

# Fort Belknap Indian Community



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Fort Belknap Indian Community  
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Fort Belknap Indian Community  
(Elected to administer the affairs of the community and  
to represent the Assiniboine and the Gros Ventre  
Tribes of the Fort Belknap Indian Reservation)

## U.S. House of Representatives Committee on Natural Resources Subcommittee on Energy and Mineral Resources

**Legislative Hearing on H.R. 2925, H.R. 6862, H.R. 7003 and H.R. 7004**

**Testimony on H.R. 2925, the Mining Regulatory Clarity Act of 2023, and  
H.R. 6862, to amend the FAST Act**

**January 31, 2024**

### **I. Introduction**

Mr. Chairman and Members of the Subcommittee on Energy and Mineral Resources, thank you for the opportunity to testify before you. My name is Jeffrey Stiffarm, and I am the President of the Fort Belknap Indian Community in Central Montana. I'd like to talk about how hard rock mining has devastated the Fort Belknap Reservation to illustrate the Tribes' opposition to the Mining Regulatory Clarity Act and the vital need for meaningful reform of the 1872 Mining Law to prevent what happened to my people from happening to others.

### **II. History of Mining in the Little Rocky Mountains**

The Fort Belknap Indian Reservation is home to the Gros Ventre and Assiniboine Tribes. Our Reservation was established and set aside for the Tribes' use by an Act of Congress in 1888.<sup>i</sup>

At that time, the Tribes received assurances from the United States government that we would retain our rights to all water necessary to fulfill the purposes of the Reservation, including waters originating in the Little Rocky Mountains that Tribal members used for irrigation, domestic supplies, and other purposes.<sup>ii</sup>

The original Fort Belknap Reservation included the Little Rocky Mountains, which are considered sacred by Tribal members, and were traditionally used by the Tribes for hunting, fishing, cultural, and spiritual purposes.

When gold was discovered in the Little Rockies in the 1880s, the federal government pressured our Tribes to cede the gold-bearing areas of the Reservation to the United States. Congress carved out the Little Rocky Mountains from the Reservation's boundaries in 1896.<sup>iii</sup>

A Canadian owned mining company, Pegasus Gold, filed claims on these lands and two modern cyanide leach gold mines were approved, and operated on these lands under BLM-approved Plans

of Operations from 1981-2003.<sup>iv</sup> At its largest, the Zortman-Landusky mining complex covered over 1,200 acres.

### **III. The Contamination**

The Zortman and Landusky mine sites are surrounded on three sides by the Fort Belknap Reservation and sit at the headwaters for many creeks that eventually flow through the Reservation.

Heap leaching at the Zortman-Landusky mines resulted in vast amounts of acid mine drainage that contaminated the water supply that supports the Fort Belknap Indian Community and the Town of Zortman.<sup>v</sup>

In fact, the Tribes are facing permanent surface and groundwater contamination and continue to suffer from multiple devastating and lasting harms to the Tribes' beneficial uses, including impairment of drinking water, fish and wildlife habitat, recreation, agricultural, and industrial uses.<sup>vi</sup> Acid mine drainage has likewise resulted in public health risks and continues to threaten the Tribes' powwow grounds, ceremonial and sacred sites, including other areas of cultural significance.

### **IV. Continued Contamination and Threats from New Mining**

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.”<sup>vii</sup>

After Pegasus Gold declared bankruptcy, the mine was designated a CERCLA site under the Superfund program.<sup>viii</sup> On October 5, 2000, the Interior Secretary issued Public Land Order (PLO) 7464 withdrawing approximately 3,500 acres from new mine claims in order to facilitate CERCLA (Superfund) cleanup.<sup>ix</sup> Since then, state and federal agencies have contributed tens of millions of dollars for reclamation and water treatment at the site, and the BLM estimates that an additional \$2.2 million will be needed every year for water treatment for the foreseeable future.<sup>x</sup>

In order to continue the ongoing reclamation work, the BLM continued to establish mineral withdrawals to prevent new mining activities that could interfere with that work.<sup>xi</sup> Unfortunately, a 2-day lapse in the mineral withdrawal renewal resulted in ten new mining claims being staked on BLM lands within the Zortman Landusky Reclamation Area<sup>xii</sup> – jeopardizing the enormous investment in existing and ongoing reclamation work.

The owner of the company that staked the new claims, Blue Arc LLC, is currently the subject of an enforcement action by the State of Montana for alleged illegal exploration activities on other nearby lands.<sup>xiii</sup>

Under existing law, Blue Arc would not be able to move forward with a plan of operations on its mining claims within the mineral withdrawal without demonstrating that it has valid claims.<sup>xiv</sup> If

the Mining Regulatory Clarity Act were law, however, these claims would automatically be considered a “valid existing right,” which would establish a vested property right here and on mining claims on all federal public lands. This would interfere with the US Government's cleanup here, and come at the expense of protecting Tribal, environmental, and natural resources across the West.

This is a public health and safety threat of the highest magnitude. Future exploration or mining activities at the site not only threatens the health and welfare of tribal members and tens of millions in CERCLA clean-up work, it threatens to further desecrate sacred tribal land, including the potential to disturb the graves of relatives and ancestors of tribal members.

The 1872 Mining Law is an outdated law that has failed to protect communities like mine. It's hard to believe that congress is considering legislation today that would make this law worse. The 1872 Mining Law must be reformed to better protect communities and Tribes, such as the legislation outlined in the Clean Energy Mineral Reform Act, introduced by Senator Heinrich and Congressman Grijalva.<sup>xv</sup>

## **V. Closing**

The water is flowing orange from acid mine drainage. The events at the Fort Belknap Indian Community are not unique. Other such scenarios exist and more will occur in the future if the 1872 Mining Clarity Regulatory Act is passed. And it won't just affect Indian Country. Our planet is in a vulnerable state. Unsubstantiated claims cannot be allowed.

Reform of U.S. mining laws must include meaningful consultation with Tribes and also the ability to say “no” to mines that would harm other important land uses. It cannot allow mining companies to trample communities and indigenous rights by allowing a company to stake an indefinite number of claims and allow that company to move forward with activities on those claims without any demonstration that there are even valuable minerals there.

The Fort Belknap Tribes appreciate the opportunity to testify today against the Mining Regulatory Clarity Act, and to urge support for meaningful reform of the 1872 Mining Law.

## **VI. President Stiffarm's Press Quote In Full**

The Fort Belknap Indian Community opposes the Mining Regulatory Clarity Act. The Gros Ventre and Assiniboine Tribes have been directly affected by mining atrocities and to this day, suffer the harmful effects of mining under the 1872 Mining Law. The Mining Regulatory Clarity Act would make this outdated law worse by allowing mining companies, including foreign-owned companies, to dispose of mine waste on public lands without demonstrating that the companies hold valid claims. The Fort Belknap Indian Community faces permanent surface and groundwater contamination from decades of hard rock mining in the Little Rocky Mountains on and adjacent to the Fort Belknap Reservation and continues to suffer from multiple devastating and lasting harms to the Tribes' beneficial uses, including impairment of drinking water, fish and wildlife habitat, recreation, agricultural, and industrial uses.

We urge Congress to reject legislative proposals that make this colonial-era law worse, and to move forward with meaningful reform of the 1872 Mining law as outlined in the Clean Energy Mineral Reform Act, introduced by Senator Heinrich and Congressman Grijalva.

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<sup>i</sup> 25 Stat. 113 (May 1, 1888).

<sup>ii</sup> 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”).

<sup>iii</sup> 29 Stat. 350 (1896).

<sup>iv</sup> U.S. Bureau of Land Management, Action Memorandum for Water Management at the Zortman And Landusky Mines, Non Time-Critical Removal Actions, Malta Field Office, Bureau of Land Management, Phillips County, Montana. September 2006.

<sup>v</sup> *Montana Department of Environmental Quality v. Luke Ployhar Blue Arc LLC. et al.*, Case No. DV-2023-10. April 18, 2023. Finding of Fact, p. 3.

<sup>vi</sup> Montana Department of Environmental Quality, Landusky Metals Total Maximum Daily Loads and Framework Water Quality Improvement Plan, March 2012, Available at:

<https://deq.mt.gov/files/water/wqpb/CWAIC/TMDL/M31-TMDL-01a.pdf>

<sup>vii</sup> *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).

<sup>viii</sup> U.S. Bureau of Land Management, Action Memorandum for Water Management at the Zortman And Landusky Mines, Non Time-Critical Removal Actions, Malta Field Office, Bureau of Land Management, Phillips County, Montana. September 2006.

<sup>ix</sup> Please see PLO 7464 (65 FR 59463, Oct. 5., 2000) The Secretary has subsequently extended this mineral withdrawal in PLOs 7643, 7753, and 7841.

<sup>x</sup> U.S. Bureau of Land Management, Press Release, Withdrawal Established to Protect Zortman Landusky Mine Reclamation Site, September 9, 2022. Available at: <https://www.blm.gov/press-release/withdrawal-established-protect-zortman-landusky-mine-reclamation-site>

<sup>xi</sup> *Id.*

<sup>xii</sup> Specifically, reclamation efforts within the Zortman-Landusky Reclamation Area were jeopardized by the Department of Interior’s failure to maintain the mineral withdrawal protections between the expiration of PLO 7464 on October 4, 2020 and the segregation of lands under this proposed mineral withdrawal on October 7, 2020. This 48-hour lapse in protection allowed 10 mining claims to be staked on October 5, 2020 by Luke Ployhar/Blue Arc LLC on BLM lands within the mineral withdrawal boundaries.

<sup>xiii</sup> See Montana DEQ, Violation Letter #VLHRM20220330-00071 to Luke Ployhar/Blue Arc LLC, April 1, 2022 (The Montana Department of Environmental Quality recently issued notices of violations against Luke Ployhar/Blue Arc LLC for allegedly conducting exploration and mining activities at seven locations in Township 25N, Range 25E, Section 7 without a permit. The disturbance associated with these unpermitted and unbonded mining activities contributes further to the degradation of the reclamation efforts in the Zortman Landusky Reclamation Area.) Montana DEQ subsequently filed a request for a preliminary injunction to allow DEQ to reclaim the disturbed lands to prevent any additional infiltration of groundwater into the water treatment system and previously reclaimed areas... This order was issued in Phillips County District Court case DV-2023-10 (August 2023)

<sup>xiv</sup> The withdrawal of federal lands from mineral exploration and development does not apply to claimants with “valid existing rights” on mining claims previously located on the segregated lands. However, existing mining claims on lands going through the withdrawal process must be valid in order for the claim to be exempt from the segregative effects of a withdrawal notice. 43 C.F.R. § 2091.0-7. As BLM regulations currently state: “After the date on which the lands are withdrawn from appropriation under the mining laws, BLM will not approve a plan of operations or allow notice-level operations to proceed until BLM has prepared a mineral examination report to determine whether the mining claim was valid before the withdrawal, and whether it remains valid.” 43 C.F.R. § 3809.100(a).

<sup>xv</sup> <https://democrats-naturalresources.house.gov/media/press-releases/ranking-member-grijalva-sen-heinrich-introduce-mining-reform-legislation-to-protect-communities-tribal-consultation-and-environment->

## When Science Wins

**For more than twenty years, researchers at Aaniiih Nakoda College and the Fort Belknap Reservation’s Environmental Protection Department have worked to document the harm done by an abandoned gold mine adjacent to the reservation. Their findings are now helping block efforts to restart exploration within the mine site.**

By Paul Boyer



*South Big Horn Creek, which flows from the Zortman and Landusky Mines onto the reservation, is stained red from acid mine drainage. Aaniiih Nakoda College researchers found that the water was no longer able to support life. Photo courtesy of Aaniiih Nakoda College*

For decades, a massive open pit gold mine on the southern border of the Fort Belknap Reservation of Montana methodically transformed a forested mountain landscape sacred to the Aaniiih and Nakoda people into a moonscape of craters and crushed rock. Highly acidic water, tainted by cyanide used to extract particles of gold and silver from ore, flowed down the mountains and onto reservation land, turning streams red and killing aquatic life.

The Zortman and Landusky Mines closed in 1997 when the value of gold dropped and Pegasus Gold Corp, its parent company, went bankrupt, but the damage remains and may be irreparable. Declared a federal Superfund site, millions of dollars are spent every year by the state of Montana to treat polluted water draining out of abandoned pits and leach fields. Experts say this work will continue “in perpetuity,” meaning, for all practical purposes, forever.



*One of two water treatment plants constructed to neutralize acidic water draining from the mine. Because there is no way to stop the exposed rock from generating acidic runoff, mitigation must continue around the clock and “in perpetuity.” Photo by Paul Boyer*

But the urge to squeeze profit from the land, despite its grim history and lasting harm, also remains. An effort is now underway to restart exploration and potentially renew mining on privately owned land within the mine’s boundaries and a short distance from the tanks, pipes, containment ponds and water treatment plant working around the clock to mitigate the damage already done.

This incongruous turn of events was triggered by a seemingly small bureaucratic oversight when, in 2020, a five-year federal moratorium on issuing mining claims expired 48 hours before a new moratorium, also known as a “mineral withdrawal,” was issued. During this two-day gap, according to a 2021 [complaint](#) filed by the Fort Belknap Indian Community and several conservation groups, ten claims were filed in the Zortman Landusky Reclamation Area by Blue Arc LLC, a mining exploration company owned by Luke Ployhar, who purchased mine claims totaling over 1,000 acres after Pegasus declared bankruptcy.

At first, it looked like Montana’s Department of Environmental Quality would give the green light to Blue Arc’s proposal to dig an exploratory trench in anticipation of renewed mining. That’s what many community members expected. Between 1979 and the mid 1990s, state and federal regulators approved eleven requests to expand mining operations with only minimal environmental review. These expansions happened despite strong opposition from the Fort Belknap Community.

But then something unexpected happened: In the wake of a public meeting held on January 4, 2022, the DEQ announced that it would require additional analysis of Blue Arc’s request, citing strong community opposition and what it called “conflicting evidence from credible and potentially expert sources.”

“This evidence raises substantial questions regarding whether significant impacts could occur to historical, archeological, social and cultural resources as a result of the proposed actions,” according to a DEQ

statement. “Based on the current information before us, DEQ cannot say with certainty that potentially significant impacts do not exist.”

To say that the tribe and other mine opponents were surprised by this favorable ruling is putting it mildly. As a story in the Havre Daily News put it, “this decision came as a shock to many on Fort Belknap”—not simply because the project was at least temporarily blocked, but because tribal members were heard, and their arguments carried weight. Perhaps for the first time, they were called a “credible” and “potentially expert” source of information by an agency that many tribal activists had long viewed as their adversary.

Of course, the battle is not yet won, but this particular victory is evidence, some say, of the tribes’ growing capacity to fight back. Initially, the Fort Belknap Community, constrained by limited resources, relied on the work of local environmental groups, recalled tribal Environmental Manager Ina Nez Perce. “They were fighting the fight,” she said, but it was a lopsided battle against what was, for a time, the world’s largest cyanide heap leach mine.

In the early 1990s, however, the work of citizen-activists was strengthened by leadership from the tribal government, Nez Perce said. The tribes’ environmental protection office now has more staff and resources to monitor water quality and habitat conditions, and elected officials are also vocal advocates for the reservation’s water quality and water rights.

But essential to this activism and political leadership is the growing research capacity of Aaniiih Nakoda College, the local tribal college, which has been gathering data on water quality for over twenty years and recently established, with \$3.5 million in funding from the National Science Foundation, the interdisciplinary Nic?Mní (Water) Center to expand its research and share findings through an annual forum. Data collected by STEM faculty and Nic?Mní staff provide compelling evidence of ongoing environmental damage to waterways, groundwater and ecological systems.

In a statement provided to the Daily Montanan following the DEQ ruling, Luke Ployhar, owner of Blue Arc, appeared to argue that the Zortman and Landusky Mines had not impacted tribal watershed, asserting, “Any and all claims by the Tribes of bad water extending onto their lands is a blatant falsehood. The water treatment facilities put in place by Pegasus Mining are able to capture and contain and process any historical elevated acidic waters.”

In fact, data collected by the college paints a very different story. Examining water from streams flowing out of the mine’s land and onto the reservation, tribal and college scientists have filled boxes with evidence documenting significant damage to several key waterways.

A paper coauthored by college scientists and students in the natural resources program, recently published in the White Clay and Nakoda Circle Speaker Environmental Newsletter, summarized findings from a years-long aquatic study managed by the college’s EPA-funded Water Laboratory, a research program that predates the new Water Center. Purposefully following EPA procedures and protocols so that findings could be presented in court, the study found significant damage to key waterways, even years after mining ended.

King Creek, which has its headwaters in the mine, “remains a severely impacted drainage,” according to the paper. Another stream, Swift Gulch, “has been totally disrupted by mining activity and reclamation efforts.”

“With extensive field and laboratory studies we found that the contamination from the mine, as it continues toward the reservation, is rapidly moving downstream with rain or storm events,” the paper reported, turning the water in some creeks bright red. Tailings and sediment collected along the drainages of these and other creeks found “heavy metal contamination with some exceeding health levels allowed in surface water.”

“We have the water quality data to back up that water coming onto the reservation is impacted,” said Mitchell Healy, the tribes’ water quality coordinator, who holds an associate degree in natural resources from Aaniiih Nakoda College and a master’s degree in environmental management from the University of Maryland University College. “It’s from the mines. It’s obvious. There are no ifs, ands or buts about it.”

Additionally, data collected by Aaniiih Nakoda College faculty member Dan Kinsey and natural resource students also document the impact of polluted water on invertebrate life. Using fine-mesh kick nets to collect larvae and insects from several streams, he and the students report that most impacted streams are nearly lifeless.

“All of those drainages are polluted,” said retired faculty member Liz McClain, summarizing findings from the accumulating data at the January 4 public meeting. “And the water is so polluted nothing will live in it.”



*Aaniiih Nakoda College faculty member Dan Kinsey (right) with students Teeha Roberts, Doug Anderson and Tia Zander collecting macroinvertebrates from North Fork of Little People’s Creek.*

Researchers also investigated the mine’s impact on the larger ecosystem, including land that has been “reclaimed.” Before mining, the mountainous region was forested and supported a rich variety of animal and plant life, with equally complex microbial life in the topsoil. Mining stripped away the soil, leaving deep cavities and acres of bare ground and crushed ro

ck.

Much of this remains, but some parts have been covered with dirt and planted with grass, reflecting a longstanding approach to land reclamation that focuses more on covering an eyesore than on restoring a



habitat. While this work softened the edges of excavated cavities, research conducted between 2002 and 2006 by Water Lab personnel, supported by funding from the USDA Tribal Colleges Research Grants Program and carried out in partnership with restoration ecologists at the University of Wyoming, found that soil in these reclaimed regions cannot break down organic matter as efficiently as soil in undisturbed parts of the surrounding mountains.

Analysis of two test sites found that soil contained “minimal levels of organic matter needed to support microbial activity as well as sustain plant growth and nutrient recycling,” compared with undisturbed test sites, according to a paper published in Circle Speaker. College scientists caution that it is important to continue monitoring the soil to better understand the process of regeneration, but their work provides more evidence that the mine’s harm is systemic, long term, and may require many years—possibly generations—to restore what was lost.



*A view into the Landusky mine pit. Collectively, the Zortman and Landusky Mines encompass 1,200 acres of land that formerly belonged to the Fort Belknap Reservation. Photo by Paul Boyer*

This evidence, combined with a history of mistrust toward state and federal officials, is shaping the response to the proposed exploration. State DEQ officials, speaking at the January 4 public meeting, argued that Luke Ployhar was only requesting approval for a relatively small exploratory trench. Tribal leaders and state environmental organizations who spoke at the meeting rejected this reassurance.

To insist that the proposal is only about a trench the size of a city bus and will have no environmental impacts “only serves the purpose of ignoring reality,” said Derf Johnson, a staff attorney with the Montana Environmental Information Center. “Mining exploration leads to mining. It’s the first step in what could be a whole range of activities and impacts.”

Multiple speakers also emphasized what they characterized as the DEQ's track record of minimizing potential risk, inadequately investigating the damage done and failing to seek input from the tribe.

"Fort Belknap opposes this new mining permit that you guys are looking at for Luke Ployhar, based on the fact that, first of all, you guys didn't consult the Tribes," asserted Fort Belknap Community Tribal President Jeff Stiffarm. The only time that you did consult the Tribes was when we filed a lawsuit against you guys for not following your laws."

Stiffarm also pressed the DEQ officials to explain how Ployhar was able to complete and submit all of the paperwork required for approval of excavation during the brief 48-hour gap in the moratorium. "Maybe it was you guys that notified Mr. Ployhar about this two-day window," Stiffarm said. "There's a lot of unanswered questions that you guys are not answering for us."

At a deeper level, opposition to mining is guided by the spiritual significance of the Little Rocky Mountains, which are known, respectively, as Biith oto? (Fur Cap) and Jyahe widá (Island) Mountains by the Aaniiih and Nakoda nations.

"These mountains are our churches," Stiffarm said. "That's how sacred they are to us."

In his statement made following the DEQ's decision, Luke Ployhar charged that the Fort Belknap Community opposes his bid only because the tribes want to profit from the land. "Make no mistake, the tribes are interested in this area due to its significant economic possibilities and not cultural heritage."

It's a claim strenuously rejected by tribal members fighting renewed mining.

"Mr. Ployhar is mistaken, President Stiffarm said. "The Aaniiih and Nakoda people have zero interest in any more gold mining on or near our reservation... For years, we bathed in and ingested the chemical remnants of more than a century of gold mining. We are now continuously fighting to clean up and restore the safety of the waters flowing to our permanent homeland."

The land where the mine now sits was originally part of the reservation, but sold to the federal government when prospectors discovered gold in the late 19<sup>th</sup> century. The acreage removed from tribal lands, known as the Grinnell Notch, is named after George Bird Grinnell, the federal government's negotiator, who, many tribal members say, coerced tribal leaders into relinquishing the land.



*The North Fork of Little People’s Creek, which is not impacted by mining, is used by college researchers as a control site. This is what all reservation streams should look like. Photo courtesy of Aaniiih Nakoda College.*

Fort Belknap Community Environmental Manager Ina Nez Perce said it is her hope—one shared by many—that the land will be returned to the tribes and that, to the greatest extent possible, the damaged landscape will be restored and returned to its traditional cultural and spiritual uses.

The land is usable, she agreed—but not for mining. “That’s out of the question.”

For decades, the tribes had only limited ability to fight mining companies and their allies in government. The finding from the state DEQ, which acknowledges credible opposition to the planned exploration, suggests that a new era of empowerment is emerging, led by the continuing work of community activists, tribal leadership, and the growing research capacity of both Aaniiih Nakoda College and the tribal environmental protection office.

Even if mining companies and state officials don’t understand the cultural significance, said retired science faculty member Liz McClain, “science can beat them.”

*Paul Boyer is editor of Native Science Report.*

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