



FROM OUR MOUNTAINS TO OUR LAKE

Hope

Looking Back— and Thinking Forward

Dear Member,

This past year was a challenge on many fronts with the rollback of environmental regulations and laws, and the removal of people with institutional memory from federal agencies like EPA. My hope is that in 2019, we will begin to stem the tide of environmental deregulation and destruction.

In the fight against the Rock Creek mine, there were several developments in the last year. The decision by the Forest Service last summer to authorize construction of the first phase of the mine came as no surprise to us. Citing uncertainty in the scope of impacts, the Forest Service opted not to permit the full mine, but rather to green light development of Phase 1 of the mine, which is the Evaluation Adit.

A positive development was the decision by Montana DEQ to enforce Montana's "Bad Actor Law." In this newsletter, you will read about how Hecla's choice of Phillips Baker as its CEO has had ramifications for the company and its plans to develop the Rock Creek and Montanore mines.

Along with waging our important legal campaign, we held several successful events last year to keep you apprised and engaged in the fight, including our Annual Party at Evans Brothers and the Holiday "Funraiser" at Idaho Pour Authority. We hope you were able to join us for at least one of the events. The generosity of local businesses, volunteers, and, you, our supporters, made them a great success!

In keeping with the types of communication that many people are using, especially young people, the Alliance is sharing a lot of information via Facebook, and, more recently, Twitter and Instagram. If you use social media, we encourage you to connect with us on these platforms. We've also gotten away from sending out paper newsletters, but do send out news alerts electronically several times a year. If you are not receiving these, please send us an email to info@rockcreekalliance.org so we can add you to our database.

Finally, on an immensely sad and sobering note, on January 25, 2019, a tailings dam at an iron ore mine in Brazil's Minas Gerais



Kayakers in Idlewilde Bay
Photo By: Keokee Publishing

state collapsed, leaving a path of destruction and death. The collapse was predictable and, perhaps, preventable in the short term. Worldwide, there are many tailings dams at risk of failure, yet plans for unsafe new dams, like Rock Creek's, persist.

As a society, we have many challenges ahead in affecting change in the way mines are permitted (or not), monitored, and regulated. I hope you will stay the course with us, and continue to support our work in opposing the Rock Creek mine and in implementing positive change on a broader scale. Be assured that in 2019, our attorneys will continue to aggressively pursue every promising legal challenge from the "Bad Actor Law" to the Endangered Species Act to halt the mine's construction.

There are many ways you can help including financial support and volunteerism. Let us know if you have time to get involved, and please renew your membership in 2019 if you have not already done so. We cannot go it alone!

For Our Lake and Wilderness,

Mary Crowe Costello
Executive Director

Rock Creek Alliance et al. Challenge Findings Related to Bull Trout and Grizzly Bears

In late January, the Rock Creek Alliance and our Montana partners, represented by Earthjustice, entered into litigation challenging the findings and determinations related to the mine's impacts on threatened grizzly bears and bull trout.

Background

To date, there have been three biological opinions for the mine and supplements to those opinions. All have been accompanied by a no-jeopardy determination. The Alliance successfully challenged the 2003 BiOp, resulting in a federal court decision to vacate the opinion. This was followed by the release of a new opinion in 2006 that the court ultimately upheld in a subsequent challenge, while determining that the Forest Service's authorization for the Rock Creek mine was faulty based on a failure to adequately address project impacts to bull trout.

In 2017, the US Fish and Wildlife Service (FWS) and the Forest Service determined that they must reinitiate formal consultation under the ESA concerning the mine's impacts on bull trout because they had failed to consider the impact that dewatering of streams would have on bull trout habitat. FWS acknowledged that increased sediment, reduced stream baseflows, and other impacts would kill bull trout in Rock Creek and Bull River, but claimed the populations are robust enough to weather the mortality, and has been relying on the construction of fish passage at the Cabinet Gorge dam to reestablish connectivity with the healthier Lake Pend Oreille core area. Despite being in the planning stages for over a decade, a fish ladder has not been constructed. Thus, the agency is erroneously relying on the strength of the Lake Pend Oreille core area to justify the impacts of the mine to the small, isolated populations in the lower Clark Fork River core area. (Core areas are units of habitat and populations that the agency uses to gauge recovery.)

At the same time, FWS refused to consider new mortality data, which indicates that the mine's mitigation plan will not negate mortality risks to grizzlies. Since 2007, a key component of the mine's mitigation plan for reducing human-caused grizzly bear mortality has been to fund a Montana Fish, Wildlife and Parks grizzly bear management specialist dedicated to reducing human-caused grizzly mortality in the Cabinet-Yaak ecosystem. That specialist has implemented many of the conflict-reduction

measures FWS identified as essential in reaching a no-jeopardy determination for the mine. Unfortunately, human-caused mortalities in the U.S. portion of the Cabinet-Yaak ecosystem have increased during the ten years since the grizzly bear management specialist began work in 2007.

Despite this finding, the agency has stubbornly refused to consider this mortality data, and will not reinstitute formal consultation on the mine's impacts to grizzly bears. Instead, FWS issued a supplement to its 2006 Biological Opinion in which it concluded reinitiation of ESA consultation concerning grizzly bear impacts is not warranted and the 2006 no-jeopardy determination remains valid.

The Alliance and our partners are now challenging that determination and the agencies' failure to reinstate ESA consultation regarding the mine's impacts on grizzly bears. We also are challenging the legality of FWS's 2017 Bull Trout Biological Opinion and the Forest Service's authorization for the first phase of the project that relies on the faulty determinations made by FWS.

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Montana DEQ Deems Hecla Mining and Phillips Baker “Bad Actors”

By now, you may have already heard that Montana DEQ, in an official enforcement action, declared Phillips Baker, the CEO of Hecla Mining, and Hecla Mining Company to be bad actors.

Here's how it unfolded. In the fall of 2017, our attorneys sent a notice and documentation of Phillips Baker's involvement in the defunct Pegasus Gold and its subsidiaries to officials at DEQ. In this letter, DEQ was asked to investigate Baker's involvement in Pegasus as it relates to the bad actor provision of the Montana Metal Mine Reclamation Act. This provision prohibits former principals of companies that fail to complete required mine reclamation from receiving an exploration license or operating permit. Phillips Baker was CFO of Pegasus Gold up until the time of its bankruptcy in 1998. As the letter states "Pegasis entities 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."

A final legal resolution may be a ways off, but, ultimately, we hope that Hecla will be forced to come into compliance—or, better yet, abandon their plans to develop the mines. One thing is clear. We cannot entrust Lake Pend Oreille and the Cabinet Mountains Wilderness to a company whose leading principal has demonstrated he would willingly leave behind a toxic legacy

Page 3
FROM OUR MOUNTAINS TO OUR LAKE
Baker Grass Above Rock Lake
Photo By: Ken Vanden Heuvel





Montana Law Prohibits Mine’s Dewaterring of Wilderness Streams and Lakes

To develop and operate the Rock Creek mine, Hecla Mining Company would appropriate water from the Cabinet Mountains Wilderness through a water use permit issued by DNRC that would allow groundwater to drain into the mine void for use in ore processing and other operations.

Hydrologic modeling has demonstrated that this appropriation would substantially reduce flow levels in multiple streams within

the Cabinet Mountains Wilderness. Potentially impacted reaches include South Basin Creek, Chicago Creek, St. Paul Lake drainage, and Unnamed East Fork Tributary, Copper Gulch, Moran Basin Creek, and the East Fork Bull River. Astoundingly, under multiple modeled scenarios the proposed appropriation would deplete 100% or more of the groundwater discharge to Chicago Creek within the wilderness and more than 50% of groundwater discharge to South Basin Creek within the wilderness.

Montana law prohibits this dewaterring because streams within Congressionally established wilderness areas are designated “Outstanding Resource Waters.” Because of their “environmental, ecological, or economic value,” the Montana Legislature has declared that such “[o]utstanding resource waters must be afforded the greatest protection feasible under state law.”

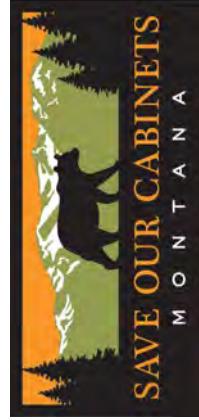
On December 11, our attorneys presented oral argument in a Montana state court about the impacts the Rock Creek mine would have on multiple waters in the Cabinet Mountains Wilderness, and Montana’s strong protections for Outstanding Resource Waters that protect them from degradation. We now await the court’s decision in this case.

Tragic Tailings Dam Burst in Brazil: Predictable and Preventable

On January 25, 2019, a tailings impoundment in the state of Brumadinho in Brazil collapsed spilling toxic sludge that buried residential and mine buildings, including a cafeteria where hundreds of workers were eating.

The collapse of the tailings dam owned by Vale ranks among the worst mining disasters in decades. More than 100 have died, and at least 200 are still missing. It follows on the heels of the country’s worst environmental incident when the Samarco dam, operated by Vale and BHP, collapsed in 2015.

Both the Samarco and the Brumadinho disasters involve the failure of tailings dams using the “upstream” method of construction. (There are three construction methods: upstream, centerline, and downstream, with downstream considered the least risky of the three, but most expensive.) Mining engineers have determined that upstream construction is inherently unsafe. The cause of the Brumadinho failure is believed to be due to liquefaction that occurs over time through recurring saturation of tailings. The actual event is sudden and can be triggered by vibration due to earthquakes, nearby landslides or even trucks on



Lawsuit filed Challenging Waste Water Discharge Permit for Montanore Mine

In January 2017, the Montana Department of Environmental Quality (DEQ) issued a water pollution discharge permit for the Montanore Mine, which would bore beneath the Cabinet Mountains Wilderness south of Libby, Montana. The permit authorizes substantial discharges of metals, nutrients, sediment, and dangerously warm mine wastewater to high-quality waters in the Cabinet Mountains. The Cabinet Mountains Wilderness south boasts some of the purest waters in the lower 48 and, together with surrounding national forest lands, harbors

vital populations of bull trout—a threatened species protected by the Endangered Species Act—and other native fish. The permit contains numerous flaws that violate the Montana Water Quality Act, applicable requirements of the federal Clean Water Act, and state and federal regulations. Save Our Cabinets and our Montana partners subsequently filed a lawsuit asking a state district court judge to overturn the water pollution discharge permit for the Montanore mine. In the complaint, our attorneys argued, among other things, that Montana DEQ acted illegally by omitting essential pollution-control requirements from the permit and relying on an outdated pollution authorization issued in 1992 to Noranda Minerals for a different project to allow that company to evade Montana’s legal protections for high-quality waters. Notably, at that time, bull trout had not been listed under ESA.

Last year, our attorneys filed a motion in support of summary judgment and subsequent response briefs in opposition to defendants’ cross-motions for summary judgment. A hearing to present oral argument took place on February 11, 2019,



Short Video Chronicles the Risks to the Cabinet Mountains Wilderness

If you haven’t watched it yet, check out the Alliance’s YouTube channel to see a three-minute video about the risks to the Cabinet Mountains Wilderness. We think you’ll agree that the film is very well done. The purpose of the video is to engage both regional and national audiences in the fight to protect the Cabinet Mountains in the fight to protect the Rock Creek and Montanore mines.

Status of the Montanore Mine

The Montanore mine currently has no permit to operate or begin construction, despite claims made by Hecla Mining to a Libby audience that it can begin construction of Phase 1. In 2017, Judge Molloy vacated the Forest Service’s prior decision to approve the mine as a result of our litigation. As you read in the article on the bad actor provision, Hecla has been deemed a bad actor by Montana DEQ and, subject to the state’s enforcement action, cannot currently obtain state authorization to mine in Montana. This enforcement action also applies to the Montanore mine.



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PROTECTING OUR WATER AND QUALITY OF LIFE



Rock Creek Alliance is a non-profit organization formed by citizens, conservationists, and outdoor sports enthusiasts to protect our public lands and water resources from proposed mining activities within the lower Clark Fork River—Lake Pend Oreille Watershed

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