

# Fort Belknap Indian Community

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Fort Belknap Indian Community  
(Tribal Govt.)  
Fort Belknap Indian Community  
(Elected to administer the affairs of the community and  
to represent the Assiniboiné and the Gros Ventre  
Tribes of the Fort Belknap Indian Reservation)

October 5, 2021

Honorable Mark Lee Greenblatt  
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## **Re: Request for an Investigation**

It has come to our attention that the Department of Interior allowed the mineral withdrawal at the Zortman Landusky Reclamation Area to lapse for a 48-hour period in October 2020, during which time Blue Arc LLC filed ten mining claims in the Zortman Landusky Reclamation Area, potentially jeopardizing decades of costly and ongoing reclamation work at the defunct Zortman and Landusky cyanide leach gold mines. Because it takes a great deal of preparation and effort to properly file a mining claim, the very brief lapse in the withdrawal and the coordinated filing of mining claims warrants a thorough investigation. On behalf of the Assiniboiné and Gros Ventre Tribes of the Fort Belknap Indian Community, Earthworks, Montana Environmental Information Center, and Montana Trout Unlimited, we request an investigation into the Interior Department's actions related to its failure to maintain a mineral withdrawal at the Zortman Landusky Reclamation Area during that critical juncture and any potential inappropriate or ex parte communications with private parties related to the filed claims.

## **Timeline:**

10/5/2000: Public Land Order 7464 established a mineral withdrawal to protect the reclamation of the Zortman Landusky mining area for a five-year period.<sup>[1]</sup>

10/5/2005: Public Land Order 7643 extended the mineral withdrawal for 5-year period.<sup>[2]</sup>

10/5/2010: Public Land Order 7753 extended the mineral withdrawal for 5-year period.<sup>[3]</sup>

10/5/2015: Public Land Order 7841 extended the mineral withdrawal for 5-year period.<sup>[4]</sup>

10/1/2020: Notice of proposed 20-year withdrawal, signed by Interior Secretary David L. Bernhardt (but not published in Federal Register)

10/4/2020: Public Land Order 7841 expired.

10/5/2020: Blue Arc LLC filed 10 mining claims within the mineral withdrawal boundaries.<sup>[5]</sup> Mike Flatt, Spectrum Engineering, stated that Luke Ployhar did much of the staking, and that many of the claim markers were placed prior to the expiration of the withdrawal. The required written location information was then placed on these stakes after the withdrawal expired.<sup>[6]</sup>

10/7/2020: Notice of proposed 20-year mineral withdrawal published in Federal Register.<sup>[7]</sup>

### **Background:**

The Zortman and Landusky Mines are defunct open pit cyanide leach gold mines, located in the Little Rocky Mountains in north central Montana and adjacent to the Fort Belknap Indian Reservation. The mines were abandoned in January 1998 when Zortman Mining Inc. and its parent company Pegasus Gold Corp. filed for Chapter 11 bankruptcy. The Gros Ventre and Assiniboine Tribes of the Fort Belknap Indian Community (FBIC), BLM, EPA and Montana DEQ have collaborated on reclamation activities at the mine through multiple CERCLA actions. Due to the inadequacy of the Pegasus Gold reclamation bond, more than \$50 million in state and federal funds has been spent at Zortman/Landusky to address mine reclamation and long-term water treatment, with \$2-3 million in additional annual expenditures necessary for water treatment in perpetuity.

Mining operations at the Zortman/Landusky Mines resulted in severe and lasting damage to the traditional lands of the Gros Ventre and Assiniboine Tribes, including extensive surface and groundwater pollution from acid mine drainage and metals pollution throughout the Little Rocky Mountains that continues today. There are multiple water treatment systems to collect and treat contaminated run-off from the mines, totaling nearly a half billion gallons of water per year. Clean-up activities at Zortman/Landusky have been, and continue to be time-consuming, costly, and a great burden to the FBIC and the people of Montana.

In 2000, the Interior Department issued public land order 7464 withdrawing (closing) 3,530.62 acres of public lands from mineral location and entry to protect and facilitate the ongoing reclamation work at these two mines for a five-year period. The Public Land Order that established the mineral withdrawal was then extended by subsequent PLOs in 2005, 2010 and 2015. The final PLO expired on October 4, 2020. On October 7, 2020, the Department of Interior announced in the Federal Register that it proposed to withdraw the area for a 20-year period, officially segregating the land from mineral location and entry again. The notice appeared three days after the existing mineral withdrawal expired - leaving these lands open to mineral entry for a critical 48-hour period.

The day after the withdrawal expired on October 4th, 2020, Blue Arc LLC staked 10 mining claims on public lands within the boundaries of the mineral withdrawal. The claims were staked on lands that are, and continue to be, undergoing reclamation. According to a contractor, some or all of these claims may have been physically staked prior to the mineral withdrawal expiration, with the written location information subsequently placed on the claim stakes after the withdrawal had expired.

In a press release announcing the 20-year proposed withdrawal, the BLM Montana State Director stated that, "These public lands need to be protected to enable ongoing reclamation work as quickly and cost effectively as possible. The completed reclamation efforts will stabilize the area and enable us to continue working with the Montana Department of Environmental Quality to return the area to a state that can support the area's abundant wildlife resources."<sup>[8]</sup>

According to the BLM, reclamation contracts will eventually total approximately \$70 million and involve moving millions of tons of material and treating hundreds of millions of gallons of water over the next twenty years. Mine reclamation operations located on these lands include: small portions of the mine pits, large valley-filled leach pads, waste rock dumps, processing plants, water treatment plants, reclamation material stockpiles, reclamation quarry sites, an access road and support facilities.

## **Questions:**

1. Why wasn't the proposed 20-year mineral withdrawal noticed in a timely manner to prevent the lapse?
2. What communication occurred between the state, regional and Washington offices with respect to the mineral withdrawal? What was the timeline by which the segregation notice arrived at the Interior Department?
3. Whose responsibility was it to ensure the timely withdrawal of these lands?
4. When were the mining claims physically staked? Is the BLM reviewing the validity of these claims?
5. What communication occurred between the BLM or Interior and Blue Arc LLC, Luke Ployhar, or any other person or principal associated with the claims? Were these communications proper and/or legal? It takes considerable time and advanced planning to stake mining claims. How did the mining company know that the Public Land Order had expired and the withdrawal extension had not yet been noticed in the Federal Register? Was Luke Ployhar or anyone else informed in advance that the withdrawal extension would be delayed?
6. Why wasn't the Fort Belknap Indian Community notified by any federal agency of the lapse of the withdrawal or the subsequent staking of claims?
7. This was a serious failure. What steps are being taken to address this lapse?
8. Why was the mineral withdrawal area reduced in size, and who made the decision?

We look forward to hearing from you.

Sincerely,



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<sup>[1]</sup> 65 FR 63619 (2000)

<sup>[2]</sup> 70 FR 49944 (2005)

<sup>[3]</sup> 75 FR 63856 (2010)

<sup>[4]</sup> <https://www.federalregister.gov/documents/2015/10/05/2015-25285/public-land-order-no-7841-extension-of-public-land-order-no-7464-montana>

<sup>[5]</sup> BLM MLRS database

<sup>[6]</sup> Personal communication from Mike Flatt at Zortman Landusky Technical working group meeting on June 10, 2021, as reported by David Chambers.

<sup>[7]</sup> <https://www.federalregister.gov/documents/2020/10/07/2020-22313/notice-of-proposed-withdrawal-and-notification-of-public-meeting-montana>

<sup>[8]</sup> Id.

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