

Katherine K. O'Brien  
Timothy J. Preso  
Earthjustice  
313 East Main Street  
Bozeman, MT 59715  
Tel: (406) 586-9699  
Fax: (406) 586-9695  
kobrien@earthjustice.org  
tpreso@earthjustice.org

*Counsel for Proposed Intervenors  
Ksanka Kupaqa Xa 'łçin, Earthworks,  
Montana Environmental Information  
Center, Clark Fork Coalition, Rock Creek  
Alliance, Save Our Cabinets, and  
Montana Conservation Voters*

Daniel D. Belcourt  
Belcourt Law P.C.  
120 Woodworth Avenue  
Missoula, MT 59801  
Tel: (406) 265-0934  
Fax: (406) 493-6427  
danbelcourt@aol.com

David A. Bell  
Geiszler Steele, P.C.  
619 SW Higgins Ave., Suite K  
Missoula, MT 59803  
Tel: (406) 541-4940  
dbell@lawmissoula.com

*Counsel for Proposed Intervenor  
Fort Belknap Indian Community*

MONTANA FIRST JUDICIAL DISTRICT COURT  
LEWIS AND CLARK COUNTY

MONTANORE MINERALS CORP., TROY  
MINE, INC., and RC RESOURCES, INC.,

Plaintiffs,

v.

MONTANA DEPARTMENT OF  
ENVIRONMENTAL QUALITY and TOM  
LIVERS, Director of the Montana Department of  
Environmental Quality,

Defendants;

and

FORT BELKNAP INDIAN COMMUNITY,  
KSANKA KUPAQA XA 'ŁÇIN,  
EARTHWORKS, MONTANA  
ENVIRONMENTAL INFORMATION  
CENTER, CLARK FORK COALITION, ROCK  
CREEK ALLIANCE, SAVE OUR CABINETS,  
and MONTANA CONSERVATION VOTERS;

Proposed Defendant-Intervenors.

Case No. ADV-2018-363  
Judge: Hon. Mike Menahan

**MEMORANDUM IN SUPPORT OF  
SUPERSEDING MOTION TO  
INTERVENE**

Mont. R. Civ. P. 24

MONTANA DEPARTMENT OF  
ENVIRONMENTAL QUALITY,

Third-Party Plaintiff and Counterclaim  
Plaintiff,

and

FORT BELKNAP INDIAN COMMUNITY,  
KSANKA KUPAQA XA'ÉÇIN,  
EARTHWORKS, MONTANA  
ENVIRONMENTAL INFORMATION  
CENTER, CLARK FORK COALITION, ROCK  
CREEK ALLIANCE, SAVE OUR CABINETS,  
and MONTANA CONSERVATION VOTERS,

Proposed Third-Party/Counterclaim  
Plaintiff-Intervenors,

v.

PHILLIPS S. BAKER, JR., HECLA MINING  
COMPANY,

Third-Party Defendants,

RC RESOURCES, INC., MONTANORE  
MINERALS CORP., PHILLIPS S. BAKER, JR.,  
and HECLA MINING COMPANY,

Counterclaim Defendants.

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## INTRODUCTION

The Fort Belknap Indian Community, Ksanka Kupaqa Xa'łçin (Ksanka Crazy Dog Society), Earthworks, Montana Environmental Information Center, Clark Fork Coalition, Rock Creek Alliance, Save Our Cabinets, and Montana Conservation Voters (collectively “Proposed Intervenor”), hereby seek leave to intervene in this case as Defendants and as Third-Party/Counterclaim Plaintiffs aligned with Defendant and Third-Party/Counterclaim Plaintiff Montana Department of Environmental Quality (“DEQ”) and Defendant DEQ Director Tom Livers. As provided by Montana Rule of Civil Procedure 24 and the Metal Mine Reclamation Act (“MMRA”), MCA § 82-4-354(3)(b), Proposed Intervenor seek to participate as parties to DEQ’s enforcement action against Phillips S. Baker, Jr., under the MMRA’s “bad actor” provision, MCA § 82-4-360, and to defend DEQ’s authority to enforce the same.

Proposed Intervenor are entitled to intervene under Montana Rule of Civil Procedure 24(a)(1) because the MMRA grants them an unconditional right to intervene. See id.; MCA § 82-4-354(3)(b). In addition, Proposed Intervenor are entitled to intervene under Rule 24(a)(2) because they possess substantial interests that will be affected by the outcome of this case, and which may not be adequately represented by the existing parties. See Sportsmen for I-143 v. Mont. Fifteenth Judicial Dist. Ct., 2002 MT 18, ¶ 7, 308 Mont. 189, 40 P.3d 400. These interests include the sovereign interests of the Gros Ventre and Assiniboine Tribes and their governing body, the Fort Belknap Indian Community Council, in ensuring adequate enforcement of the bad actor law to prevent Mr. Baker from engaging in mineral exploration or mining in Montana unless and until the reclamation defaults of Mr. Baker’s former companies at the Zortman-Landusky mines—which continue to contaminate tribal lands and water on the Fort Belknap Indian Reservation and additional lands and resources of significant cultural importance to the Tribes—are rectified as state law requires. See MCA § 82-4-360(2). In addition, Proposed Intervenor Ksanka Kupaqa Xa'łçin, Earthworks, Montana Environmental Information Center, Clark Fork Coalition, Rock Creek Alliance, Save Our Cabinets, and Montana Conservation Voters have substantial interests in preserving the areas of Montana’s Cabinet Mountains where Mr. Baker is engaged in mineral exploration and seeks to develop and operate the Rock Creek and Montanore Mines through his current company, Hecla Mining Company, and its subsidiaries. For this reason, too, Proposed Intervenor are acutely interested in ensuring adequate enforcement of the bad actor law to prevent Mr. Baker from engaging in exploration or

mining activity that is prohibited by statute and threatens serious environmental harm. See MCA § 82-4-360. Accordingly, intervention as a matter of right should be granted under Rule 24(a) and MCA § 82-4-354(3)(b). In the alternative, the Court should permit Proposed Intervenors' intervention under Montana Rule of Civil Procedure 24(b).

## **BACKGROUND**

### **I. PROPOSED INTERVENORS' ENFORCEMENT REQUEST AND THIS LITIGATION**

In October 2017, Proposed Intervenors Earthworks, Montana Environmental Information Center, Clark Fork Coalition, Rock Creek Alliance, and Save Our Cabinets formally requested that DEQ enforce the MMRA's bad actor provision, MCA § 82-4-360; see also *id.* §§ 82-4-331(3), 82-4-335(9), against Phillips S. Baker, Jr. See Ex. 1 to Aff. of Katherine K. O'Brien in Supp. of Mot. to Intervene (filed April 4, 2018). Proposed Intervenors Montana Conservation Voters, Fort Belknap Indian Community, and members and supporters of Proposed Intervenor Ksanka Kupaqa Xa'łçin joined in supporting and advocating for the requested enforcement action to state officials. See Aff. of Neal Ullman in Supp. of Mot. to Intervene, ¶ 5 (filed April 4, 2018); Ex. 5 to O'Brien Aff.

Proposed Intervenors' enforcement request was predicated on the fact that Mr. Baker, who currently serves as President, CEO, and Director of Hecla Mining Company ("Hecla"), previously served as a principal officer of Pegasus Gold Incorporated and several of its subsidiaries (collectively, the "Pegasus Entities") that operated gold mines in Montana, including the Zortman-Landusky, Basin Creek, and Beal Mountain mines. O'Brien Aff., Ex. 3 at 1; Ex. 1 at 3, 9, 12-16. Under the MMRA, the Pegasus Entities were required to reclaim those mines consistent with their approved reclamation plans and statutory requirements. See MCA §§ 82-4-336, 82-4-341. However, rather than completing the required reclamation, the Pegasus Entities filed for bankruptcy protection in January 1998, defaulted on their reclamation obligations, and left DEQ responsible for carrying out reclamation in the companies' stead. O'Brien Aff., Ex. 2 at 792. As described by DEQ's Environmental Management Bureau Chief, "[n]o previous DEQ reclamation projects had approached the scale of the Pegasus properties." *Id.* Through litigation and settlement agreements, DEQ was able to secure funds for reclamation from the Pegasus bankruptcy estate and the Pegasus entities' sureties, but those funds have fallen far short of the amount required to complete necessary clean-up work. See generally O'Brien Aff., Exs. 1, 3.

As a result, to this day the Pegasus Entities' default continues to drain public coffers and inflict profound environmental and social costs on multiple Montana communities. For example, acid mine drainage from the Zortman-Landusky mines in Phillips County has reached tribal lands and waters on the Fort Belknap Indian Reservation, contaminating the Gros Ventre and Assiniboine Tribes' ceremonial sites, powwow grounds, and drinking water sources formerly used by tribal members. See attached Aff. of Fort Belknap Indian Community President Andrew Werk, Jr., in Supp. of Superseding Mot. to Intervene, ¶¶ 3-12; O'Brien Aff., Ex. 5. To date, DEQ has spent more than \$32 million in public funds for clean-up at the Zortman-Landusky site, and ongoing annual expenditures of approximately \$2.3 million will be required in perpetuity to treat contaminated water. Third Party Complaint and Counterclaim, ¶ 11; O'Brien Aff., Ex. 1 at 5. In Silver Bow County, the Beal Mountain Mine continues emitting contaminants into the headwaters of the Clark Fork River, damaging water quality and threatening a rare, genetically pure population of westslope cutthroat trout in German Gulch. See Aff. of Tim Flynn in Supp. of Mot. to Intervene, ¶¶ 5-7 (filed April 4, 2018); Aff. of Brianna Randall in Supp. of Mot. to Intervene, ¶ 4 (filed April 4, 2018); Aff. of Karen Knudsen in Supp. of Mot. to Intervene, ¶¶ 5-6 (filed April 4, 2018).

At the time of the Pegasus bankruptcy, Mr. Baker was the Vice President for Finance and Chief Financial Officer of Pegasus Gold, Incorporated—the Pegasus parent company—and also served as a principal officer and director of each of the Pegasus subsidiaries responsible for operating the Zortman-Landusky, Basin Creek, and Beal Mountain mines. O'Brien Aff., Ex. 3 at 1; Ex. 1 at 3, 9, 12-16.

Mr. Baker now serves as President and CEO of Hecla, which is seeking to develop the Rock Creek and Montanore mines beneath the Cabinet Mountains Wilderness in northwest Montana. O'Brien Aff., Ex. 3 at 1; see also id., Ex. 6 at 55 (SEC filing stating Hecla has "100% ownership of the Rock Creek project" and "100% ownership of the Montanore project"). As documented in federal and state agency analyses, development of these mines threatens substantial damage to water quality, water quantity, wildlife, and wilderness values in the Cabinet Mountains. See generally, e.g., Save Our Cabinets v. U.S. Fish & Wildlife Serv., 255 F.

Supp. 3d 1035 (D. Mont. 2017) (discussing Montanore Mine); U.S. Forest Serv., Final Supp. Eenvtl. Impact Statement for the Rock Creek Project (June 2017).<sup>1</sup>

As Proposed Intervenors asserted in their enforcement request, Montana law prohibits Mr. Baker from engaging in any mineral exploration or mining activity in Montana unless and until he rectifies the reclamation defaults of his former companies as dictated by statute. See generally O’Brien Aff., Ex. 1. Specifically, the MMRA 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 department otherwise received proceeds from a surety to perform reclamation on that person’s behalf, or if the person’s surety completed reclamation on that person’s behalf.

MCA § 82-4-360(1); see also id. § 82-4-331(3) (prohibiting entities that default on their reclamation obligations, as well as their principal officers, from obtaining mineral exploration licenses); id. § 82-4-335(9) (prohibiting such entities and their principal officers from obtaining hard rock mine operating permits). A person disqualified from mining or exploration under this provision may regain his ability to conduct such activities only by paying DEQ (1) the full amount of reclamation expenses incurred by DEQ at the relevant mine(s), (2) the full amount of any MMRA penalties assessed by DEQ, and (3) interest on those expenses and penalties at a rate of 6% per year. Id. § 82-4-360(2)(a). In addition, the person must demonstrate to DEQ’s satisfaction “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)(b).

On March 20, 2018, after investigating the allegations in Proposed Intervenors’ enforcement request, DEQ issued violation letters to Mr. Baker and Hecla as required by the MMRA, MCA § 82-4-361(1), alleging that Mr. Baker is in violation of the bad actor provision at MCA § 82-4-360 and that Hecla is unlawfully aiding that violation by employing Baker as the company’s President and CEO. See O’Brien Aff., Exs. 3 and 4. Under the MMRA, DEQ’s issuance of these violation letters initiated an administrative process that could lead to formal enforcement action following further DEQ investigation and consideration of any responsive information provided by Mr. Baker and Hecla. See MCA § 82-4-361(1). Accordingly, DEQ’s

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<sup>1</sup> Available at <https://www.fs.usda.gov/detail/kootenai/home/?cid=stelprdb5327758> (last visited July 12, 2018).

letters invited responses explaining any disagreement with DEQ’s allegations, and advised that “DEQ will consider the information provided before pursuing further action.” O’Brien Aff., Ex. 3 at 3; Ex. 4 at 2. Nevertheless, on the same day DEQ issued the violation letters, Hecla’s subsidiaries filed suit against DEQ and its director, asserting a variety of claims and seeking emergency relief to short-circuit DEQ’s administrative process. Proposed Intervenor Earthworks, Montana Environmental Information Center, Clark Fork Coalition, Rock Creek Alliance, Save Our Cabinets, and Montana Conservation Voters moved to intervene as defendants aligned with DEQ and Director Livers in that action on April 4, 2018.

On June 25, 2018, DEQ notified Mr. Baker and Hecla through letters to counsel that DEQ had determined through further investigation, and following review of information submitted by Mr. Baker and Hecla, that Mr. Baker is in violation of the bad actor law, MCA § 82-4-360, based on his principal officer roles at the defaulting Pegasus Entities. DEQ therefore advised that Mr. Baker is barred from engaging in mining or exploration activity in Montana. See Exs. C and D to Third-Party Compl. and Counterclaim (filed June 25, 2018). The same day, DEQ filed a Third-Party Complaint and Counterclaim in this action seeking a declaratory judgment that Mr. Baker is disqualified under MCA § 82-4-360 from conducting mining or exploration activities in Montana, individually or through any corporate entity he controls, as well as an injunction prohibiting Mr. Baker from engaging in such activities.

## **II. PROPOSED INTERVENORS**

Proposed Intervenor represent a diverse coalition of stakeholders that collectively have dedicated many decades of advocacy to fighting for appropriate reclamation of the Pegasus Entities’ abandoned mines and for protection of the Cabinet Mountains Wilderness and surrounding public lands from the threats posed by Hecla’s proposed Montanore and Rock Creek Mines. Proposed Intervenor include the sovereign Fort Belknap Indian Community, comprising the Gros Ventre and Assiniboine Tribes of the Fort Belknap Indian Reservation, whose tribal lands and resources have been profoundly and permanently injured by contamination from the Zortman-Landusky mines. Proposed Intervenor also include Ksanka Kupaqa Xa’łéin, a traditional society within the Ksanka Band of the Ktunaxa (Kootenai) Nation whose aboriginal lands within the Cabinet Mountains—including areas of profound cultural and spiritual importance to society members—are threatened by the Rock Creek and Montanore Mines. Proposed Intervenor further include multiple conservation organizations that have played

unique and longstanding roles in advocating for appropriate clean-up of the Pegasus mines and against unlawful authorizations for the Rock Creek and Montanore Mines. This constellation of longstanding interests motivated Proposed Intervenors to submit and support the enforcement request that touched off this litigation. Accordingly, the outcome of this case will directly affect Proposed Intervenors' interests in the areas damaged by the abandoned Pegasus mines and threatened by the Rock Creek and Montanore mines.

**A. Fort Belknap Indian Community**

The Fort Belknap Indian Community ("FBIC") consists of the Gros Ventre and Assiniboine Tribes (the "Tribes") who reside on the Fort Belknap Indian Reservation in north-central Montana. The Fort Belknap Indian Community Council is the governing body for the FBIC. It is responsible for managing the affairs of the Community and committed to the protection of the environment, human health, and safety of the Fort Belknap Indian Reservation.

The Fort Belknap Indian Reservation was established and set aside for the Tribes' use by Act of Congress on May 1, 1888. 25 Stat. 113 (1888). The original Fort Belknap 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 the Tribes 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").

Nevertheless, between 1979 and 1994 state and federal agencies approved the development and fifteen subsequent expansions of 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. Among other impacts, mining operations at Zortman-Landusky 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. Today, acid mine drainage from the Zortman-Landusky sites continues to spread deeper into the Reservation, where it has contaminated the Tribes' ceremonial sites, powwow grounds, and drinking water sources formerly used by the Tribe and Tribal members.

As stated by the U.S. District Court for Montana, “[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.” Gros Ventre Tribe, et al. v. United States, et al., No. CV 00-69-M-DWM, slip op. at 12 (D. Mont. June 28, 2004). Accordingly, for decades the Tribes have engaged in litigation and other advocacy to oppose harmful operations at the Zortman-Landusky mines and address the resulting environmental and cultural damage, including by participating in a Technical Working Group with DEQ and federal agency partners to direct ongoing water treatment and cleanup operations at the mines. In furtherance of those efforts, the FBIC formally supported the October 2017 enforcement request that initiated this case. See O’Brien Aff., Ex. 5.

#### **B. Ksanka Kupaqa Xa’łçin**

Ksanka Kupaqa Xa’łçin (Ksanka Crazy Dog Society) is a traditional warrior society within the Ksanka band of the Ktunaxa (Kootenai) Nation. See attached Aff. of Wilbert Michel Buckskin, ¶ 4; attached Aff. of Ken Friedlander, ¶ 3. The society’s contemporary membership consists of tribal members who are United States military veterans and accept the invitation and responsibility to serve as Crazy Dogs. Buckskin Aff., ¶¶ 3-4; Friedlander Aff., ¶¶ 3-4. Members of the Crazy Dog Society hold a leadership role in their community and, in particular, play a special role in stewarding their tribe’s cultural and spiritual traditions. See Buckskin Aff., ¶ 4. Many of those traditions are connected to the area known as the Cabinet Mountains in northwest Montana, which lies within the aboriginal territory of the Ktunaxa people and has profound cultural and spiritual importance to members of the Crazy Dog Society and their broader tribal community. See id., ¶¶ 5-8; Friedlander Aff., ¶¶ 6-8. Members of the Crazy Dog Society use public lands in the Cabinet Mountains, including areas within and adjacent to the Cabinet Mountains Wilderness that would be affected by the Rock Creek and Montanore mines, for traditional spiritual and cultural activities and for hunting, recreation, and family gatherings. See Buckskin Aff., ¶¶ 5-7; Friedlander Aff., ¶¶ 8-9. In an effort to protect those culturally and spiritually important areas from the adverse effects of mining activity inconsistent with state law,

Mr. Wilbert Michel Buckskin, an elder of the Ksanka band of the Ktunaxa Nation, a member of the Crazy Dog Society, and an affiant in support of this motion, met with state officials in November of 2017 to advocate for the enforcement action at issue in this case.

**C. Earthworks**

Earthworks is a non-profit organization dedicated to protecting communities and the environment from the adverse effects of mineral and energy development. Aff. of Bonnie Gestring in Supp. of Mot. to Intervene, ¶ 2 (filed April 4, 2018). Earthworks members live and recreate in the Cabinet Mountains area where the Rock Creek and Montanore mines are proposed. *Id.*, ¶¶ 2, 6-10. Accordingly, 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 proposed mines. *Id.*, ¶ 4. In addition, Earthworks has engaged in extensive advocacy to address the environmental and public health fallout from the abandoned Pegasus mines. *Id.*, ¶ 11. Earthworks was a sponsor of the October 2017 enforcement request that precipitated the DEQ enforcement action at issue in this case. *See* O’Brien Aff., Ex. 1 at 1.

**D. Montana Environmental Information Center**

Montana Environmental Information Center (“MEIC”) is a member-supported non-profit organization dedicated to protecting and restoring Montana’s natural environment and protecting Montanans’ constitutional right to a clean and healthful environment. Aff. of Jim Jensen in Supp. of Mot. to Intervene, ¶ 2 (filed April 4, 2018). MEIC has litigated numerous cases concerning the adverse effects of metal mining in Montana, including the Pegasus mines. *Id.*, ¶¶ 3, 7. In particular, MEIC has engaged in litigation and other advocacy since the 1990s to address contamination from the Zortman-Landusky mines. *Id.*, ¶ 7. In addition, for more than thirty years MEIC has been a leading advocate to protect the Cabinet Mountains Wilderness, surrounding public lands and waters, and the wildlife that depend on that landscape from the Rock Creek and Montanore Mine project proposals. *Id.*, ¶ 3. MEIC members recreate in and otherwise derive benefit from the public lands and waters in the Cabinet Mountains. *Id.*, ¶¶ 4-5. MEIC was a sponsor of the October 2017 enforcement request that precipitated the DEQ enforcement action at issue in this case. *See* O’Brien Aff., Ex. 1 at 1.

**E. Clark Fork Coalition**

Clark Fork Coalition (the “Coalition”) is a non-profit river conservation organization dedicated to protecting and restoring clean water throughout Montana’s Clark Fork River

watershed. Knudsen Aff., ¶ 3. 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 proposed Rock Creek and Montanore Mines. *Id.* On behalf of its approximately 3,000 members, the Coalition also has engaged in extensive advocacy to address the legacy of contamination from Pegasus Gold’s Beal Mountain Mine. *Id.* The Coalition’s members, board members, and staff use the public lands and waters threatened with pollution, flow reductions, and other adverse impacts from the Rock Creek and Montanore Mines, as well as waters and public lands affected by contamination from the Beal Mountain Mine. *Id.*, ¶¶ 3, 6-7; Flynn Aff., ¶¶ 1-7. The Coalition was a sponsor of the October 2017 enforcement request that precipitated the DEQ enforcement action at issue in this case. O’Brien Aff., Ex. 1 at 1.

**F. Rock Creek Alliance**

Rock Creek Alliance (the “Alliance”) is a non-profit organization dedicated to protecting the Clark Fork-Pend Oreille watershed and the Cabinet Mountains Wilderness from the adverse impacts of the proposed Rock Creek Mine. Aff. of Jean Gerth in Supp. of Mot. to Intervene, ¶ 2 (filed April 4, 2018). To that end, the Alliance has for decades engaged in litigation and advocacy at the state and federal levels to challenge unlawful authorizations for the Rock Creek Mine. Alliance members live, own property, and recreate in and around the Cabinet Mountains, including in the wilderness and National Forest lands and associated waters threatened by the proposed Rock Creek Mine. *Id.*, ¶¶ 3-7; Aff. of Mary Costello in Supp. of Mot. to Intervene, ¶¶ 2-3, 5-10 (filed April 4, 2018). Rock Creek Alliance was a sponsor of the October 2017 enforcement request that precipitated the DEQ enforcement action at issue in this case. O’Brien Aff., Ex. 1 at 1.

**G. Save Our Cabinets**

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. Costello Aff., ¶¶ 1-2. Save Our Cabinets’ supporters, board members, and staff live, own property, and recreate in and around the Cabinet Mountains, including in the wilderness and National Forest lands and associated waters threatened by the proposed Montanore and Rock Creek mines. *Id.*, ¶¶ 2, 5-10. Save Our Cabinets has engaged in extensive public education, advocacy, and litigation to protect the Cabinet Mountains region and its waters, native fish, and wildlife from

the adverse effects of the proposed Montanore Mine. *Id.*, ¶ 3. Save Our Cabinets was a sponsor of the October 2017 enforcement request that precipitated the DEQ enforcement action at issue in this case. O’Brien Aff., Ex. 1 at 1.

#### **H. Montana Conservation Voters**

Montana Conservation Voters (“MCV”) is a non-partisan, statewide membership organization that serves as the political voice of Montana’s conservation and environmental community. Ullman Aff., ¶ 3. MCV 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. *Id.* MCV works for responsible stewardship of Montana’s unparalleled natural assets by providing voter participation services to more than 35,000 conservationists. *Id.* MCV 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. *Id.*, ¶¶ 4-5. MCV strongly advocated in favor of the October 2017 MMRA enforcement request that precipitated this case, including by participating in discussions with state officials, raising awareness about the alleged MMRA violation among MCV’s membership and in the media, and coordinating with the groups that originally requested enforcement action. *Id.*, ¶ 5. Ensuring strong and appropriate enforcement of Montana’s hard rock mining laws is central to MCV’s mission and the organization’s broader campaigns to protect Montana’s lands and waters from mining pollution. *Id.*, ¶ 6.

### **ARGUMENT**

#### **I. PROPOSED INTERVENORS ARE ENTITLED TO INTERVENE AS OF RIGHT**

Proposed Intervenor satisfy the requirements for intervention as of right under Montana Rule of Civil Procedure 24(a). First, Proposed Intervenor are entitled to intervene under Rule 24(a)(1) because the MMRA grants them an unconditional right to intervene. *See* MCA § 82-4-354(3)(b). Alternatively, Proposed Intervenor are entitled to intervene under Rule 24(a)(2) because they have filed a timely intervention motion establishing interests that may be impaired by the disposition of this action and which may not be adequately represented by existing parties.

##### **A. The MMRA Grants Proposed Intervenor an Unconditional Right to Intervene, Justifying Intervention under Rule 24(a)(1)**

Proposed Intervenor are entitled to intervene in this action, first, because they possess “an unconditional right to intervene by statute.” Mont. R. Civ. P. 24(a)(1). The MMRA

provides that where, as here, DEQ “has commenced and is diligently prosecuting a civil action to require compliance with [the MMRA],” “[a] person having an interest that is or may be adversely affected” is barred from initiating his own civil action to compel compliance, but instead “may intervene as a matter of right in the civil action” initiated by DEQ. MCA § 82-4-354(3)(b).

Proposed Intervenors have substantial interests that are and may be adversely affected by Mr. Baker’s violation of the MMRA’s bad actor provision, MCA § 82-4-360, and the outcome of DEQ’s civil action to enforce that provision. As summarized above and documented in the attached affidavits, the Fort Belknap Indian Community has well-established sovereign interests in its tribal lands on the Fort Belknap Indian Reservation. See, e.g., United States v. Mazurie, 419 U.S. 544, 557 (1975) (affirming Indian tribes’ sovereignty over their territory); In re Hanna, 2010 MT 38, ¶ 16, 355 Mont. 236, 227 P.3d 596 (same). Those sovereign interests are directly affected by Mr. Baker’s violation of the MMRA’s bad actor provision, MCA § 82-4-360, which dictates that Mr. Baker must cure the reclamation defaults of the Pegasus Entities for which he served as a principal officer before he may undertake new mining or exploration activity in Montana. Those reclamation defaults include the Pegasus Entities’ failure to adequately reclaim the Zortman-Landusky mines, which for decades have contaminated water sources and lands utilized by members of the Gros Ventre and Assiniboine Tribes for cultural, spiritual, subsistence, and domestic purposes—including water and land on the Tribes’ reservation—and are expected to continue damaging such resources in perpetuity. See Werk Aff., ¶¶ 3-12; O’Brien Aff., Ex. 5. A ruling in DEQ’s favor in this case would require Mr. Baker, as a condition to undertaking exploration or mining activity in Montana, to repay DEQ for publicly funded reclamation carried out at the Zortman-Landusky mines in the Pegasus entities’ stead, generating much-needed funds for the ongoing clean-up work at the site, and would require Mr. Baker to demonstrate that the necessary work has been completed to DEQ’s satisfaction. See MCA § 82-4-360(2).

The members of Ksanka Kupaqa Xa’łçin have documented substantial cultural, spiritual, recreational, and subsistence interests in the areas of the Cabinet Mountains that are threatened by the Rock Creek and Montanore Mine projects Mr. Baker is advancing through his current company, Hecla. See Buckskin Aff., ¶¶ 5-8, Friedlander Aff., ¶¶ 6-9; see also Pit River Tribe v. U.S. Forest Serv., 469 F.3d 768, 779 (9th Cir. 2006) (Indian tribe possessed legally cognizable

interest in protecting areas used by tribal members for cultural and religious ceremonies). A ruling in DEQ's favor in this case would help protect those interests by preventing Mr. Baker from proceeding with the Rock Creek and Montanore Mine projects unless and until he rectifies the reclamation defaults of the Pegasus entities he formerly led. See MCA § 82-4-360.

Proposed Intervenor Earthworks, MEIC, Clark Fork Coalition, Rock Creek Alliance, Save Our Cabinets, and Montana Conservation Voters (collectively, the "Conservation Organizations") likewise have established substantial, legally protected interests in the areas of the Cabinet Mountains threatened by the Rock Creek and Montanore Mines, which as described are directly affected by Mr. Baker's MMRA violation and the outcome of DEQ's enforcement action. The Conservation Organizations' members, supporters, board members, and staff live, own property, and recreate in and around the lands and waters of the Cabinet Mountains that are threatened with water pollution, stream dewatering, wildlife losses, and other harmful effects from the Rock Creek and Montanore Mines. See Costello Aff., ¶¶ 2, 5-10; Gerth Aff., ¶¶ 3-7; Gestring Aff., ¶¶ 2, 6-10; Jensen Aff., ¶¶ 4-5; Knudsen Aff., ¶¶ 3, 7-8; Randall Aff., ¶¶ 5-7. These "environmental, conservation and wildlife interests" justify intervention as of right. Sagebrush Rebellion, Inc. v. Watt, 713 F.2d 525, 526-28 (9th Cir. 1983); Citizens for Balanced Use v. Mont. Wilderness Ass'n, 647 F.3d 893, 897-98 (9th Cir. 2011) (affirming that group's interest in preserving wilderness study area for members' use and enjoyment constitutes sufficient interest to support intervention as of right); W. Energy All. v. Zinke, 877 F.3d 1157, 1165 (10th Cir. 2017) (conservation groups entitled to intervene to protect their "interests in reducing the instances and effects of oil and gas drilling on public lands").<sup>2</sup> In addition, the Conservation Organizations' members, board members, and staff live and own property near and recreate in areas impacted by pollution from the abandoned Pegasus mines and have dedicated years of effort to remediating pollution from those mines. See Gestring Aff., ¶ 11; Jensen Aff., ¶¶ 6-9; Knudsen Aff., ¶¶ 3, 5-6; Flynn Aff., ¶¶ 1-2, 4-7.

Indeed, Proposed Intervenor's significant sovereign, cultural, spiritual, environmental, and recreational interests are what motivated them to develop, submit, and advocate in support of the October 2017 MMRA enforcement request that precipitated DEQ's enforcement action in

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<sup>2</sup> Because Montana's rule governing intervention as of right "is essentially identical to the federal rule," this federal authority properly informs the Court's analysis in this case. Sportsmen for I-143, ¶ 7 (citing Sagebrush Rebellion, 713 F.2d at 527).

this case. Proposed Intervenors' interest in supporting and defending the DEQ enforcement action for which they advocated provides an additional and independent basis for their intervention. See Sportsmen for I-143, ¶ 12 (“[A] public interest group is entitled as a matter of right to intervene in an action challenging the legality of a measure it has supported.”) (quoting Idaho Farm Bureau Fed’n v. Babbitt, 58 F.3d 1392, 1397 (9th Cir. 1995)); see also Cal. Dump Truck Owners Ass’n v. Nichols, 275 F.R.D. 303, 306-07 (E.D. Cal. 2011) (conservation organization entitled to intervene to defend vehicle emissions regulation for which it had advocated).

In sum, Proposed Intervenors are entitled to intervene under Montana Rule of Civil Procedure 24(a)(1) because, as parties with interests that may be adversely affected by the outcome of DEQ’s enforcement action and the underlying MMRA violation, they possess an unconditional right to intervene by statute, MCA § 82-4-354(3)(b). The Court need not go any further to grant this motion, though as explained below Proposed Intervenors also satisfy the standards for intervention under Montana Rule of Civil Procedure 24(a)(2) and 24(b).<sup>3</sup>

**B. Proposed Intervenors Satisfy the Standard for Intervention as of Right Under Rule 24(a)(2)**

In the alternative, Proposed Intervenors satisfy the standard for intervention as of right under Montana Rule of Civil Procedure 24(a)(2). To establish a right to intervene under Rule 24(a)(2), an applicant’s motion must: “(1) be timely; (2) show an interest in the subject matter of the action; (3) show that the protection of the interest may be impaired by the disposition of the action; and (4) show that the interest is not adequately represented by an existing party.” Id.; see also Mont. R. Civ. P. 24(a)(2). “While an applicant seeking to intervene has the burden to show that these four elements are met, the requirements are broadly interpreted in favor of intervention.” Citizens for Balanced Use, 647 F.3d at 897 (citation omitted); see also Sportsmen for I-143, ¶ 7 (affirming that intervention standard under Rule 24(a)(2) is “interpreted liberally”). Proposed Intervenors’ motion satisfies each of the four elements under this liberal standard.

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<sup>3</sup> In addition, Proposed Intervenors are necessary parties to this action under the Uniform Declaratory Judgments Act, MCA § 27-8-301, because their enforcement request prompted the DEQ enforcement action at issue and Proposed Intervenors’ interests would be affected by the declaratory judgments sought in this case. See id.; Williams v. Bd. of Cty. Comm’rs, 2013 MT 243, ¶¶ 31-33, 371 Mont. 356, 308 P.3d 88. Though the original and third-party/counterclaim plaintiffs in this case erred by failing to name Proposed Intervenors as parties to this action, that error can be remedied by granting intervention. See Williams, ¶¶ 31, 35.

1. Proposed Intervenor’s Motion Is Timely

Proposed Intervenor’s have timely requested leave to intervene. Plaintiffs RC Resources Inc., Troy Mining Inc., and Montanore Minerals Corp. (collectively, the “Hecla Subsidiaries”) filed their complaint against DEQ and Director Livers in this case on March 20, 2018, and filed an amended complaint on March 23, 2018. The Conservation Organizations filed their original motion to intervene as defendants less than two weeks later, before the deadlines for DEQ and Director Livers to answer the Hecla Subsidiaries’ complaint and respond to the Hecla Subsidiaries’ pending preliminary injunction motion. See Mot. to Intervene as Defendants and for Expedited Consideration (filed April 4, 2018). Joined by the Fort Belknap Indian Community and Ksanka Kupaqa Xa’łçin, they file this superseding motion to intervene as Third-Party/Counterclaim Plaintiff-Intervenor’s three weeks after the filing of DEQ’s Third-Party Complaint and Counterclaim on June 25, 2018, and before the associated answer deadline.<sup>4</sup> In short, Proposed Intervenor’s have sought leave to intervene at the earliest stage of the proceedings initiated by both the original complaint and third-party complaint/counterclaim in this action. Further, granting intervention at this early stage would not prejudice any party or cause undue delay; indeed, the Court has not ruled on any substantive matters nor even entered a scheduling order. This motion is therefore timely. See, e.g., JAS, Inc. v. Eisele, 2014 MT 77, ¶ 27, 374 Mont. 312, 321 P.3d 113 (intervention motion timely where filed five months after complaint and two weeks after entry of judgment); Citizens for Balanced Use, 647 F.3d at 897 (intervention motion timely where filed “less than three months after the complaint was filed”); Idaho Farm Bureau Fed’n, 58 F.3d at 1397 (intervention motion timely where filed four months after complaint and before hearings or rulings on substantive matters).

2. Proposed Intervenor’s Have Substantial Interests in This Lawsuit

Proposed Intervenor’s have substantial interests in this action that justify their intervention as of right. An applicant for intervention as of right under Rule 24(a)(2) must have a “direct, substantial, legally protectable interest in the proceedings.” Sportsmen for I-143, ¶ 9 (quotation omitted); see also Mont. R. Civ. P. 24(a)(2) (requiring a claim of an “interest relating to the

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<sup>4</sup> The Fort Belknap Indian Community and Ksanka Kupaqa Xa’łçin also seek leave to intervene as defendants aligned with DEQ and Director Livers in response to the Hecla Subsidiaries’ claims. Granting this request would promote efficiency by aligning the positions of all Proposed Intervenor’s, who intend to file joint pleadings in this case if intervention is granted.

property or transaction which is the subject of the action”). “To demonstrate a significant protectable interest, an applicant must establish that [its] interest is protectable under some law and that there is a relationship between the legally protected interest and the claims at issue,” Citizens for Balanced Use, 647 F.3d at 897 (citation omitted); “no specific legal or equitable interest need be established,” id. (quotation and alteration omitted).

Proposed Intervenors readily satisfy this standard. As discussed supra, Point I.A, Proposed Intervenors collectively have documented substantial and legally protected sovereign, cultural, spiritual, environmental, recreational, and aesthetic interests in the areas affected by both the abandoned Pegasus mines and the proposed Rock Creek and Montanore Mines. See, e.g., Citizens for Balanced Use, 647 F.3d at 897-98 (group’s interest in preserving wilderness study area for members’ use and enjoyment justifies intervention as of right); Pit River Tribe, 469 F.3d at 779 (Indian tribe possessed legally cognizable interest in protecting areas used by tribal members for cultural and religious ceremonies); In re Hanna, ¶ 16 (affirming tribes’ inherent sovereign authority over their territories). In addition, Proposed Intervenors possess an interest justifying intervention in defending and supporting the DEQ enforcement action that Proposed Intervenors precipitated through their October 2017 enforcement request. Sportsmen for I-143, ¶ 12; Cal. Dump Truck Owners, 275 F.R.D. at 306-07.

### 3. This Lawsuit Threatens to Harm Proposed Intervenors’ Interests

Because Proposed Intervenors have significant interests that will be affected by this lawsuit, it follows that this lawsuit threatens to impair Proposed Intervenors’ interests. See Citizens for Balanced Use, 647 F.3d at 898 (“Having found that [the proposed intervenors] have a significant protectable interest, this court had little difficulty concluding that the disposition of the case may, as a practical matter, affect it.”) (alterations and quotation omitted). At issue in this case is DEQ’s authority to enforce the MMRA’s bad actor provision, MCA § 82-4-360, against Mr. Baker and prevent Mr. Baker from profiting from new mining projects in Montana that threaten substantial environmental harm unless he rectifies his prior companies’ catastrophic reclamation defaults. It was Proposed Intervenors who alerted DEQ to Mr. Baker’s statutory violation by their October 2017 enforcement request—a request Proposed Intervenors made to protect their substantial interests in the areas and resources damaged by the abandoned Pegasus mines and threatened by the proposed Rock Creek and Montanore Mines. In this action, the parties adverse to DEQ will seek to thwart the enforcement action for which Proposed

Intervenors have diligently advocated. If those parties are successful, Mr. Baker would be permitted to advance development of the Rock Creek and Montanore Mine projects, and to do so without taking any action to remedy the reclamation defaults of his former companies. The interests Proposed Intervenors have sought to protect through their enforcement request therefore are in jeopardy in this case, and Proposed Intervenors are entitled to intervene to protect those interests. See Citizens for Balanced Use, 647 F.3d at 898.

4. The Existing Parties Do Not Adequately Represent Proposed Intervenors' Interests

No party in this action adequately represents Proposed Intervenors' interests. Existing parties do not adequately represent a proposed intervenor's interests where the parties may not make the same arguments the proposed intervenor seeks to make or where "the intervenor offers a necessary element to the proceedings that would be neglected" by the existing parties. Sagebrush Rebellion, 713 F.2d at 528; see also Sportsmen for I-143, ¶ 14 (relying on Sagebrush Rebellion in analyzing the adequacy of representation requirement). Proposed Intervenors need only show that the representation of their interests by the existing parties "may be" inadequate. Sportsmen for I-143, ¶ 14 (quotation marks and citation omitted). "[T]he burden of making this showing is minimal." Id. (citation omitted).

It is plain that Hecla, the Hecla Subsidiaries, and Mr. Baker (collectively, the "Industry Parties") cannot adequately represent Proposed Intervenors' interests because the Industry Parties' interests are directly opposed to the interests of Proposed Intervenors. The Industry Parties seek to defeat the MMRA enforcement action that Proposed Intervenors advocated for through their 2017 enforcement request to DEQ, and which Proposed Intervenors seek to support through their participation in this case.

DEQ also cannot adequately represent Proposed Intervenors' interests. As an administrative agency accountable to all Montanans, DEQ is obliged to represent the broader public interest and not the specific interests of Proposed Intervenors and their members and citizens in ensuring adequate reclamation of the abandoned Pegasus mines and preventing the threatened impacts of the Rock Creek and Montanore Mines. See Trbovich v. United Mine Workers of Am., 404 U.S. 528, 538-39 (1972) (government may not adequately represent a proposed intervenor's interests where the government's duty to represent both broad public interests and narrower interests of intervention applicant are "related, but not identical"); Fund for Animals v. Norton, 322 F.3d 728, 736-37 & n.9 (D.C. Cir. 2003) (collecting cases

recognizing “that governmental entities do not adequately represent the interests of aspiring intervenors” where government entities’ responsibility is to advance public interest at large, as opposed to narrower interest advanced by intervenors). The Montana Supreme Court has recognized this principle, reversing a district court’s denial of an advocacy group’s motion to intervene where the group argued that they were not adequately represented by Montana Fish, Wildlife and Parks (“FWP”) because “the Director of the FWP is a political appointee” accountable to the public at large. Sportsmen for I-143, ¶¶ 16-17.

Moreover, while Proposed Intervenors’ position is aligned with DEQ’s in the instant case, in many more cases Proposed Intervenors have been, or presently are, adverse to DEQ concerning DEQ’s authorizations for and oversight of the same mining projects at issue in this case. See, e.g., Mont. Env’tl. Info. Ctr. v. Mont. Dep’t of Env’tl. Quality, No. BDV 2017-641 (Mont. First Judicial Dist. Ct., filed Aug. 15, 2017) (challenge by Proposed Intervenors MEIC, Earthworks, and Save Our Cabinets to DEQ’s issuance of water pollution discharge permit for the Montanore Mine); Clark Fork Coal. v. Mont. Dep’t of Env’tl. Quality, 2008 MT 407, 347 Mont. 197, 197 P.3d 482 (challenge by Proposed Intervenors Clark Fork Coalition, Rock Creek Alliance, and MEIC to DEQ’s issuance of a water pollution discharge permit for the Rock Creek Mine); Red Thunder, Inc., et al., 117 IBLA 167 (1990) (challenge by Proposed Intervenor Fort Belknap Indian Community to approval of Landusky mine expansion by U.S. Bureau of Land Management and Montana Department of State Lands, DEQ’s predecessor agency). Given this record of adversity concerning the very mine projects at issue in this case, DEQ cannot adequately represent Proposed Intervenors’ interests.<sup>5</sup>

Further, DEQ cannot adequately represent the distinct sovereign interests of the Gros Ventre and Assiniboine Tribes and their governing body, the Fort Belknap Indian Community

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<sup>5</sup> Indeed, while DEQ in this case took the action Proposed Intervenors sought in their October 2017 enforcement request—*i.e.*, issuance of violation letters to Hecla and Baker under the MMRA’s bad actor provisions and the present enforcement action—DEQ denied Proposed Intervenors’ enforcement request “[a]s written,” adopting a different theory of liability than Proposed Intervenors had advanced. See O’Brien Aff., Ex. 3 at 2. Accordingly, there is already divergence between DEQ and Proposed Intervenors concerning the grounds for statutory enforcement in this case, and DEQ may not advance all grounds for enforcement for which Proposed Intervenors would argue. See Sagebrush Rebellion, 713 F.2d at 528 (considering whether agency “will undoubtedly make all of the intervenor’s arguments, whether the [agency] is capable of and willing to make such arguments, and whether the intervenor offers a necessary element to the proceedings that would be neglected....”) (citations omitted).

Council. The Tribes are “distinct, independent political communities” with a government independent of the State of Montana. Merrion v. Jicarilla Apache Tribe, 455 U.S. 130, 159 (1982); see also In re Hanna, ¶ 16 (recognizing that “tribes’ recognized right of self-government ... has traditionally operated to exclude state authority, or jurisdiction, over Indian affairs”) (citations omitted). It is well established that the Tribes and their government deal with the State of Montana and its agencies on a government-to-government basis as distinct sovereigns; it is the Fort Belknap Indian Community Council, not the State or its DEQ, that represents the distinct interests of the Fort Belknap Indian Community. Accordingly, DEQ cannot adequately represent the interests of the Tribes and their government in this case. See, e.g., Forest Cty. Potawatomi Cmty. v. United States, 317 F.R.D. 6, 15 (D.D.C. 2016) (holding tribe asserting sovereign interests in litigation satisfied minimal burden of showing their interests may not be adequately represented by federal government).

Nor can DEQ adequately represent the traditional cultural interests advanced by Proposed Intervenor Ksanka Kupaqa Xa’łçin. DEQ’s mandate under the MMRA is to facilitate mining as an economic activity in Montana while ensuring adequate environmental protection, see MCA §§ 82-4-301, 82-4-302; it has no mandate to protect the cultural and spiritual interests of traditionalists within the Ksanka community. Further, DEQ is not in a position to explicate and advocate for the traditional cultural and spiritual values the Ksanka Kupaqa Xa’łçin seek to protect in this litigation. Accordingly, DEQ may not adequately represent the interests of Ksanka Kupaqa Xa’łçin. See Glamis Imperial Corp. v. U.S. Dep’t of the Interior, No. CIV.A. 01-530 (RMU), 2001 WL 1704305, at \*3-4 (D.D.C. Nov. 13, 2001) (tribe established that government entity may not adequately represent tribe’s interests where government entity “has a ‘multiple-use mandate’ and a duty to represent the general public interest,” while the tribe “is concerned about safeguarding the environmental and religious values, the traditional use, and the cultural patrimony associated with the site at issue” and “can best advance its own unique arguments in its favor”).

In sum, Proposed Intervenor satisfy the “minimal burden” of showing that representation of their interests by the existing parties “may be” inadequate. Sportsmen for I-143, ¶ 14. Accordingly, the Court should grant intervention as of right under Rule 24(a)(2).

## **II. IN THE ALTERNATIVE, PROPOSED INTERVENORS SHOULD BE GRANTED PERMISSIVE INTERVENTION**

While Proposed Intervenors meet the requirements of Rule 24(a) for intervention as of right, Proposed Intervenors equally satisfy all requirements to intervene permissively pursuant to Rule 24(b). Under Rule 24(b), a court may allow an applicant to intervene if the motion is timely; the applicant's claim or defense has a question of law or fact in common with the main action; and intervention will not result in prejudice or undue delay to the existing parties. See Mont. R. Civ. P. 24(b)(1), (3). As set forth above, this motion is timely. The remaining requirements are also satisfied.

### **A. Proposed Intervenors' Defenses and Claims Have Questions of Law and Fact in Common with the Main Action**

Proposed Intervenors satisfy the "common question" requirement for permissive intervention. Proposed Intervenors intend to assert defenses responsive to the Hecla Subsidiaries' claims and advance affirmative arguments aligned with DEQ's enforcement claims. See Kootenai Tribe of Idaho v. Veneman, 313 F.3d 1094, 1110-11 (9th Cir. 2002) (intervention proper where groups "asserted defenses ... directly responsive to the claims for injunction asserted by plaintiffs"), abrogated on other grounds by Wilderness Soc'y v. U.S. Forest Serv., 630 F.3d 1173 (9th Cir. 2011). Nothing more is required to demonstrate that Proposed Intervenors' claims and defenses present common questions of law and fact with Plaintiffs' complaint. See Mont. R. Civ. P. 24(b)(1)(B).

### **B. Intervention Will Not Result in Prejudice or Undue Delay**

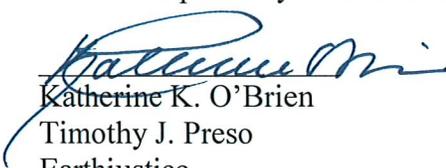
Finally, granting permissive intervention here will not prejudice the rights of the existing parties or cause undue delay. See Mont. R. Civ. P. 24(b)(3). As described above, Proposed Intervenors have requested leave to intervene within weeks of the filing of the original complaint and third-party complaint/counterclaim in this action, before the associated answer deadlines, and before the Court has issued any substantive rulings or entered a scheduling order for this case. Further, Proposed Intervenors have agreed to file joint pleadings in this case as appropriate in order to promote efficiency for the Court and all parties. Because intervention is proposed at such an early stage and Proposed Intervenors have taken steps to avoid duplicative briefing or argument, granting this motion will not result in prejudice or undue delay.

In sum, Proposed Intervenors equally satisfy the requirements for permissive intervention. See Mont. R. Civ. P. 24(b). For this independent reason, the Court should grant Proposed Intervenors' intervention motion.

### CONCLUSION

For the foregoing reasons, this Court should grant Proposed Intervenors' motion to intervene as of right under Rule 24(a). Alternatively, the Court should permit Proposed Intervenors to intervene under Rule 24(b).

Respectfully submitted on this 16th day of July, 2018,

  
Katherine K. O'Brien  
Timothy J. Preso  
Earthjustice  
313 East Main Street  
Bozeman, MT 59715  
Tel: (406) 586-9699  
Fax: (406) 586-9695  
kobrien@earthjustice.org  
tpreso@earthjustice.org

*Counsel for Proposed Intervenors  
Ksanka Kupaqa Xa'téin, Earthworks,  
Montana Environmental Information  
Center, Clark Fork Coalition, Rock Creek  
Alliance, Save Our Cabinets, and  
Montana Conservation Voters*

/s/Daniel D. Belcourt  
Daniel D. Belcourt  
Belcourt Law P.C.  
120 Woodworth Avenue  
Missoula, MT 59801  
Tel: (406) 265-0934  
Fax: (406) 493-6427  
danbelcourt@aol.com

David A. Bell  
Geiszler Steele, P.C.  
619 SW Higgins Ave., Suite K  
Missoula, MT 59803  
Tel: (406) 541-4940  
dbell@lawmissoula.com

*Counsel for Proposed Intervenor  
Fort Belknap Indian Community*

**CERTIFICATE OF SERVICE**

I hereby certify that on this 16<sup>th</sup> day of July, 2018, I served the foregoing document and its associated exhibits by first-class mail, postage prepaid, to the following:

James H. Goetz  
Jeffrey J. Tierney  
Goetz, Baldwin & Geddes, P.C.  
35 North Grand Avenue  
P.O. Box 6580  
Bozeman, MT 59771-6580

Keith Strong  
P.O. Box 1247  
Bozeman, MT 59771

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

Phillips S. Baker, Jr.  
Hecla Mining, Inc.  
6500 N. Mineral Drive, Suite 200  
Coeur d'Alene, ID 83815

*Courtesy copy to:*

Mark D. Parker  
Parker, Heitz & Cosgrove, PLLC  
401 N. 31<sup>st</sup> St., Ste. 805  
Billings, MT 59103-7212

Hecla Mining, Inc.  
6500 N. Mineral Drive, Suite 200  
Coeur d'Alene, ID 83815

*Courtesy copy to:*

William W. Mercer  
Holland & Hart LLP  
401 North 31<sup>st</sup> Street  
Suite 1500  
P.O. Box 639  
Billings, MT 59103-0639

  
Katherine K. O'Brien