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MONTANA FIRST JUDICIAL DISTRICT COURT
LEWIS AND CLARK COUNTY

KSANKA ELDERS ADVISORY
COMMITTEE, CONFEDERATED SALISH
AND KOOTENAI TRIBES OF THE
FLATHEAD RESERVATION, FORT
BELKNAP INDIAN COMMUNITY,
EARTHWORKS, MONTANA
ENVIRONMENTAL INFORMATION
CENTER, CLARK FORK COALITION,
ROCK CREEK ALLIANCE, MONTANA
TROUT UNLIMITED, MONTANA
CONSERVATION VOTERS EDUCATION
FUND, SAVE OUR CABINETS, and
CABINET RESOURCE GROUP

Plaintiffs,

vs.

CHRIS DORRINGTON, in his official capacity
as Director of Montana Department of
Environmental Quality, and MONTANA
DEPARTMENT OF ENVIRONMENTAL
QUALITY,

Defendants.

Case No. CDV-2021-1126

(email)

**PETITION FOR WRIT OF
MANDAMUS AND COMPLAINT
FOR DECLARATORY RELIEF**

pd. 1/2

1. This action challenges the failure of Chris Dorrington, Director of the Montana Department of Environmental Quality (DEQ), and DEQ to enforce the “bad actor” provisions of Montana’s Metal Mine Reclamation Act (MMRA), MCA §§ 82-4-331(3), -335(9), -360(1), and uphold the inalienable protections of Montana’s Constitution to prevent unlawful mining by a former top corporate leader of the notorious Pegasus Gold companies.

2. Pegasus Gold Incorporated and its subsidiaries (collectively, “Pegasus”) operated multiple cyanide heap-leach gold mines in Montana in the 1990s, including the Zortman-Landusky, Basin Creek, and Beal Mountain mines. When Pegasus filed for bankruptcy protection in 1998, it left the citizens and taxpayers of Montana and the federal government with more than \$80 million in anticipated reclamation liabilities and water treatment obligations at its heavily contaminated mine sites. Pegasus’s actions burdened the public with a legacy of toxic contamination of invaluable water resources, vital fisheries, and sites sacred to the Gros Ventre and Assiniboine Tribes of the Fort Belknap Indian Community. This pollution will require expensive water treatment in perpetuity.

3. Yet today, Phillips S. Baker, Jr., one of the top corporate leaders of the Pegasus entities responsible for these environmental and financial disasters, is back and seeking to profit from new mines in Montana with a new company, Hecla Mining Company and its subsidiaries (together, “Hecla”). Baker is President and Chief Executive Officer (CEO) of Hecla and a member of the corporation’s board of directors. Hecla and Baker are now pursuing two new large-scale hard rock mining projects adjacent to and underneath the Cabinet Mountains Wilderness, which threaten to destroy an area of unparalleled ecological integrity and of deep cultural significance to the Kootenai Tribe.

4. The MMRA's bad actor provisions prohibit corporations and their principals that fail to fulfill their reclamation obligations, like Pegasus and Baker, from undertaking new mining or exploration activities in Montana unless they (1) repay Montanans for cleaning up the bad actors' abandoned mines and (2) fully reclaim their abandoned mines. Id. Director Dorrington and DEQ have a clear legal duty to enforce these provisions. Id. §§ 82-4-331(3), -335(9), -360(1), -361(1), -362(1).

5. Director Dorrington and DEQ's current failure to enforce the bad actor law represents an abrupt and unjustified agency reversal. Initially, in 2017, acting upon the enforcement request of various conservation organizations, DEQ issued violation letters informing Hecla and Baker that they were violating the bad actor provisions of the MMRA. In response, Hecla sued DEQ to evade enforcement of the law and avoid responsibility for the environmental and economic devastation caused by its President and CEO, Baker. DEQ, represented pro bono by outside counsel, filed counterclaims against Hecla and Baker to enforce the bad actor law and either bar them from further mining and exploration or recoup the millions of dollars paid by Montanans to clean up Baker's abandoned mines. After extensive procedural wrangling, two district courts rejected Hecla's various evasions, which teed the matter up for resolution on the merits.

6. In 2020, however, Greg Gianforte was elected Governor of Montana. Governor Gianforte replaced the prior administration's cabinet members and appointed Chris Dorrington as DEQ Director. Shortly after his appointment, Director Dorrington fired DEQ's pro bono counsel and moved to voluntarily dismiss DEQ's bad actor claims against Hecla and Baker, stating that "Montana received a new governor," citing the "time and money" required to prosecute the case, and alluding to other agency priorities. DEQ Br. in Supp. of Mot. to Dismiss,

Montanore Minerals Corp., et al. v. DEQ, et al., No. ADV 2018-363 (Mont. First Jud. Dist.) (Jul. 14, 2021).

7. Director Dorrington and DEQ's refusal to enforce the bad actor law violates their clear legal duties under the MMRA, which are in turn predicated on the bedrock environmental protections of Montana's Constitution. This unlawful conduct threatens to despoil one of Montana's ecological treasures and an area that has held great cultural importance to the Kootenai Tribe since long before Montana was a state. Director Dorrington and DEQ's abdication of responsibility further forces members of the Fort Belknap Tribes to disproportionately bear the burden of Baker's disastrous legacy at the Zortman and Landusky sites, while allowing Hecla and Baker to continue to profit on additional mining in the state. Moreover, Dorrington and DEQ's decision ensures that Montanans, rather than the corporate officials responsible for the environmental disasters, remain on the hook to pay for perpetual treatment of the toxic pollution left by Pegasus and Baker at the Zortman, Landusky, Basin Creek, and Beal Mountain sites.

8. Accordingly, Plaintiffs Ksanka Elders Advisory Committee, the Confederated Salish and Kootenai Tribes of the Flathead Reservation, Fort Belknap Indian Community, Earthworks, Montana Environmental Information Center, Clark Fork Coalition, Montana Trout Unlimited, Montana Conservation Voters Education Fund, Save Our Cabinets, Rock Creek Alliance, and Cabinet Resource Group (together, "Plaintiffs") bring this action for a writ of mandamus ordering Director Dorrington and DEQ to fulfill their clear legal duties under the MMRA and enforce the bad actor law.

JURISDICTION AND VENUE

9. Plaintiffs bring this action pursuant to the mandamus provision of the MMRA, MCA § 82-4-354(1)-(2), and the Uniform Declaratory Judgments Act, id. §§ 27-8-201, 202. This Court has original jurisdiction over this action. MCA § 3-5-302(1)(c); Mont. Const. art. VII, § 1.

10. Venue is proper in this district pursuant to the MMRA's mandamus provision, id. § 82-4-354(2) (providing that action for mandamus may be brought in the First Judicial District). Venue is also proper in this district because Director Dorrington is the defendant in his official capacity and his decision to unlawfully forego enforcement of the bad actor law took place in whole or in part in Lewis and Clark County. Id. § 25-2-125.

PARTIES

11. Plaintiff Ksanka Elders Advisory Committee (KEAC) is made up of members of the Confederated Salish and Kootenai Tribes. The KEAC guides the Kootenai Culture Committee and serves as direct cultural advisors to the Confederated Salish and Kootenai Tribes. The ancestral territory of the Kootenai includes land in the Cabinet Mountains in northwest Montana and is thus important to the Kootenai for religious, hunting and fishing, and sustenance purposes. Hecla Mining Company and Phillips Baker propose two massive mines beneath and adjacent to the Cabinet Mountains that threaten long-lasting harm to the ancestral territory and waters of the Kootenai.

12. Plaintiff Confederated Salish and Kootenai Tribes (CSKT) is a federally recognized, sovereign tribe located on the Flathead Reservation in northwest Montana. The CSKT is governed by a ten member Tribal Council under a constitution adopted through the Indian Reorganization Act of 1934, 25 U.S.C. § 461 et seq. The Tribal Council is charged with

protecting the health, security, and general welfare of the Confederated Salish and Kootenai Tribes. See Constitution of the Confederated Salish and Kootenai Tribes of the Flathead Reservation, Art. VI, § 1(a). The aboriginal territory of the CSKT stretches across a vast region, including parts of what are now British Columbia, Canada and the states of Idaho, Montana, and Wyoming. Pursuant to Article 3 of the 1855 Treaty With The Flatheads, Etc. (Hellgate Treaty), 12 Stat. 975 (1855), the CSKT ceded most of this land to the United States, reserving for themselves a homeland (the Flathead Reservation) along with the continuing right to hunt, fish, and gather in their usual and accustomed places both on and off-Reservation throughout their aboriginal territory, including the Cabinet Mountains. These ancestral lands and waters continue to be a primary source of sustenance—both material and spiritual—to CSKT tribal members, particularly the Kootenai. The exercise of off-Reservation treaty-reserved rights depends upon healthy natural resources. The CSKT Tribal Council is charged with protecting the health, security, and general welfare of its members. This duty necessarily encompasses protecting the ancestral lands, waters, and sacred places of the CSKT people, including the lands beneath and adjacent to the Cabinet Mountains. Given the long-lasting harm that the Zortman-Landusky mines continue to cause, the threat the two massive proposed mines pose to the aboriginal lands of the CSKT is real, and the CSKT Tribal Council supports this case.

Image 1: Sky Lake in the Cabinet Mountains Wilderness.



13. Plaintiff Fort Belknap Indian Community of the Fort Belknap Indian Reservation of Montana is a federally recognized Indian Tribe. The Fort Belknap Indian Reservation is homeland of the Gros Ventre and the Assiniboine Tribes. The Reservation was created by an Act of Congress on May 1, 1888. Tribal members accepted the Indian Reorganization Act on October 27, 1934. The Fort Belknap Indian Community adopted a constitution on October 19, 1935, and a corporate charter on August 25, 1937, in accordance with Section 16 of the Indian Reorganization Act of June 18, 1934. Under that constitution and charter, the Fort Belknap Indian Community Council is recognized as the governing body on the Fort Belknap Indian Reservation and the Council is charged with the duty of protecting the health, security, and

general welfare of its tribal members. The original Fort Belknap Indian Reservation included the Little Rocky Mountains, which to this day are the headwaters for much of the Reservation's water resources, are considered sacred by Tribal members, and were traditionally used by the Tribes for hunting, fishing, cultural, and spiritual purposes. Though Congress carved out the Little Rocky Mountains from the Reservation's boundaries by act of 1896, 29 Stat. 350 (1896), the Tribes received assurances from the United States that they would retain their rights to all water necessary to fulfill the purposes of the Reservation, including waters originating in the Little Rocky Mountains that Tribal members utilized for irrigation, domestic supplies, and other purposes. See Gros Ventre Tribe v. United States, 469 F.3d 801, 804-05 (9th Cir. 2006); see also Winters v. United States, 207 U.S. 564, 567, 576 (1908) (recognizing Tribes' right to all waters flowing to and entering Reservation lands, "undiminished in quantity and undeteriorated in quality"). Between 1979 and 1994 state and federal agencies approved the mining and development activities at the Zortman-Landusky Mines owned and operated by Pegasus Gold Corporation and its subsidiary, Zortman Mining Incorporated, within the Little Rocky Mountains adjacent to the Reservation. The mining operations of Pegasus Gold and Zortman Mining Incorporated diverted stream flows away from the Reservation and contaminated multiple streams running onto the southern end of the Reservation with cyanide and acid mine drainage. The acid mine drainage and pollution caused by Pegasus Gold Corporation and its principals and subsidiaries at the Zortman-Landusky sites continue to spread deeper into the Reservation, contaminating the Tribes' ceremonial sites, powwow grounds, and drinking water sources used by Tribal members. For these reasons, the Fort Belknap Indian Community Council formally supports this case.

14. Plaintiff Earthworks is a non-profit organization dedicated to protecting communities and the environment from the adverse effects of mineral and energy development while promoting sustainable resource solutions. Earthworks has an office in Missoula, Montana, and is headquartered in Washington, D.C. Earthworks has advocated for years to protect the Cabinet Mountains, surrounding public lands and waters, and the wildlife that depend on that landscape from the threat of hard rock mining, including Hecla's Rock Creek and Montanore project proposals. In addition, Earthworks has engaged in extensive advocacy and litigation concerning the environmental and public health fallout from the abandoned Pegasus mines. Earthworks members live and recreate in northwest Montana, including the Cabinet Mountains area where Hecla's Rock Creek and Montanore mine projects are proposed.

15. Plaintiff Montana Environmental Information Center (MEIC) is a member-supported Montana non-profit organization based in Helena, Montana. Founded in 1973, MEIC represents approximately 5,000 members and supporters from across Montana and the United States. MEIC is dedicated to protecting and restoring Montana's natural environment and protecting Montanans' constitutional right to a clean and healthful environment. MEIC has litigated numerous cases concerning the adverse effects of metal mining in Montana, including the Pegasus mines. MEIC also has advocated for years to protect the Cabinet Mountains Wilderness, surrounding public lands and waters, and the wildlife that depend on that landscape from the threat of hard rock mining, including Hecla's Rock Creek and Montanore project proposals. MEIC members live near, recreate in, and otherwise derive benefit from the public lands and waters in the Cabinet Mountains.

16. Plaintiff Clark Fork Coalition (the "Coalition") is a non-profit river conservation organization dedicated to protecting and restoring clean water throughout the Clark Fork River

watershed. Since 1985, the Coalition has worked to improve and protect water quality and restore stream flow and function in the waterways of the Clark Fork River basin, including the Lower Clark Fork River and its tributaries that would be harmed by the Rock Creek mine. On behalf of its approximately 2,700 members, the Coalition has engaged in extensive advocacy and litigation to address the legacy of contamination from Pegasus Gold's Beal Mountain mine and to protect the Lower Clark Fork watershed from the threats posed by the Rock Creek mine. The Coalition's members use the waterways threatened with pollution and flow reductions from the Rock Creek mine and the adjacent public lands.

17. Plaintiff Rock Creek Alliance (the "Alliance") is a non-profit organization dedicated to protecting the Clark Fork-Pend Oreille watershed from the adverse impacts of the proposed Rock Creek mine. The Alliance also works to protect and conserve aquatic and terrestrial habitat in western Montana, including in the Cabinet Mountains, and Clark Fork-Pend Oreille watershed, to ensure the continued viability of the threatened species of grizzly bear, bull trout, lynx, and sensitive wildlife species including wolverine, harlequin duck, and westslope cutthroat trout that live there. The Alliance further strives to protect the integrity and wilderness characteristics of the 93,000-acre Cabinet Mountains Wilderness, one of the original wilderness areas designated by Congress. As part of these efforts, the Alliance has participated in nearly every stage of the environmental analyses and permitting processes for the proposed Rock Creek mine by submitting comments, commissioning technical studies, organizing and assisting the public in attending hearings and submitting comments, and consistently communicating with the state and federal agencies with authority over the mine. Alliance members live and recreate in and around the Cabinet Mountains region, including the wilderness lands adjacent to the proposed Rock Creek mine site.

18. Plaintiff Montana Trout Unlimited (MTU) is a non-profit organization dedicated to conserving, protecting, and restoring coldwater fisheries and their habitats in Montana. MTU is the state-level organization that shares its mission with national Trout Unlimited. Founded in 1964, MTU is the only statewide grassroots organization dedicated solely to conserving and restoring coldwater fisheries. MTU is comprised of 13 chapters representing more than 4,000 members. Throughout its history as an organization, MTU has worked on mining issues that affect or potentially impact coldwater resources across the state including reviewing mining proposals, analyzing permit applications, participating in the NEPA or MEPA processes, supporting citizens or communities adversely affected by mining proposals or operations, promoting more environmentally responsible mining policy and practices, researching the effects of hardrock mining on water resources and fisheries, reviewing and evaluating reclamation and restoration efforts at mine sites, as well as helping to fund, develop and oversee abandon mine cleanup. This has all been done in the interest of pursuing MTU's mission and promoting responsible mining in Montana. That is why, MTU strongly supported passage of the bad actor provision of the MMRA and has expressed equally strong support for the enforcement of the bad actor law in the case of Helca Mining and Phillips S. Baker Jr. MTU and its members are adamant that Director Dorrington and DEQ enforce the bad actor law in the interest of promoting responsible mining in Montana. MTU's members live and recreate in and around the lands impacted by the pollution from Pegasus's Beal Mountain Mine.

19. Plaintiff Montana Conservation Voters Education Fund (MCV Education Fund) is a non-partisan, statewide membership organization that serves as the political voice of Montana's conservation and environmental community. MCV Education Fund informs its membership and the broader public about the votes and actions of elected officials that affect

clean air and water, open spaces, and public health. MCV Education Fund works for responsible stewardship of Montana's unparalleled natural assets by providing voter participation services to more than 35,000 conservationists. MCV Education Fund also fights to protect clean water and air and Montana's outdoor heritage by involving people in government and advocating for legislative priorities in the Montana Legislature, including bills that would prevent undue environmental harm from hard rock mining and protect Montana's designated wilderness areas and other federal public lands. MCV Education Fund strongly advocated in favor of the October 2017 MMRA enforcement request that precipitated DEQ's original enforcement action in this matter. MCV Education Fund participated in discussions with state officials concerning the request, raised awareness about the alleged MMRA violations among MCV Education Fund's membership and in the media, and coordinated with the groups that formally requested enforcement action. Ensuring strong and appropriate enforcement of Montana's hard rock mining laws is central to MCV Education Fund's mission and the organization's broader campaigns to protect Montana's lands and waters from mining pollution.

20. Plaintiff Save Our Cabinets is a Montana non-profit organization dedicated to protecting wild lands, wildlife, and water quality in the Cabinet Mountains of northwest Montana. Save Our Cabinets is headquartered in Heron, Montana, and its members live and recreate in and around the Cabinet Mountains. Save Our Cabinets has engaged in extensive public education and advocacy to protect the Cabinet Mountains region and its waters, native fish, and wildlife from the adverse effects of the proposed Rock Creek and Montanore mines.

21. Plaintiff Cabinet Resource Group is a northwest Montana grassroots environmental organization started in 1976. The Cabinet Resource Group is based in communities adjacent to the Kootenai National Forest and the Cabinet Mountains Wilderness

Area. The Cabinet Resource Group has long advocated to protect the Cabinet Mountains Wilderness Area from the impacts of hard rock mining. The Cabinet Resource Group's members live near, recreate in, and otherwise derive benefits from the public lands and waters in the Cabinet Mountains.

22. On September 8, 2021, and again on November 3, 2021, Plaintiffs sent letters supported by sworn declarations to Director Dorrington, notifying him of his failure to enforce the bad actor law and to uphold his constitutional obligations with respect to Hecla and Baker and the abandoned Pegasus Mines. Despite the letters, Director Dorrington and DEQ have taken no action and made no commitment to enforce the bad actor law or uphold their constitutional obligations.

23. Plaintiffs' letters to Director Dorrington were accompanied by declarations from members of the organizations documenting their interests in the public lands, waters, and wildlife of the Cabinet Mountains, the Little Rocky Mountains and Fort Belknap Reservation, and the areas surrounding the Beal Mountain Mine, which are and will be adversely affected by Director Dorrington and DEQ's failure to enforce the bad actor law against Hecla and Baker.

24. Defendant Chris Dorrington is Director of the Montana Department of Environmental Quality, an agency of the State of Montana, and is charged with implementing and enforcing the Metal Mine Reclamation Act. Pursuant to the MMRA, Director Dorrington is charged with permitting and oversight of hard rock mining and exploration activities in Montana as well as mine reclamation. DEQ is headquartered in Helena, Montana, which is where Director Dorrington conducts his official duties.

25. Defendant Montanan Department of Environmental Quality (DEQ) is an agency of the State of Montana that is charged with implementing and enforcing the MMRA. Pursuant

to the MMRA, DEQ is charged with permitting and oversight of hard rock mining and exploration activities in Montana as well as reclamation. DEQ is headquartered in Helena, Montana.

FACTUAL AND LEGAL BACKGROUND

I. MONTANA'S CONSTITUTIONAL PROTECTIONS

26. The fundamental environmental protections of Montana's Constitution undergird and animate the provisions of the MMRA, including the bad actor law.

27. Montana's Constitution contains the "strongest environmental protection provision[s] found in any state constitution." Mont. Env'tl. Info. Ctr. v. Dep't of Env'tl. Quality (MEIC), 1999 MT 248, ¶ 66, 296 Mont. 207, 988 P.2d 1236.

28. The Montana Constitution enshrines the "inalienable" "right to a clean and healthful environment." Mont. Const. art. 2, § 3. This inalienable right entails corresponding responsibilities. Thus, "[t]he state and each person shall maintain and improve a clean and healthful environment in Montana for present and future generations." Id. art. IX, § 1(1).

29. The state must also "provide adequate remedies for the protection of the environmental life support system from degradation and ... adequate remedies to prevent unreasonable depletion and degradation of natural resources." Id. art IX, § 1(3).

30. These provisions are "both anticipatory and preventative and do not require that dead fish float on the surface of our state's rivers and streams before the Montana Constitution's farsighted environmental protections can be invoked." Park Cnty. Env'tl. Council v. Mont. Dep't of Env'tl. Quality, 2020 MT 303, ¶ 61, 402 Mont. 168, 477 P.3d 288 (quoting MEIC, ¶ 77).

31. Moreover, when resource extraction occurs, Montana's Constitution mandates that the land be reclaimed. Mont. Const. art. IX, § 2(1).

32. The constitutional right to a clean and healthful environment and the constitutional obligation to reclaim all lands disturbed by the taking of natural resources inform and animate the Metal Mine Reclamation Act and, specifically, the bad actor provisions.

II. THE METAL MINE RECLAMATION ACT AND THE BAD ACTOR PROVISIONS

33. The MMRA was enacted in light of the “constitutional obligations under Article II, section 3, and Article IX of the Montana constitution.” MCA, §§ 82-4-301(1), 302(1)(a).

34. The MMRA recognizes that “proper reclamation of mined land ... is necessary to prevent undesirable land and surface water conditions detrimental to the general welfare, health, safety, ecology, and property rights of the citizens of the state.” *Id.* § 82-4-301(3).

35. The bad actor provisions of the MMRA prohibit persons, including companies and the principal officers of companies, that default on reclamation obligations under state law from engaging in mineral exploration or mining activity in Montana, or obtaining permits for the same, unless the relevant company or officer satisfies statutory requirements to rectify the default. *Id.* §§ 82-4-331(3), -335(8), -360. As relevant here, MCA § 82-4-360(1) provides that

a person may not conduct mining or exploration activities in this state if that person or any firm or business association of which that person was a principal or controlling member had a bond forfeited under this part, if the [D]epartment [of Environmental Quality] otherwise received proceeds from a surety to perform reclamation on that person’s behalf, or if the person’s surety completed reclamation on the person’s behalf.

See also *id.* § 82-4-303(22) (MMRA defining “person” to include natural persons and corporate entities).

36. A person barred from exploration and mining activities under MCA § 82-4-360(1) may resume such activities only if they pay DEQ (1) the full amount the agency incurred to carry out reclamation on behalf of that person or the company for which the person served as a principal or controlling member, (2) the full amount of any penalties assessed by DEQ under the

MMRA, and (3) 6% annual interest on the expenses incurred and penalties assessed; and “the person demonstrates and [DEQ] determines that the person has remedied the conditions that led to the bond forfeiture or receipt of the bond proceeds and that those conditions no longer exist.” Id. § 82-4-360(2).

III. THE PEGASUS ENTITIES’ RECLAMATION DEFAULTS TRIGGER THE BAD ACTOR PROVISIONS.

37. Pegasus Gold Incorporated and its subsidiaries owned and operated multiple cyanide heap-leach gold mines in Montana into the 1990s. Of relevance here, Pegasus Gold Incorporated and its subsidiaries Pegasus Gold Corporation and Zortman Mining, Inc. owned and operated the Zortman-Landusky Mines; Pegasus Gold Incorporated and its subsidiary Pegasus Gold Montana Mining, Inc., owned and operated the Basin Creek Mine; and Pegasus Gold Incorporated and its subsidiary Beal Mountain Montana Mining, Inc., owned and operated the Beal Mountain Mine. These corporate entities are referred to collectively hereafter as the “Pegasus Entities.”

38. Between January 1994 and March 1998, Phillips S. Baker, Jr., held leadership positions in the Pegasus Entities, including the roles of (1) Vice President for Finance and Chief Financial Officer of Pegasus Gold Incorporated, the Pegasus parent company; (2) Vice President and Director of Zortman Mining, Inc.; (3) Vice President, Chief Financial Officer, and Director of Pegasus Gold Corporation; (4) Vice President and Director of Pegasus Gold Montana Mining, Inc.; and (5) Vice President and Director of Beal Mountain Montana Mining, Inc.

39. The Pegasus Entities filed for bankruptcy protection on January 16, 1998, during Mr. Baker’s tenure. Subsequently, the Pegasus Entities were unable to fulfill their reclamation

obligations for the Zortman-Landusky, Basin Creek, and Beal Mountain Mines as required by the MMRA, their DEQ-issued exploration licenses and operating permits, and other authorities.

Image 2: Polluted Water from Zortman-Landusky Mines.



40. DEQ participated as a creditor in the Pegasus Entities' bankruptcy proceedings in an attempt to secure adequate funds for the extensive environmental clean-up required at the Pegasus mines that were no longer operational. As a result of protracted litigation and negotiations, DEQ reached settlement agreements with the Pegasus Entities' sureties that allowed DEQ to access some funds for reclamation of the Zortman-Landusky and Basin Creek Mines. DEQ has carried out reclamation activities at those sites in the Pegasus Entities' stead.

Image 3: Leaking cyanide leach pad at Beal Mountain Mine site.



41. Mr. Baker now serves as President and CEO of Hecla. He has served as President and Director since 2001 and CEO since 2003. Baker is also a member of Hecla's Board of Directors. Baker previously served as the Chairman of the National Mining Association.

42. Hecla acquired the Rock Creek Mine project in June 2015 and the Montanore Mine project in September 2016. Hecla is pursuing exploration activities, and seeking to develop and operate those projects, through its wholly-owned subsidiaries, RC Resources, Inc. (Rock Creek) and Montanore Minerals Corporation (Montanore).

43. In an October 23, 2017 letter, Plaintiffs Earthworks, MEIC, Clark Fork Coalition, Rock Creek Alliance, and Save Our Cabinets alerted DEQ to Baker's leadership history with the Pegasus entities responsible for the reclamation defaults at the Zortman-Landusky, Beal

Mountain, and Basin Creek mines and requested that DEQ take enforcement action under the MMRA's bad actor provisions, MCA §§ 82-4-331(3), -335(8), -360. Plaintiffs MCV Education Fund and the Fort Belknap Indian Community supported that enforcement request through formal communications with the responsible state officials and public education and outreach.

44. On March 20, 2018, DEQ issued violation letters to Baker and Hecla as required by the MMRA, MCA § 82-4-361(1), alleging that Baker is in violation of the bad actor provision at MCA § 82-4-360, and that Hecla is unlawfully aiding that violation through its employment of Baker as the company's President and CEO.

45. Baker and Hecla did not respond to DEQ's violation letters. Instead, Montanore Minerals Corp., RC Resources, Inc., and Troy Mine, Inc., filed suit on March 23, 2018 challenging DEQ's violation letters. Complaint for Declaratory Judgment and Injunctive Relief, Montanore Minerals Corp. v. Mont. Dep't of Envtl. Quality, No. DV 18-52 (Mont. 19th Jud. Dist. Court Mar. 23, 2018).

46. On June 25, 2018, following further investigation and communication with Baker and Hecla regarding the violation-letter allegations, DEQ issued reply letters to Baker and Hecla stating DEQ's conclusion that Baker is barred from engaging in exploration or mining in Montana under MCA § 82-4-360 because he was a principal or controlling member of the Pegasus Entities and DEQ received proceeds from a surety to perform reclamation on the Pegasus Entities' behalf. DEQ filed its third-party complaint and counterclaim in that action on the same day.

47. DEQ's third-party complaint and counterclaim requested a declaratory judgement that Baker is disqualified from conducting mining or exploration activities under the MMRA and injunctive relief enjoining Baker, Hecla, and its subsidiaries RC Resources and Montanore

Minerals Corp. from conducting exploration or mining activities in Montana until they return to compliance with the law. Third Party Complaint and Counterclaim, Montanore Minerals Corp. v. Mont. Dep't of Env'tl. Quality, No. ADV 2018-363 (Mont. 1st Jud. Dist. Court June 25, 2018).

48. The district court dismissed the claims of Montanore Minerals Corp., RC Resources, Inc., and Troy Mine, Inc. against DEQ as unripe and premature. Montanore Minerals Corp. v. Mont. Dep't of Env'tl. Quality, No. ADV 2018-363 (Mont. 1st Jud. Dist. Court Dec. 7, 2018).

IV. DEQ'S ABRUPT ABANDONMENT OF ENFORCEMENT OF THE BAD ACTOR PROVISION AGAINST BAKER AND HECLA VIOLATES MONTANA LAW AND ITS CONSTITUTION.

49. On November 4, 2020, Greg Gianforte was elected Governor of Montana, and assumed office in January 2021. Governor Gianforte replaced cabinet members, appointing Chris Dorrington as DEQ Director in 2021.

50. On April 29, 2021, the State District Court for the First Judicial District of Montana ruled that the Court has jurisdiction to adjudicate DEQ's claims over Hecla and Baker. Montanore Minerals Corp. v. Mont. Dep't of Env'tl. Quality, No. ADV 2018-363 (Mont. 1st Jud. Dist. Court Apr. 29, 2021).

51. On July 14, 2021, DEQ abruptly decided to voluntarily dismiss the case against Hecla and Baker, electing to not enforce Montana's bad actor laws under the MMRA, MCA §§ 82-4-331(3), 82-4-335(9), 82-4-360(1). Mot. to Dismiss, Montanore Minerals Corp. v. Mont. Dep't of Env'tl. Quality, No. ADV 2018-363 (July 14, 2021).

52. Though DEQ moved to dismiss the case, the agency did not withdraw its findings and determination that Baker, as a former principal of Hecla, could not receive a hard rock exploration license or operating permit or conduct exploration or mining activities in Montana.

Instead, DEQ noted that “Montana received a new Governor, who appointed a new Director of DEQ” and that the agency did not want to “dedicate[] ... resources and time” to enforcing the Metal Mine Reclamation Act. Br. in Supp. of Mot. to Dismiss, Montanore Minerals Corp. v. Mont. Dep’t of Env’tl. Quality, No. ADV 2018-363 (July 14, 2021). DEQ, however, had been represented pro bono in its enforcement case before firing their counsel after Gianforte took office.

53. In its decision to abandon enforcement of the bad actor law against Baker, DEQ wrote that Hecla’s subsidiaries are not authorized to mine and that DEQ had not issued permits to the subsidiaries. Id. In fact, DEQ has already issued exploration permits for the Rock Creek Mine and an operating permit for the Montanore Mine.

54. Director Dorrington and DEQ have made no effort to require Hecla and Baker to abate the pollution and acid mine drainage caused by the mines that Pegasus and Baker abandoned.

55. DEQ’s motion to dismiss its enforcement effort against Hecla and Baker was an unambiguous indication that Director Dorrington and DEQ do not intend to enforce the bad actor law against Hecla or Baker.

56. Montanans’ continue to pay millions of dollars annually and will continue to do so in perpetuity to treat the dangerous pollution left behind at Pegasus’ and Baker’s abandoned mines.

CAUSE OF ACTION

57. Plaintiffs hereby re-allege and incorporate Paragraphs 1 through 56.

58. Between 1994 and 1998, Baker was a principal or controlling member of the Pegasus Entities within the meaning of MCA § 82-4-360(1). In January 1998, the Pegasus

Entities filed for bankruptcy protection and subsequently defaulted on their reclamation obligations at the Zortman-Landusky, Basin Creek, and Beal Mountain mines. DEQ received proceeds from the Pegasus Entities' sureties to carry out reclamation in the companies' stead. Accordingly, Baker is prohibited from conducting mineral exploration or mining activities in Montana pursuant to MCA § 82-4-360(1), either individually or through any corporate entity that he directs or controls.

59. The surety bond proceeds DEQ was able to access through litigation and negotiation with Pegasus Entities' sureties were inadequate to cover the full costs of reclamation at the abandoned Pegasus mines. As a result, Montana citizens and taxpayers have been compelled to spend tens of millions of dollars in public funds on reclamation work that the Pegasus Entities, run by Baker and his cohorts, were legally obligated to complete and pay for. Despite those substantial outlays of public funds, reclamation and pollution-control efforts at the Zortman-Landusky, Basin Creek, and Beal Mountain mines are far from complete and are expected to burden the State and taxpayers with ongoing expenses in perpetuity.

60. The bad actor provision of the MMRA imposes an automatic bar on mining or exploration operations for any person or company that qualifies as a bad actor, unless and until the bad actor rectifies his violations. MCA § 82-4-360(1).

61. Enforcement of the bad actor provision secures Montanans' right to a clean and healthful environment and the State of Montana's duty to uphold that right and ensure reclamation of lands disturbed by the exploitation of natural resources. Mont. Const. arts. II, § 3, IX, §§ 1(1), 2(1).

62. Director Dorrington in his official capacity as Director of DEQ and DEQ have a clear legal duty to enforce the provisions of the MMRA, including the bad actor provision.

MCA §§ 82-4-361(1), -362(1).

63. Director Dorrington and DEQ have neglected and refused to enforce the bad actor law against Hecla and Baker.

64. Director Dorrington and DEQ's bases for neglecting and refusing to enforce the bad actor law against Hecla and Baker were unsupported and arbitrary and capricious.

65. Director Dorrington and DEQ's neglect and refusal to enforce the bad actor provision are unlawful, in violation of their clear legal duties, the MMRA, and the Montana Constitution.

REQUEST FOR RELIEF

Based on the foregoing legal violations, Plaintiffs request that this Court:

1. Declare that Director Dorrington and DEQ have violated their enforcement obligations under the MMRA and Montana's Constitution;
2. Issue a writ of mandamus directing Director Dorrington and DEQ to enforce the bad actor provision of the MMRA to bar Hecla and Baker from conducting mining or exploration activities in Montana unless and until Hecla and Baker rectify their default.
3. Grant Plaintiffs such additional relief as the Court may deem just and proper.

Respectfully submitted this 10th day of November, 2021.

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