF  
ENVIRONMENTAL REVIEW; ELLEN PFISTER; and  
STEVE CHARTER,

Defendants.

) Case No. DV 18-0869  
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DONALD HARRIS

SUMMONS

THE STATE OF MONTANA SENDS GREETINGS  
TO THE ABOVE-NAMED DEFENDANT:

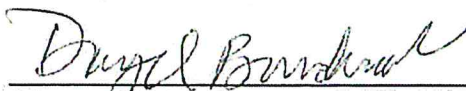
**STATE OF MONTANA BOARD OF ENVIRONMENTAL REVIEW**  
1520 E. 6th Avenue  
Helena, MT 59601

You are hereby summoned to answer the Complaint in this action which is filed in the office of the Clerk of this Court, a copy of which is herewith served upon you and to file your answer and serve a copy thereof upon the plaintiff's attorney within forty-two (42) days after the service of this Summons, exclusive of the day of service; and in case of your failure to appear or answer, judgment will be taken against you by default, for the relief demanded in the Complaint.

WITNESS my hand and the seal of said Court this 1 day of June, 2018.

TERRY HALPIN  
CLERK OF DISTRICT COURT

(COURT SEAL)

By:   
Deputy Clerk

William W. Mercer  
Holland & Hart LLP  
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Billings, Montana 59103-0639  
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William W. Mercer  
Holland & Hart LLP  
401 N. 31st Street, Suite 1500  
P.O. Box 639  
Billings, Montana 59103-0639  
Telephone: (406) 896-4607  
Fax: (406) 252-1669  
Email: wwmerc@hollandhart.com

John C. Martin  
Holland & Hart LLP  
25 South Willow Street, Suite 200  
P.O. Box 68  
Jackson, Wyoming 83001  
Telephone: (307) 739-9741  
Fax: (307) 739-9744  
Email: jcmartin@hollandhart.com

ATTORNEYS FOR SIGNAL PEAK ENERGY, LLC

CLERK OF THE  
DISTRICT COURT  
TERRY HALPIN

2018 JUN 1 PM 4 38

FILED

BY \_\_\_\_\_  
DEPUTY

**MONTANA THIRTEENTH JUDICIAL DISTRICT COURT  
YELLOWSTONE COUNTY**

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SIGNAL PEAK ENERGY, LLC,	)	Case No. DV 18-0869
Plaintiff,	)	
vs.	)	DONALD HARRIS
MONTANA ENVIRONMENTAL INFORMATION	)	
CENTER; STATE OF MONTANA BOARD OF	)	COMPLAINT FOR
ENVIRONMENTAL REVIEW; ELLEN PFISTER; and	)	DECLARATORY JUDGMENT
STEVE CHARTER,	)	
Defendants.	)	

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Plaintiff Signal Peak Energy, LLC ("Signal Peak"), for its Complaint against Defendants Montana Environmental Information Center ("MEIC"), State of Montana Board of Environmental Review (the "Board"), Ellen Pfister ("Ms. Pfister") and Steve Charter ("Mr. Charter"), alleges as follows:

## **INTRODUCTION**

1. This is an action seeking a judicial declaration that Defendants MEIC, Pfister and Charter may not shield themselves from discovery in an administrative action brought by MEIC before the Board. Without the benefit of any supporting evidence, these Parties claim that their First Amendment rights will be “chilled” if they are required to sit for depositions or produce documents in response to discovery. Signal Peak respectfully submits that neither the First Amendment to the United States Constitution nor Article II, Section 6 of the Montana Constitution excuse MEIC, Ms. Pfister, or Mr. Charter from complying with discovery obligations in the pending administrative litigation. Accordingly, Signal Peak asks that the Court declare that complying with discovery would not infringe the Defendants’ constitutional rights and order the Parties to abide by applicable rules and respond to discovery.

## **PARTIES**

2. Plaintiff Signal Peak is a limited liability company organized and existing under the laws of the State of Delaware and authorized to conduct and engaged in the business of mining in the State of Montana. Signal Peak is the owner and operator of the Bull Mountain Coal Mine #1 located south of the city of Roundup in Musselshell County and Yellowstone County, Montana. Signal Peak is based in Roundup, Montana.

3. Defendant MEIC is a Montana advocacy organization based in Helena, Montana. MEIC is the petitioner in an action MEIC brought before the Board.

4. Defendant the Board is a statutorily mandated administrative review board charged with enforcing various State of Montana environmental regulations and statutes. The Board is an extension of the executive branch of the State of Montana government and Signal

Peak names the Board to assure that this Court retains the requisite authority to provide complete relief to Signal Peak.

5. Defendant Ms. Pfister is a resident of Yellowstone County, Montana, a member of MEIC and the owner of certain surface lands that are located above Signal Peak's Bull Mountains Mine.

6. Defendant Mr. Charter is a resident of Yellowstone County, Montana, a member of MEIC and the owner of certain surface lands that are located above mining operations proposed by Signal Peak.

#### **JURISDICTION AND VENUE**

7. Signal Peak incorporates and adopts by reference the allegations contained in Paragraphs 1 through 8 as if restated fully in this paragraph.

8. Jurisdiction is appropriate in Montana District Court pursuant to Article VII, Section 4 of the Montana Constitution and the Uniform Declaratory Judgment Act, Mont. Code Ann. §§ 27-8-101, *et seq.*

9. Venue is proper in the Yellowstone County District Court pursuant to Mont. Code Ann. §§ 25-2-118 and 27-8-201.

#### **BACKGROUND AND FACTS**

10. Signal Peak incorporates and adopts by reference the allegations contained in Paragraphs 1 through 9 as if restated fully in this paragraph.

11. On August 11, 2016, Defendant MEIC filed with the Board a Notice of Appeal and Request for Hearing ("AM3 Appeal"), pursuant to Mont. Code Ann. § 82-4-206(1)-(2) and Administrative Rule of Montana 17.24.425(1), challenging the Montana Department of Environmental Quality's ("DEQ") approval of Amendment Application AM3 to Signal Peak's Permit No. C1993017 for the Bull Mountain Coal Mine #1.

12. On August 23, 2016, Signal Peak moved to intervene in the AM3 Appeal and on August 30, 2016, the Hearing Examiner granted the request.

13. On March 30, 2018, in compliance with the applicable Scheduling Order, Signal Peak issued deposition notices and subpoenas duces tecum on Ms. Pfister and Mr. Charter. Copies of the notices and subpoenas are attached as **Exhibit A** and **Exhibit B**. The deposition notices and subpoenas duces tecum informed Ms. Pfister and Mr. Charter of their obligation to appear for a deposition and to produce specified documents responsive to the subpoenas.

14. Ms. Pfister and Mr. Charter own surface lands that they claim have been or will be impacted by Signal Peak's operations, and Signal Peak reasonably believes that Ms. Pfister and Mr. Charter have discoverable personal knowledge and documents that may contribute to the resolution of MEIC's AM3 Appeal.

15. The subpoenas duces tecum required, among other things, that Ms. Pfister and Mr. Charter produce written communications between and among entities or associations concerning impacts to water resources located on their surface lands.

16. Ms. Pfister and Mr. Charter are members of MEIC and have corresponded with MEIC employees. On information and belief, Mr. Charter and Ms. Pfister have copies of correspondence in their possession that would be responsive to the subpoenas at issue.

17. Ms. Pfister and Mr. Charter are known throughout the region as visible and outspoken members of Eastern Montana advocacy organizations. Ms. Pfister and Mr. Charter have complained publically on multiple occasions about the Bull Mountain Coal Mine #1. Ms. Pfister and Mr. Charter have also participated in the underlying permitting proceeding by submitting comments concerning DEQ's approval of the proposed expansion.

18. On April 17, 2018, MEIC filed a motion to quash the deposition notices and subpoenas duces tecum of Ms. Pfister and Mr. Charter. The Motion to Quash is attached as **Exhibit C**. MEIC alleged, in part, that compliance with the deposition notices and subpoenas duces tecum would unlawfully infringe on the First Amendment freedom of speech rights of MEIC. MEIC claimed that compliance with the deposition notices and subpoenas duces tecum would unlawfully “chill the First Amendment rights of Ms. Pfister, Mr. Charter, and MEIC to associate and petition the government for redress” and impact MEIC membership and its ability to advocate. MEIC did not provide any concrete support for the notion that ordinary discovery requirements somehow “chill” expression or prevent Ms. Pfister or Mr. Charter from continuing to voice their very public opinions in opposition to mining. Indeed, even after the discovery at issue was sent, Mr. Charter submitted comments on the Bull Mountain No. 1 mine and Ms. Pfister sent correspondence to Signal Peak complaining about conditions at the mine.

19. Ms. Pfister and Mr. Charter alleged by declaration that sitting for a deposition and producing correspondence with MEIC “infringe[d] on their First Amendment rights to speak, associate, and petition the government for redress.” The declarations are attached as **Exhibit D** and **Exhibit E**.

20. Signal Peak respectfully submits that the prospect of sitting for a deposition or responding to a subpoena for documents will not intimidate Ms. Pfister or Mr. Charter. Their participation in ordinary discovery during an administrative proceeding cannot reasonably be expected to move them to avoid exercising their rights to petition the government or otherwise to make their opinions known.

21. Counsel for Ms. Pfister and counsel for Mr. Charter have entered appearances in the AM3 Appeal for the limited purpose of resolving the Motion to Quash.

22. On May 2, 2018, Signal Peak responded in opposition to the Motion to Quash and contested the First Amendment claims raised by MEIC, Ms. Pfister and Mr. Charter. A copy of the Response is attached as **Exhibit F**.

23. On May 10 and 11, 2018, respectively, Mr. Charter and Ms. Pfister joined MEIC in objecting to the deposition notices and subpoenas duces tecum, in part, on constitutional grounds.

24. On May 23, 2018, the Hearing Examiner informed MEIC, Signal Peak, Ms. Pfister and Mr. Charter that she, as an extension of the executive branch, lacked the authority and jurisdiction to resolve the constitutional questions raised in the Motion to Quash.

25. On June 1, 2018, Signal Peak, MEIC, Ms. Pfister and Mr. Charter agreed that the Hearing Examiner lacked the authority and jurisdiction to resolve the constitutional questions raised in the Motion to Quash and that the Montana District Court would have jurisdiction to resolve the constitutional issue.

## COUNT I

### **Discovery in the Administrative Proceeding Does Not Infringe on Constitutional Rights and MEIC; Ms. Pfister or Mr. Charter Must Comply their Discovery Obligations**

26. Signal Peak incorporates and adopts by reference the allegations contained in Paragraphs 1 through 25 as if restated fully in this paragraph.

27. Constitutional questions are properly decided by a judicial body, not an administrative official, under the constitutional principle of separation of powers, and the first business of courts is to provide a forum in which the constitution rights of all citizens may be protected.

28. The allegations raised by MEIC, Ms. Pfister and Mr. Charter that the deposition notices and subpoenas duces tecum chill the First Amendment rights of MEIC, Ms. Pfister and



Mr. Charter to speak and to associate and petition the government for redress are constitutional questions beyond the authority and jurisdiction of the Board and the Hearing Examiner.

29. This Court has jurisdiction to resolve the constitutional questions raised by MEIC, Ms. Pfister and Mr. Charter.

30. The First Amendment to the Constitution of the United States protects a person's right to freedom of speech, peaceably assemble and petition for redress.

31. The Montana Constitution, Article II, Section 6, protects Montanans right to peaceably assemble, petition for redress or peaceably protest against public action.

32. Signal Peak believes that Ms. Pfister and Mr. Charter have discoverable personal knowledge that may contribute to the resolution of the AM3 Appeal. Indeed, submissions from Ms. Pfister and Mr. Charter to DEQ reflect allegations that rely on their claimed personal knowledge of conditions in the area of the Signal Peak Mine.

33. Ms. Pfister and Mr. Charter are members of MEIC, and in this capacity, admit communicating with MEIC employees in a manner responsive to the subpoenas duces tecum.

34. The deposition notices and the subpoena duces tecum were issued in good faith and reasonably calculated to lead to the discovery of admissible evidence. Montana law requires that Mr. Charter and Ms. Pfister provide documents and appear for depositions in the administrative proceeding.

35. The deposition notices and the subpoena duces tecum were not issued to intimidate or chill the constitutional rights of MEIC, Ms. Pfister or Mr. Charter and do not chill the exercise of these parties' First Amendment rights.

36. Upon information and belief, MEIC, Ms. Pfister and Mr. Charter have continued to publically advocate on matters related to coal mining in Eastern Montana, individually and on

behalf of their advocacy organizations, since the issuance of the deposition notices and the subpoenas duces tecum.

37. The depositions and requests for documents will not affect MEIC's exercise of its First Amendment rights in any material way.

38. Depositions and production of documents will not infringe upon Ms. Pfister and Mr. Charter's exercise of their constitutional rights. Neither the Montana Constitution nor the Constitution of the United States excuse MEIC, Ms. Pfister or Mr. Charter from compliance with legitimate discovery in a proceeding before the Board. Ms. Pfister and Mr. Charter are obligated under Montana law to respond to the subpoenas and participate in the depositions noticed by Signal Peak.

#### **PRAYER FOR RELIEF**

39. Signal Peak incorporates and adopts by reference the allegations contained in Paragraphs 1 through 38 as if restated fully in this paragraph.

WHEREFORE, Plaintiff Signal Peak prays the Court declare that:

(1) The Board and the Hearing Examiner lack the authority and jurisdiction to resolve the constitutional claims raised by MEIC, Ms. Pfister and Mr. Charter in this administrative proceeding pending before the Board; and

(2) The deposition notices and subpoenas duces tecum issued to Ms. Pfister and Mr. Charter do not unlawfully infringe the constitutional rights of MEIC, Ms. Pfister or Mr. Charter.

(3) Pursuant to Montana law governing administrative proceedings, Ms. Pfister and Mr. Charter must respond to the subpoenas and participate in the depositions noticed by Signal Peak.

Dated this 1st day of June, 2018.

for Brianne McLaughlin  
John C. Martin  
Holland & Hart LLP  
25 South Willow Street  
Suite 200  
P.O. Box 68  
Jackson, Wyoming 83001

William W. Mercer  
Holland & Hart LLP  
401 N. 31st Street  
Suite 1500  
P.O. Box 639  
Billings, Montana 59103-0639

ATTORNEYS FOR SIGNAL PEAK ENERGY,  
LLC

11032290\_1