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Montana's New Governor Lets "Bad Actor" Off Scot Free

Tribes, Conservation Groups respond to Gianforte Administration's decision to drop case against Hecla's Baker

On Wednesday, July 14th, the Montana Department of Environmental Quality (DEQ) dropped its enforcement of Montana's "bad actor" law against Hecla Mining Co. and its CEO, Phillips S. Baker, Jr., drawing strong objections from tribes and conservation groups that intervened in support of the case. The "bad actor" law was enacted in 2001, in the wake of the Pegasus Gold bankruptcy and its abandoned mines that required tens of millions of dollars in public money for reclamation. The bad actor law was designed to prevent senior mining executives and companies from receiving a new permit to mine in Montana if they've failed to clean-up past operations or failed to reimburse the state for those clean-up costs.

"The bad actor law is clear and Hecla and Baker should finally be held accountable. By dropping this enforcement action, DEQ is perpetuating the devastating burden of environmental injustice," **Fort Belknap Indian Community President Werk stated.** "The State of Montana must prioritize protecting the health of Montana communities, including the Aaniiih and Nakoda Tribes of the Fort Belknap Indian Community, and protecting the natural resources that sustain all life. DEQ's dismissal of the enforcement action flies in the face of this responsibility and prioritizes mining executives over Montanans."

DEQ filed the "bad actor" enforcement action against Hecla and Baker in March 2018, and was subsequently joined by the Fort Belknap Indian Community, Ksanka Kupaqa Xa'łzin (a traditional society within the Ksanka Band of the Ktunaxa Nation) and a coalition of five conservation groups (Earthworks, Montana Environmental Information Center, Rock Creek Alliance, Clark Fork Coalition and Montana Conservation Voters), who intervened in support of the case in July 2018.

Baker served as the Vice President and Chief Financial Officer for Pegasus Gold when it filed for bankruptcy in 1998 and abandoned its operations at the Zortman-Landusky, Beal Mountain and Basin Creek cyanide leach gold mines, leaving Montana taxpayers with tens of millions of dollars in reclamation and long-term water treatment costs. To date, the state has spent more than \$50 million for reclamation and water treatment at Zortman-Landusky alone, where acid mine drainage despoiled the land, water, and sacred sites of the Aaniiih and Nakoda Tribes, whose reservation borders the mine site. Publicly-funded water treatment costs continue at Zortman-Landusky and Beal Mountain today, and will be needed in perpetuity.

Hecla and its CEO Baker are currently proposing two massive new copper/silver mines adjacent to and excavating under the Cabinet Mountains Wilderness, which would damage the traditional lands of the Ktunaxa people. Recent federal court decisions invalidated permits for those mines for failure to comply with the Clean Water Act and Endangered Species Act.

In May, District Court Judge Mike Menahan [ruled that Montana DEQ does have the jurisdiction](#) to enforce the bad actor law against Baker and his Idaho-based company, clearing the way for the DEQ to pursue the case and reach a decision on the merits. Nonetheless, the newly-minted Gianforte Administration made the decision to drop DEQ's enforcement action and allow Baker and Hecla to further pursue the Cabinet Mountain mining projects.

"We're deeply disappointed to see the Gianforte Administration abandon this enforcement action. DEQ needs to enforce the laws on the books and hold bad actors accountable when they leave Montana with a mountain of clean-up costs for their toxic pollution." **said Bonnie Gestring, Northwest Program Director at Earthworks.**

"Montana's mining laws only serve as an effective deterrent if they are enforced," **said Andrew Gorder, Legal Director for the Clark Fork Coalition.** "The 'bad actor' law was passed in the wake of Pegasus' bankruptcy and was clearly intended to hold mining executives accountable for their previous messes. If DEQ won't enforce the law against Pegasus' former Vice President and CFO, then the law isn't worth the paper it's printed on."

"In dropping this case, DEQ is walking away from its only real shot at defending Montanans from being bilked out of millions of dollars of taxpayer money by Baker and Pegasus," **said David Brooks, executive director with Montana Trout Unlimited.** "Of equal concern to failing to recuperate costs from Pegasus's past actions, this decision also sends the message to mining executives that it is fine to leave Montana and its citizens with massive cleanup costs in the future. The Bad Actor law is meant to be a deterrent, not just a punishment."

"It's abhorrent for the DEQ to repeat the same mistakes of the past, which resulted in taxpayer bailouts, toxic water, and a loss of economic opportunities," **stated Derf Johnson, staff attorney with the Montana Environmental Information Center.** "DEQ's spin that this action is somehow "good" for the state is reminiscent of DEQ's defense of Pegasus Gold before it declared bankruptcy and left the state with a toxic mess."

Montana's modern "bad actor" law was enacted overwhelmingly by a bi-partisan legislature in 2001 and signed into law by former Republican Governor Judy Martz.

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Additional Resources:

- DEQ's [Motion to Dismiss](#) and DEQ's [Brief in Support of Motion to Dismiss](#)
- [Conservation coalition request for enforcement letter](#)
- [Montana DEQ violation letter to Phillip S. Baker](#)
- [Background on threats Hecla's mine proposals present to the Cabinets Mountains Wilderness](#)