



Director Tom Livers
Montana Department of Environmental Quality
P.O. Box 200901
Helena, MT 59620-0901
Via Hand Delivery

October 23, 2017

Dear Director Livers:

This is a request for enforcement under the Metal Mine Reclamation Act (“MMRA”), MCA §§ 82-4-331(3), 82-4-335(9), and 82-4-360(1), submitted on behalf of Earthworks, Montana Environmental Information Center, Clark Fork Coalition, Rock Creek Alliance, and Save Our Cabinets (collectively, the “Conservation Organizations”). The cited MMRA provisions generally prohibit the former principals of companies that fail to complete required mine reclamation from receiving a hard rock exploration license or operating permit and conducting exploration or mining activities in Montana. As explained more fully below, these provisions apply to and prohibit Hecla Mining Company (“Hecla”) from developing the Rock Creek and Montanore mine projects because Hecla President, Chief Executive Officer, and Director Phillips S. Baker, Jr. is a former principal officer of Pegasus Gold Incorporated and its subsidiaries Pegasus Gold Corporation, Zortman Mining Incorporated, Pegasus Gold Montana Mining Incorporated, and Beal Mountain Mining Incorporated. The Pegasus entities failed to complete required reclamation of, at a minimum, the Zortman-Landusky and Basin Creek mines, resulting in DEQ’s receipt of bond funds to carry out necessary reclamation in their stead.¹

When the Pegasus entities filed for bankruptcy in 1998, they left in their wake a toxic legacy that has devastated invaluable water resources, vital fisheries, and tribal sacred sites and poses ongoing threats to human health and the environment. Further, the Pegasus bankruptcy shifted to the State of Montana and its taxpayers tens of millions of dollars in reclamation liabilities and water treatment obligations that will burden the state in perpetuity. Yet today, one of the top leaders of the Pegasus entities responsible for these environmental and financial disasters is seeking to profit with his current company, Hecla, from two new massive hard rock mining projects on uniquely sensitive lands in our state with DEQ’s authorization.

As explained more fully below, in these circumstances the MMRA’s “bad actor” provisions, MCA §§ 82-4-331(3), 82-4-335(9), and 82-4-360(1),² disqualify Hecla from

¹ The Conservation Organizations reserve the right to supplement this submission with additional allegations concerning other Pegasus mines. However, as explained herein, the available facts establish a violation of the MMRA and compel DEQ to take appropriate enforcement action.

² See Minutes of the Mont. Senate Cmte. on Nat. Res., Hearing on H.B. 69, 57th Leg., at 3–5 (April 9, 2001) (statement of Sen. Grosfield describing “bad actor” provisions); Larry D. Mitchell, Metal Mine Bonding in Mont., Staff Rep. to Mont. Env’tl Quality Council at 9 (Oct. 2004) (describing legislative action on MMRA “bad actor” provisions).

receiving exploration and operating permits or carrying out exploration and mining activities in Montana. Accordingly, the Conservation Organizations request that DEQ take action to enforce the MMRA within sixty days by issuing a notice of violation advising Hecla that it may not conduct exploration or mining in Montana and suspending the exploration license for the Rock Creek mine and the operating permit for the Montanore mine. See id. § 82-4-362(1). As required by MCA § 82-4-354(1), attached to this letter are affidavits stating the specific facts of DEQ’s failure to enforce the relevant MMRA provisions and documenting the interests of the Conservation Organizations and their members that would be adversely affected by development and operation of the Rock Creek and Montanore mines.

I. LEGAL BACKGROUND

The MMRA generally prohibits a person or company³ from receiving permits for or conducting exploration or mining activities in Montana if that person, company, or the person’s former company failed to complete required mine reclamation and the state or a surety funded or carried out reclamation instead. This prohibition appears in three MMRA provisions:

- Section 82-4-331(3) provides that a person or company may not receive an exploration license if that person/company’s failure, “or the failure of any firm or business association of which that person was a principal or controlling member,” to comply with the MMRA, its implementing regulations, or a permit or license issued under the MMRA “has resulted in either the receipt of bond proceeds by [DEQ] or the completion of reclamation by the person’s surety or by [DEQ].”
- Section 82-4-335(9) provides that a person or company may not receive a hard rock operating permit under the same conditions.
- Section 82-4-360(1) provides that a person or company “may not conduct mining or exploration activities in this state” if that person/company “or any firm or business association of which that person was a principal or controlling member had a bond forfeited” under the MMRA, if DEQ “otherwise received bond proceeds from a surety to perform reclamation” on the person’s/company’s behalf, or if the person’s/company’s surety completed reclamation on their behalf.

An exception from these “bad actor” prohibitions applies only if the person/company seeking to conduct exploration or mining activities pays DEQ (1) the full amount of expenses DEQ incurred for reclamation carried out on behalf of that person/company or that person’s former company, (2) the full amount of any penalties assessed under the MMRA, and (3) interest on the expenses incurred and penalties assessed at the rate of 6% per year; and the person/company demonstrates and DEQ determines that the person/company “has remedied the conditions that led to the bond forfeiture or receipt of the bond proceeds and that those

³ “Person” includes “any ... corporation, firm, association, partnership, or other legal entity engaged in exploration for or mining of minerals on or below the surface of the earth, reprocessing of tailings or waste materials, or operation of a hard-rock mill.” MCA § 82-4-303(22).

conditions no longer exist.” MCA § 82-4-360(2); see id. §§ 82-4-331(3)(a), 82-4-335(9)(a) (incorporating exception).

II. FACTUAL BACKGROUND

A. The Pegasus Mines

Pegasus Gold Incorporated and its subsidiaries owned and operated multiple cyanide heap leach gold mining projects in Montana in the 1990s, including the Zortman-Landusky, Basin Creek, and Beal Mountain mines.⁴ The MMRA required the Pegasus entities to reclaim these mine sites consistent with their approved reclamation plans and statutory requirements. See MCA §§ 82-4-336, 82-4-341. But when the Pegasus entities filed for bankruptcy protection in January 1998,⁵ they defaulted on those obligations and “Montana DEQ’s Environmental Management Bureau became responsible for collecting over \$80 million in surety bonds and implementing reclamation plans” at the four mines.⁶ As described by then-Environmental Management Bureau Chief Warren McCullough, “[n]o previous DEQ reclamation projects had approached the scale of the Pegasus properties.”⁷

Hecla President, CEO, and Director Phillips S. Baker, Jr., was the Vice President, Finance and Chief Financial Officer of Pegasus Gold Incorporated from January 1994 until March 1998.⁸ In addition, Mr. Baker was a principal officer and director of each of the Pegasus subsidiaries responsible for operating the mines at issue⁹: between 1994 and 1998, Mr. Baker was Vice President and Director of (1) Zortman Mining, Incorporated and Pegasus Gold Corporation,¹⁰ which operated the Zortman-Landusky mines¹¹; (2) Pegasus Gold Montana Mining, Incorporated,¹² which operated the Basin Creek Mine¹³; and (3) Beal Mountain Montana Mining, Incorporated,¹⁴ which operated the Beal Mountain Mine.¹⁵

⁴ See attached Affidavit of Katherine O’Brien, ¶¶ 4-5, 15-17.

⁵ Id. ¶ 6-7.

⁶ Warren D. McCullough, “Lessons Learned in Montana – A Dispatch From the Front Lines,” Proceedings of the Am. Soc’y of Mining & Reclamation and the 9th Billings Land Reclamation Symposium, Billings, MT 792-93 (June 2003).

⁷ Id.

⁸ See O’Brien Aff., ¶¶ 22, 37.

⁹ See id., ¶¶ 24-36.

¹⁰ Id., ¶¶ 24-25, 32-33. Mr. Baker also served as Chief Financial Officer for Pegasus Gold Corporation between 1994 and 1998. Id., ¶ 25.

¹¹ Id., ¶ 5.

¹² Id., ¶¶ 27-30. Pegasus Gold Montana Mining was previously known as Basin Creek Mining. See id., ¶¶ 28-29.

¹³ Id., ¶ 17.

¹⁴ Id., ¶¶ 35-36.

¹⁵ See USDA Forest Serv., Draft Existing Conditions Report for Beal Mountain Mine 5 (April 2004) (prepared by Maxim Techs., Inc.) (“Beal Mountain Existing Conditions Rep.”), available at https://www.fs.usda.gov/Internet/FSE_DOCUMENTS/stelprdb5183265.pdf (last visited Oct. 20, 2017)

1. *The Zortman-Landusky Mines*

Pegasus Gold Corporation and Zortman Mining Incorporated owned and operated the Zortman and Landusky mines in the Little Rocky Mountains immediately south of the Fort Belknap Indian Reservation from 1979 until 1998.¹⁶ The Pegasus entities' operations at the Zortman-Landusky mines polluted ground and surface water sources with cyanide and acid rock drainage and, nearly twenty years after those operations ceased, the severe impacts of that pollution continue to harm the environment and affected communities.¹⁷ As described in the attached letter from Mark L. Azure, President of the Fort Belknap Community Council, acid mine drainage continues to run off the Zortman-Landusky sites; it has reached the Fort Belknap Indian Reservation, contaminating the Fort Belknap Gros Ventre and Assiniboine Tribes' ceremonial sites, areas tribal members use for fishing and recreation, and springs that formerly provided clean water for tribal members.¹⁸ As Mr. Azure states, the ongoing desecration of the Tribes' sacred places as a result of pollution from the Pegasus mining operations inflicts profound injury on the Tribes' cultural interests.¹⁹ The United States District Court for Montana acknowledged this reality in 2004, stating that "[i]t is undisputed that the Zortman-Landusky mines have devastated portions of the Little Rockies, and will have effects on the surrounding area, including the Fort Belknap Reservation, for generations. That devastation, and the resulting impact on tribal culture, cannot be overstated."²⁰

As stated above, Pegasus Gold Incorporated and most of its subsidiaries, including Zortman Mining, filed for bankruptcy protection in January 1998.²¹ As a consequence of its financial troubles, Zortman Mining was unable to fulfill its reclamation obligations at Zortman-Landusky under the MMRA and its exploration and operating permits.²² In 1998, DEQ negotiated a settlement agreement with the company's sureties to secure bond funds to complete necessary reclamation work in the company's stead.²³ DEQ and the U.S. Bureau of Land

¹⁶ O'Brien Aff., ¶ 5. Parent company Pegasus Gold Incorporated also identified the Zortman mine as its project. See Pegasus Gold Inc. 1998 Form 10-K (attached as Exhibit 1 to O'Brien Aff.).

¹⁷ See generally, Larry D. Mitchell, Zortman & Landusky Mines, HJR 43, Water Quality Impacts, Mont. Env't'l Quality Council Staff Paper (Oct. 2004) ("Mitchell 2004") (attached as Exhibit 5 to O'Brien Aff.); In re Island Mountain Protectors, 14 IBLA 168, 190 (May 29, 1998) (attached as Exhibit A); R. David Williams, et al., Zortman-Landusky: Challenges in a Decade of Closure, Proceedings of the Am. Soc'y of Mining & Reclamation, Billings, MT (June 2009) (attached as Exhibit B); Letter from Mark L. Azure, President, Fort Belknap Community Council, Fort Belknap Indian Community, to Tom Livers, Director, Mont. Dep't of Env't'l Quality (Oct. 10, 2017) (attached as Exhibit C).

¹⁸ Letter from Mark L. Azure, supra.

¹⁹ Id.

²⁰ Order, Gros Ventre Tribe, Assiniboine Tribe, and the Fort Belknap Indian Cmty. Council v. Bureau of Land Mgmt., no. CV 00-69-M-DWM, at 12 (D. Mont. June 28, 2004).

²¹ O'Brien Aff., ¶¶ 6-7.

²² Id. ¶ 8, 12.

²³ Id. ¶ 8-11.

Management thereafter took over responsibility for reclamation and water treatment at the Zortman-Landusky sites.²⁴

The costs for water treatment and reclamation that the Pegasus entities failed to complete at Zortman-Landusky are staggering and vastly exceed the sum DEQ was able to secure from the sureties. Between January 1999 and December 2016, DEQ and its federal partners spent more than \$74 million on reclamation and water treatment, including \$45,422,665 from the Pegasus entities' reclamation and water bonds, \$1,050,000 from the Pegasus bankruptcy settlement, \$16,601,812 in federal agency funds, and more than \$10,995,369 in Montana state funds.²⁵ According to DEQ, the trust fund that the Legislature established for perpetual water treatment at Zortman-Landusky is inadequate to cover treatment costs going forward, which DEQ estimates will run approximately \$2.3 million per year.²⁶

2. *The Basin Creek Mine*

Pegasus Gold Incorporated and its wholly-owned subsidiary Pegasus Gold Montana Mining Incorporated owned and operated the Basin Creek mine southwest of Helena from 1989 until January 1999.²⁷ Following the Pegasus bankruptcy, the entities responsible for Basin Creek had insufficient assets to complete required reclamation.²⁸ Consequently, DEQ negotiated for the receipt of \$3,825,000 in bond funds from the surety for Pegasus Gold Montana Mining and assumed responsibility for reclamation and other cleanup activities at the Basin Creek mine.²⁹

3. *The Beal Mountain Mine*

The Beal Mountain mine site is located on National Forest lands approximately 10 miles southwest of Fairmont Hot Springs near the headwaters of the Clark Fork River.³⁰ Pegasus Gold Incorporated and its wholly-owned subsidiary Beal Mountain Montana Mining Incorporated owned and operated the mine between 1988 and 1997.³¹ After Pegasus Gold Incorporated and Beal Mountain Montana Mining filed for bankruptcy protection in 1998,³² DEQ and the U.S. Forest Service had to take responsibility for the Beal Mountain mine site, which the Pegasus entities had not fully reclaimed.³³ The \$6.2 million reclamation bond for the mine quickly proved inadequate to address selenium and cyanide contamination from a leaking leach pad liner

²⁴ See *id.*, ¶¶ 10-13.

²⁵ *Id.*, ¶ 14.

²⁶ *Id.*

²⁷ See *id.*, ¶¶ 15-17.

²⁸ *Id.*, ¶¶ 18-19.

²⁹ See *id.*, ¶¶ 20-21.

³⁰ See Montana DEQ, Beal Mountain Mine Fact Sheet 1 (Jan. 2011) (“Beal Mountain Fact Sheet”) (attached as Exhibit D); attached Affidavit of Tim Flynn.

³¹ See Beal Mountain Existing Conditions Rep., *supra*; see also Pegasus Gold Inc. 1998 Form 10-K.

³² See O'Brien Aff. ¶¶ 6-7.

³³ See Beal Mountain Fact Sheet 1-2; Perry Backus, “Cleanup Costs Mount at Beal Mountain Mine Site,” *Missoulian* (Dec. 30, 2005).

at the site and selenium runoff from the mine's waste rock pile.³⁴ To date, the agencies have spent more than \$21 million reclaiming the site.³⁵ Still, contamination from the mine poses ongoing threats to water quality in the headwaters of the Clark Fork River and to conservation of the rare genetically pure population of westslope cutthroat trout that occupy German Gulch near the mine site.³⁶ In 2010, the Forest Service estimated that additional work to complete reclamation of the Beal Mountain mine site will cost more than \$39.5 million.³⁷ To the Conservation Organizations' knowledge, no source of funding has been identified to complete the necessary reclamation work at Beal Mountain.³⁸

B. The Hecla Mines

As stated, Mr. Baker left Pegasus Gold Incorporated after the bankruptcy proceedings commenced in 1998. With his current company, Hecla, Mr. Baker is now advancing development of the Rock Creek and Montanore mines, both proposed copper/silver mines that would tunnel beneath the Cabinet Mountains Wilderness in northwest Montana.³⁹ As the Conservation Organizations have documented in numerous submissions to DEQ, the U.S. Forest Service, and the U.S. Fish and Wildlife Service, development and operation of the Rock Creek and Montanore mines would inflict substantial and irreversible damage on water quality, water quantity, wildlife populations, and wilderness values in the Cabinet Mountains Wilderness and surrounding public and private lands. The wildlife threatened by Hecla's mining proposals include vital populations of grizzly bears and bull trout protected by the Endangered Species Act.

Despite these threatened impacts, DEQ has issued Hecla's wholly-owned subsidiary, RC Resources, an exploration license for the Rock Creek Mine, which authorizes exploration activities through November 28, 2017.⁴⁰ DEQ has issued Hecla's wholly-owned subsidiary, Montanore Minerals Corporation, an operating permit for the Montanore mine authorizing development of the project's evaluation phase.⁴¹

III. REQUEST FOR ENFORCEMENT

State law prohibits the former leadership of Pegasus from undertaking exploration or mining activities in Montana and renders DEQ's authorizations for Hecla's Rock Creek and Montanore mine projects unlawful. As described above, the MMRA prohibits a person or company from receiving an exploration license or operating permit if "the failure of any firm or

³⁴ See P. Backus, "Cleanup Costs Mount at Beal Mountain Mine Site," *supra*.

³⁵ Robert Wintergerst, Env'tl. Engineer, U.S. Forest Serv. N. Region, Pers. Comm'n (Oct. 10, 2017).

³⁶ See attached Affidavit of Tim Flynn; P. Backus, "Cleanup Costs Mount at Beal Mountain Mine Site," *supra*.

³⁷ USDA Forest Serv., Final (Revision 6) Engineering Evaluation/Cost Analysis, Beal Mountain Mine, at ES-xvi (March 2010) (excerpts attached as Exhibit E).

³⁸ See Beal Mountain Fact Sheet 1-2.

³⁹ See O'Brien Aff., ¶¶ 37-42, 45-48.

⁴⁰ *Id.* ¶¶ 41, 43.

⁴¹ *Id.* ¶¶ 47, 49-50.

business association of which that person was a principal or controlling member” to comply with the MMRA, its implementing regulations, or a permit or license issued under the MMRA “has resulted in either the receipt of bond proceeds by [DEQ] or the completion of reclamation by the person’s surety or by [DEQ].” MCA §§ 82-4-331(3), 82-4-335(9). The MMRA further prohibits a person or company from conducting exploration or mining activities in Montana “if any firm or business association of which that person was a principal or controlling member had a bond forfeited” under the MMRA, if DEQ “otherwise received bond proceeds from a surety to perform reclamation” on the person’s/company’s behalf, or if the person’s/company’s surety completed reclamation on their behalf. Id. § 82-4-360(1).

These provisions prohibit Hecla from receiving hard rock exploration licenses or operating permits or conducting exploration or mining activities because, at a minimum: (1) Zortman Mining Incorporated, for which Hecla President, CEO, and Director Phillips S. Baker, Jr., was Vice President and Director, failed to complete reclamation required by its MMRA exploration license and operating permit for the Zortman-Landusky mines and DEQ has received bond proceeds for and completed reclamation of the Zortman-Landusky mines; and (2) Pegasus Gold Montana Mining Incorporated, for which Mr. Baker was Vice President and Director, failed to complete required reclamation of the Basin Creek mine and DEQ received bond proceeds from that company’s surety to perform reclamation on the company’s behalf. On information and belief, no exception from these statutory prohibitions applies.

The Pegasus entities led by Mr. Baker left the State of Montana and its federal partners with crushing financial liabilities for multiple large-scale mines across the state and a devastating pollution burden that will be borne by Montanans for generations. Given this history, DEQ’s authorizations for Mr. Baker’s current company, Hecla, to profit from new mine development in Montana would violate state law and work a great injustice. Accordingly, the Conservation Organizations request that DEQ take appropriate action to enforce the MMRA’s “bad actor” provisions, MCA §§ 82-4-331(3), 82-4-335(9), 82-4-360(1), within sixty days of receipt of this letter by issuing a notice of violation advising Hecla that it is barred from conducting exploration or mining activities in Montana and suspending the exploration license for the Rock Creek mine held by Hecla subsidiary RC Resources and the operating permit for the Montanore mine held by Hecla subsidiary Montanore Minerals Corporation, see id. § 82-4-362(1). DEQ should further inform Hecla that it is barred from receiving a hard rock operating permit for the Rock Creek mine and an amended operating permit authorizing further development of the Montanore mine.

Should you have any questions concerning this request, please contact the undersigned at the number below.

Sincerely,



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