

# EPA'S ANIMAS SPILL

---

## JOINT OVERSIGHT HEARING

BEFORE THE

COMMITTEE ON NATURAL RESOURCES  
U.S. HOUSE OF REPRESENTATIVES

AND THE

COMMITTEE ON OVERSIGHT AND  
GOVERNMENT REFORM

ONE HUNDRED FOURTEENTH CONGRESS

FIRST SESSION

---

Thursday, September 17, 2015

---

### **Serial No. 114-20**

(Committee on Natural Resources)

---

### **Serial No. 114-62**

(Committee on Oversight and Government Reform)

---

Printed for the use of the Committee on Natural Resources



Available via the World Wide Web: <http://www.fdsys.gov>

or

Committee address: <http://naturalresources.house.gov>

---

U.S. GOVERNMENT PUBLISHING OFFICE

96-242 PDF

WASHINGTON : 2016

---

For sale by the Superintendent of Documents, U.S. Government Publishing Office  
Internet: [bookstore.gpo.gov](http://bookstore.gpo.gov) Phone: toll free (866) 512-1800; DC area (202) 512-1800  
Fax: (202) 512-2104 Mail: Stop IDCC, Washington, DC 20402-0001

COMMITTEE ON NATURAL RESOURCES

ROB BISHOP, UT, *Chairman*  
RAÚL M. GRIJALVA, AZ, *Ranking Democratic Member*

Don Young, AK	Grace F. Napolitano, CA
Louie Gohmert, TX	Madeleine Z. Bordallo, GU
Doug Lamborn, CO	Jim Costa, CA
Robert J. Wittman, VA	Gregorio Kilili Camacho Sablan, CNMI
John Fleming, LA	Niki Tsongas, MA
Tom McClintock, CA	Pedro R. Pierluisi, PR
Glenn Thompson, PA	Jared Huffman, CA
Cynthia M. Lummis, WY	Raul Ruiz, CA
Dan Benishek, MI	Alan S. Lowenthal, CA
Jeff Duncan, SC	Matt Cartwright, PA
Paul A. Gosar, AZ	Donald S. Beyer, Jr., VA
Raúl R. Labrador, ID	Norma J. Torres, CA
Doug LaMalfa, CA	Debbie Dingell, MI
Jeff Denham, CA	Ruben Gallego, AZ
Paul Cook, CA	Lois Capps, CA
Bruce Westerman, AR	Jared Polis, CO
Garret Graves, LA	Wm. Lacy Clay, MO
Dan Newhouse, WA	
Ryan K. Zinke, MT	
Jody B. Hice, GA	
Aumua Amata Coleman Radewagen, AS	
Thomas MacArthur, NJ	
Alexander X. Mooney, WV	
Crescent Hardy, NV	
<i>Vacancy</i>	

Jason Knox, *Chief of Staff*  
Lisa Pittman, *Chief Counsel*  
David Watkins, *Democratic Staff Director*  
Sarah Parker, *Democratic Deputy Chief Counsel*

---

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

JASON CHAFFETZ, Utah, *Chairman*

JOHN L. MICA, Florida	ELIJAH E. CUMMINGS, Maryland, <i>Ranking</i>
MICHAEL R. TURNER, Ohio	<i>Minority Member</i>
JOHN J. DUNCAN, Jr., Tennessee	CAROLYN B. MALONEY, New York
JIM JORDAN, Ohio	ELEANOR HOLMES NORTON, District of
TIM WALBERG, Michigan	Columbia
JUSTIN AMASH, Michigan	WM. LACY CLAY, Missouri
PAUL A. GOSAR, Arizona	STEPHEN F. LYNCH, Massachusetts
SCOTT DESJARLAIS, Tennessee	JIM COOPER, Tennessee
TREY GOWDY, South Carolina	GERALD E. CONNOLLY, Virginia
BLAKE FARENTHOLD, Texas	MATT CARTWRIGHT, Pennsylvania
CYNTHIA M. LUMMIS, Wyoming	TAMMY DUCKWORTH, Illinois
THOMAS MASSIE, Kentucky	ROBIN L. KELLY, Illinois
MARK MEADOWS, North Carolina	BRENDA L. LAWRENCE, Michigan
RON DeSANTIS, Florida	TED LIEU, California
MICK MULVANEY, South Carolina	BONNIE WATSON COLEMAN, New Jersey
KEN BUCK, Colorado	STACEY E. PLASKETT, Virgin Islands
MARK WALKER, North Carolina	MARK DeSAULNIER, California
ROD BLUM, Iowa	BRENDAN F. BOYLE, Pennsylvania
JODY B. HICE, Georgia	PETER WELCH, Vermont
STEVE RUSSELL, Oklahoma	MICHELE LUJAN GRISHAM, New Mexico
EARL L. "BUDDY" CARTER, Georgia	
GLENN GROTHMAN, Wisconsin	
WILL HURD, Texas	
GARY J. PALMER, Alabama	

SEAN McLAUGHLIN, *Staff Director*  
DAVID RAPALLO, *Minority Staff Director*  
KATIE BAILEY, *Professional Staff Member*  
SARAH VANCE, *Clerk*



## CONTENTS

---

	Page
Hearing held on Thursday, September 17, 2015 .....	1
Statement of Members:	
Bishop, Hon. Rob, a Representative in Congress from the State of Utah ...	1
Prepared statement of .....	3
Cartwright, Hon. Matt, a Representative in Congress from the State of Pennsylvania .....	8
Chaffetz, Hon. Jason, a Representative in Congress from the State of Utah .....	7
Grijalva, Hon. Raúl M., a Representative in Congress from the State of Arizona .....	4
Prepared statement of .....	6
Statement of Witnesses:	
Begaye, Russell, President, Navajo Nation, Window Rock, Arizona .....	79
Prepared statement of .....	80
Questions submitted for the record .....	86
Flynn, Ryan, Secretary of Environment and Natural Resource Trustee, State of New Mexico, Sante Fe, New Mexico .....	97
Prepared statement of .....	98
Questions submitted for the record .....	101
McCarthy, Gina, Administrator, U.S. Environmental Protection Agency, Washington, DC .....	10
Prepared statement of .....	12
Questions submitted for the record .....	13
Olguin, Mike, Member, Tribal Council, Southern Ute Indian Tribe, Ignacio, Colorado .....	88
Prepared statement of .....	89
Questions submitted for the record .....	92
Wolk, Larry, Executive Director and Chief Medical Officer, Colorado Department of Public Health and Environment, Denver, Colorado .....	93
Prepared statement of .....	95
Questions submitted for the record .....	96
Additional Materials Submitted for the Record:	
Fox News report, "Before Colorado mine disaster, EPA project caused spill in Georgia," by Watchdog.org, August 20, 2015 .....	63
Gold King Mine Task Order Statement of Work, August 17, 2015, prepared for EPA Region 8 ERRS by Environmental Restoration, LLC ..	135
Hennis, Todd, President of San Juan Corporation of Colorado and Owner of the Gold King Mine, prepared statement of .....	131
List of documents submitted for the record retained in the Committee's official files .....	146
Standard Form 95, Claim for Damage, Injury, or Death from the U.S. Environmental Protection Agency for Gold King Mine Release Claims ..	31
Summary Report from the U.S. Environmental Protection Agency's Internal Review of the August 5, 2015 Gold King Mine Blowout .....	138
U.S. Environmental Protection Agency Region 8, August 17, 2015 Memorandum providing partial chronology of events from the Gold King Mine Release incident .....	112
Wall Street Journal article, "Salvaging a Lesson From the Animas River Spill," by Bill Wehrum, September 9, 2015 .....	53



## **JOINT OVERSIGHT HEARING ON EPA'S ANIMAS SPILL**

---

**Thursday, September 17, 2015  
U.S. House of Representatives  
Committee on Natural Resources  
joint with the  
Committee on Oversight and Government Reform  
Washington, DC**

---

The committees met, pursuant to notice, at 10:08 a.m., in room 2167, Rayburn House Office Building, Washington, DC, Hon. Rob Bishop [Chairman of the Committee on Natural Resources] presiding.

Present from the Committee on Natural Resources: Representatives Bishop, Gohmert, Lamborn, Fleming, McClintock, Lummis, Duncan, Gosar, Labrador, LaMalfa, Westerman, Newhouse, Hice, Hardy; Grijalva, Napolitano, Tsongas, Huffman, Lowenthal, Cartwright, Beyer, and Gallego.

Present from the Committee on Oversight and Government Reform: Representatives Chaffetz, Mica, Jordan, Walberg, Amash, Gosar, Gowdy, Lummis, Massie, Meadows, DeSantis, Mulvaney, Buck, Walker, Blum, Hice, Carter, Grothman, Hurd, Palmer; Maloney, Norton, Clay, Lynch, Connolly, Cartwright, Lieu, Watson Coleman, Plaskett, DeSaulnier, Welch, and Lujan Grisham.

Also present: Representative Tipton, Pearce; and Luján.

Chairman CHAFFETZ. The Committee on Oversight and Government Reform and the Committee on Natural Resources will come to order. Without objection, the Chair is authorized to declare a recess at any time.

I am pleased to have both committees here, and I am pleased to recognize the Chairman of the Committee on Natural Resources, my colleague from Utah, Mr. Bishop, for 5 minutes for his opening statement.

### **STATEMENT OF THE HON. ROB BISHOP, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF UTAH**

The CHAIRMAN. Hey, you started the clock, and I could not even find the button to turn this on. Thank you, Mr. Chaffetz, it is nice to be here with you.

Over a year ago, EPA began remediation on the Gold King Mine in Colorado that ultimately led to 3 million gallons of orange crap that went down the Animas and San Juan Rivers from Colorado into New Mexico, Utah, and perhaps even into Arizona.

EPA documents show the Agency was aware as early as June of 2014 that a massive blowout was possible. However, EPA decided not to test the hydrostatic pressure in the mine. Instead, they just simply dug around it with heavy machinery. If an individual or private company had done this, EPA would already have made sure there was hell to pay.

EPA's aggressive enforcement tactics have often resulted in criminal charges for mistakes or accidents. In Alaska, armed EPA agents descended on a small mining town based on speculation that individuals may have violated the Clean Water Act. In Wyoming, EPA is threatening a rancher with \$75,000 a day in fines because he built a stock pond on his own land. One dismissed EPA regional director spoke of crucifying someone to make an example for others. I even have a constituent who had jail time because he tried to work with the EPA; and EPA told him, when he asked for advice on how to solve his problem, "We don't advise, we just regulate."

Evidence from states across this Nation demonstrate that EPA is more concerned with the enforcing of a heavy-handed regulation than actually protecting our resources. Now, EPA has violated not only this issue, but also violated environmental laws, like the Clean Water Act and the Endangered Species Act.

Making sure EPA is held accountable for the spill it caused is the primary reason for today's hearing. Another is to hear from those who are affected by EPA's action. We want to find out what happened, how to solve it, and how to make sure it does not happen again. We want to find out why EPA was so slow in notifying downstream users of what was happening to them. EPA basically sat back and let others do the work of informing; and when those authorities asked EPA for information about the spill, or for access to the results of the water quality or sediment sampling plans, EPA simply delayed.

I find that the states of New Mexico, Utah, and Colorado were quick and competent in their efforts. I am very proud of what the tribes were doing in this area. They were effective with the resources that they actually had. Even EPA workers who worked on the ground, I thought did a great job; but even they were kept in the dark by EPA Washington.

EPA is not alone in this shameful behavior. The Interior Department was nearly invisible in the wake of the spill, despite the fact that every one of their agencies has some jurisdiction. The Bureau of Reclamation released over a billion gallons of water from the Navajo Dam to dilute the spill. I would like to know who did that, why, and understand the problems that resulted from that release of water.

But the agencies who were simply there, like the Fish and Wildlife, the Park Service, and BLM, they have responsibility; but they were AWOL, and they should be held accountable for some of the results, as well.

I am disappointed the Department of the Interior is not here to testify on how they will go about their separate investigation. We need to know what the scope of that investigation is, and waiting 60 days in sacrosanct area while they make their decisions is a wrong approach. We need to know ahead of time if the wrong questions are being asked in the first place. That is why I wish the Department of the Interior was actually here to testify on how they are going to go about their review of what is going on.

Finally, I have one other complaint. I understand that Administrator McCarthy agreed to come only if she appeared first and on her own panel; that is something we would not do in my



committee. You are lucky that this is a joint committee. Refusing to sit alongside representatives of the states and tribes that have traveled across this country to discuss this disaster is simply unheard of, and is wrong. It is arrogance, and it is hubris. It goes through the Agency, and it should not take place. The Administration does not deserve special treatment; they should be at the same panel with the same other people. I am sorry, I find this request shameful. The first thing you should do is apologize to the Navajo Nation and the Southern Utes in New Mexico and Colorado for refusing to sit at the same table and take the same questions with them.

Both the EPA and the Department of the Interior will be held accountable, today and in the future, as the recovery efforts continue. I look forward to this hearing to find out specifics of what happened and how we solve this in the future, so that we do not replicate this again.

Before we move forward on any other kind of reclamation in this effort, we have to make sure that we do not recreate the mistakes that we have done in the past. Accountability is going to be important. I look forward to hearing the testimony of all the witnesses that are here, and I yield back.

[The prepared statement of Chairman Bishop follows:]

PREPARED STATEMENT OF THE HON. ROB BISHOP, CHAIRMAN, COMMITTEE ON  
NATURAL RESOURCES

Over a year ago, EPA began to investigate remediation of the Gold King Mine near Silverton, Colorado. That work culminated last month in the disastrous spill of *3 million gallons* of orange mine water containing toxic heavy metals including lead, cadmium, and arsenic. The plume flowed along the Animas and San Juan Rivers from Colorado and into New Mexico, Utah, and Arizona.

EPA documents show the Agency was aware as early as *June 2014* that a massive blowout was possible. However, EPA decided not to test the hydrostatic pressure in the mine. Instead, it dug around with heavy machinery. If an individual or a private company had done this, EPA would have already made sure there was hell to pay.

Americans have repeatedly witnessed EPA's aggressive enforcement tactics, which often result in criminal charges for true mistakes or accidents. In Alaska, armed EPA agents descended on a small mining town based on *speculation* that individuals *may* have violated the Clean Water Act. In Wyoming, EPA is threatening a rancher with \$75,000 in fines a day because he built a stock pond on his own land. One dismissed EPA Regional Director even spoke of crucifying someone to make an example for others.

Evidence from every state demonstrates EPA is more concerned with enforcing a heavy handed regulatory agenda than responsibly protecting our natural resources.

Now we hear *from EPA* that the Animas River is under control, despite EPA's violating environmental laws like the Clean Water Act and Endangered Species Act.

Making sure EPA is held accountable for the spill it caused is the primary reason for today's hearing. Another is to hear from those affected by EPA's actions.

Instead of notifying downstream users and the appropriate tribal, state, and local authorities that a toxic plume was headed toward them, EPA sat back and let others do the work. And when those authorities asked EPA for information about the spill and for access to the results of water quality and sediment sampling plans, EPA obfuscated and delayed. So much for "transparency."

EPA is not alone in its shameful behavior. The Department of the Interior has been nearly invisible in the wake of the spill—despite nearly every one of its agencies having jurisdiction. The Bureau of Reclamation—the agency tasked with conducting a review of EPA's spill—released 1.3 billion gallons of water from the Navajo Dam to help dilute the spill. The USGS has conducted sampling and helped estimate the spill's volume. The Fish and Wildlife Service, the National Park Service, and the BLM are entrusted with managing wildlife resources and Federal lands. And finally, the Bureau of Indian Affairs ensures the Federal Government's trust responsibility to tribes is honored.

Let me be clear. Secretary Jewell's refusal to testify today is especially egregious and disappointing, given the magnitude of this disaster and the breadth of its effect on her agency. As Chair of the White House Council on Native American Affairs, her absence runs counter to that Council's stated trust responsibilities. As Chairman, I will expect her to appear before the committee in the near future to provide answers. An eleventh hour, unsigned statement and "no show" is simply unacceptable and cannot be tolerated.

I understand Administrator McCarthy agreed to come only if she appeared first and on her own panel—refusing to sit alongside representatives of states and tribes that traveled across the country to discuss the disaster her agency unleashed in their backyard.

Despite our Government's foundation by states on the principles of federalism, the Federal Government's trust and treaty obligations to tribes, the EPA Administrator, at least in my view, should not be given special treatment.

I expect we will hear the words "1872 Mining Law" repeatedly from both the Administration and the minority, as they attempt to ignore EPA's culpability, shift blame, and pursue action on an agenda that would decimate the mining industry.

That is not why we are here today. This hearing is to hold the EPA accountable for the disaster they caused and ensure states, tribes, and affected property owners know what to expect as recovery efforts move forward.

---

Chairman CHAFFETZ. I thank the gentleman. I now recognize Mr. Grijalva, the Ranking Member of the Committee on Natural Resources, for his opening statement.

**STATEMENT OF THE HON. RAÚL GRIJALVA, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ARIZONA**

Mr. GRIJALVA. Thank you, Mr. Chairman. Also, thank you to Chairman Bishop for holding this hearing.

I would like to believe that Republicans are holding so many hearings on this particular incident because they genuinely care about water quality, wildlife, and public health of affected communities. I would like to believe that this has opened your eyes to the problem of abandoned mines throughout the West, acid mine drainage, and the difficult task of cleaning this mess up. Unfortunately, as much as I would like to believe, we all know this is not the case.

The Majority's overwhelming interest in this issue comes from the fact that it was the Environmental Protection Agency that was holding the shovel when the spill occurred, and the Majority cannot pass up a chance to attack EPA. For them, this is a gold mine. This is being mined like a political gold mine, and the Gold Rush is on.

I am not here to defend EPA on this issue at all. They made a mistake, particularly when it came to notifying the Navajo Nation and others in New Mexico about the spill, the consequences, and the mitigation that was going to be needed. This spill imposed real costs on people downstream.

The legitimate claims from people affected by this spill deserve to be dealt with quickly, and I hope they will be made whole quickly. But it is important to put this incident in perspective, which is so sorely lacking around here.

First, the EPA and the state of Colorado were there to clean up someone else's mess. The EPA and the state of Colorado did not hollow out the inside of these mountains in the search for gold. They did not simply pick up and leave when things were not profitable any more; those were the owners and operators of the Gold King Mine. But Colorado and the EPA were there this summer, as

they have been for years, working closely with local stakeholders, trying to figure out a way to clean the mess up.

Second, this was not a pristine mountain stream. The four mines on the Cement Creek had been leaking 330 million gallons of acid mine drainage each year. The EPA spill released 3 million gallons. That effectively means that there is an equivalent-sized spill every 3 days on the river. Let me put it another way. This is the juice box that we are all used to—well, at least my grandkids use all the time—it represents the amount of wastewater that was spilled on August 5 because of EPA. This water jug represents the amount that goes into the river each year.

Third, it is important to point out that EPA was not there by itself. In addition to the longtime support of the local community, which has fought pollution from these mines for well over a century, the EPA was there in partnership with the state of Colorado, a partnership that has existed for decades.

It was the EPA and the Colorado Department of Public Health and Environment that investigated the site back in the 1990s. It was EPA and the Colorado Division of Reclamation, Mining and Safety that were working to stop the drainage from these mines; and both of these agencies concluded there would not be a blowout at the Gold King Mine.

But what we need more than perspective on this particular spill, is perspective on the entire issue. The problem here is a horribly outdated mining law that dates back to the time of the telegraph and the horse and buggy. We now have phones we carry in our pockets, but our mining law remains stuck in 1872. Because of that law, we have over a half million abandoned mines in this Nation, tens of thousands of miles of rivers contaminated with acid mine waste, and not nearly enough money to clean this all up. It is time to update this outdated relic.

Earlier this year, I introduced the Hardrock Mining Reform and Reclamation Act. It gives us a modern mining law with strong environmental and public health protection. It raises the money to help clean up abandoned hardrock mines from coast to coast. Sadly, no Republicans have agreed to co-sponsor this bill yet.

Whether it is uranium proposals to mine dangerously close to the Grand Canyon, whether it is gold in New Mexico, or copper ore in Arizona, the fact remains that, as these companies leave, they leave behind—to the miners that worked hard on those tough jobs, to the affected communities, they are left to pick up and have to deal with all the consequences of contamination that are left behind.

Hardrock mining, because of the law, pays no royalties at all. It is time that the Majority, if they really care about what is happening to these communities and the rivers in the West, I invite them to join me in trying to reform our 19th century mining laws.

With that, Mr. Chairman, thank you, and I yield back.

[The prepared statement of Mr. Grijalva follows:]

PREPARED STATEMENT OF THE HON. RAÚL M. GRIJALVA, RANKING MEMBER,  
COMMITTEE ON NATURAL RESOURCES

Thank you, Mr. Chairman, and thank you and Chairman Bishop for holding this hearing.

I would like to believe that Republicans are holding so many hearings on this particular incident because they genuinely care about water quality and wildlife.

I would like to believe that this has opened your eyes to the problem of abandoned mines throughout the West, and acid mine drainage, and the difficult task of cleaning this mess up.

Unfortunately, we all know that is not the case.

The Majority's overwhelming interest in this issue comes from the fact that it was the Environmental Protection Agency that was holding the shovel when the spill occurred, and the Majority cannot pass up a chance to attack the EPA. For them, this gold mine has really been a gold mine.

I am not here to defend the EPA on this issue. They made a mistake, particularly when it came to notifying the Navajo Nation and others in New Mexico, and this spill imposed real costs on people downstream.

The legitimate claims from people affected by this spill deserve to be dealt with quickly, and I hope they will be made whole as soon as possible.

But it is important to put this incident in perspective, which is so sorely lacking around here.

First, the EPA and the state of Colorado were there to clean up someone else's mess. They did not hollow out the inside of these mountains in search of gold. They did not simply pick up and leave when things weren't profitable enough—that was the owners and operators of the Gold King Mine.

But they were there this summer, as they have been for years, working closely with local stakeholders, trying to figure out a way to clean this mess up.

Second, this was not a pristine mountain stream. The four mines on Cement Creek had been leaking 330 million gallons of acid mine drainage each year. The EPA spill released 3 million gallons.

That effectively means that there's an equivalent sized spill every 3 days on this river.

Let me put that another way. If this juice box represents the amount of wastewater that was spilled on August 5 because of the EPA, then this water jug represents the amount that goes into the river each year.

Third, it's important to point out that EPA was not there by itself. In addition to the longtime support of the local community, which has fought water pollution from these mines for well over a century, the EPA was there in partnership with the state of Colorado, a partnership that has existed for decades.

It was EPA and the Colorado Department of Public Health and Environment that investigated the site back in the 1990s.

It was EPA and the Colorado Division of Reclamation, Mining and Safety that were working to stop the drainage from these mines, and both of those agencies concluded there wouldn't be a blowout at the Gold King Mine.

But what we need more than perspective on this particular spill is perspective on the entire issue.

The problem here is a horribly outdated mining law that dates back to the time of the telegraph and the horse and buggy.

We now have phones we carry in our pockets. But our mining law remains stuck in 1872.

Because of that law, we have a half million abandoned mines in this Nation, tens of thousands of miles of rivers contaminated with acid mine waste, and not nearly enough money to clean this all up.

It is time to update this outdated relic.

Earlier this year I introduced the Hardrock Mining Reform and Reclamation Act. It gives us a modern mining law, with strong environmental protections, and it raises the money to help clean up abandoned hardrock mines from coast to coast. Sadly, no Republicans have agreed to co-sponsor this bill yet.

If the Majority really cares about what's happening to the communities and the rivers in the West, I invite them to join me in trying to reform our 19th century mining laws.

I yield back.

---

Chairman CHAFFETZ. Thank you. I will now recognize myself for 5 minutes.

**STATEMENT OF THE HON. JASON CHAFFETZ, A  
REPRESENTATIVE IN CONGRESS FROM THE STATE OF UTAH**

Chairman CHAFFETZ. In Colorado last month, there was a massive environmental disaster. Three million gallons of polluted mine wastewater spilled into the Animas River in a matter of hours. It was the worst ecological catastrophe in the region in recent memory. The spill released a mustard-colored plume into the regional river system stretching some 80 miles long. We have a video that I would like to show of what happened.

[Video shown.]

Chairman CHAFFETZ. All right, when they fix that we will come back to it. That is not the right video.

So, what caused the accident? What caused the accident? The Environmental Protection Agency. My colleagues and I often disagree on the merits of EPA's action. However, I am certain that everyone in this room can agree that EPA should not be making the environment worse.

We are here to examine how this disaster happened. We are also here to examine how it was managed. Most importantly, we are here to make sure it never, ever happens again.

The EPA must be held fully accountable for the accident. Last year, a private company in West Virginia accidentally released roughly 7,500 gallons of chemicals into the river. Remember, this spill was 3 million gallons. The EPA immediately began a criminal investigation. The EPA built a case against the company that resulted in criminal indictments for six employees. The company was forced to declare bankruptcy.

In 1999, a private company in Alaska inadvertently spilled 1,500 gallons of oil into a nearby river. The project manager of the site was sentenced to prison—prison—for 6 months. Yet, I have heard the EPA Administrator go on television, saying, "We hold our people to an even higher standard." I am not aware of anybody who has been dismissed, held accountable, let alone given some criminal charges along the way.

In the aftermath of the Deep Horizon's oil spill in 2010, President Obama demanded that those responsible be held fully accountable. When asked if he would fire the CEO of the company responsible, President Obama said, "He wouldn't be working for me." Has anything happened to any of the EPA employees who were responsible for this? Not a thing. The EPA should not get special treatment or avoid the consequences they have instituted on others.

One of the more offensive things that I heard as I visited with the President of the Navajo Nation, who was deeply affected by this, is that days—days—after this, we had EPA employees walking the banks of the river. They were not there to do a cleanup, not there to help with the cows, the cattle, and other things, but they were out there, handing out these waiver forms, trying to get a waiver form signed to limit the liability, days after this happened. Many of these people do not even speak English, and yet you had employees of the Federal Government working for you out there trying to limit their liability. That is so fundamentally, totally wrong and offensive.

Did the EPA call the Navajo Nation to let them know what was happening right away? No. It was 48 hours until you bothered to even make contact with the Navajo Nation. Then, when you offered support, two people came down—two—to go sit in the Control Center, basically to spy and to see what was going on there. They were not down there working hard to get this thing cleaned up. We are going to hear from the President of the Navajo Nation. He is the one that told us about this and what is going on.

You can shake your head no, but that is exactly what happened. It is highly offensive—hand out waiver forms, try to limit the liability, instead of taking care of what you knew was happening more than a year in advance—more than a year in advance. That is what is so deeply concerning here.

There is one other point that I would like to make as we go along in this. In June of 2014, the EPA contracted with Environmental Restoration, a company, to work the Gold King Mine. In the contract—again, more than a year in advance—the contract says, “Conditions may exist that could result in a blowout of the blockages and cause a release of large volumes of contaminated mine waters and sediment from inside the mine, which contain concentrated heavy metals.” They knew this was a distinct possibility; they knew that this was going to happen more than a year in advance. Yet, obviously, they did not take the necessary precautions to make sure that this did not happen.

We want to have some answers to that, and a host of other questions. We do appreciate you being here today, and we look forward to a lively discussion.

I would like to recognize Mr. Cartwright, the gentleman from Pennsylvania, for his comments and opening statement.

**STATEMENT OF THE HON. MATT CARTWRIGHT, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF PENNSYLVANIA**

Mr. CARTWRIGHT. Thank you, Mr. Chairman, and thank you, Administrator McCarthy, for appearing before us. I understand this is your third time testifying this week about this specific topic, and I understand this is the fourth hearing overall on the question of the Gold King Mine release.

It is certainly appropriate for Congress to examine this spill, how it happened, whether it could have been prevented, how it was handled, and what can be done to prevent similar types of spills into the future. But before we begin, I want to make one very important point: While the Gold King Mine spill was damaging, as has been pointed out by Mr. Grijalva, this spill pales in comparison to a series of even bigger toxic spills from many other mines that have been abandoned for decades, and the cumulative effect of daily seepage from mines all across our Nation for more than 100 years.

The Animas River has been plagued by pollution caused by abandoned mines like the Gold King Mine. For example, in 1975, a dam broke on a pond holding mine waste, sending 50,000 tons of sludge into the Animas River and turning it, at that time, the color of aluminum paint. Three years later, an estimated 500 million gallons of water and sludge from the Sunnyside Mine turned the Animas River black, all the way to New Mexico.

Last week, the mayor of Durango, Colorado, Dean Brookie, testified before the Science Committee that “the August 5 release of 3 million gallons was equivalent to roughly a week’s worth of normal discharge from this mine.” He said this was a level of only 2 percent of the annual discharge from the mine. He testified, “The heavy metal contamination that emanates from hundreds of separate mine sites in the mountains upstream of Durango has been impacting our community since the late 19th century. It is a constant, if often invisible threat to our community’s public health and economic well-being, and has thus far resisted thoughtful and well-intended efforts to mitigate this risk.”

Now, in Pennsylvania, my own district faces this same threat of continual mine discharges. We used to mine coal in northeastern Pennsylvania, hard coal. In fact, there are 575 abandoned mine lands in my district, creating 382 miles of acid mine drainage-affected streams. The fact is that mining companies have not been held responsible for the toxic devastation they left behind. But EPA and states are being forced to clean up this legacy of leakage with resources that are completely inadequate.

Using data obtained from the states, the environmental advocacy group Earthworks estimated there are more than 500,000 abandoned hardrock mines throughout the country. To clean up just 147 of these mine sites, it would cost the Federal Government between \$7–\$24 billion, according to a 2004 estimate; but in Fiscal Year 2015, the budget for cleaning up hardrock mine sites totaled only about \$40 million. Congress has to provide more resources to address this problem.

Congress must address the much broader problem of cleaning up these mine sites. That is why I am pleased to be an original co-sponsor of Mr. Grijalva’s bill, the Hardrock Mining Reform and Reclamation Act of 2015, to help remedy the problem.

Finally, as I said at the outset, I think it is completely appropriate to conduct oversight of EPA’s actions in this case; so the hearing is appropriate. But EPA has taken responsibility for this accident; and independent technical experts, including experts at the Department of the Interior and EPA’s Inspector General, are currently assessing what could be done differently to avoid this type of spill in the future, and to speed the notification of all parties involved. But, let’s take this opportunity now to focus on the larger issue of the devastating legacy of pollution that mining companies have left behind all across our Nation.

Let me close by extending our welcome to the other witnesses today from the Navajo Nation, the Southern Ute Tribal Council, and from New Mexico and Colorado. I look forward to your testimony, not only about this bill, but about what steps Congress can take to address the much broader problems we are facing with water quality throughout the country.

I thank you, Mr. Chairman.

Chairman CHAFFETZ. I thank the gentleman. We are going to try to show this video again. I think it is less than a minute. It shows the start of the spill and what happened.

[Video shown.]

Chairman CHAFFETZ. Some 3 million gallons. We are going to hold the record open for 5 legislative days for any Members who would like to submit a written statement.

The Chair also would like to note the presence today of some of our colleagues: Congressman Steve Pearce of New Mexico; Congressman Scott Tipton of Colorado; as well as Ben Ray Luján, also of New Mexico. We appreciate your interest in this issue, and look forward to your insight. I would ask unanimous consent that Congressmen Pearce, Luján, and Tipton be allowed to fully participate in today's hearing.

The CHAIRMAN. Mr. Chairman, are you really sure you want Pearce and Tipton to be here? Can we discuss that at all?

[Laughter.]

Chairman CHAFFETZ. We have some great flexibility here that we are exercising—the Pope is coming next week, we are trying to be as nice as possible.

The CHAIRMAN. All right, I will not say anything then.

[Laughter.]

Mr. GRIJALVA. Absolution.

Chairman CHAFFETZ. Without objection, so ordered.

We now recognize the distinguished witness on our first panel. We are pleased to welcome Ms. Gina McCarthy, the Administrator of the U.S. Environmental Protection Agency.

Pursuant to Oversight and Government Reform Committee rules, all witnesses are to be sworn before they testify. If you would, please rise and raise your right hand.

Do you solemnly swear or affirm that the testimony you are about to give will be the truth, the whole truth, and nothing but the truth?

Ms. MCCARTHY. Yes, I do, Chairman.

Chairman CHAFFETZ. Thank you. Let the record reflect the witness answered in the affirmative.

Your entire written statement will, obviously, be made part of the record. But we would appreciate your verbal comments, and we now recognize you for those at this time.

**STATEMENT OF GINA MCCARTHY, ADMINISTRATOR, U.S.  
ENVIRONMENTAL PROTECTION AGENCY, WASHINGTON, DC**

Ms. MCCARTHY. Good morning, Chairmen Chaffetz and Bishop, Ranking—

Chairman CHAFFETZ. If you could, move that microphone—apologies. I just want to make sure the audio is sufficient. As close as you can. Thank you.

Ms. MCCARTHY. All right. Better?

Chairman CHAFFETZ. Much better, thank you.

Ms. MCCARTHY. Good morning, Chairmen Chaffetz and Bishop, Ranking Members Cummings and Grijalva, and members of the committee. I am Gina McCarthy, Administrator of the U.S. Environmental Protection Agency. I want to thank you for the opportunity to appear today to discuss the August 5 Gold King Mine release and subsequent EPA response.

This was a tragic and unfortunate incident, and the EPA has taken responsibility to ensure that it is cleaned up appropriately. The EPA's core mission is to ensure a clean environment and to



protect public health; and we are dedicated to continuing to do our job to protect the environment and to hold ourselves to the same high standard we demand of others.

The EPA was at the Gold King Mine on August 5, conducting an investigation to assess mine conditions and ongoing water discharges, dewater the mine pool, and assess the feasibility of further mine remediation. While excavating above a mine opening, the lower portion of the bedrock crumbled, and approximately 3 million gallons of pressurized water discharged from the mine into Cement Creek, which is a tributary to the Animas River.

EPA and Colorado officials informed downstream jurisdictions in Colorado within hours of the release, before the plume reached drinking water intakes and irrigation diversions. Notifications to other downstream jurisdictions continued the following day, allowing for those intakes to be closed prior to the plume's arrival.

In the aftermath of the release, we initiated an internal review of the incident and we released an Internal Review Summary Report on August 26, which includes an assessment of the events and potential factors contributing to the Gold King Mine incident. The report provides observations, conclusions, and recommendations that regions should consider applying when conducting ongoing and planned site assessments, investigations, and construction or removal projects at similar types of sites across the country. The EPA will implement all the recommendations from the report, and has shared its findings with external reviewers.

In addition to the internal review, the U.S. Department of the Interior is leading an independent assessment of the factors that led to the Gold King Mine incident. The goal of DOI's independent review is to provide the EPA with an analysis of the incident that took place at the Gold King Mine, including the contributing causes. Both internal and external reviews will help inform the EPA for ongoing and planned site assessments, investigations, and construction or removal projects.

One of our foremost priorities is to keep the public informed about the impacts from the Gold King Mine release and our response activities. The EPA has closely coordinated with our Federal partners and with officials in Colorado, New Mexico, Utah, the Southern Ute and Ute Mountain Ute tribes, and Navajo Nation to keep them apprised of water and sediment sampling results, which are routinely posted on our Web site. These results do indicate that the water and sediment have returned to pre-event conditions. They also supported local and state decisionmakers as they made decisions about lifting water restrictions along the Animas and the San Juan Rivers on August 14 and August 15.

Finally, I want to clarify that the EPA was working with the state of Colorado to take action at the Gold King Mine to address both the potential for a catastrophic release and the ongoing adverse water quality impacts caused by the significant mine discharges into the Upper Animas watershed. Based upon 2009–2014 flow data, approximately 330 million gallons of contaminated water was being discharged from mines in the watershed each year to Cement Creek and the Animas River—that is 100 times more than the estimated release from the Gold King Mine on August 5.

The EPA was and continues to work with the state of Colorado and the Animas River Stakeholder Group to address these significant discharges from mines in the Upper Animas watershed that are impacting these waterways.

I think it is important to note that, across the country, our Superfund program has successfully cleaned up more than 1,150 hazardous waste sites, and successfully responded to or provided oversight for thousands of removal actions to protect human health and the environment. That reflects our long-standing commitment to protect human health and the environment that we will continue to pursue. We will also continue to support the Administration's request for an Abandoned Mine Lands fee to help cover the costs of cleanup of these sites.

All of the affected residents of Colorado and New Mexico and members of the Southern Ute, Ute Mountain Ute, and Navajo Nation tribes can be assured that EPA has and will continue to take responsibility to help ensure that the Gold King Mine release is cleaned up.

Thank you, Mr. Chairman. That concludes my statement. I will be happy to answer any questions the committee might have.

[The prepared statement of Ms. McCarthy follows:]

PREPARED STATEMENT OF GINA MCCARTHY, ADMINISTRATOR, U.S. ENVIRONMENTAL PROTECTION AGENCY

Good morning Chairmen Chaffetz and Bishop, Ranking Members Cummings and Grijalva, and members of the committee. I am Gina McCarthy, Administrator for the U.S. Environmental Protection Agency. Thank you for the opportunity to appear today to discuss the August 5 Gold King Mine release and subsequent EPA response.

This was a tragic and unfortunate incident, and the EPA has taken responsibility to ensure that it is cleaned up appropriately. The EPA's core mission is to ensure a clean environment and protect public health, and we are dedicated to continuing to do our job to protect the environment and to hold ourselves to the same high standard we demand from others.

The EPA was at the Gold King Mine on August 5 conducting an investigation to assess mine conditions and ongoing water discharges, dewater the mine pool, and assess the feasibility of further mine remediation. While excavating above a mine opening, the lower portion of the bedrock crumbled and approximately 3 million gallons of pressurized water discharged from the mine into Cement Creek, a tributary of the Animas River. EPA and Colorado officials informed downstream jurisdictions in Colorado within hours of the release before the plume reached drinking water intakes and irrigation diversions, and notifications to other downstream jurisdictions continued the following day, allowing for those intakes to be closed prior to the plume's arrival.

In the aftermath of the release, we initiated an internal review of the incident and released an Internal Review Summary Report on August, 26, which includes an assessment of the events and potential factors contributing to the Gold King Mine incident. The report provides observations, conclusions, and recommendations that regions should consider applying when conducting ongoing and planned site assessments, investigations, and construction or removal projects at similar types of sites across the country. The EPA will implement all the recommendations from the report and has shared its findings with external reviewers.

In addition to the internal review, the U.S. Department of the Interior is leading an independent assessment of the factors that led to the Gold King Mine incident. The goal of DOI's independent review is to provide the EPA with an analysis of the incident that took place at Gold King Mine, including the contributing causes. Both internal and external reviews will help inform the EPA for ongoing and planned site assessments, investigations, and construction or removal projects.

One of our foremost priorities is to keep the public informed about the impacts from the Gold King Mine release and our response activities. The EPA has closely coordinated with our Federal partners and with officials in Colorado, New Mexico, Utah, the Southern Ute and Ute Mountain Ute tribes and the Navajo Nation to

keep them apprised of water and sediment sampling results, which are routinely posted on our website. These results indicate that water and sediment have returned to pre-event conditions and supported local and state decisionmakers as they made the decision to lift water restrictions along the Animas and San Juan Rivers on August 14 and August 15.

Finally, I want to clarify that the EPA was working with the state of Colorado to take action at the Gold King Mine to address both the potential for a catastrophic release and the ongoing adverse water quality impacts caused by the significant mine discharges into the Upper Animas Watershed.

Based upon 2009–2014 flow data, approximately 330 million gallons of contaminated water was being discharged from mines in the Watershed each year to Cement Creek and the Animas River—100 times more than the estimated release from the Gold King Mine on August 5.

The EPA was and continues to work with the state of Colorado and the Animas River Stakeholder Group to address these significant discharges from mines in the Upper Animas Watershed that are impacting these waterways.

I think it is important to note, that all across the country, our Superfund program has successfully cleaned up more than 1,150 hazardous waste sites and successfully responded to or provided oversight for thousands of removal actions to protect human health and the environment. That reflects our long-standing commitment to protect human health and the environment that we will continue to pursue and continue to support the Administration's request for an Abandoned Mine Lands fee to help cover the costs of cleanups at these sites.

All of the affected residents of Colorado and New Mexico and members of the Southern Ute, Ute Mountain Ute, and Navajo Nation Tribes can be assured that the EPA has and will continue to take responsibility to help ensure that the Gold King Mine release is cleaned up.

Thank you Mr. Chairman that concludes my statement. I will be happy to answer any questions that you or the committee members may have.

---

QUESTIONS SUBMITTED FOR THE RECORD TO ADMINISTRATOR GINA MCCARTHY,  
U.S. ENVIRONMENTAL PROTECTION AGENCY

**Questions Submitted by Rep. Jason Chaffetz, Chairman, Committee on Oversight and Government Reform**

*Question 1.* Administrator McCarthy has said that Environmental Protection Agency (EPA) acknowledges responsibility for the Gold King release. What is the extent of the “responsibility” EPA is willing to assume?

Answer. The EPA has taken responsibility to ensure that the release from Gold King Mine is cleaned up appropriately. The Agency is committed to working closely with response agencies and state, local and tribal officials to respond to concerns and to evaluate impacts to public health and the environment.

On August 26, 2015, with a December 8, 2015, addendum, the Agency issued an internal review of the events leading up to the blowout. The Summary Report and addendum are posted on the EPA Web site. One of the initial lessons learned in the aftermath of the Gold King Mine release is that the EPA can improve its communications regarding releases and other environmental events that may affect multiple jurisdictions. The EPA believes it is important to focus on the steps that need to be taken to help prevent similar incidents from occurring at other mining sites. The EPA is reviewing the Department of the Interior Technical Evaluation of the Gold King Mine Incident report and is awaiting the review from the EPA's Office of the Inspector General. These reports and assessments will help inform the EPA's ongoing efforts to work safely and effectively at mine sites as we carry out our mission to protect human health and the environment.

*Question 2.* The EPA is the Federal agency charged with setting the national standard for environmental stewardship. Shouldn't EPA be held to a higher standard than the entities it regulates?

Answer. The EPA's core mission is to ensure a clean environment and protect public health, and we are dedicated to continuing to do our job to protect the environment and to hold ourselves to the same high standard we demand from others.

*Question 3.* In a letter dated September 3, 2015, the state of Utah put EPA Region 8 Administrator, Shawn McGrath on notice of actions taken by state and local government agencies to protect the health, safety and welfare of citizens and

visitors, as well as the economic base of the affected local governments. The letter notes that not-with-standing EPA's stated intent to reimburse response costs, expenses and damages, to date the state has received no response, or confirmation of EPA's intention to reimburse the state, the process to obtain reimbursement or when payment may be received. Based on these circumstances:

- a. Does EPA in fact intend to reimburse the state for response costs, expenses and damages?
- b. What is the process for the state and local governments to submit claims to EPA?
- c. When may the state and local governments expect to receive payment?
- d. How will EPA fund the costs of reimbursement?

Answer. Enclosed is the EPA Regional Administrator's October 7, 2015, response to the state of Utah's inquiry regarding the process for seeking reimbursement for state and local governments' response costs, expenses and damages from the Gold King Mine release. This letter addresses the Joint Committee's question about the process for submitting claims under the Federal Tort Claims Act and applying for cooperative agreements pursuant to the Comprehensive Environmental Response, Compensation & Liability Act (CERCLA) and the EPA's implementing regulations at 40 C.F.R. Part 35, Subpart O. The region continues to work with the state on its request for reimbursement of response costs.

Enclosure

**U.S. ENVIRONMENTAL PROTECTION AGENCY,  
REGION 8,  
DENVER, COLORADO**

October 7, 2015

Alan Matheson  
Executive Director  
Utah Department of Environmental Quality  
P.O. Box 144810  
Salt Lake City, Utah 84114-4810

Dear Mr. Matheson:

Thank you for your letter of September 3, 2015, inquiring about the process for seeking reimbursement for state and local governments' response costs, expenses and damages from the Gold King Mine Spill.

Individuals, businesses or governmental entities that have a claim for money damages resulting from personal injury, property damage or economic loss caused by negligent or wrongful federal government actions may file a claim under the Federal Tort Claims Act (FTCA). Standard Form 95 is used to present claims against the United States under the FTCA. Standard Form 95 is not required to present a claim under the FTCA, but it is a convenient format for supplying the information necessary to bring an FTCA claim. For information about how to file a claim, including access to Standard Form 95, please visit the EPA's website at the following address: <http://www2.epa.gov/goldkingmine/claims-process-and-standard-form-95-damage-injury-or-death-result-gold-king-mine>.

As a general matter, claims must be presented to the EPA **within two years after the claim accrues**. A person may amend their claim form at any time prior to reaching a settlement with the EPA, or before the person files a lawsuit under the FTCA. Although EPA regulations state that the agency has six months to resolve a claim, we will make every effort to respond to Gold King Mine release claims as soon as possible.

The EPA also can enter into cooperative agreements with states, tribes and political subdivisions to pay for certain costs related to response actions in connection with the Gold King Mine release under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) and EPA implementing regulations at 40 C.F.R. Part 35, Subpart O. If the state of Utah wishes to apply for a cooperative agreement with the EPA, please call Cinna Vallejos at (303) 312-6376, or visit the EPA's website at the following address: [http://www.epa.gov/ogd/grants/how\\_to\\_apply.htm](http://www.epa.gov/ogd/grants/how_to_apply.htm).

The EPA continues to monitor conditions in the Animas and San Juan Rivers and is in the process of developing a monitoring strategy for the next year, with input from all the stakeholders, including the Utah Division of Water Quality.

The EPA, in consultation with the Animas River Stakeholders Group (ARSG), has installed a bulkhead in the Red and Bonita mine. This bulkhead will control any sudden releases from within the Red and Bonita mine and can be closed in when the site team is ready to evaluate the results from the bulkhead closure. The EPA is working at the Gold King Mine to stabilize the adit entry and the first 75 feet of the adit this year, weather conditions permitting. Next year we will continue with work to open up the mine and evaluate water flows.

As part of the Gold King Mine spill, the EPA has tasked our contractor to install a temporary treatment system at Gladstone to treat ongoing discharges from the Gold King Mine over the winter. While this treatment will dramatically improve the water quality of the Gold King Mine discharge, other mines in the area will continue to discharge water until more permanent solutions are developed. We are working with the state of Colorado and local leaders on such long-term remediation strategies in the Upper Cement Creek Basin.

Again, we appreciate your inquiry. If the EPA may provide anything further, please contact me, or your staff may wish to contact David Ostrander, Gold King Mine Regional Incident Coordinator, at (303) 312-6827 or ostrander.david@epa.gov.

Sincerely,

SHAUN L. MCGRATH,  
*Regional Administrator.*

*Question 4.* Does EPA assume responsibility for the damages caused by the action or inaction of its contractor—Environmental Restoration on August 5, 2015?

- a. Was Environmental Restoration following a work plan prepared by EPA at the time of the release?
- b. Was Environmental Restoration acting under the direction and control of EPA's on-scene coordinator at the time of the incident?

Answer. The EPA is committed to working closely with response agencies and state, local and tribal officials to respond to concerns and to evaluate impacts to public health and the environment. Individuals, businesses or governmental entities that believe they have suffered money damages resulting from personal injury, property damage or economic loss caused by negligent or wrongful U.S. Government actions may file a claim with the EPA under the Federal Tort Claims Act for injury or damage. To date, no determination has been made regarding claims submitted to the EPA.

The EPA had an approved work plan for site activities and there was an EPA On-Scene Coordinator at the time of the incident. The EPA is reviewing the Department of the Interior's report on the Gold King Mine incident and is awaiting a report from the EPA's Office of the Inspector General.

*Question 5.* Does EPA plan on taking any action against its contractors—Weston (Superfund Assessment and Response Team) and Environmental Restoration (Emergency and Rapid Response Services) to recover any reimbursement costs or damages it is required to pay?

Answer. At this point, the EPA has not taken any action against its contractors. The EPA believes it is important to focus on the steps that need to be taken to help prevent similar incidents from occurring at other mining sites. The EPA is currently reviewing the Department of the Interior's report of the Gold King Mine Incident and is awaiting a report from the EPA's Office of the Inspector General.

*Question 6.* Why did EPA delay in providing the state and other stakeholders notice of the release and why did it refuse to share water quality monitoring data in the days immediately following the release?

- a. Was EPA adequately prepared for an emergency given the conditions known at the time?
- b. Did the sampling and monitoring results immediately following the release disclose any ongoing threats to public health, safety or the environment?

Answer. Consistent with EPA Region 8's Regional Contingency Plan, notifications to local officials in Silverton and to the Colorado spill reporting line were done as quickly as possible through the state staff who were working in the area. The

Colorado Department of Public Health and Environment then proceeded to immediately notify downstream water users along the Animas River, on Wednesday, August 5, the day of the release. Local officials in Durango were notified the day of the incident and actions were taken to shut down water intakes and irrigation ditches. The plume reached Durango the evening of August 6. Further notifications were made to additional Colorado state officials, EPA Region 6, New Mexico Environmental Department, and additional local and tribal officials on August 5–8.

The EPA began collecting water quality data in advance of the plume reaching downstream locations, and once the data was thoroughly reviewed and validated, it was released to the public and posted on the EPA's Web site. Sampling following the release showed a spike in metal concentrations for 1 day and subsequently water quality returning to pre-incident conditions. The closure of water intakes, irrigation ditches and recreational use on the Animas River limited the potential for exposure to the metal concentration spike and addressed concern for public health or safety. Additionally, assessment of immediate impacts through studies done by Colorado Department of Public Health and Environment and Mountain Studies Institute showed no acute impacts to the aquatic biota.

The EPA was working with the state of Colorado to take action at the Gold King Mine to address both the potential for a catastrophic release and the ongoing adverse water quality impacts caused by the significant mine discharges into the Upper Animas Watershed over many years. These efforts are continuing following the August 5, 2015, release to prevent future releases.

The Site Health and Safety Plan at the Gold King Mine included emergency procedures that addressed worker safety, release response, evacuation routes and emergency notifications. A copy of the Health and Safety Plan can be found at: <http://www2.epa.gov/goldkingmine/gold-king-health-and-safety-plan>. All indications at the site were that there was limited water backed up inside the mine prior to the release and that precautions had been taken to avoid an uncontrolled release.

*Question 7.* What are EPA's plans to address the continuing and long-term impacts of the discharges from the mines in the Animas watershed?

- a. What water treatment technologies and processes have been evaluated to address the discharges?
- b. What are the estimated costs of long-term treatment of the discharges from the Gold King Mine?
- c. To what level of water quality (drinking water standards) will the discharge be treated?
- d. How long will treatment be required?
- e. How will EPA fund those ongoing perpetual, long-term costs?

*Answer.* The U.S. EPA, together with the Colorado Department of Public Health and Environment, is listening to and working with local, tribal, nongovernmental and other stakeholders regarding their concerns and evaluating options for long-term solutions to the impacts from mining in the Upper Animas Watershed.

In the interim, the EPA has constructed a temporary water treatment plant to address the ongoing discharges from the Gold King Mine over the winter season. The EPA evaluated six proposals for the interim water treatment plant, all proposing a chemical neutralization process. The capital cost of interim water treatment plant selected is \$1.78 million and annual operations costs are \$1.0 million. The water quality discharge goals for the interim water treatment plant is to reduce total metals by greater than 85 percent. Since the treated water is not being used as a source of potable water, drinking water standards were not applied to the discharge of the water treatment plant. The treatment plant will be operated over the winter during the limited time that removal work is being conducted at the Gold King Mine. EPA's Superfund Removal Program is providing the funding for the temporary water treatment.

*Question 8.* Has EPA sampled the sediments in the Animas and San Juan Rivers following the Gold King Mine Release?

- a. Has EPA made a comparison between the contaminant (heavy metals and hazardous substances) concentrations in the sediments pre-release and post-release?
- b. What conditions does the comparison disclose?

*Answer.* The EPA has been conducting environmental studies of metal concentrations and other water quality parameters in the Upper Animas Watershed since 2009. As part of those studies, the EPA collected sediment and surface water sam-

ples. In addition, after the Gold King Mine release, the EPA conducted sampling of sediment and surface water at the same sampling locations in Colorado to specifically evaluate impacts from the Gold King Mine release. In New Mexico, surface water and sediment sampling began on August 6, 2015, and August 10, 2015, respectively. In Utah, surface water and sediment sampling began on August 9, 2015, and August 14, 2015, respectively.

Because the EPA had data to characterize pre-release conditions in Colorado, we were able to compare metal concentrations in sediment pre-release and post-release. Concentrations of metals in river sediments typically vary from sample to sample, and this was observed in the San Juan River but no net increase in metals concentrations have been observed since the Gold King Mine release. The EPA's test results subsequent to the Gold King Mine release show that metal concentration levels throughout the area as well as in New Mexico and Utah are below sediment/soil recreational screening levels.

By August 12, 2015, EPA's test results were showing metal concentration levels throughout this area below surface water and sediment/soil recreational screening levels and returning to pre-event conditions. By September 2, 2015, sampling results were showing that levels were back to and maintaining pre-event levels.<sup>1</sup> Based on previous monitoring, it has been shown that metal concentrations may fluctuate from time to time because of water surges due to heavy rains or other events that may change the water flow rates or volume.

*Question 9.* Has EPA evaluated the impacts of the release in the sediments, macroinvertebrates, vegetation and aquatic life in the Animas and San Juan water systems?

- a. What did the evaluation disclose?
- b. Are there protected species of fish or other aquatic life in the Animas and San Juan Rivers?
- c. What are the anticipated long-term impacts on sediments, macroinvertebrates, vegetation and aquatic life based on the available sampling information?

*Answer.* The EPA has evaluated macroinvertebrate impacts in the Animas and San Juan Rivers. In collaboration with the Mountain Studies Institute, benthic invertebrates have been evaluated in Colorado both pre-release and post-release. The state of Colorado has evaluated impacts to fish, and no fish kills have been reported in the rivers downstream from the release.

The EPA has compared metals concentrations measured in the sediment sampling program in the Animas and San Juan Rivers with sediment screening concentrations used by the EPA to evaluate the potential for ecological impacts, and sediment concentrations in the rivers are consistently below those screening concentrations. These studies have indicated no additional impairment to benthic macroinvertebrates, microinvertebrates nor fish.

The EPA understands there are no protected species of fish or other aquatic life in the Upper Animas River. The U.S. Fish and Wildlife Service lists the following fish species as present or potentially present in the San Juan River: Razorback sucker (endangered) and Colorado pikeminnow (endangered), Greenback cutthroat trout (threatened), and the Zuni bluehead sucker (endangered).

The EPA has not found any immediate impacts to biota and data does not suggest that there will be any long-term impacts to the Animas or San Juan River sediments, benthic macroinvertebrates, vegetation or aquatic life due to the Gold King Mine release. The EPA will evaluate additional data produced under a long-term Conceptual Monitoring Plan currently in review.

*Question 10.* Has EPA identified technologies and processes to treat sediments in the Animas and San Juan Rivers to eliminate any heavy metals and hazardous substance contamination?

- a. To what quality levels will the sediments be treated?
- b. How long will treatment be required?
- c. How will EPA fund those ongoing perpetual, long-term costs?

*Answer.* Other than removal or capping, there are no known treatment technologies for treating sediment. However, because there have not been any risks identified to the Animas and San Juan Rivers due to the Gold King Mine release, no treatment technologies appear to be warranted at this time. The EPA will evaluate additional data produced under a long-term Conceptual Monitoring Plan.

<sup>1</sup> <http://www2.epa.gov/goldkingmine/data-gold-king-mine-response#datasets>.

### Questions Submitted by Rep. Grace Napolitano

*Question 1.* Estimates of the number of abandoned mines in the United States vary greatly—anywhere from 100,000 to 500,000. With the information that EPA currently has, can you provide me with the number and location of known abandoned mines in the United States (please break them down by: state, Federal land vs. private land, NPL list, Federal agency with jurisdiction). How many of these abandoned mines are foreign owned? Additionally, can you please quantify the amount of ongoing toxic releases that escape from these mines on a daily basis?

Answer. Abandoned mine lands exist across private, Federal, state, and/or tribal lands. A number of Federal statutes address environmental contamination issues associated with abandoned mine lands, and Federal statutory authority is spread among several agencies with no one agency having overall statutory responsibility. Five Federal agencies including the Department of the Interior's Bureau of Land Management, Office of Surface Mining Reclamation and Enforcement, and National Park Service; the Department of Agriculture's Forest Service; and the Environmental Protection Agency may be authorized to fund the cleanup of some of these hardrock mine sites based upon jurisdiction, need, and state concurrence. Therefore, the EPA does not maintain a comprehensive list of the number, location or ownership status of abandoned mines in the United States.

The EPA does not maintain information on the amount of ongoing toxic releases from mines. However, according to the U.S. General Accounting Office (Information on the Number of Hardrock Mines, Cost of Cleanup, and Value of Financial Assurances, GAO-11-834T, July 14, 2011), there are at least 161,000 abandoned hardrock mine sites in the 12 western states and Alaska, and at least 33,000 of these sites have degraded the environment by contaminating surface water and groundwater or leaving arsenic-contaminated tailings piles. There are 129 mining and mineral processing sites on the NPL and another 8 sites being addressed through Superfund Alternative Approach agreements. Although not a comprehensive list, additional information regarding other state inventories can be found at: <http://www.abandonedmines.gov/mapdata.html>.

*Question 2.* My understanding is that the Environmental Protection Agency has limited statutory responsibility over abandoned mines, unless these mines pose an imminent and substantial endangerment to public health, or where assistance from EPA is requested by another Federal agency, a state, or other stakeholder. More specifically, as you noted in your testimony, EPA may participate in abandoned mine activities related to its authorities under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA).

- Please provide me with a detailed summary of the abandoned mine sites where EPA has used its CERCLA authority over the past 5 years, including information on the amount of Federal appropriations expended for such sites, whether the activities undertaken using these funds were related to removal or remedial activities (or some other CERCLA related authority), and a brief description of the activities undertaken.
- In addition, I understand that EPA may also utilize the authorities under the Federal Water Pollution Control Act (Clean Water Act) related to abandoned mines, including both its authorities under sections 402 and 319. Please provide me with a detailed summary of the abandoned mine sites where EPA has used its Clean Water Act authority over the past 5 years, including a brief description of the activities undertaken.

Answer. In general, EPA's Superfund program addresses hardrock mining and mineral processing site cleanups by listing a site on the Superfund National Priorities List (NPL) or by performing removal actions when states have requested the EPA's assistance to address imminent risks to human health or the environment. The Superfund program has also worked with other Federal agencies to address contamination at hardrock mining sites. To date, the EPA's Superfund program has been involved in only a small fraction of the abandoned hardrock mine sites located throughout the country.

There are currently 129 abandoned hardrock mining and mineral processing sites on the NPL and another 8 sites with Superfund Alternative Approach (SAA) agreements. Information available online for each site includes the state and the EPA region where the site is located, provides a current status update of the site, and links to additional information about the site.<sup>2</sup>

<sup>2</sup> <http://www.epa.gov/superfund/abandoned-mine-lands-site-information-1>.



If warranted, removal actions, which are short-term responses used to handle threats of releases which pose an imminent risk to public health or the environment, may be taken at any stage of the Superfund process to ensure public safety. The EPA took early removal actions to address imminent threats at approximately 35 percent of hardrock mining or mineral processing NPL sites prior to their being added to the NPL.

The EPA has spent close to \$1.1 billion in Superfund removal and remedial response costs at the 137 proposed, final, and deleted non-Federal NPL and SAA mining sites during FY 2010–2014. Of the \$1.1 billion, the EPA has spent nearly \$585 million in congressionally appropriated funds and more than \$470 million in funds obtained from potentially responsible parties through settlements (Special Accounts). These expenditures do not include any funds potentially responsible parties and Federal agencies have spent on their own to conduct response work. The most frequently selected remedies at mining sites to address acid mine drainage include: institutional controls, on-site and off-site disposal and engineering containment, and water treatment (lime/precipitation).

The EPA is not aware of any Clean Water Act Section 402 (NPDES) permit issued for abandoned mines in the last 5 years. In utilizing Clean Water Act Section 319 funding, states identify priority waters and nonpoint-source pollution problems, and identify and fund activities to address these problems. From 2009–2014, of the Section 319 projects funded by the EPA, just over \$61.7 million were invested to fund 105 projects that targeted pollution related to abandoned mine drainage, mine tailings, open pit mining, and surface/subsurface mining across 10 states (AK, AZ, CA, CO, MD, MI, MT, OH, PA, WV). Of these funds, approximately 60 percent have gone to watershed-based projects, implementing best management practices within the target watersheds; the remaining 40 percent provided funding for activities such as watershed planning, water quality monitoring, planning and staff support.

*Question 3.* My understanding is that a potential remedial action related to abandoned mines is to permanently seal any potential openings to the mine shaft, to allow the mine to fill with water (and remove all of the air that is causing the chemical reactions that lead to acid mine drainage), and to control and treat any potential seepage from the mine. Some have suggested that this potential remedy only increases the likelihood of a future release, should the water in the sealed mine cross over into another mine or escape through a previously unknown weak point in the structure. How does EPA ensure that proposed remedial actions related to abandoned mines improve the overall protection of human health and the environment, and not increase the likelihood of future uncontrolled releases, such as those that occurred at the Gold King Mine?

*Answer.* Mine tunnels or adits have been sealed or plugged using bulkheads by mining companies as well as state, Federal, and other regulators at hardrock and coal mine sites across the United States and the world. The objective of installing engineered bulkheads in mine adits is to stop or reduce the flow of acid mine drainage from the mine and thereby reduce the costs of water treatment that is often necessary prior to discharging the mine-contaminated water to the environment. A well-engineered bulkhead is typically designed to handle any mine water pressure that would likely build up in the mine behind the plug. Proper characterization of the mine workings hydrology, hydrogeology, and structural stability is needed prior to designing and constructing these plugs.

It is important to note that the Gold King Mine level 7 was primarily plugged by a cave-in within the mine tunnel and a temporary soil fill was used to secure the adit over the winter. There was not a concrete, engineered bulkhead installed at the Gold King Mine Level 7 adit. In order to be effective and avoid unintended consequences, bulkheads have to be designed and constructed to withstand hydraulic head or pressure buildup which may impact other parts of the mine workings. If not properly characterized or designed, permanent bulkheads may potentially lead to pressure buildup and a water release from other parts of the mine. Flow through bulkheads, which have piping and valves constructed within them, can be designed to monitor water buildup and pressure and/or relieve the water and pressure buildup and reduce the potential of water being released from other parts of the mine.

*Question 4.* The water and sediments stirred up by the Gold King Mine spill carried downstream through the Animas River, surged into the San Juan River and eventually made it to Lake Powell. The chemical constituency of the release is now distributed throughout the Animas, San Juan and the San Juan Arm of Lake Powell. These sediments and consolidated chemicals will be resuspended into the water column during future high flow runoff or storm events. While the initial impact may have dissipated, we know that the long-term effects will continue. What

support does EPA intend to provide to the states of Colorado, New Mexico and Arizona to continue to monitor and evaluate this resuspension of chemicals into the water columns.

Answer. The EPA will implement a Conceptual Monitoring Plan that will sample and assess conditions across the entire watershed, including Cement Creek near the Gold King Mine over at least the next year, to help determine whether there are any longer term impacts associated with the Gold King Mine release. The Conceptual Monitoring Plan was distributed for review and comment by state, tribal, and local interests, and the EPA currently is evaluating comments received. The EPA expects to provide technical and financial resources in implementing the Conceptual Monitoring Plan to the affected states and tribes using CERCLA response and Clean Water Act authorities.

The EPA, together with the Colorado Department of Public Health and Environment, is listening to and working with local, tribal, nongovernmental and other stakeholders regarding their concerns and evaluating options for long-term solutions to the impacts from mining in the Upper Animas Watershed.

*Question 5.* The tribes have a special relationship with the Animas and San Juan Rivers. They withdraw water that does not have to go through traditional water treatment before it is used to irrigate crops, water stock or be used directly by the tribal people. What specific actions will the EPA take to ensure that the tribes are funded, supported, and worked with as required—in a nation-to-nation relationship to track the impacts of this spill over the years it will take to move the sediment downstream?

Answer. The EPA recognizes that tribes have important and traditional uses of their waters. The EPA proposed a Conceptual Monitoring Plan to assess the impacts of the release and to assess the condition of the watershed and these rivers. That plan was provided to the tribes for their review and comment. We have recently received and are reviewing their input. The EPA is exploring options on how to support the tribes in the assessment of these rivers. The EPA will continue to work with the tribes through our nation-to-nation relationship, and in accordance with the EPA's tribal policies. We will continue to apply that approach to our work with the tribes through the Conceptual Monitoring Plan and beyond.

*Question 6.* Have samples been pulled and analyzed at the source of the spill for baseline conditions. Are they continuing to be sampled? Does the EPA have long-term concerns with the effects on health, livestock and the watershed from exposure to the metals in the river water? Do the Centers for Disease Control and Prevention or National Institutes of Health play a role in analyzing the short- and long-term effects?

Answer. Yes. The EPA has conducted sampling near the Gold King Mine entrance periodically since 2009. Since the August 5 release, the EPA has collected samples from the mine discharge and sediments in the mine. We have also analyzed samples in Cement Creek both upstream and downstream from the treatment ponds.

The EPA will implement a Conceptual Monitoring Plan that will sample and assess conditions across the entire watershed, including Cement Creek near the Gold King Mine over the next year, to help determine whether there are any longer term impacts associated with the Gold King Mine release.

Sampling of surface water and sediment to date have indicated no additional impairment to the Animas River and San Juan River associated with the Gold King Mine release. Water and sediment concentrations in the Animas and San Juan Rivers vary day-to-day, and, even prior to the spill, water and sediment concentrations occasionally exceeded screening levels for health, livestock, agriculture, river biota, etc. Those screening levels are for long-term conditions and the occasional exceedances observed are not high enough or sustained enough to threaten public health or other resources. It is important to note that this region of the Upper Animas River has been impaired by metals concentrations due to extensive historical mining activities for more than 100 years.

The EPA works closely with the Agency for Toxic Substance and Disease Registry (ATSDR), which is part of the Centers for Disease Control and Prevention, in the evaluation of public health impacts due to environmental contamination. ATSDR participated in the Area Command for the Gold King Mine and provided advice and information to local officials.

### Questions Submitted by Rep. Dan Newhouse

*Question 1.* Who was EPA's "On-Scene Coordinator" at the Gold King Mine on August 5 when the spill was triggered and what was the role of that official on site?

Answer. The EPA On-Scene Coordinator (OSC), as stated in the National Oil and Hazardous Substances Pollution Contingency Plan (the NCP), directs response efforts and coordinates all other efforts at the scene of a release. The section of the NCP on response operations (40 CFR 300.135) details the duties of the OSC. Because of threats or harassment related to the Gold King Mine release on August 5, the EPA has not released the names of employees on-site at the time of the release.

*Question 2.* Why didn't the EPA test the hydrostatic pressure within the mine before working, even though it was well-known that contaminated mine water was gathering in the mine's tunnels?

Answer. EPA's Gold King Mine Internal Review Team found that site conditions made it difficult to use a drill rig to bore into the GKM from above and determine the level of the mine pool and pressure within the mine. The Review Team identified technical challenges, safety, timing, and cost as factors in considering this technique—and also identified the steepness and instability of slopes at the site as a key safety consideration.

*Question 3.* Ensuring water quality while handling waste in closed mines clearly requires expertise in mine management. Why does your agency continue to insert itself into mine remediation without employing a single mine engineer across the entire agency?

Answer. Throughout the EPA's three decades of cleaning up waste sites through the Superfund response program, the EPA has used an interdisciplinary approach to clean up sites that includes employing scientists and engineers, including those with mine-related degrees and experience in project manager positions, including our On-Scene Coordinators. Many of these employees have experience in the natural resource and mining industries that they bring with them to the EPA.

Additionally, EPA contractors include staff with science and engineering backgrounds, and Region 8 consults with state partners at the Colorado Department of Public Health and the Environment and Division of Reclamation, Mining and Safety who have many years of experience in mine site remediation. In conducting mining type operations, the EPA uses private companies with mining engineers to conduct mine remediation work.

### Questions Submitted by Rep. Mark Walker

*Question 1.* Do you understand why the Animas spill has exacerbated concerns that the Environmental Protection Agency ("EPA") is not qualified to manage our Nation's waterways through the Agency's new overarching Waters of the United States ("WOTUS") regulation?

Answer. There is no relationship between the Animas River spill and the EPA/Department of the Army Clean Water Rule. The EPA has worked successfully to address environmental concerns at hundreds of abandoned mine sites across the West. We are thoroughly investigating the Animas River incident and working closely with our Federal, state, and local partners to remediate the effects of the spill.

The EPA and the Army developed the Clean Water Rule at the request of a broad range of interests, including Members of Congress, agriculture and forestry organizations, states and local governments, development groups, and many others to respond to confusion and uncertainty resulting from various decisions of the Supreme Court. The agencies will continue to work under the Clean Water Act to protect public health, clean water, and a healthy economy.

*Question 2.* Most of the waters that the EPA is seeking new jurisdiction over through this new mandate have traditionally been managed by states, correct?

Answer. The majority of states implementing Clean Water Act programs define their scope of waters jurisdiction to be no greater than that established by the EPA under the Clean Water Act. As a result, states have not traditionally protected waters under state programs more broadly than Federal law defines.

*Question 3.* There is a video on the EPA Web site that was released when you all announced the final WOTUS rule that says "until now 60 percent over our

streams and millions of acres of wetlands all across the country were not protected.” Is that statement inaccurate?

Answer. The EPA has consistently stated that CWA protections **are unclear** for 60 percent of the Nation’s streams and millions of acres of wetlands as a result of Supreme Court decisions in *SWANCC* and *Rapanos*. These decisions resulted in confusion about the scope of waters covered by the statute. The goal of the Clean Water Rule is to reduce this confusion and clearly define, in simple and direct terms, which waters are and which are not covered by the Act. This clarity will protect human health and the environment, while reducing the costs and delays associated with resource-intensive case-specific jurisdictional determinations.

*Question 4.* What day did you first read the memos written by Major General Peabody to Assistant Secretary Darcy that were written on April 27 and May 15 and expressed serious legal and scientific deficiencies with the final WOTUS rule?

Answer. The Peabody memos and their attachments are deliberative documents internal to the Department of the Army and the Army Corps of Engineers and were only shared with the EPA at the time they were transmitted to Congress after the final Clean Water Rule was published in the *Federal Register*.

*Question 5.* Members of the U.S. House Committee on Oversight and Government Reform (“OGR”) sent these memos to you personally immediately following the July 29 hearing, at which you testified, along with numerous questions in a letter that your agency still has not responded to date. Assistant Secretary Darcy testified on June 10 about those memos and that she had seen them. Do you expect members of these committees to believe that you still have not read these memos 49 days after the agency head, with whom you claimed to be closely working, testified about knowing the intimate details of those memos?

Answer. The Peabody memos are deliberative documents internal to the Department of the Army and the Army Corps of Engineers and were not shared with the EPA during the development of the Rule, only after the Rule was final. However, the issues raised in the memos were not new and had been thoroughly discussed between the EPA and the Department of the Army during the Rule’s development. The Corps provided helpful input, and the agencies carefully considered suggestions made by Corps staff.

It is important to emphasize that the concerns raised in the Peabody memos focus on Corps recommendations to broaden the scope of the Clean Water Rule beyond that submitted for final OMB review. Ultimately, the agencies set clear distance-based limitations that reduce the extent of jurisdiction in order to provide the clarity and predictability that will assist all interested parties.

*Question 6.* At the July 29 OGR hearing, when you were asked if you were aware of the legal and scientific deficiencies raised by the U.S. Army Corps of Engineers in those memos, you replied, “Just from what I’ve read, I have not seen the memo myself.” Later in that exchange, you stated, “In moving forward with the final, I individually had conversations with [Assistant Secretary of the Army Darcy] about the changes that the Army Corps was interested in making, and as the proposal moved through the interagency process I understood that everything had been fully satisfied.” Were you briefed or did you ask anyone to send you the memos after reading the news stories about them? If not, why didn’t you want to read the memos prior to the July 29 hearing? Were you advised not to so that you did not have to testify about the allegations in the memos of serious flaws and scientific deficiencies with your new regulation?

Answer. The Peabody memos are deliberative documents internal to the Department of the Army and the Army Corps of Engineers prepared after the Clean Water Rule was submitted for final OMB review. They are not part of the agencies’ administrative record for the Clean Water Rule. The EPA worked closely with the Corps and the Army throughout the rulemaking process to respond to issues raised at every level of the Corps and the EPA. The process involved years of coordination and discussions to assess, evaluate, and reach conclusions regarding every aspect of the rulemaking. The final rule represents our best mutual efforts to clarify the scope of Clean Water Act jurisdiction consistent with science and the law.

Chairman CHAFFETZ. Thank you. I now recognize the gentleman from Utah, the Chairman of the Natural Resources Committee, Mr. Bishop, for his questions.

The CHAIRMAN. Thank you, Ms. McCarthy, for being here. As usual, I am still disappointed that you are alone on that panel, but thank you for being here.

Ms. McCarthy, are you aware that Federal agencies are required under the Endangered Species Act to review any discretionary action they plan to undertake, to see if it may affect endangered species or the critical habitat? And that, if the Agency determines that endangered species or the critical habitat may be affected, they must consult with the Fish and Wildlife Service?

Ms. MCCARTHY. I am aware.

The CHAIRMAN. Did EPA consult with Fish and Wildlife on its activity on the Gold King Mine prior to the August 5 disaster?

Ms. MCCARTHY. EPA had no reason to consult with them, because we did not plan to take action that would have discharged that amount of material into the creek.

The CHAIRMAN. So, you assert that you did not anticipate the release; at least that is the email. You two agencies were not talking before, so I am glad we finally forced you to actually have some communication last night before you sent this through. But your assertion is you did not anticipate the release that would affect downstream endangered species, so, therefore, you did not consult with Fish and Wildlife.

Ms. MCCARTHY. We were actually there, Mr. Chairman, because of the threat of that release, in attempting to mitigate that—

The CHAIRMAN. You did not contact them because you assert you did not anticipate that. Now, is that what you and your staff are saying—

Ms. MCCARTHY. We were there to prevent that type of release. That is exactly right.

The CHAIRMAN. I am sorry, I did not quite hear what you said.

Ms. MCCARTHY. We were there to actually prevent a release, because that is the reason why we were working with the state of Colorado and others at the site—

The CHAIRMAN. That is—

Ms. MCCARTHY [continuing]. Was to try to depressurize—

The CHAIRMAN. I understand.

Ms. MCCARTHY [continuing]. If that was—

The CHAIRMAN. That is cool. I appreciate that, but the fact is you did not talk to Fish and Wildlife, even though that is the law, that—

Ms. MCCARTHY. Only if we are taking action—

The CHAIRMAN [continuing]. You are supposed to—

Ms. MCCARTHY [continuing]. As you indicated, sir, that—

The CHAIRMAN. No, I am sorry. Ms. McCarthy, listen to this. The final Health and Safety Plan, Emergency and Rapid Responses Services for the Gold King Site, prepared by Environmental Restoration—that is your contractor—for EPA Region 8, dated September 4, 2014, contains a section entitled, “Spills, Leaks, or Releases.” It states, “Locate the source and stop the flow, if it can be done safely.” The Task Order Statement of Work for EPA Region 8 prepared by Environmental Restoration—this is dated July 25, 2014—states that “conditions may exist that could result in a blowout of the blockages, and cause a release of a large volume

of contaminated mine water and sediment from inside the mine which contains concentrated heavy metals.”

Clearly, these documents demonstrate that, in fact, you did not only anticipate the possibility of a release, but also of a major blow-out; yet, EPA conducted no consultations with Fish and Wildlife, as is required under the Endangered Species Act.

Now, are you aware that these activities are both criminal and civil penalties for knowingly violating the Endangered Species Act?

Ms. MCCARTHY. Sir, I am really not trying to argue with you; I am trying to explain that the statement you are reading indicates that we were worried about those conditions existing. We clearly stated that to the contractor, so that there would be no actions taken that would have caused that release. Instead, we were there to prevent that release.

The CHAIRMAN. That is wonderful. But, ma'am—

Ms. MCCARTHY. That is—

The CHAIRMAN [continuing]. The fact is, you were anticipating this type of thing happening. The law, that you insist everyone else obey, says you have to contact Fish and Wildlife and consult with them. The fact is you did not do it, and you had over a year to accomplish that fact.

Ms. MCCARTHY. Sir, if I was there to take action to release this material, we would not be standing here today. We were taking action in an attempt to prevent that release, knowing that it was a considerable risk to leave it as it was.

The CHAIRMAN. That is sweet. I appreciate that, and I know you feel terrible about it. But, the bottom line is, your documents say you anticipated a potential major blowout; and the law says if you anticipate a major blowout, you have to contact Fish and Wildlife. And, until last night, you did not contact Fish and Wildlife. Your agency did not do it. That is what the law requires; and there are criminal and civil penalties for violating that law, which you violated.

Now, I do not really care what your goal was. It may be noble. It does not make a difference. You violated the law. A standard you make everyone else live by, you violated, and you are doing it with impunity.

Are you aware that in the San Juan River starting in Farmington, New Mexico, there is a designated critical habitat for endangered fish that would be a violation of the ESA for an agency to cause adverse modifications of the habitat by spilling millions of gallons of this water and these heavy metals? Do you realize that area does exist?

Ms. MCCARTHY. I was not aware until you just said it, sir, no.

The CHAIRMAN. So, have you or your agency discussed EPA's failure to consult with the Fish and Wildlife Service prior to this hearing, or any request prior to this hearing?

Ms. MCCARTHY. We do not believe that we actually constituted a failure to notify concerning endangered species, because the actions we were taking were intended to stop a blowout. Clearly, there was a problem at the site. That is what we are looking at now to identify—

The CHAIRMAN. All right, I appreciate your making your own interpretation of the law; but that is not what the law requires, and that is not what the law says.

Ms. MCCARTHY. OK, sir.

The CHAIRMAN. You violated the law, period.

Now, the communications you said you made—oh, I am sorry, I am over. I apologize for that. I will get another shot at this. I yield back.

Chairman CHAFFETZ. I thank the gentleman. I recognize the gentleman from Arizona, Mr. Grijalva, for 5 minutes.

Mr. GRIJALVA. Thank you very much, Mr. Chairman.

Ms. Administrator, getting back to the subject of the hearing, which is the Gold King Mine, the role EPA had, and the role EPA has at this point. The question is, if EPA and the state had not been at the Gold King Mine at all, what would have eventually happened to the water that was released on August 5?

Ms. MCCARTHY. Well, I think as you know, sir, our reason for being there was the degraded water quality, a result of 300-plus million gallons that were going into the creek and the Animas River over time. It was anticipated that there was a serious potential for a blowout. We were there, working with Colorado and the Animas River Stakeholder Group, to address the work plan and opportunity to try to mitigate that, and basically to resolve an issue that was of significant concern to those communities.

Mr. GRIJALVA. The affected Native nations' issue, that they have legitimately raised, is the issue of notification—rapid and on-time notification as to what was occurring and the effect that it could have on tribal lands and their people, and your response to the lack of rapid and necessary notification to that by the Agency.

Ms. MCCARTHY. The Agency did institute its notification procedure the same day, that was able to effectively get to the state of Colorado that day and ensure that, before the plume arrived at any intake for drinking water or for irrigation, that there was an ability to mitigate that, and make sure that the spill was contained. So that was good.

The following day, we completed the notifications to the downstream folks. So, we are talking about a spill on August 5, and we completed the notifications on August 6.

Now, is that rapid? I would argue that we should have done better. I would argue that it would have been much better and more appropriate to reach everybody the same day. Are we trying to do better? Yes. We have issued a notification to all of our regions to go back and take a look at what our notification process is, how to improve it, how to test it frequently to make sure that it is done.

I think we could have done a lot better at this. But, the good news is that we were able to beat the plumes all the way down, so that we were able to protect those drinking water supplies and those irrigation channels as best we could.

Mr. GRIJALVA. Madam Administrator, the Hardrock Mining Reform and Reclamation Act has within it a provision that would create a fund for cleaning up of the hundreds of thousands of abandoned hardrock mine sites in the country. This provision has been endorsed by the Administration by being included in the President's budget. The funds necessary, how does it help with

addressing the problem not only that we are dealing with here today, but the potential that exists, particularly in the West and across this country?

Ms. MCCARTHY. I think it would help significantly. Certainly, we are very supportive of the President's initiative in the Fiscal Year 2016 budget, and we think that it is incredibly important to have resources associated with this. We are talking about legacy mines, where we will have almost no ability to go after—

Mr. GRIJALVA. Anybody.

Ms. MCCARTHY [continuing]. The principals involved in this. We know that, just in Colorado alone, we have 23,000 of those. In the Animas, the Upper Animas, it is 400 mines. That is why we were there, because there was no ability over the past 20, 30, 40 years to really effectively address this, even though the state worked hard at it, and EPA tried to help, as well.

This is a significant problem in the West and Alaska, where we estimate there are at least 161,000 of these mines left, where they continue, in many cases, to degrade water quality.

Mr. GRIJALVA. Administrator, there is certainly an implication by the Majority—well, it is not really an implication, it is a direct statement—that if a private company had done this, EPA's response to this incident would have been much stronger and much more severe. Did EPA treat itself any differently here than it would have treated a private company in the same position? That is the question.

Ms. MCCARTHY. No, sir. We would have required any company that was doing a response action, where they were out doing an emergency response action, to keep their folks safe if a spill occurred, and then to clean it downstream, to take responsibility, and to make sure that, over time, long-term consequences are addressed and mitigated. That is exactly what EPA is doing here. We have taken full responsibility for our actions.

Mr. GRIJALVA. Thank you. I yield back.

Chairman CHAFFETZ. I recognize myself for 5 minutes.

If you had to give yourself a letter grade on your response, what would you give yourself so far?

Ms. MCCARTHY. Sir, I am not giving myself a letter grade, I am doing the best I can to look at this incident and what caused—

Chairman CHAFFETZ. You said in your opening statement, "The EPA has closely coordinated with our Federal partners and with officials in Colorado, New Mexico, Utah, Southern Ute and Ute Mountain tribes, and the Navajo Nation, to keep them apprised of water and sediment sampling results, which are routinely posted on our Web site." I have to tell you I am highly offended by those comments.

Sitting behind you on the front row is the President of the Navajo Nation. I want to read some things from his testimony. These are his words, not my words, "To begin with, the U.S. Environmental Protection Agency inexplicably delayed notification of the spill to the Navajo Nation. The spill occurred on the morning of August 5, but the Nation was not informed of the release until August 6, a full day later, and not even by the Environmental Protection Agency, but by the state of New Mexico. It took the EPA almost 2 full days to notify us. We view this as a violation of the



government-to-government relationship between the Federal Government and the Navajo Nation.” How do you answer that?

Ms. MCCARTHY. Well, sir, I am working closely with the President. I have great respect for him, and—

Chairman CHAFFETZ. No, you are not. No, you are not. You took 2 days before you called them.

Ms. MCCARTHY. Let me just answer. The call from New Mexico was the way in which we actually do these notifications. We work with states. That is not inappropriate.

Chairman CHAFFETZ. To put in your statement that you are working closely with the Navajo Nation is totally misleading.

Ms. MCCARTHY. Sir—

Chairman CHAFFETZ. Let me—I have to keep going.

The Environmental Protection Agency also demonstrated complete lack of transparency. He goes on to say, “The media was receiving faster and fuller information from the EPA than the Navajo Nation. For example, the *New York Times* reported the spill hours before EPA provided the Nation with notice of the spill. And media sources reported that EPA confirmed the presence of arsenic on August 7, whereas the Environmental Protection Agency still had not reported the presence of arsenic to the Nation, even by Sunday, August 9.” What is your excuse for that?

Ms. MCCARTHY. Sir, I indicated that our notifications could have been better. But the Navajo were given—

Chairman CHAFFETZ. No, you did not.

Ms. MCCARTHY [continuing]. Notice the day after—

Chairman CHAFFETZ. In your testimony you said you are working closely with them.

Ms. MCCARTHY. We are working—

Chairman CHAFFETZ. You did not say you screwed up on the communication.

Ms. MCCARTHY. I did not—

Chairman CHAFFETZ. Why would it take 2 days?

Ms. MCCARTHY. I did not say that either, sir. I said that we did take a day. I regret that. I wish it had been earlier. But the plume actually did not—

Chairman CHAFFETZ. You took 2 days.

Ms. MCCARTHY [continuing]. Reach the Navajo until August 8. So, we had time to work with them, and we have been working hard to coordinate with them ever since.

Chairman CHAFFETZ. Your first call was to the media, not to the Navajo Nation; and I have a problem with that.

Ms. MCCARTHY. I did not make any calls, sir, to the—

Chairman CHAFFETZ. That is the problem. That is the problem. You did not make a call. You have the President of the Navajo Nation and you, personally, do not get involved in this.

Ms. MCCARTHY. I did, sir.

Chairman CHAFFETZ. It is one of the worst spills we have ever had.

Ms. MCCARTHY. I did, sir, get involved. Could it have been earlier?

Chairman CHAFFETZ. When did you call the President of the Navajo Nation?

Ms. MCCARTHY. I believe that I went to the site. August 11 and August 12 is when I was there.

Chairman CHAFFETZ. Well, let's go to the site visit, because the President of the Navajo Nation wanted to visit the site and you denied him. You would not take him to that site. We quote—this is from the Navajo President—“We requested a tour from the Environmental Protection Agency, but faced immediate resistance. Staff indicated they would only take us to the confluence of the Cement Creek and the Animas River.” He goes on and on.

You did not allow them—the EPA would not allow them to go to the site. Why not?

Ms. MCCARTHY. As far as my understanding—and I was not at the site of the mine—is that it was a dangerous location, and we brought them as close as they could. They actually seemed, at that point in time, to be very satisfied that they were being protected in getting an opportunity to be at the site—

Chairman CHAFFETZ. So you were doing it to protect them?

Ms. MCCARTHY. Many times that is—you, yourself, saw the site in the video. There was damage that occurred. We are keeping people safe, but there is no way in which we have kept people from going as close to the site as they could safely get—and the Navajo, in fact, went there.

Chairman CHAFFETZ. They did not get there, and that is the testimony: “We finally convinced them to take us within a half-mile of the point of release. We walked the rest of the way to the point of the release. There we saw a completely unblocked mine adit with an estimated 550-gallon-per-minute flow of bright opaque orange,” and he goes on and on.

You did not do that. You did not call them, you did not communicate with them. You told the media before you told them. They wanted to go to the site, you would not do that. Then you have the gall to hand out Standard Form 95 and walk along the river and try to get them to do waiver forms; and you only did that after the President said, “We are going to sue the EPA.”

Ms. MCCARTHY. Sir—

Chairman CHAFFETZ. Why did you do that?

Ms. MCCARTHY. Sir, it is my understanding that we did not hand out claim forms. We had a long discussion following that concern, and we are now getting claims—

Chairman CHAFFETZ. You are not telling the truth. Here is the quote—

Ms. MCCARTHY. Sorry, but that is my understanding.

Chairman CHAFFETZ [continuing]. From the President of the Navajo Nation, “It was quick to dispatch staff to the Navajo communities to hand out Standard Form 95 and encourage members of the Navajo Nation to fill out forms to expedite settlement of their claims under the Federal Tort Claims Act, and apparently to obtain release from members of the Navajo Nation. But this was only after I”—again, from the President—“announced that the Navajo Nation would be suing the EPA.”

Ms. MCCARTHY. The—

Chairman CHAFFETZ. Do you deny that your people were handing out this form?

Ms. MCCARTHY. I do deny that we were going around, trying to get anybody to sign these forms. Based on the information I had, that is not correct.

Did we supply forms to the Navajo, the Navajo Nation leadership? Absolutely, because it is part of an opportunity for individual claims to be made. It is not a settlement or a release form.

But we walk through those issues, and I think there is a much better understanding of the process for claims that the Federal Government has established. I am hoping that we can utilize our ability to work with them to recognize the damage that has been done, to fully account for that damage, and to compensate for it. That is part of the process.

Chairman CHAFFETZ. Standard Form 95—I encourage the media and everybody to look at it. It states, “I certify that the amount of claim covers only damages and injuries caused by the incident above and agree to accept said amount in full satisfaction and final settlement of this claim.” It is a settlement agreement.

Ms. MCCARTHY. No, it is—

Chairman CHAFFETZ. The record will reflect that, again, you are totally misleading, totally out of touch, and totally inappropriate in this instance.

Ms. MCCARTHY. That—

Chairman CHAFFETZ. My time has expired. I will now recognize the gentleman from Pennsylvania, Mr. Cartwright.

Mr. CARTWRIGHT. Thank you, Mr. Chairman. I would like to give the Administrator a moment to answer your last statement.

Ms. MCCARTHY. The section you just read refers to a final settlement. This is an application to begin a settlement process that can be added to and amended throughout the entire process.

The final settlement requires a settlement. The claimant needs to actually sign off. It was an ability to get started, it was not a final document in any way.

Mr. CARTWRIGHT. Well, thank you for that, Administrator McCarthy.

I would like to switch gears for a moment and focus on the extent of the problem of acid mine drainage around the country. It is a problem that my constituents in northeastern Pennsylvania know only too well. There are 65 million gallons of acid mine runoff every day. Here we are talking about a 3 million gallon spill. There are 65 million gallons of acid mine runoff every day flowing into the Lackawanna River, compared to that 3 million in the Animas River spill.

In case you don't believe it, I am going to show you pictures of the Lackawanna River on a typical day. This is the Old Forge Borehole. It emits 65 million gallons of orange acid mine drainage into the Susquehanna River, which finds its way down to the Chesapeake Bay.

Any spill in our rivers is important and needs to be addressed. Here, however, what my local paper published, after the Animas spill received so much media and congressional attention, was this cartoon by my friend, the political cartoonist John Cole, from Scranton. On the left side it says, “Three million gallons of toxic mine waste accidentally dumped into Colorado's Animas River. It's being called an ‘environmental disaster.’” Then, over on the right

side, it shows an illustration of the Old Forge Borehole with 65 million gallons a day of acid mine runoff, and it says, "Around here we'd call it 'Tuesday afternoon'."

[Slide.]

We understand the problem in northeastern Pennsylvania. The director of the Lackawanna River Corridor Association, my friend, Bernie McGurl, explained to me that in northeastern Pennsylvania, "Schuylkill, Lackawanna, Luzerne, Dauphin, Northumberland, Columbia, and Carbon Counties all have profound mine drainage issues, with thousands of miles of streams that are impacted by mine drainage, many of which are totally devoid of aquatic life."

Now, nationally, there are over 500,000 abandoned mines. These abandoned mines scar our Nation and pollute our waterways. My understanding is that, in 2008, EPA estimated that to clean them up would cost \$50 billion.

Now, I welcome this newfound interest in water quality in a bipartisan way. But given that enormous sum—\$50 billion—Administrator McCarthy, how much do mining companies contribute to cleaning up this mess that they create?

Ms. MCCARTHY. Well, in the hardrock mining industry, it is very difficult for me to honestly estimate that. But on these legacy sites, the contribution is close to zero.

Mr. CARTWRIGHT. How much are hardrock mining companies charged in royalties for what they extract?

Ms. MCCARTHY. They are not charged any, that I am aware of.

Mr. CARTWRIGHT. They are not charged.

Ms. MCCARTHY. No, sir.

Mr. CARTWRIGHT. Now that we have established that mining companies are not contributing to cleaning up their own messes, what are the sources of funding that you have for mine cleanup?

Ms. MCCARTHY. The Federal agencies have some resources. They are not as significant as the challenges that we are facing. For EPA, we have an emergency response fund that we utilize, but that is for the entire country; and we have to prioritize that and use our resources wisely.

Mr. CARTWRIGHT. What can Congress do to help EPA clean up these mines?

Ms. MCCARTHY. Well, we think that the proposal that the President put in, which actually looks to establish a fee on hardrock mining, similar to what we do with coal mining industries, that would be utilized to address these legacy sites is an appropriate thing to do. It would be based on a polluter-pays principle, and provides significantly additional funds for us to at least begin to address these challenges.

Mr. CARTWRIGHT. Now, for abandoned coal mines, funding comes from coal AML reclamation fees based on coal royalties. Correct?

Ms. MCCARTHY. That is correct.

Mr. CARTWRIGHT. While coal companies do pay royalties that go toward abandoned mine cleanup, they contribute only a small fraction of what we need to deal with the problem.

We have to remember that the AML is set to expire in the coming years. I want to take this moment to urge Congress to turn its attention to reauthorizing the AML, so we can continue the important work in reducing the impact of abandoned mines.

I thank you, Mr. Chairman.  
 Chairman CHAFFETZ. I thank the gentleman. I ask unanimous consent to enter Standard Form 95 into the record.

[No response.]

Chairman CHAFFETZ. Without objection, so ordered.

[The information follows:]

<b>CLAIM FOR DAMAGE, INJURY, OR DEATH</b>		<b>INSTRUCTIONS:</b> Please read carefully the instructions on the reverse side and supply information requested on both sides of this form. Use additional sheet(s) if necessary. See reverse side for additional instructions.			FORM APPROVED OMB NO. 1105-0008	
1. Submit to Appropriate Federal Agency:  U.S. Environmental Protection Agency Attn: Gold King Mine Release (A8K9) Claims 1595 Wynkoop ST (MC-8RC) Denver, CO 80202-1129				2. Name, address of claimant, and claimant's personal representative if any. (See instructions on reverse). Number, Street, City, State and Zip code.		
3. TYPE OF EMPLOYMENT <input type="checkbox"/> MILITARY <input type="checkbox"/> CIVILIAN		4. DATE OF BIRTH	5. MARITAL STATUS	6. DATE AND DAY OF ACCIDENT	7. TIME (A.M. OR P.M.)	
8. BASIS OF CLAIM (State in detail the known facts and circumstances attending the damage, injury, or death, identifying persons and property involved, the place of occurrence and the cause thereof. Use additional pages if necessary).						
<b>9. PROPERTY DAMAGE</b>						
NAME AND ADDRESS OF OWNER, IF OTHER THAN CLAIMANT (Number, Street, City, State, and Zip Code).						
BRIEFLY DESCRIBE THE PROPERTY, NATURE AND EXTENT OF THE DAMAGE AND THE LOCATION OF WHERE THE PROPERTY MAY BE INSPECTED. (See instructions on reverse side).						
<b>10. PERSONAL INJURY/WRONGFUL DEATH</b>						
STATE THE NATURE AND EXTENT OF EACH INJURY OR CAUSE OF DEATH, WHICH FORMS THE BASIS OF THE CLAIM. IF OTHER THAN CLAIMANT, STATE THE NAME OF THE INJURED PERSON OR DECEDENT.						
<b>11. WITNESSES</b>						
NAME			ADDRESS (Number, Street, City, State, and Zip Code)			
12. (See instructions on reverse). <b>AMOUNT OF CLAIM</b> (in dollars)						
12a. PROPERTY DAMAGE	12b. PERSONAL INJURY	12c. WRONGFUL DEATH	12d. TOTAL (Failure to specify may cause forfeiture of your rights).			
I CERTIFY THAT THE AMOUNT OF CLAIM COVERS ONLY DAMAGES AND INJURIES CAUSED BY THE INCIDENT ABOVE AND AGREE TO ACCEPT SAID AMOUNT IN FULL SATISFACTION AND FINAL SETTLEMENT OF THIS CLAIM.						
13a. SIGNATURE OF CLAIMANT (See instructions on reverse side).			13b. PHONE NUMBER OF PERSON SIGNING FORM	14. DATE OF SIGNATURE		
<b>CIVIL PENALTY FOR PRESENTING FRAUDULENT CLAIM</b>  The claimant is liable to the United States Government for a civil penalty of not less than \$5,000 and not more than \$10,000, plus 3 times the amount of damages sustained by the Government. (See 31 U.S.C. 3729).			<b>CRIMINAL PENALTY FOR PRESENTING FRAUDULENT CLAIM OR MAKING FALSE STATEMENTS</b>  Fine, imprisonment, or both. (See 18 U.S.C. 287, 1001.)			

INSURANCE COVERAGE	
In order that subrogation claims may be adjudicated, it is essential that the claimant provide the following information regarding the insurance coverage of the vehicle or property.	
15. Do you carry accident insurance? <input type="checkbox"/> Yes If yes, give name and address of insurance company (Number, Street, City, State, and Zip Code) and policy number. <input type="checkbox"/> No	
16. Have you filed a claim with your insurance carrier in this instance, and if so, is it full coverage or deductible? <input type="checkbox"/> Yes <input type="checkbox"/> No	17. If deductible, state amount.
18. If a claim has been filed with your carrier, what action has your insurer taken or proposed to take with reference to your claim? (It is necessary that you ascertain these facts).	
19. Do you carry public liability and property damage insurance? <input type="checkbox"/> Yes If yes, give name and address of insurance carrier (Number, Street, City, State, and Zip Code). <input type="checkbox"/> No	
INSTRUCTIONS	
<p><b>Claims presented under the Federal Tort Claims Act should be submitted directly to the "appropriate Federal agency" whose employee(s) was involved in the incident. If the incident involves more than one claimant, each claimant should submit a separate claim form.</b></p> <p style="text-align: center;"><b>Complete all items - Insert the word NONE where applicable.</b></p> <p>A CLAIM SHALL BE DEEMED TO HAVE BEEN PRESENTED WHEN A FEDERAL AGENCY RECEIVES FROM A CLAIMANT, HIS DULY AUTHORIZED AGENT, OR LEGAL REPRESENTATIVE, AN EXECUTED STANDARD FORM 95 OR OTHER WRITTEN NOTIFICATION OF AN INCIDENT, ACCOMPANIED BY A CLAIM FOR MONEY</p> <p><b>Failure to completely execute this form or to supply the requested material within two years from the date the claim accrued may render your claim invalid. A claim is deemed presented when it is received by the appropriate agency, not when it is mailed.</b></p> <p>If instruction is needed in completing this form, the agency listed in item #1 on the reverse side may be contacted. Complete regulations pertaining to claims asserted under the Federal Tort Claims Act can be found in Title 28, Code of Federal Regulations, Part 14. Many agencies have published supplementing regulations. If more than one agency is involved, please state each agency.</p> <p>The claim may be filed by a duly authorized agent or other legal representative, provided evidence satisfactory to the Government is submitted with the claim establishing express authority to act for the claimant. A claim presented by an agent or legal representative must be presented in the name of the claimant. If the claim is signed by the agent or legal representative, it must show the title or legal capacity of the person signing and be accompanied by evidence of his/her authority to present a claim on behalf of the claimant as agent, executor, administrator, parent, guardian or other representative.</p> <p>If claimant intends to file for both personal injury and property damage, the amount for each must be shown in item number 12 of this form.</p> <p>DAMAGES IN A <b>SUM CERTAIN</b> FOR INJURY TO OR LOSS OF PROPERTY, PERSONAL INJURY, OR DEATH ALLEGED TO HAVE OCCURRED BY REASON OF THE INCIDENT. THE CLAIM MUST BE PRESENTED TO THE APPROPRIATE FEDERAL AGENCY WITHIN <b>TWO YEARS</b> AFTER THE CLAIM ACCRUES.</p> <p>The amount claimed should be substantiated by competent evidence as follows:</p> <p>(a) In support of the claim for personal injury or death, the claimant should submit a written report by the attending physician, showing the nature and extent of the injury, the nature and extent of treatment, the degree of permanent disability, if any, the prognosis, and the period of hospitalization, or incapacitation, attaching itemized bills for medical, hospital, or burial expenses actually incurred.</p> <p>(b) In support of claims for damage to property, which has been or can be economically repaired, the claimant should submit at least two itemized signed statements or estimates by reliable, disinterested concerns, or, if payment has been made, the itemized signed receipts evidencing payment.</p> <p>(c) In support of claims for damage to property which is not economically repairable, or if the property is lost or destroyed, the claimant should submit statements as to the original cost of the property, the date of purchase, and the value of the property, both before and after the accident. Such statements should be by disinterested competent persons, preferably reputable dealers or officials familiar with the type of property damaged, or by two or more competitive bidders, and should be certified as being just and correct.</p> <p>(d) Failure to specify a sum certain will render your claim invalid and may result in forfeiture of your rights.</p>	
PRIVACY ACT NOTICE	
<p>This Notice is provided in accordance with the Privacy Act, 5 U.S.C. 552a(e)(3), and concerns the information requested in the letter to which this Notice is attached.</p> <p>A. <i>Authority:</i> The requested information is solicited pursuant to one or more of the following: 5 U.S.C. 301, 28 U.S.C. 501 et seq., 28 U.S.C. 2671 et seq., 28 C.F.R. Part 14.</p> <p>B. <i>Principal Purpose:</i> The information requested is to be used in evaluating claims.</p> <p>C. <i>Routine Use:</i> See the Notices of Systems of Records for the agency to whom you are submitting this form for this information.</p> <p>D. <i>Effect of Failure to Respond:</i> Disclosure is voluntary. However, failure to supply the requested information or to execute the form may render your claim "invalid."</p>	
PAPERWORK REDUCTION ACT NOTICE	
<p>This notice is solely for the purpose of the Paperwork Reduction Act, 44 U.S.C. 3501. Public reporting burden for this collection of information is estimated to average 6 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Director, Torts Branch, Attention: Paperwork Reduction Staff, Civil Division, U.S. Department of Justice, Washington, DC 20530 or to the Office of Management and Budget. Do not mail completed form(s) to these addresses.</p>	

STANDARD FORM 95 REV. (2/2007) BACK

Chairman CHAFFETZ. I now recognize the gentleman from Texas, Mr. Gohmert, for 5 minutes.

Mr. GOHMERT. Thank you, Mr. Chairman. Ms. McCarthy, the EPA internal review documents of the spill said there is no documentation of flow for the Gold King Mine adit available before July 2005, when the adit was discharging about 42 gallons per minute. Then, in September of 2005, it was up to 135 gallons per minute; in 2006, it increased to 314 gallons per minute; 2009–2014, the rate dropped again, all the way down to 13 gallons per minutes in September of 2014. According to the documentation your staff gave our committee staff on September 8, post-blowout adit discharge is

approximately 600 gallons per minute. Is there any new data since September 8 that changes the 600 gallons per minute discharge rate?

Ms. MCCARTHY. I think I have a slightly lower figure, but I am happy to provide you with that, sir. I do not want to speak when I do not have all the data at my fingertips.

Mr. GOHMERT. OK. You were coming to testify, and you do not know if EPA has made it worse since September 8 or made it better?

Ms. MCCARTHY. Well, my understanding is that it is something on the order of 550 gallons per minute, if that is what you are asking me.

Mr. GOHMERT. The problem is—and I love a good demonstration—but when we show tea or any other thing, and we are talking about real sludge, the facts are that before the blowout, the discharge rate was 70 gallons per minute; that is 100,800 gallons per day. Now, 600, maybe 550, but we are talking about 800,000–900,000 gallons, up 8 or 9 times what it was. That is with the EPA handling—

Ms. MCCARTHY. Well—

Mr. GOHMERT [continuing]. And, Ms. McCarthy, I am just blown away. You indicate that you did not anticipate—the EPA did not anticipate—that this type of blowout could occur. Now, when a—

Ms. MCCARTHY. I did not say that.

Mr. GOHMERT. Oh, OK. So you just went into it knowing this kind of damage could occur, but not preparing for it.

Ms. MCCARTHY. We went in there specifically because the concern was raised by us and other professionals that there was potentially a pressurized blockage there. We were actually trying to take action that would mitigate that.

Mr. GOHMERT. OK. But it never crossed EPA's mind that you may do more damage than you did good?

Ms. MCCARTHY. Of course we tried—

Mr. GOHMERT. OK. Then what activity did you do to be prepared for when the flood gates flew open, and you did this kind of damage to the environment?

Ms. MCCARTHY. What—

Mr. GOHMERT. How were you prepared for that—

Ms. MCCARTHY. What we did—

Mr. GOHMERT [continuing]. Other than with waivers of claim certificates?

Ms. MCCARTHY. No, sir, we spent a great deal of time with the state of Colorado, with the Animas—

Mr. GOHMERT. Well, we are going to find out about that from Colorado, because you have told us before—you testified on July 9 under the Waters of the United States Rule that that was developed—you said, "It is available in the docket, that is what we relied on, both the knowledge and expertise of our staff, the information we received from the public, and comments that—the science that is available to us."

But on April 27, Jo-Ellen Darcy, Assistant Secretary for the Army for Civil Works, from Major John Peabody, proved that that was a false statement, that the 4,000-foot determination was not based on science. You did not have proper evidence of that. Then

we had a Federal judge, Ralph Erickson, that verified that you did not—so you come in here and you tell us, “Oh, we worked with the state of Colorado.” It does not sound that way, once again; and the result is that we continue to have massive damage to the environment.

Since you have been at the EPA, how many people, industries, or companies have been charged with criminal violations?

Ms. MCCARTHY. I do not have that number, sir.

Mr. GOHMERT. You have charged plenty of people, right?

Ms. MCCARTHY. We have conducted enforcement activities that we should conduct, yes.

Mr. GOHMERT. How many people at the EPA are under investigation right now for this massive discharge that you created?

Ms. MCCARTHY. I am unaware of any criminal investigation, sir.

Mr. GOHMERT. Well, I guess there is the rub, isn't it?

Ms. MCCARTHY. I—

Mr. GOHMERT. Your agency is above the law, with all the damage you do to the environment, and you want to be in charge of all the waters of the United States. You could not even figure out how to get ready for a possible discharge. I yield back.

Ms. MCCARTHY. We are holding ourselves fully accountable, sir.

Chairman CHAFFETZ. I thank the gentleman—

Mr. GOHMERT. You just—wait.

Chairman CHAFFETZ. The gentleman's time—

Mr. GOHMERT. She added the answer—who is being held accountable?

Chairman CHAFFETZ. The gentleman's time is expired. We are now going to recognize the gentlewoman from California, Mrs. Napolitano, for 5 minutes.

Mrs. NAPOLITANO. Thank you, Mr. Chairman; and thank you for being here, Ms. McCarthy.

A lot of questions. First of all, in my subcommittee I was not privy to any information from EPA, and that I hold a little bit concerning. Please keep that in mind.

How many of the companies that you know of that are mines—wherever, whether it is gold, silver, or coal, are foreign-owned? Do we have any record of that?

Ms. MCCARTHY. I do not have that information.

Mrs. NAPOLITANO. Do you have any way of being able to tell this committee? Because if some of those companies are foreign-owned, they are making money, they are not being—how would I say—made responsible for anything that they leave behind. They leave it up to the U.S. taxpayer to pick up any kind of remediation, and I think that needs to be part of the answer that we need to look at.

In the rest of the United States—and I am very, very concerned about what happened in Las Animas—but what about the rest of the Nation that has these hundreds, maybe thousands of mines? How many of those are close to blowouts? Are there assessments?

Ms. MCCARTHY. EPA is only involved in, actually, a small percentage of those.

Mrs. NAPOLITANO. Why?

Ms. MCCARTHY. Because the authority to look at these is spread among a number of agencies, and EPA generally focuses on—



Mrs. NAPOLITANO. Can you break it down so that we have an idea of what the problem really is with some of these mines that may affect the health and welfare of our communities?

Ms. MCCARTHY. We can do our best, but I can tell you that the ones that we follow are the ones on the National Priorities List, and the ones where we work with states to address what we consider to be an imminent threat or a need for emergency response. The Upper Animas was in that category.

Mrs. NAPOLITANO. OK, but I would like to see if you can answer some of this for the whole committee.

I am glad Mr. Bishop is worried about Fish and Wildlife and the Endangered Species. That is something that is near and dear to the heart of a lot of us. But with that, your budgeting, how much budget do you require to be able to do a job, to maybe look at avoiding what happened at Las Animas?

Ms. MCCARTHY. Well, we just have an environmental fund that allows us to tap that for the response actions.

Mrs. NAPOLITANO. How much is that fund?

Ms. MCCARTHY. The Fiscal Year 2015 Superfund remediation action budget is \$501 million.

Mrs. NAPOLITANO. Does it have to be on the Superfund? Does it have to be designated a Superfund site?

Ms. MCCARTHY. No, it does not. This is for remedial action that we need to take, whether it is on the Superfund list or not.

Mrs. NAPOLITANO. And you are currently working on how many mines to be able to address the issues?

Ms. MCCARTHY. I am sorry, I will have to get back to you—

Mrs. NAPOLITANO. Would you, please? Because that would kind of answer some of the questions I have.

And then, how many other agencies are involved, or should be involved, besides Fish and Wildlife and the National Institute of Health—for being able to determine the status of the health concerns? CDC? What about BIA, Bureau of Indian Affairs? What role do they play in being able to notify Native American tribes? Are they immediate, do you work with them, or do you get them involved immediately and task them with doing the outreach?

How many other areas do we have that are really concerning, in terms of contamination that are cancerous? Lead, arsenic, uranium, and the gold mines, the copper mines, what are the hard minerals that are there that are going to affect the health of our Nation?

Ms. MCCARTHY. Well, there are at least 161,000 abandoned mines. While we are talking about ones we know, there are so many that we do not know. We know we have experience in looking at these mines, and they involve sudden releases like the ones we were talking about here and the potential for that. There are also periodic mine discharges that are impacting headwaters. There are a lot of them.

Mrs. NAPOLITANO. I am running out of time, but I want to be sure that my colleague in Pennsylvania—if there is a continuous release, is that one of the areas that EPA may be looking at to be able to help address the issue?

Ms. MCCARTHY. Well, the challenge for us is really there are a lot of these issues. I do not know whether that specific one is on the NPL. I doubt that. I do not know if others do—

Mrs. NAPOLITANO. He is shaking his head no behind you, so they do not know.

Ms. MCCARTHY [continuing]. But when a state wants us to come in and work with them, we do our best—

Mrs. NAPOLITANO. But is it only at the request of a state, or do we have the ability to have you look at a lot of these mines?

Ms. MCCARTHY. No, we make priorities depending upon what we find out and what we are asked to do, but the challenge for us is it is limited. And that does not take care of the long-term problem; it takes care of short-term problems.

Mrs. NAPOLITANO. So, what do we need to do to address that in the long term?

Chairman CHAFFETZ. I thank the gentlewoman. The gentlewoman's time has expired.

Mrs. NAPOLITANO. Thank you, Mr. Chairman.

Chairman CHAFFETZ. We now recognize the gentleman from Florida, Mr. Mica, for 5 minutes.

Mr. MICA. Thank you. Let me kind of pick up where Mr. Gohmert, the gentleman from Texas, left off on the issue of accountability.

If a private company, corporation, or individual dumped 7,500 gallons of toxic chemical into a natural waterway, wouldn't there be a penalty? Wouldn't you hold them accountable?

Ms. MCCARTHY. It all depends on the circumstances, sir. We would hold them accountable for cleanup—

Mr. MICA. You would investigate. But—

Ms. MCCARTHY [continuing]. But whether or not there would be a penalty involved would depend on the circumstances.

Mr. MICA [continuing]. They would be—someone would be held accountable—

Ms. MCCARTHY. That is correct.

Mr. MICA [continuing]. Responsible, you would review that.

Ms. MCCARTHY. Yes, yes.

Mr. MICA. And you do that. That is part of your responsibility.

One of the frustrations I think that Members of Congress and the American people have is holding agencies accountable. You have been there since July of 2013. You were there during this spill. Is that correct?

Ms. MCCARTHY. Yes, sir.

Mr. MICA. And you are in charge of the agency?

Ms. MCCARTHY. Yes, sir.

Mr. MICA. Is there an SES individual below you, or a deputy that also would be responsible for this, for—

Ms. MCCARTHY. Well, we have—

Mr. MICA [continuing]. Looking at this matter, and overseeing it?

Ms. MCCARTHY. I have an assistant administrator.

Mr. MICA. OK. And who is that?

Ms. MCCARTHY. Mathy Stanislaus.

Mr. MICA. OK. Then you have a regional administrator.

Ms. MCCARTHY. That is correct.

Mr. MICA. Is that Shaun McGrath?

Ms. MCCARTHY. That is correct.

Mr. MICA. OK. And then you have an on-scene EPA—

Ms. MCCARTHY. On-scene coordinator.

Mr. MICA. Who is that, for the record?

Ms. MCCARTHY. I do not know the individual's name.

Mr. MICA. OK. And you have conducted some preliminary investigation?

Ms. MCCARTHY. Yes, we have—

Mr. MICA. Everything we see, it looks like there was a mistake. You have a contractor, too, who the EPA was overseeing. Who is being held accountable, based on the information that you have so far?

Ms. MCCARTHY. One of the reasons why we asked DOI to do an independent investigation was to make sure that somebody independently looked at that, and provided us information, so that we could follow up to see if there was any—

Mr. MICA. And that is not complete?

Ms. MCCARTHY [continuing]. Lack of judgment or lack of oversight, or—

Mr. MICA. That is not complete, that process?

Ms. MCCARTHY. No, sir. That is going to be completed in October, is my—

Mr. MICA. I want you to tell the committee and report back to the committee who is held responsible. I have reviewed some of the bonuses given to different agencies in the past; and at least, historically, EPA has paid some of the biggest performance awards. In fact, some of your SES-class folks, 64 percent of them got bonuses.

I want to know if there are any recommendations pending for any bonuses for any of these individuals, and have that made part of the record. I would like that in the next 30 days.

Then also, I want, for the long-term record, for you to report back to the committee the findings and who is held accountable. I think that is the least we can do.

Ms. MCCARTHY. Yes.

Mr. MICA. Then what action is taken to those individuals who have done this damage to the environment, and caused untold damage to the people sitting behind you, who we are going to hear from.

The other thing, too, is the estimate of the cost for getting this all back to regular order.

Ms. MCCARTHY. I understand. I am happy—

Mr. MICA. Do you have any estimate?

Ms. MCCARTHY. In terms of what it would take? I know that we have already spent somewhere upwards of \$10 million. We expect that will go up considerably over time. Again, the challenge we have is to look at the Upper Animas River, because, while there may be some continued discharge from the Gold King Mine, there continues to be a much larger discharge from that area.

Mr. MICA. So \$10 million. Again, all I think—

Ms. MCCARTHY. That was just the emergency, the immediate response—

Mr. MICA. This is a reasonable request, that we hold you—

Ms. MCCARTHY. Absolutely.

Mr. MICA [continuing]. And others accountable who are responsible for this. It can be based on the independent findings, but we are looking at \$10 million of cost, and a disruption to many parties. Is that correct?

Ms. MCCARTHY. I fully recognize, and I expect to be held accountable. That is the job of this committee, I fully respect it and I will cooperate in any way I can.

Mr. MICA. Finally—I have just a second here—we have pending in some court issues dealing with the redefinition of “navigable waters,” and the rule.

Ms. MCCARTHY. Yes.

Mr. MICA. What is the status, very briefly, of that? Is the rule going into place—

Ms. MCCARTHY. Yes.

Mr. MICA. Is it on hold? And what are you doing?

Ms. MCCARTHY. The rule is actually being implemented, except, I believe, in the 13 states where there was a decision by a judge to actually issue a preliminary injunction. So, in all but those 13 states, it is being fully implemented, as we are sitting here, yes.

Mr. MICA. Thank you.

Chairman CHAFFETZ. I thank the gentleman. We will now recognize the gentleman from Missouri, Mr. Clay, for 5 minutes.

Mr. CLAY. Thank you, Mr. Chairman. Administrator McCarthy, most of the cleanup of hazardous waste from abandoned and inactive hardrock mines like Gold King is carried out by the EPA and state government agencies.

Ms. MCCARTHY. That is right.

Mr. CLAY. The hazardous waste at these abandoned mines was caused, however, by the activities of mining companies, not EPA or state government. Is that correct?

Ms. MCCARTHY. That is correct.

Mr. CLAY. It was the mining companies that made the mess, but those companies are not the ones cleaning it up. Do mine owners or operators have any legal obligation to clean up the pollution they leave behind?

Ms. MCCARTHY. It is my understanding that there is some liability in some cases, but consistently, in these legacy sites, the owners are absent from the discussion.

Mr. CLAY. Why is the EPA involved at all in the cleanup of inactive mines like Gold King?

Ms. MCCARTHY. We were there because of the concern of a potential blowout and the concern of the water quality that was being consistently degraded from the mine seepage that was entering into the Cement Creek and the Animas River.

The Cement Creek, literally, has, as far as I know, no fish whatsoever. For miles downstream in the Animas, the fish population has almost gone down to zero. So, EPA has been looking at this as a potential NPL site, a Superfund site; and, short of that, looking at how we coordinate with the state and with the local stakeholders to address the challenge, short of issuing a decision to put it on the NPL site.

Mr. CLAY. So, there are constant pollutants seeping into the river from the mine, and it has been going on for years, apparently—

Ms. MCCARTHY. Large discharges. There is no question that the Animas has been struggling; but our hope was that we could continue to work together and get that quality shifted into another direction, and get that quality continually improved, instead of degraded.

Mr. CLAY. And, of course, today's hearing—you do not have to respond to this—but today's hearing is to blame the EPA for the callous disregard of mining companies, of not being good stewards of our environment. I think it is a farce, what we are conducting here with you.

I understand that for abandoned and inactive coal mines, there is a dedicated funding source for mine waste cleanup which is derived from fees collected on each ton of coal mined in this country. Is there a similar funding source for hardrock mine remediation?

Ms. MCCARTHY. There is not, but that is what the President's Fiscal Year 2016 proposed budget is suggesting should happen.

Mr. CLAY. Are mine owners financing the cleanup of the mine waste that pollutes the land and rivers for decades after the mines cease operations?

Ms. MCCARTHY. In most cases, no, sir.

Mr. CLAY. Oh, my. Do you believe the President's proposal, if enacted, would help provide necessary resources for cleaning up abandoned mines?

Ms. MCCARTHY. I do, sir.

Mr. CLAY. Well, it is about time that we, as a Congress, get serious about responsible parties, and who is responsible for making this mess and cleaning it up. It is the same thing with radioactive waste left all over the landscape, and nobody wants to take responsibility for it. Yet you want to dump on the EPA today. I think we should be ashamed of ourselves. We should be ashamed of what we are doing in this committee today.

The current owner of Gold King Mine, Todd Hennis, told CNN in August, "I have been predicting for the last 14 years that the situation would continue getting worse and worse. I foresaw disaster, and that has been borne out." Well, why are taxpayers responsible for cleaning up abandoned mines, while owners can sit back and do nothing?

That is the question we need to be asking, as a committee. Why don't they have any responsibility, when they made the mess? We all have a responsibility to be good stewards of the environment, but in this case we will let that one party off.

Mr. Chairman, I yield back my time.

Chairman CHAFFETZ. I thank the gentleman, and I hope he has the guts to stand here and ask the President of the Navajo Nation if what we are doing here today is a farce.

Mr. CLAY. And I hope we have the guts, as a Congress, to actually try to clean it up and stop pointing fingers.

Chairman CHAFFETZ. Well—

Mr. CLAY. That is what I hope.

Chairman CHAFFETZ. We will see if you ask the Navajo Nation if it is a farce. We will now recognize the gentleman from Louisiana, Mr. Fleming, for 5 minutes.

Dr. FLEMING. Thank you, Mr. Chairman. Ms. McCarthy, in Louisiana we have a saying that the chef should occasionally taste her own sauce. What do I mean by that?

I want to bring up a different issue, but it is connected. Are you familiar with the Camp Minden issue, relative to the EPA? It was handled out of Dallas.

Ms. MCCARTHY. Yes, I am.

Dr. FLEMING. What happened was there was a big explosion in 2012, as a result of propellant, this explosive that had accumulated over 15 million pounds; and it was a lack of oversight by the U.S. Army over this private company that allowed this to happen.

So, we had the problem with, "How were we going to get rid of this 15 million pounds?" And, of course, EPA became involved. But we were shocked that the EPA, first of all, said, "Well, we are not sure. I guess the local state would probably have to pay for it." We finally got money from the Superfund.

Then, after analysis, the EPA said, "We are just going to burn it in the open," which means all of these toxic substances—arsenic, lead, whatever—going into the air, into our ground, and into our water.

Now, I think back about the coal industry that has been more or less severely hampered, if not shut down, because of CO<sub>2</sub> emissions, which certainly is not as toxic—if toxic at all—as arsenic and lead. We have coal-fired plants being shut down and now we have the Waters of the U.S. But I was shocked, and the local community was shocked, when the EPA came in and said, "We see nothing wrong with the open burn of 15 million pounds of propellant."

We pushed back on it. We had many hearings locally. We finally got the EPA to back down and to allow a closed burning, which is a more costly procedure. It really seems ironic to me that the EPA, which can provide huge fines on private industry and individuals, and can actually put people in jail through criminal activities of pollution, would be so cavalier in this case. In fact, only because of pushback from the community did we get the EPA to do the right thing. The EPA was clearly trying to take the shortcuts and avoid the cost.

Then you look at this situation. Incompetently, the EPA allowed, of course, this toxic spill, this water that is now in our environment; it will never be cleaned up completely. I guess what I am saying is it seems like, to me, there is a double standard. The EPA is not holding itself to the same standards that you hold individuals and industry itself to.

Ms. MCCARTHY. Well, sir, let me respond on Camp Minden. I actually could not be more pleased of the outcome, and it took a long time to get there. I do appreciate the way in which the state intervened on that, as well as all of the elected officials.

Dr. FLEMING. Yes.

Ms. MCCARTHY. It was an option that was chosen by the DOD. It was not an uncontrolled burn. But, I think we have ended up in a much better place, one that the community really participated wonderfully well in, and I could not be more pleased.

Now, in terms of this effort, I want you to understand—and I am sure that you do—that EPA's job was to try to support an effort to address what we knew was almost a likely inevitability of a blowout at that mine, as well as knowing that the river was being damaged each and every day, as a result of the mining in the Upper Animas.

Should that spill have occurred? No. Are we going to figure out whether we could have done something about it, done something different—

Dr. FLEMING. But here is my question, Ms. McCarthy—

Ms. MCCARTHY [continuing]. We will find that out——

Dr. FLEMING. I appreciate that. My question is that private citizens, Americans, and companies——

Ms. MCCARTHY. Yes, yes.

Dr. FLEMING [continuing]. Are held to a high standard, and the punishments are severe. But, we are not hearing today of any punishments, or reductions in pay, or even firings that are going to occur because of this incompetency. That is the point I am making, it is a double standard.

Yes, I know you are doing the best you can, and so forth. But one agency after another, the VA and now the EPA, has these responsibilities and these broad powers that no single company has, to inflict damage, to inflict severe punishment and penalties on Americans. Yet we do not find anything within the Agency where the decisionmakers and the people with all this power have any accountability for that.

Ms. MCCARTHY. Sir, when a spill like this happens, the accountability is for the person who actually needs to take responsibility for that spill to do so, which we had.

The second level is, "How did it happen, and was there activity that should have been done differently. Is it criminal? Is it civil? Is it negligent?" That is what we are looking at now. We are independently having that done, and I will live with those consequences. I will appropriately take action——

Dr. FLEMING. We will certainly want to hear who those decisionmakers were and what happened to them. Thank you, and I yield back.

Chairman CHAFFETZ. I thank the gentleman. We will now recognize the gentlewoman from Massachusetts, Ms. Tsongas, for 5 minutes.

Ms. TSONGAS. Thank you, Mr. Chairman. And welcome, Administrator McCarthy.

This has not been a simple conversation for you. A lot of questions have been raised, I think on both sides of the aisle. I think we were all dismayed to see the horrific way in which the river was so impacted. I happen to come from a district that is rooted in the Industrial Revolution, where rivers have run various different colors, depending on the dye that was cast into them——

Ms. MCCARTHY. I remember that.

Ms. TSONGAS [continuing]. At the end of the manufacturing days; so we are all very concerned about how we care for our rivers.

Obviously, this spill does warrant an investigation, but I do think I have to give you credit for being willing to be here and answer appropriately the questions that we all have. So, I want to thank you for it.

I think it is somewhat disingenuous to compare this with a private spill. As we have heard, you all have proactively made a decision to investigate yourselves through the Inspector General and the EPA, and through the Bureau of Reclamation, as well as doing an investigation. As you have said, you will accept the outcome of that and take appropriate actions.

What is also different here is that this is a legacy site. Mine operators who benefited from the various metals that were in those grounds have subsequently abandoned them and left an

environmental mess, and we have a difficult time holding them accountable. You have said that you were there because of concern with a blowout, the possibility of a blowout, and the degraded water quality. You have also noted there are 161,000 such abandoned mines in which these issues present the EPA with a challenge of how best to fix them.

You have also talked about—given that long list, you create a National Priorities List. I am curious, and think it would really be helpful for you to explain how you prioritize, given the vast number of mines that have the great potential to pose such harm to our environment.

Ms. MCCARTHY. We actually prioritize it in a couple of different ways. We have factors that we consider, in terms of what deserves to be on the National Priorities List. In this particular case, we started back in the mid-1990s, looking at this, and actually suggesting that it be on the National Priorities List. But what we found at that point in time was that the communities and the states were actually getting together an Animas River Stakeholder Group, who insisted that they could do a good job at addressing this issue without taking that measure.

They actually did a good job. Up until 2005, that river was getting cleaner all the time. But there was a turnaround in the river, and that turnaround meant that we were getting a lot more discharges. We see fish populations degrading. That is why we were continuing to look at it as of 2008, to see if we should look at the upper creek, the Cement Creek, as the section that we would articulate and look at for the National Priorities List.

Out of that discussion came a collaborative effort with the state and the Animas River Stakeholder Group to take a look at what we could do. That is when the concern of a blowout arose, and we started working on a work plan that was very public, went to public hearings about what EPA could do to try to address that issue while people looked at the long-term challenge and thought about how best to do it.

That is the history of this site. It is a long one, and, obviously, today, not a successful one.

Ms. TSONGAS. So, the local community—how did the communities initiate their interaction with the EPA? What was the process by which that took place?

Ms. MCCARTHY. Actually, we have been working with them since at least the mid-1990s, that is how far back it goes. They pulled together the stakeholder group, that was really those people who worked in the mines, public citizens, local leaders, and state representatives. EPA helped to participate in some of those. It really just became a collaborative effort, knowing that they had a large problem, and that we had to work together. That became the tone of the discussion. EPA was not there to work as a lone entity. It was there to share ideas, to bring our mining experts to the table, to work with the state of Colorado and folks who knew the area better than we did, and to identify what work should happen.

That was the work plan that we were working under at the time that this spill occurred. It was fully developed with everybody's input, with public hearings. Now, did we underestimate the potential of the spill at the site? Did we do something we should not



have? Those are the issues that the independent review will give a fresh eye to. But it was not because we did not try, and it was not because we were not working collaboratively.

Ms. TSONGAS. Was the mine operator, the former mine operator, a part of any of those discussions?

Chairman CHAFFETZ. I thank the gentlewoman. Sorry, the gentlewoman's time has expired. I now recognize the gentleman from Michigan, Mr. Walberg, for 5 minutes.

Mr. WALBERG. Thank you, Mr. Chairman; and Administrator McCarthy, thank you for being here.

Before I go back to some responsibility questions, let me get to something I think is practical, especially since snowy weather, winter, may indeed be coming to this area very soon. It is expected that snow and wintery conditions will hit the Upper Animas area as soon as early October, which I would assume will impact the testing, recovery, and remediation efforts. What steps is EPA taking to prepare for these conditions?

Ms. MCCARTHY. We are looking at two efforts, primarily. One is we are looking at a long-range monitoring plan that we are about to put out in draft to all of the groups that we are working with in the area, including the state, local and county officials, and the tribes. We will hopefully get some long-range monitoring plan agreed to that will consider the challenges that we are facing with the winter months coming up.

Mr. WALBERG. Can you guarantee that you will not abandon the site during the winter?

Ms. MCCARTHY. We will not abandon the site. The second thing we are doing is taking a look at whether we need to enhance the treatment process right at the site. That is not the full remediation that the Upper Animas needs, but we are looking at that issue in collaboration with the state and local communities, and the tribes, as well.

Mr. WALBERG. How many other sites similar to the Gold King is EPA currently working at or involved with right now?

Ms. MCCARTHY. Well, first of all, I have actually issued a memo holding off on continued work on similar sites until we see what went wrong. What are we going to—

Mr. WALBERG. With this site?

Ms. MCCARTHY [continuing]. See from the independent—from this site—so that we can learn those lessons, and ensure it does not happen again.

My understanding is that we have, at this point, identified 10 sites to actually have work put on hold that seem similar enough that we want to just monitor that situation, as long as there is not an imminent hazard. We are waiting on that October review to take a look at it.

Mr. WALBERG. Isn't it true that the contractor, whose work caused or contributed to the disaster, is still working at the Gold King site?

Ms. MCCARTHY. Yes, that is true, sir.

Mr. WALBERG. Do you think the contractor that played such a huge role in this disaster should be working at the site?

Ms. MCCARTHY. I think one of the challenges that we face is that our on-scene coordinator was at that site, and they were overseeing

that work. The contractor, as far as my understanding, was doing the work dictated under the work plan. They are a very experienced contractor. We have no information that says that they had done anything wrong.

We certainly know that the work plan was not sufficient—

Mr. WALBERG. Just a big yellow plume.

Ms. MCCARTHY. Well, that was a result of, obviously, actions that we took. It was unanticipated. It was a decision we made with mining officials, ourselves, the states, and others. We need to look at what went wrong, but they are actually actively working to see that the—

Mr. WALBERG. Were they given a \$500,000 additional—I guess you would not call it a bonus, but \$500,000 additional to clean up the mess they made?

Ms. MCCARTHY. I am not aware of what the sums are. If you are referring to the fact that they were the first on site and the most able to contain the spill, to construct the treatment facilities right at the spill location, and to contain it; they were there, they helped to do that. What that accounted for, in terms of time and money, I do not know.

Mr. WALBERG. Well, I would appreciate you checking into that—

Ms. MCCARTHY. I will—

Mr. WALBERG [continuing]. Because it seems that it is indicated that this company, this contractor, that was highly responsible for the disaster, they were there, and they were able to be there as quickly because they were there. They were the ones that were doing it and caused this spill to take place, but it appears that they received an additional \$500,000 on top of their contract to now do the cleanup for the mess that they made. That, to me, does not sound appropriate.

Ms. MCCARTHY. Sir, I am happy to provide you the information on what other compensation may have been given to this contractor, but I also want to reiterate that EPA is the one that is taking full responsibility for this. DOI will tell us whether mistakes were made at the site, or whether there was any misjudgment or work that we did not do, in terms of—

Mr. WALBERG. Well, let me get to that, and I appreciate that you have said that numerous times. We appreciate any entity that says, “The buck does stop here.”

Tell the committee in what ways EPA failed and bears the blame in this case.

Ms. MCCARTHY. We are going to wait for the DOI review to tell us that.

Mr. WALBERG. What do you think? I mean we can read reports—

Ms. MCCARTHY. Yes. Well, lessons—

Mr. WALBERG. What do you think?

Ms. MCCARTHY. There are certainly already lessons learned. Do I think we were as good as we should be on notification? No, I do not think so. I realize that we had three different regional offices involved, we had 120 miles to account for before it even hit the Navajo Nation lands. We should have been more on top of that,

and we should be looking at that. That is why we have already demanded that those actions take—

Did we work effectively to get our response actions up? I think our response actions have been good. Can they always improve? We will look at ways in which we can do that. So we are trying to get the lessons learned here. One of the big open questions, I think, that you have raised in this committee—and I am sure we will be talking about again—is how did this spill happen? Did we look at this in a way that was not due diligent enough? Did we have the right people there, looking at—

Mr. WALBERG. And I think that goes back to the contract as well. So—

Chairman CHAFFETZ. I thank the gentleman—

Mr. WALBERG. I thank the Chairman.

Chairman CHAFFETZ. Time has expired. We will now recognize the gentleman from Massachusetts, Mr. Lynch, for 5 minutes.

Mr. LYNCH. Thank you, Mr. Chairman. Ms. McCarthy, normally when I see an old friend at a wake or a funeral, I say, "It is good to see you, just sorry to see you under these circumstances." So it is good to see you, just sorry to see you under these circumstances.

Ms. MCCARTHY. Does it feel like that to you, too?

Mr. LYNCH. Yes. Well, I love my EPA in my region. I have to say, just—

Ms. MCCARTHY. Thank you.

Mr. LYNCH. I want to say some good things here. They are very responsive, very conscientious; and I appreciate the work that they do.

But this is not the EPA's finest hour. I think you would admit that. I actually have a connection to this whole incident. I used to live in Farmington, New Mexico.

Ms. MCCARTHY. Really?

Mr. LYNCH. I actually was an iron worker there, and lived on the Navajo Reservation. I was a guest of the Navajo Nation for a couple of years. I know how the tribe is intensely invested, not only financially, but spiritually—

Ms. MCCARTHY. Yes.

Mr. LYNCH [continuing]. In their land. I was honored to be their guest for a couple of years.

What troubles me here is that we often see how the EPA works. They have an almost maddening hyper-technical compliance regime for businesses. That is often the case. Yet, in this case, internally, it seems that the EPA abandoned all that hyper-technical compliance in its own application of its actions.

What are we going to do? What are we going to do here to help the Navajo recover? What are we going to do to get this straightened out and cleaned up? Can we get a promise from you that you are all in on this, and that you are going to be as relentless in cleaning up this spill and this accident as you have been in some cases where you come down on some industries, that we are all aware of, that found themselves in a similar situation?

We need that type of guarantee. We need you to be all in on this. We need you to be relentless in terms of fixing your mistake with what happened here. I mean, albeit, I know there were good intentions here, but, good Lord, this is a beautiful area, and now

it is damaged extensively. We need your help to set this thing right.

Ms. MCCARTHY. Well, I think you know, from my forthrightness about taking responsibility for this, that we are all in. Is it extraordinarily difficult and upsetting for the Navajo? There is no question about it. I recognize that. We are working to try to figure out what we can do together to resolve the circumstances here, but I know that it is going to take a really long time. And this is not EPA's final—best—what did you say? Finest hour.

But I am here to tell you that we are taking responsibility, we will do that in the long term, and we will find a way to get to the Animas River and the San Juan in a way that takes care of the underlying fundamental challenge we have here.

But, I want to say that this was not a compliance issue. This was a response action to deal with, basically, contamination that EPA was not the responsible party for. Am I excusing our role in this? Did our actions actually contribute to this? If we did anything wrong, we will be fully accountable for that. In the meantime, we have to make good to the Navajo, the Southern Ute, the Ute Mountain Ute, and the states that are involved in this. There is no question about it.

Mr. LYNCH. Yes. As I said before, there is a spiritual dimension to this for the Navajo and the Ute, as well. I lived not too far from Shiprock, and there is an intense investment here on the part of these tribes. This is their homeland. Sometimes we forget that they are a sovereign nation, and we have a huge responsibility here to fix what we have exacerbated. Maybe we did not create it, but we certainly exacerbated the problem here; and we need to step up in a big way and meet our obligations.

Mr. Chairman, I will yield back.

Chairman CHAFFETZ. I thank the gentleman. I now recognize the gentleman from California, Mr. McClintock, for 5 minutes.

Mr. MCCLINTOCK. Thank you, Mr. Chairman. Ms. McCarthy, the EPA posted videos to its Web site taken by on-site contractors at the spill emerging out of the mine as it happened. I think we saw a clip of that earlier.

On September 9, EPA Assistant Administrator Mathy Stanislaus testified before the House Science Committee on these videos, and I think we have a clip of that testimony.

[Video shown.]

Mr. MCCLINTOCK. I am going to ask they stop it here. Obviously, the tape was heavily edited. This was a week ago, when your agency was giving misinformation to the Congress.

You have had a week, and I am going to ask you again. Is this editing and concealing of videos EPA's idea of transparency and accountability?

Ms. MCCARTHY. No, sir. That originally-posted video should not have been redacted. When it was pointed out to us, we have posted the unredacted version on our Web site.

Mr. MCCLINTOCK. You understand the concern here.

Ms. MCCARTHY. Yes.

Mr. MCCLINTOCK. There are two, basically. One is the fundamental competence of the EPA, and I think that speaks for itself

in this incident. The other is the double standard that seems to be at work here.

You testified earlier in this hearing that you are not required to consult with the National Fish and Wildlife Service, because you did not intend to cause the spill. Well, the Chairman pointed out there is a company that accidentally spilled 7,500 gallons—one-fourth of 1 percent of what the EPA spilled, and you went after those people viciously and got six criminal indictments. You are sending people to jail over that.

Some other poor guy in Alaska operating a backhoe accidentally causes a 1,500-gallon spill. That is five-hundredths of 1 percent of the spill that EPA, and you sent him to prison.

No criminal charges are being filed against EPA officials, are there?

Ms. MCCARTHY. Well, I think that we are waiting for the Department of the Interior to actually produce a report. If they identify criminal or administrative concerns—

Mr. MCCLINTOCK. Well, you understand the skepticism of the Agency investigating itself.

Ms. MCCARTHY. No, the Agency is not—

Mr. MCCLINTOCK. You say you are holding yourselves accountable, that you are going to take full responsibility. Does that mean that you are resigning?

Ms. MCCARTHY. No, sir. It means that I am actually having the—

Mr. MCCLINTOCK. Well, have you asked—

Ms. MCCARTHY. I am having—

Mr. MCCLINTOCK. Have you asked any of your subordinates to resign?

Ms. MCCARTHY. No, sir, not—

Mr. MCCLINTOCK. Have you docked anybody's pay?

Ms. MCCARTHY. No, sir.

Mr. MCCLINTOCK. Have you yelled at anybody?

Ms. MCCARTHY. Well, maybe.

Mr. MCCLINTOCK. Have you—

Ms. MCCARTHY. Sir, I am taking accountability for the spill and issues around that; but we are working as closely as we can to independently get this looked at, and we will be holding people fully accountable—

Mr. MCCLINTOCK. One more question. There was a blog entry reporting on this, pointing out that after the initial spill things went from bad to worse for those relying on the river.

For example, Navajo farmers, unable to use water from the river, were provided with emergency water reserves from the EPA. Unfortunately, this water was contaminated, too, prompting another attempted EPA cover-up. According to *The Guardian*, EPA officials originally told Navajo leaders the individual reporting the contamination was “unstable,” and deliberately “agitating” in an attempt to undermine the Agency. The Navajo leader took the EPA at its word, at least until he observed the pollution for himself. Is this true?

Ms. MCCARTHY. What I understand is that those tanks were tested by the Navajo and found to be clean. It was drinking water put into fully cleaned tanks. That is my understanding of the situation.

There was definitely concern. Do I think the level of mistrust contributed to that? Do I understand why, given EPA's responsibility here? I absolutely do. It is going to take a long time, I think, before anybody begins, at least in the Navajo, to be able to trust our relationship again. Do I regret that?

Mr. MCCLINTOCK. Yes.

Ms. MCCARTHY. But I am working with them. If they want third-party review of everything we do—we are trying to identify how we do this.

We will rebuild this trust; but damage has been done beyond what happened to that river, and it is going to take a long time to repair that. I am going to do the best I can to make sure that happens.

Chairman CHAFFETZ. I thank the gentleman. I now recognize the gentleman from California, Mr. Lowenthal, for 5 minutes.

Mr. LOWENTHAL. Thank you, Mr. Chairman, and both of the Chairs for holding this hearing. And thank you, Administrator McCarthy, for coming, for being so forthright, for not trying to duck tough issues, and for being accountable.

But I think that we still have to go back to some of the points that were made before, that the Gold King Mine spill tragedy reminds the Nation of the reality that we have "a creeping killer in the shadows." There are up to a half million abandoned mines, nationwide. Many of these mines are dangerous. They are discharging toxic, acidic mine waste into our surface waters; and if we do not do anything to properly clean them up and close them down, we will have more disasters. That is it. I think that is what I have learned after being here.

I am very sorry it took this tragedy, and I am sorry for some of the actions that have been taken; but I am really glad that we are focusing our attention on what is frequently ignored or forgotten—and that is to help address this problem of abandoned mines. I point out again that Ranking Member Grijalva, many of my colleagues, and myself, have introduced legislation that would secure funding to clean up and properly close down these dangerous mines.

H.R. 963, the Hardrock Mining Reform and Reclamation Act, would also provide assistance to mining communities and ensure a fair return to taxpayers for extracting public minerals. I would like to urge all my colleagues here today to become co-sponsors of this important legislation, and help us to prevent the next abandoned mine contamination release before it happens.

Now, Administrator McCarthy, these may seem like obvious questions I have. Some have already been gone over, but I would like to get them on the record.

The EPA, as I understand, was partnering with the state of Colorado on the Gold King Mine project. Is that correct?

Ms. MCCARTHY. Yes, sir. We were cooperating with them, yes, and coordinating our efforts.

Mr. LOWENTHAL. Why was the EPA in Colorado working with the state on the Gold King Mine, as well as on other mines in the area?

Ms. MCCARTHY. Because of the degradation of the water quality in the Animas River and the San Juan River that was being

contributed to by these 400 mines in the Upper Animas, as well as the threat of a blowout at the mine, which was a very big concern.

Mr. LOWENTHAL. How did that happen? Why were we in this situation?

Ms. MCCARTHY. It is a long history, but those mines have really not been actively worked since 1991. Since that time, there has been a buildup of water in the system. Some of the mines in the area have been plugged, which shifts the hydrology, which creates a backup. In the Gold King Mine itself, it had some collapses in the mine, which made it inaccessible; so we were trying to get a handle on the situation that was growing increasingly dangerous.

Mr. LOWENTHAL. And the question to me is—again, to clear up—why were the original mining operators—why did they not clean this up? And who will now be paying for this cleanup?

Ms. MCCARTHY. My understanding is that, for the most part, they are not obligated to. What we use, in terms of our resources, are taxpayer dollars; they are given to us, appropriated, by Congress.

Mr. LOWENTHAL. So, it is the taxpayers that will be paying for this—and, not only this. As we look into the future, as you already stated, we have incomplete data as to where abandoned mines are, what toxins they are releasing into our waterways, and we are currently unable to adequately pay for the cleanup of these abandoned mines.

It seems to me, if we take a larger view of the Gold King Mine disaster, and we move forward with legislation, that something like the Hardrock Mining Reform and Reclamation Act would provide the funding for cleaning up these abandoned mine sites. Is that not so, that something like this would be appropriate?

Ms. MCCARTHY. It would certainly help, sir.

Mr. LOWENTHAL. Thank you, and I yield back.

Chairman CHAFFETZ. I thank the gentleman. I now recognize the gentlewoman from Wyoming, Mrs. Lummis, for 5 minutes.

Mrs. LUMMIS. Thank you, Mr. Chairman. Thank you, Director McCarthy, for being here. Let me set up a scenario.

A number of years ago, there was a water treatment plant that was actually downstream that was treating the water from this mine. About 10 years ago, there was a storm; it was damaged, it needed to be replaced. A decision was made not to replace it, not to treat the water that was coming down.

Next, EPA and the state of Colorado created a plan to clean up the mine, rather than just treat the water going downstream. So, they blocked off the flow of water from drainpipes in the mine. When they plugged the drainpipes, the water built up into a huge wall of water in the mine; and that was a significant cause of the blowout last month.

So, rather than replace the treatment plant downstream that was providing cleaned-up water to the Utes and the Navajos, the decision was made, “No, let’s not treat it, let’s block the drains, store the water in the mine.” When it built up, it spilled out. It goes downstream.

Then, Bureau of Reclamation dumps a ton of water downstream that should have been available to the tribes to irrigate with and to keep water flows such that endangered species can remain

viable. To me, this looks like a chain of events that was foreseeable and avoidable.

Now, it was the Gold King Mine's owner that asserted that the buildup of water in the mine, when you plugged the drains, was a contributor to the blowout. Do you have any reason to disagree with that?

Ms. MCCARTHY. I have a slightly different understanding of the history here, and the issues, so I do not want to pick apart the issue; but I do think we need to have a conversation about it, because I do not quite see the same history here.

I do know there have been many decisions. I want you to understand EPA's role here. We did not participate in decisions about who was responsible for what, where blockages should be approved or not approved, or what to do with the treatment facility that you identified. We came in, simply trying to work with the state and the local stakeholders to identify what we could do to alleviate problems along the way.

Mrs. LUMMIS. OK. So now that we know that the Southern Ute tribe has already spent at least \$170,000 responding to the spill—

Ms. MCCARTHY. Yes.

Mrs. LUMMIS [continuing]. Who is going to reimburse them?

Ms. MCCARTHY. Actually, there are two processes here, and the reimbursement process is handled under CERCLA.

Basically, it is a Memorandum of Agreement we need to reach. I was just checking to see if that has been done with the responsible parties who have been helping us. That is a routine reimbursement process that we will be able to take care of. Those relationships with both the tribes and the states are fairly routine for us, because they act as emergency responders with us. The Southern Utes have been incredible, and actually incredibly diligent in being embedded in our Command Center, working on this. Their professionalism has been wonderful. So, we are going to make sure that they are properly reimbursed for their expenses.

The second process is the claims process, which is not really a reimbursement issue, it is what damages have occurred. We use the Federal Claims Tort Act in order to process those claims.

Mrs. LUMMIS. How does the Federal Tort Claims Act help the Navajo? They lost a huge amount of irrigating water, which can have long-term devastating effects if drought continues and they do not have the water now or in the future. How can they be made whole?

Ms. MCCARTHY. Right. There are two things that are happening here, as well.

One is that we are talking to the Navajo about how they get reimbursed for the work that they have done. It has been extensive, as well. We need to work with the President, as well as Navajo Nation EPA, to reimburse for their expenses.

The second issue also is the claims process, if individuals want to participate in that process, as well. I want to make sure that we are all aware that the reimbursement process is quite different; while it is costly, it is easy to do. We have processes in place for that.



The third issue is that we are developing a long-term monitoring plan. We need to make sure that that plan allows engagement of the tribes, the states, and the counties in that effort; and we need to have a stream of funding to support that effort, as well.

Mrs. LUMMIS. My time has expired. But, Mr. Chairman—might I ask that I have an opportunity to meet with you, Director McCarthy, about what you and I perceive as a different—

Ms. MCCARTHY. Sure.

Mrs. LUMMIS [continuing]. Scenario with regard to the cause and effect, the chain of events that led to this?

Ms. MCCARTHY. I will have my staff work with you—

Mrs. LUMMIS. Thank you.

Chairman CHAFFETZ. I thank the gentlewoman. We will now recognize the gentleman from Virginia, Mr. Beyer, for 5 minutes.

Mr. BEYER. Thank you, Mr. Chairman. Administrator McCarthy, I would like to thank you for sitting here patiently, and capably answering all these questions. I would also like to thank Representative Lummis for raising the whole issue of the bulwarks and changing the hydrology in the mountain. That seems to be what we have missed all along, that water was draining and responsibly being treated. When the bulwarks went in through a consent decree, everything changed; and there is a big problem still out there.

I am just sort of amazed that all these people, all this attention to attack the EPA over a completely accidental release of 3 million gallons of mined wastewater, when 330 million gallons of acid river drainage are flowing into Cement Creek and Animas River every year. There were 3 million gallons on August 5, and this same watershed gets 3 million gallons every 3 or 4 days.

We have heard today that there are at least 161,000 hardrock abandoned mines around the country. The U.S. Forest Service estimates 5,000–10,000 miles of rivers and streams contaminated with acid mine drainage, just from hardrock abandoned mine lands located on USFS lands. It seems to me, the huge elephant in this room is all of the water drainage from these mines, not the relatively small spill of only 3 million gallons on August 5.

The Chairman said this is one of the worst spills we have ever had. I am not sure the facts support that claim. In 1975, 50,000 tons of tailings poured into the Animas River, turning the river the color of aluminum paint. In 1978, the Sunnyside Mine, 500 million gallons into the Animas—that is 167 times what went in on that one day. Those are just the Animas River—just spills all over the country.

We keep coming back to accountability, and I like to look at process. What was the process by which this decision was made? In the testimony before, we hear about the EPA and the state of Colorado meeting with the Animas River Stakeholders Group. On August 4, they began excavation above where water was seeping into the adit. What comes back again and again with the Colorado Division of Reclamation, Mining and Safety, the EPA, and the contractor, is that the mistake was that someone determined that the adit had low or no pressure.

Ms. MCCARTHY. Yes.

Mr. BEYER. Or, "the underestimation of the water pressure in the Gold King Mine workings is believed to be the most significant factor relating to that blowout."

Is it going to be possible to identify the person or group of people who made that faulty determination? And should they, then, be fired, have their pay docked, or be yelled at, or—

Ms. MCCARTHY. Well, that—

Mr. BEYER. Because that was the heart of the matter.

Ms. MCCARTHY. That was one of the key findings of our internal review, and I am sure that is one of the key areas in which the Department of the Interior is going to look.

What we do know is that same review identified the factors that they considered to make a judgment. When I say "they," it was both the Colorado Division of Reclamation, Mining and Safety that was with us, making those determinations on the site. They were looking at factors that they could see, to see whether or not there was pressure buildup at the Gold King Mine, based on that day and that evaluation. They made a judgment that turned out to be wrong. Whether or not they did due diligence in making that, or missed factors that they should have looked at, that is what the Department of the Interior is, hopefully, going to be able to advise us.

We will follow up; and they will be held accountable if there were mistakes made, if they could have avoided this, if they forgot to look at something, or made a judgment that was not based on profound and good engineering and science.

Mr. BEYER. Thank you. I read the President of the Navajo Nation's long and very detailed testimony to be offered later. I am sure you have, too, Madam Administrator. Obviously, he points out not just concerns about the 3 million gallons, but how the EPA will deal with everything that is coming in the future, and what the Navajo Nation, its farmers, and its people will need.

Is there any reason to think that the August 5 spill was anything more than the trigger for all of this attention and partnership between the EPA and the Navajo Nation?

Ms. MCCARTHY. I think it has raised visibility of these issues in a way that I am hoping something good can come out of this, so that we will be better off, in terms of how we manage these sites, moving forward. But we have been working with the Navajo for years, and we will continue to do that. We will address the concerns that they have identified as best we can.

Mr. BEYER. Because even before the August 5 spill, most of these things were just as relevant—

Ms. MCCARTHY. They were—

Mr. BEYER [continuing]. For their farmers, for their water supply, and for the spirituality of their land.

Ms. MCCARTHY. We now know that the water is at pre-event conditions. But that does not mean that the Animas and the San Juan are at a point where they need to be, in terms of their water quality and the protection of the sediment, so that we are not experiencing these fluctuations that we are seeing now.

Chairman CHAFFETZ. I thank the gentleman for his time. The time has expired. We will now recognize the gentleman from South Carolina, Mr. Duncan, for 5 minutes.

Mr. DUNCAN. Thank you, Mr. Chairman. First off, I think there is a clear double standard of how EPA places itself and to how you place private enterprises with regard to this.

The gentleman from Arizona has been a leader on this issue for the Natural Resources Committee. I would like to yield the balance of my time to him.

Dr. GOSAR. Ms. McCarthy, in yesterday's hearing in front of the Senate Environment and Public Works Committee, when asked whether the government should be held to the same standards as it requires of the public and the private sector, you stated that, "Actually, a higher standard would be quite appropriate." Do you still believe today that a higher standard for government would be quite appropriate?

Ms. MCCARTHY. I do.

Dr. GOSAR. Thank you. I appreciate it.

Ms. MCCARTHY. We have a public responsibility that is larger than what I think the private sector has, yes.

Dr. GOSAR. I would like to highlight and submit for the record a *Wall Street Journal* article from September 9 written by a former EPA employee. In the article, Bill Wehrum states, "a facility in Charleston, West Virginia, accidentally spilled roughly 7,500 gallons of toxic chemicals into the local waterway. The EPA's recent discharge of toxic water in Colorado was many times larger. Yet the Agency went after the company with everything it had."

[The information follows:]

#### **THE WALL STREET JOURNAL**

Opinion/Commentary

#### **Salvaging a Lesson From the Animas River Spill**

By Bill Wehrum  
September 9, 2015

<http://www.wsj.com/articles/salvaging-a-lesson-from-the-animas-river-spill-1441841582>

The EPA employees at fault won't face criminal charges. Neither should companies that make similar mistakes.



The Animas River near Durango, Colo., in August after an EPA crew accidentally released more than three million gallons of mine waste into a nearby creek. PHOTO: JERRY MCBRIDE/ASSOCIATED PRESS

The Animas River disaster in Colorado is looking worse and worse for the Environmental Protection Agency. On Wednesday, EPA officials faced grilling from a congressional committee for the Agency's Aug. 5 spill of three million gallons of toxic wastewater into a tributary of the Animas during the cleanup of an abandoned mine near Silverton, Colo. On Aug. 24, the Agency released the findings of an

internal investigation that found its staff had failed to accurately gauge the water pressure within the mine, thus increasing the chances for a “blowout” like the one that occurred.

All this came after reports that the EPA had known for more than a year that cleaning up the mine was highly risky. As Rep. Lamar Smith (R., Texas), chairman of the House Committee on Science, Space and Technology, asked in Wednesday’s hearing: “Why did the EPA ignore these obvious warnings?”

Such revelations have intensified criticism of the EPA’s handling of the spill. High-profile politicians, including former Speaker of the House Newt Gingrich, have even called for criminal charges against the Agency and the employees at fault. Yet federal law protects them from any such action. America will have to settle for EPA Administrator Gina McCarthy’s statement that she is “absolutely, deeply sorry this ever happened.”

As a former EPA official, I believe the Agency and the individuals responsible shouldn’t be prosecuted for the accident. But I also believe this episode brings needed attention to a serious problem with how the EPA conducts business: The Agency often criminalizes actions that are nothing more than accidents, many far less damaging to the environment than the Animas River disaster. Such treatment is unjust. There are many examples. Consider last year’s Elk River chemical spill. In January 2014, a Freedom Industries Inc. facility in Charleston, W. Va., accidentally spilled roughly 7,500 gallons of toxic chemicals into the local waterway. The EPA’s recent discharge of toxic water in Colorado was many times larger. Yet the Agency went after the company with everything it had.

The EPA quickly dispatched an agent from its Criminal Investigation Division to West Virginia. Working with the FBI and a local U.S. attorney, the EPA built a case that resulted in criminal indictments for Freedom Industries and six of its employees. All pleaded guilty in connection with negligent discharge under the Clean Water Act and currently await sentencing, which could involve varying prison sentences.

Companies and employees who willfully commit a crime should be prosecuted. But criminal liability for negligence isn’t appropriate because, by definition, a negligent act isn’t done with intent. That doesn’t mean that negligent acts should go unpunished. There is ample authority for fines and other appropriate relief to be imposed under civil law. Criminal liability should be reserved for those who intend to break the law.

Yet under the Clean Water Act and numerous other laws enforced by the EPA, accidents like the Elk River chemical spill are criminally punishable. In that sense many environmental laws and regulations with minimal penalties suffer from a problem common in the rest of criminal code—a lack of intent requirement.

There is no indication that any of Freedom Industries’ employees intended to cause the spill. The company declared bankruptcy within days of the accident, 11 months before the federal government announced its criminal prosecution. (One employee is being criminally prosecuted for bankruptcy fraud, which isn’t related to the spill.) The company also suffered from civil lawsuits from area residents, the costs associated with the post-spill cleanup, and the inevitable public-relations disaster that accompanies such debacles.

In other words, the criminal charges related to the spill added insult to an already debilitating injury. They satisfied calls for vengeance but failed to serve the cause of justice.

Criminal prosecutions aren’t restricted to major, headline-grabbing disasters. Take the 1999 prosecution of Edward Hanousek. He oversaw a quarrying project for Pacific & Arctic Railway and Navigation Company in Alaska where a backhoe accidentally struck a pipeline, sending up to 1,500 gallons of oil gushing into nearby Skagway River. Though Hanousek was off-duty and wasn’t operating the backhoe, he was criminally charged and sentenced to six months in prison because his contract said he was responsible for safety at the site.

There is also the 2011 prosecution of Lawrence Lewis. Upon finding sewage flooding a military retirement home in the Washington, D.C., metro area, he diverted the flow into a storm drain that—unbeknown to him—discharged into the Potomac River. He was charged and pleaded guilty to a crime under the Clean Water Act.

The list goes on. The lesson is clear: People can have their lives ruined for something that, in Gina McCarthy’s words, they are “absolutely, deeply sorry” for and never meant to do.

The EPA accidentally released three million gallons of toxic water into one of America’s most scenic river systems. Thanks to federal law, the employees at fault

will never face criminal prosecution or jail time for their mistake—nor should they. But neither should the companies and individuals who make similar mistakes during their work. What's just for the EPA surely is just for those it regulates.

Dr. GOSAR. Should the Department of Justice or an independent investigator go after the EPA with everything it has?

Ms. MCCARTHY. When we get the final report to understand what happened, I would expect DOJ to pay attention to that, and I will pay attention to it, as well.

Dr. GOSAR. Would the Inspector General be involved in that—

Ms. MCCARTHY. The Inspector General is also looking at doing an independent review, yes.

Dr. GOSAR. Former EPA employee, Wehrum, also references an incident that occurred during the Clinton administration, where a railroad supervisor overseeing a quarry project hired a contractor who accidentally struck a pipeline with a backhoe and contaminated about 1,500 gallons of river water. While the supervisor, Hanousek, was off-duty at the time of the incident, and had subcontracted the work, the EPA pursued criminal charges against him. He was sentenced to 6 months in prison because he was ultimately responsible for the safety on the site.

You have said that the EPA and you are ultimately responsible for this spill, and you take personal responsibility of this incident, correct?

Ms. MCCARTHY. Sir, the only correction I would make is that the Department of Justice is the one that pursues criminal actions.

Dr. GOSAR. OK, OK. Since you believe in parity and a higher standard for government, should someone from the EPA go to jail for this incident, then? We are making apples to apples—

Ms. MCCARTHY. I am not at all aware that there is negligence, or that we did not do due diligence. Those are the things that the Department of the Interior would indicate—

Dr. GOSAR. I would beg to differ. I mean, we knew there was a problem here, and we should have alerted everybody along these lines.

Ms. MCCARTHY. I just do not—

Dr. GOSAR. I think the Chairman of the—

Ms. MCCARTHY [continuing]. Know what precipitated—

Dr. GOSAR [continuing]. Committee, from that standpoint.

Ms. MCCARTHY. I just do not know yet.

Dr. GOSAR. What actions would the EPA take against a private company who was responsible for a spill of this magnitude?

Ms. MCCARTHY. We actually would be doing exactly the same thing with that company at this stage, looking to independently identify whether or not there was any negligent or criminal activity that led to this. That is exactly the same process we are going through today.

Dr. GOSAR. OK. When the spill was reported to the National Response Center at 12:27 on August 5, the caller repeatedly emphasized how important it was to notify downstream users who would be affected by the contaminated plume headed toward them. The message was relayed to the EPA.

Why is it that the state of New Mexico, the Southern Ute tribe, and the Navajo Nation all found out about this spill from other sources, not the EPA, who caused the incident in the first place?

Ms. MCCARTHY. It was part of our contingency plan that we always use—

Dr. GOSAR. Really?

Ms. MCCARTHY [continuing]. To take advantage of local information, so that there is appropriate notification. Whether or not it was as quick as it could be, I do not know; but that was an appropriate way in which to notify.

Dr. GOSAR. Well, so you were notified. How hard would it be to pick up the phone?

Ms. MCCARTHY. Well, we have a whole stream. It is not us individually deciding who to call. There is a contingency plan for notification that is developed with the states, with the local communities, and that is what we initiate.

Dr. GOSAR. OK.

Ms. MCCARTHY. This is not done on the fly. This is a plan that was developed with everybody's input—

Dr. GOSAR. Well, obviously, as a CEO, it failed. It failed miserably. It was way delayed. You have representatives that will testify to that—the Navajo Nation, the Utes.

I want to, first, move forward a little bit. This lack of trust that is now being instilled within the tribes—how can we expect states and tribes to have trust and faith in your agency to clean up this mess, if they cannot rely simply on being informed of what is going on? You talked about collaboration, but it shows very poor respect.

I want to ask one more question before you answer, because I am running out of time.

Ms. MCCARTHY. OK.

Dr. GOSAR. Why is it so difficult—I know the Southern Utes were on there—for tribes and the states to have seats at the table at the EPA's Incident Command Center, having open lines of communication or getting questions answered about health and sediment impacts? Because I know they are. Well, I look over at the President of the Navajo Nation. This could have been dramatically averted. So, I want to know why there is so much reluctance in those applications?

Ms. MCCARTHY. Actually, there is no reluctance to have the tribes involved to the extent that they want to. They actually were involved in our Incident Command Center. The Southern Utes were there and embedded. We had—

Dr. GOSAR. And the Navajo?

Ms. MCCARTHY [continuing]. Eleven people embedded in their Incident Command Center and other activities in the tribe—

Dr. GOSAR. Something seriously went wrong in this application; and, as a CEO, I hope that you would review that. Thank you.

Ms. MCCARTHY. Thank you, sir.

Chairman BISHOP [presiding]. All right. We are now under Resource rules, which means we have a second panel that has been sitting for 2 hours, waiting to be heard.

We are going to move this quickly through, which means your 5 minutes, I am going to gavel you down at the end of it. For your

answers, if it comes to 5 minutes and you are in the middle of a sentence, I am going to stop you.

For the rest of you Members, do not wait until there are 10 seconds left before you ask her a question. Give her a fair chance to do this.

But we are going to keep the 5-minute rule and get along, so we can get the other panel in here.

Delegate Norton, you are next up for 5 minutes.

Ms. NORTON. Thank you, Mr. Chairman.

Actually, I can see something beneficial that came out of this tragic accident. And, of course, you have taken responsibility. I congratulate you on the rapid cleanup. It should not have happened in the first place, but the benefit that has come is that it has focused us on mine leaking. I would ask the Chairman to put into the record an editorial from *The Salt Lake Tribune* entitled, "Editorial: Chaffetz, Bishop owe us real answers on EPA failure, not another Benghazi." So, your taking responsibility is very important. Perhaps it is a model for what ought to happen here.

I understand that, while there is no Federal Government data, there may be as many as 500,000 abandoned mines. Are they orphans out there, nobody takes responsibility for them? The state? The Federal Government? Nobody? Is that the case?

Ms. MCCARTHY. The state and Federal Government do the best they can, but even we do not know where many of these mines are located.

Ms. NORTON. This was in Colorado. I note that in Colorado there are three mines listed on something called the National Priorities List.

Ms. MCCARTHY. Yes.

Ms. NORTON. Does this mean that those mines pose a risk, as we speak, for leakage?

Ms. MCCARTHY. The reason it is on the National Priorities List—which you might think of as the Superfund list—is that it—

Ms. NORTON. Yes, and I do not understand why this is not covered by the Superfund.

Ms. MCCARTHY. Well, there has been discussion about whether it should be on the National Priorities List. President Begaye has written to me, and I will take that letter very seriously.

There have been discussions. Up until 2005, there was a good opportunity to clean this up, and it was going in the right direction—

Ms. NORTON. Ms. McCarthy, I need to know whether this acid mine pollution with this half million or so mines poses any danger to drinking water or to fish and other wildlife.

Ms. MCCARTHY. I would have to say, throughout the country, there are many instances in which we are looking at sites on the National Priorities List which do pose significant hazard, yes.

Ms. NORTON. Including drinking water?

Ms. MCCARTHY. Correct.

Ms. NORTON. We could have some of this leakage into the drinking water of the American people?

Ms. MCCARTHY. That is a continual threat from many of—

Ms. NORTON. But we do not have any way of knowing that until it is there?

Ms. MCCARTHY. On the National Priorities List, EPA is responsible for monitoring those sites, and for taking action if the responsible party is not. So, we are monitoring those. The concern I think I have more is——

Ms. NORTON. After you monitor, can you make——

Ms. MCCARTHY [continuing]. Those that are not on the list.

Ms. NORTON. Can you then alert or make somebody do something about it?

Ms. MCCARTHY. Yes.

Ms. NORTON. Who does something about it?

Ms. MCCARTHY. It is either the responsible party or EPA.

Ms. NORTON. Or EPA?

Ms. MCCARTHY. That is correct. But we only have a small fraction of the mines on the National Priorities List.

Ms. NORTON. What do you do to get on that list?

Ms. MCCARTHY. It has to be called to our attention. We have to do a site assessment. We have to consult and confer with the governor in the site, or the leadership in the tribes, in order to have it on the National Priorities List; and we have to make a decision that is very process-oriented and public, to get them on a site and to allow us to then spend Federal and state dollars on a more full and rich cleanup.

Ms. NORTON. Well, I see the ball is in our court on that. I thank you very much, Mr. Chairman.

The CHAIRMAN. Thank you. We will now turn to Mr. Meadows.

Mr. MEADOWS. Thank you, Mr. Chairman. Ms. McCarthy, good to see you again.

Ms. MCCARTHY. You too, sir.

Mr. MEADOWS. I want you, if you would, to clear up something for me. Chairman Bishop, when he asked you about why you did not notify the Fish and Wildlife, your testimony was that you did not anticipate a discharge, so there was no notification.

Then, upon further questioning from Mr. Fleming about an unrelated, you said that a discharge was imminent, that you believed that it was going to happen.

So, which is it, your testimony to Mr. Bishop or your testimony to Mr. Fleming? Because they seem to conflict.

Ms. MCCARTHY. Well, let me try to be a little clearer; I apologize if I have not been.

We were there because concern was raised that there was pressurized water in the mine, in that adit, and that it might result in a blowout. That is the reason we were doing the work, to try to alleviate that pressure. The actions we were taking were certainly not intended to cause the blowout, and the actual professional opinion of those on the site was that that would not happen.

Mr. MEADOWS. All right. Let me go a little bit further then, because any time you do any kind of work, there is a plan.

Ms. MCCARTHY. There is.

Mr. MEADOWS. Who approved the plan? EPA? Don't you approve the plans?

Ms. MCCARTHY. Essentially, that is what we——

Mr. MEADOWS. Well, I am troubled, because I looked at that video, and I am very familiar with 402 permits. I have been there, done that.



Ms. MCCARTHY. Unfortunately, yes.

Mr. MEADOWS. It does not even seem like you followed your own guidelines that would be applied to the private sector. I did not see any of those there. Did you intentionally avoid your own guidelines?

Ms. MCCARTHY. There were plans. One—there was a plan. It was developed by—

Mr. MEADOWS. Did you follow 402 general guidelines?

Ms. MCCARTHY. We actually, I believe, followed all permits. But what—

Mr. MEADOWS. Now, I did not ask—I said 402 guidelines. That is a specific question.

Ms. MCCARTHY. Yes, I do believe we did, because we were actually not—

Mr. MEADOWS. So, where was the retention—where was all—

Ms. MCCARTHY. There was actually a retention pond that was constructed. There was one—

Mr. MEADOWS. So the retention pond was behind the truck?

Ms. MCCARTHY. No, actually—

Mr. MEADOWS. Because I saw the video. It started flowing to the truck.

Ms. MCCARTHY. No, no—

Mr. MEADOWS. Where is the retention pond?

Ms. MCCARTHY. The retention pond was constructed in a way that would have managed the anticipated release. That was our anticipated release we were trying to generate in order to relieve the pressure. Because it was a blowout, that treatment pond was clearly inundated very quickly.

Mr. MEADOWS. Yes, but, Ms. McCarthy, listen. You are talking to somebody who has done this. Normally what you have are multiple retention ponds, in case of a blowout. I know that I have had to construct them. So, you anticipate worst-case scenarios. It does not look like you anticipated worst-case scenarios. It looked like you kind of cut some corners to try to get it done, and you had a truck there working on it.

Ms. MCCARTHY. This was one of the issues that the internal review raised, as to whether or not the emergency plan was adequate.

Mr. MEADOWS. What is your opinion on that? Was it adequate? Your opinion. I am not asking—

Ms. MCCARTHY. Well, that—

Mr. MEADOWS. Was it adequate?

Ms. MCCARTHY. The internal review clearly pointed out that—

Mr. MEADOWS. That it was not adequate.

Ms. MCCARTHY [continuing]. What they saw was not adequate.

Mr. MEADOWS. OK. So let me—

Ms. MCCARTHY. What they saw.

Mr. MEADOWS [continuing]. Finish—

Ms. MCCARTHY. I do not know what else is there. But, I honestly think we have to look at the Department of the Interior—

Mr. MEADOWS. OK. Why do we have to look at the Department of the Interior? You keep coming back to that as this independent—

Ms. MCCARTHY. That is right.

Mr. MEADOWS [continuing]. Agency.

Ms. MCCARTHY. Yes.

Mr. MEADOWS. Well, it is part of the Administration, so I hardly see the DOI being independent, necessarily, the way that we would think of independent. So why not the Inspector General?

Ms. MCCARTHY. The Inspector General is looking at this issue.

Mr. MEADOWS. But why would they not have—

Ms. MCCARTHY. I think if we go to—

Mr. MEADOWS. Why would they not have the main authority, the Inspector General for the EPA?

Ms. MCCARTHY. They are going to be looking at this, but—

Mr. MEADOWS. Why would they not have the main authority?

Ms. MCCARTHY [continuing]. We are going with the agencies that have significant expertise, it is the Department of the Interior, the Army Corps.

One of the things we did was to make sure that we were not defining the scope of work—

Mr. MEADOWS. So who decided who is going to inspect who? Did you decide who is going to be independent?

Ms. MCCARTHY. No, I left that up to staff and others—

Mr. MEADOWS. But your agency decided who was going to be independent?

Ms. MCCARTHY. We actually consulted with a number of agencies. Those agencies agreed to do it. They have—

Mr. MEADOWS. Can you get those documents to the committee, in terms of those inquiries that were made, in terms of who would be best? Because, obviously, if you made multiple inquiries, you have data and emails to back that up.

Ms. MCCARTHY. I certainly can see what we have available, if that is the request. But we did try to—

Mr. MEADOWS. I would ask that you—

Ms. MCCARTHY [continuing]. Get authorities to actually look at this that would have the expertise to be able to do an independent review.

Mr. MEADOWS. If you would, get that to the committee.

Mr. Chairman, I yield back.

The CHAIRMAN. Thank you. Under 5 minutes. Well done.

Mr. Lamborn.

Mr. LAMBORN. Thank you, Mr. Chairman; and for both of the Chairmen, thank you for having this hearing.

Ms. McCarthy, it is probably no secret to you that tens of millions of Americans fear the EPA, despise it, and even hate it. Many of them are in my district. One of the reasons many Americans feel this way is the high-handed and arrogant way that the EPA operates. It is constantly moving the goal posts of environmental standards.

In many, if not all, of these cases, the existing standards are already quite stringent, and have been complied with at great expense on the part of taxpayers or the private sector. To ignore the high economic cost of further tightening of standards shows a disregard for the difficulties that many everyday Americans face in putting food on the table without having to pay higher prices for energy or losing jobs because of the higher cost of regulation to business.

My state of Colorado, for instance, is currently being forced to sue the EPA to avoid the ill-considered Clean Energy Plan, which has an extremely high cost for little or no environmental benefit.

Now, the arrogance of the EPA is seen by its reaction in the aftermath of the horrible environmental disaster in Colorado that we are here to discuss and investigate today. No one has been punished, and the EPA is seeking to avoid any hit on its budget for judgments against it resulting from this disaster. It wants other parts of the Federal Government to pay any judgments.

So, this, to me, Ms. McCarthy, is a double standard; because, had the private sector caused the environmental tragedy in Colorado, there would be serious fines and possible criminal penalties.

This brings me to my first question. In light of the perceived double standard that the EPA operates under, where the private sector is not allowed to use its own science and come to its own conclusions unquestioned, would you support legislation by Congress that would require the EPA to disclose to the American people online whatever science it uses to form its judgments?

Ms. MCCARTHY. Sir, I am not prepared to talk in the big picture about what we would support or not support. I am here to tell you that we have taken full responsibility for this issue. We are treating us the same way we would be treating the private sector. And you are absolutely right, we enforce our statutes; that is what brings the public health and environmental protections and benefits that people rely on in this country. And I believe they will continue to rely on our ability to deliver those.

Mr. LAMBORN. A private company would have to absorb a fine assessed by the EPA from its budget. You are seeking to have—

Ms. MCCARTHY. Not in this consequence. This was actually a response action to try to mitigate a danger that was pointed out to us. The challenge for the private sector would be the same as us: make sure that, if an accident happened at that site, that they get people out and keep them safe, that they reduce the spill quickly, and they take account and accountability for all of the damage that it caused.

Mr. LAMBORN. So a private company—

Ms. MCCARTHY. That is exactly what we are doing.

Mr. LAMBORN. A private company would not have been fined?

Ms. MCCARTHY. Only if—

Mr. LAMBORN. If they were acting in good faith?

Ms. MCCARTHY. Only if the actions they were taking were against an order or a settlement, or someone was found negligent or criminal in the activities.

And those last two issues are what the Department of the Interior will help inform. If we were negligent, if we did not do what we should have done, if we did not do due diligence, then we will have to be held accountable for that, as well.

Mr. LAMBORN. In the meantime, let me ask you this about the contractor.

Ms. MCCARTHY. Yes.

Mr. LAMBORN. Is the contractor being suspended from further work on mines until the results of the investigation come back?

Ms. MCCARTHY. No, sir, because the contractor was working under the direct supervision of our on-site coordinator. It is my un-

derstanding that, at this point, we do not have any reason to believe that he was not doing the work that he was tasked to do.

Mr. LAMBORN. So it was the EPA director's fault for—

Ms. MCCARTHY. I am not sure where fault lies. That is what the Department of the Interior is going to identify. The question is the key decision that was made—there was the understanding based on the site conditions—and this was the experts from us and Colorado—that there was low or no pressure. That was the key decision. It was not the fact that he did the work the way the task order indicated. It was the fact that a determination was made that proved to be incorrect.

Mr. LAMBORN. Thank you.

The CHAIRMAN. Thank you. Mr. Hice.

Dr. HICE. Thank you, Mr. Chairman, for having this hearing today. I would like to pick up where Mr. Lamborn was.

You just said that if a private company did what they should have done, there would be no problem. What I would submit to you likewise, that if the EPA had done what they should have done, we would not have had this spill. So, there ought to be equal consequences for the EPA, just as there are to private citizens. I cannot believe for one minute that the EPA would not aggressively go after another group, another company, a private company who was involved in cleaning up a potential environmental hazard; particularly if they did not have the experience and expertise of doing so, and they created a problem such as the EPA created. You would go after them, and there would be heads rolling, so to speak.

Yet, that is precisely what the EPA is now guilty of. To this point, nothing at all has happened. You said you are treating yourself, the EPA, the same as you do other companies. Quite frankly, that is just not the case.

Have you read the summary report of the internal review of the blowout?

Ms. MCCARTHY. Yes, I have, sir.

Dr. HICE. OK. You may recall on page 2, the last sentence there. It says, "The team conducted a limited review of Internet resources to determine if there are existing guidelines or procedures for investigating sites with similar characteristics as this site."

Obviously, the EPA does not have experience in cleaning up mines such as this. They had to refer to the Internet. The expertise, apparently, is restricted to Google. Is that correct?

Ms. MCCARTHY. I will have to look at the exact sentence you are reading. But the on-scene coordinator has extensive mining engineering expertise, and we worked with the Colorado Division of Reclamation, Mining and Safety, who have considerable expertise as well, including—

Dr. HICE. Well, according to your own—

Ms. MCCARTHY [continuing]. Expertise in that area.

Dr. HICE. According to the report, the summary review, EPA relied upon "Internet resources" to figure out what to do in this scenario, and that is according to what you have submitted.

Let me ask you this. According to the Federal Tort Claims Act, are you familiar with the discretionary function exemption?

Ms. MCCARTHY. No, sir.

Dr. HICE. That is a legal loophole within the law that would allow the EPA to get out of having to pay for any damages. My question to you was whether or not the EPA plans to utilize that exemption? But, you are saying you are not familiar with it.

Ms. MCCARTHY. I am not an expert in the claims process, I apologize. If we need to answer your questions in more detail—

Dr. HICE. OK. Then, my question to you is—that is a legal loophole in the law; will you commit to us today that the EPA will not utilize that loophole, and that you will pay for damages?

Ms. MCCARTHY. We will work with DOJ to compensate, as appropriate. I do not—

Dr. HICE. Will you not utilize—

Ms. MCCARTHY. I cannot concur that I—

Dr. HICE. Will you not utilize a legal loophole to get out of it?

Ms. MCCARTHY. I cannot say that I will do something against the law. I am sorry, sir, I cannot do that. But I will follow up—

Dr. HICE. No, this is in the law. I just do not want the EPA utilizing a loophole to get out of what you are responsible—

Ms. MCCARTHY. I am not going to try to get out of any of my responsibilities.

Dr. HICE. OK. Are you familiar with Greensboro, Georgia, in my district, there was a similar experience about 6 months ago, where the EPA likewise had a contractor that made a mistake. They struck a water main; and lead, arsenic, mercury, and all sorts of things went into the Oconee River and Lake. Are you familiar with that?

Ms. MCCARTHY. I do not recall it.

Dr. HICE. It is another example of the EPA having a similar problem. And, Mr. Chairman, I would like unanimous consent for this *Fox News* report to be added to the record.

The CHAIRMAN. Without objection.

[The information follows:]

**FOXNEWS.com**

**Before Colorado mine disaster, EPA project caused spill in Georgia**

Published August 20, 2015/watchdog.org

Still reeling from a disaster it created at a Colorado gold mine, the EPA has so far avoided criticism for a similar toxic waste spill in Georgia.

In Greensboro, EPA-funded contractors grading a toxic 19th-century cotton mill site struck a water main, sending the deadly sediment into a nearby creek. Though that accident took place five months ago, the hazard continues as heavy storms—one hit the area Tuesday—wash more soil into the creek.

The sediment flows carry dangerous mercury, lead, arsenic and chromium downstream to the tourist destination of Lake Oconee, which then feeds into Oconee River—home to many federally and state protected species.

Lead in the soil is 20,000 times higher than federal levels established for drinking water, said microbiologist Dave Lewis, who was a top-level scientist during 31 years at the Environmental Protection Agency.

He became a whistleblower critical of EPA practices and now works for Focus for Health, a nonprofit that researches disease triggers.

“Clearly, the site is a major hazardous chemical waste dump, which contains many of the most dangerous chemical pollutants regulated by the EPA,” Lewis wrote in a 2014 affidavit for a court case filed by local residents that failed to prevent the EPA project: creating a low-income housing development.

URL: <http://www.foxnews.com/politics/2015/08/20/before-colorado-mine-disaster-epa-project-caused-spill-in-georgia/>

---

Dr. HICE. Thank you, sir. I would just conclude, because I know we are in a hurry here. You have stated that you are taking full responsibility for this spill. In light of the criminal charges, the prison sentences, and the incredible fines that others have experienced for much less—and many of those examples have been brought forth today, much smaller accidents—Ms. McCarthy, in the interest of fairness to the American people who have experienced the wrath of the EPA for much smaller scenarios and accidents than this, I think it is only appropriate that you would resign as a statement of fairness for what other Americans have experienced for much smaller incidents.

Mr. Chairman, I thank you. With that, I yield back.

The CHAIRMAN. Yields back. Mr. LaMalfa.

Mr. LAMALFA. Thank you, Mr. Chairman. I appreciate you, Mr. Chairman and Chairman Chaffetz, for having this hearing and allowing Natural Resources to be part of the committee. Thank you, Ms. McCarthy, for making the trip today.

Several things I am looking at—well, first of all, when I look at how people have to deal with their government and their regulations, is proportionality. We know what an accident is—how that is defined. It is when something happens that is out of their control, that they did not intend to do, that they did not want to have happen, and probably wish they could have headed off somehow. But that said, accidents do happen; we forgive people for accidents.

Yet, we see an unforgiveness attitude coming from your agency with people that have not done things intentionally. When we talk about proportion, for example—coming back to that West Virginia mine spill, where it was 7,500 gallons of water, that people faced criminal indictments immediately, and could end up in prison. The company is out of business.

But in this case here, with 3 million gallons being dumped when other activities should have been taken ahead of time, that is 400 times the amount of pollutant that got out. You know? Basically, we are talking about one company the size of a small backyard dough boy pool versus 400 of those types of pools in this. The proportion for the criminal charges for them versus what has been brought upon either your contractor or the people in your organization, should we have a 400 multiplier for prison time being charged against some of your employees or your contractor?

Ms. MCCARTHY. The West Virginia spill ended up actually contaminating drinking water supplies for many people. It caused significant concern, and it was done by a company that was not following the law in their requirements. That is why that was pursued.

In this instance, I am not saying that the 3 million gallon spill did no damage. Clearly, you will hear that damage happened, whether or not it was physical or not. The difference here is that

when there is an accident, you have to determine whether somebody was doing the things they should have been doing and an accident occurred that they could not have anticipated, or whether there is fault and blame. That is what we are trying to determine with the independent review, and we will follow wherever that goes.

Mr. LAMALFA. In the case of your organization, once again, a question earlier was posed. If you have a project in anticipation of a possible blowout—which you admit to in your documents, that it was very, very possible of a blowout—that you should have been notifying Fish and Wildlife. Therefore, that was a violation of the law.

So, should this committee, should this House, should somebody be coming down hard on your agency and your people for violating the law and not having that notification; but even more so, some of the other measures that could have been taken? You call this a pressure situation in that mine, so should have hydrostatic testing been made, which is, again, referred to in documents? There is acknowledgment in some of your documents that testing should have been done ahead of time, but it was seen as technically challenging, or maybe costly. Now, in the end game, this is much more costly, brings much more embarrassment upon your agency, and brings much damage to the tribes and many people downstream, as well as drinking water, like you mentioned a minute ago.

So, how much should we come after you for not following the law and notifying Fish and Wildlife, but as well as not even following what your own documents show—that you should have had hydrostatic testing, as well as the possibility of putting a relief pipeline, drilling that in place, that would relieve the pressure? How hard should we come down on you for this?

Ms. MCCARTHY. I do not believe that the Agency violated the Endangered Species Act, and we can continue to look at that and talk. The more important thing is—you are absolutely right—if we did something wrong, then you should come after us. And, frankly, I am going to take full accountability for that, as well.

Mr. LAMALFA. Again, back to proportionality, my constituents in my rural district face a lot of issues from Federal agencies coming after them that—somebody trying to change their crop land from grazing or a wheat field to an orchard field, because they have to prepare the soil differently. They can have somebody on their case over their soil preparation with large, large fines. It, indeed, has happened.

Does that seem fair, especially when the people involved have a period which they would make an application and they do not hear back from the Federal agency; under the law it says they can then proceed, and then they come back after that, say, 90-day period? Does that seem fair, that they believe they are operating in the law, and then they come down upon them?

Ms. MCCARTHY. Sir, I cannot speak to any particular instance that I am unaware of. But I—

Mr. LAMALFA. Well, under the Waters of the United States, our folks are really, really taking a hit on it. So I thank you for your—

The CHAIRMAN. Sorry.

Ms. MCCARTHY. Thank you, sir.

The CHAIRMAN. Time is out. Follow the law. Next one, Mr. Palmer.

Mr. PALMER. Thank you, Mr. Chairman. Ms. McCarthy, thanks for coming again today.

Five months ago, the EPA sent toxic sediment into a creek in Greensboro, Georgia. Initially, EPA denied having anything to do with the project, and later admitted that it funded the cleanup and the operation that triggered the spill.

Did you request a Department of the Interior review for that spill?

Ms. MCCARTHY. I am not directly aware of it, sir; so I will have to get back to you.

Mr. PALMER. All right. The record indicates that you did not. It makes me wonder why, after an accident like that, that you did not stop all of these cleanup efforts, particularly with the Gold King Mine, after having a spill in Georgia just a few months ago.

Let me ask you this. You have been asked several times if anyone at EPA is going to lose their job over this incident. Has anyone at Environmental Restoration LLC been fired or disciplined over this? And I think you may have answered that. Am I correct—

Ms. MCCARTHY. Not that I am aware of.

Mr. PALMER. Well, am I correct in that you responded earlier that you are continuing to use them as a contractor?

Ms. MCCARTHY. That is correct.

Mr. PALMER. Also, are you aware that it was reported that EPA collected about 15,000 tons of poisonous waste from two Leadville mines in 2005, and dumped them down the shaft of the New Mikado Mine without notifying the mine owner, who happens to be Mr. Hennis, who owns the Gold King Mine; and the EPA did not take responsibility for that, and did not assist or pay for the cleanup.

Ms. MCCARTHY. I am not aware of that incident, sir.

Mr. PALMER. I think you need to look into that, as well.

One of the things that really concerns me about this—and I realize the EPA has a job to do, but I have brought this to your attention before about some of the heavy-handed tactics that EPA engages in.

Chairman Bishop, earlier in his questions, talked about the fact that the EPA has clearly violated Federal law, that it does not matter that the EPA did not realize that they violated the law, or that the EPA did not intend to violate the law, or that the EPA was just trying to do its job when it violated the law. That does not matter, and I am saying it does not matter in the context of how you have treated other folks.

I think Mr. Gosar brought up the case of Edward Hanousek. He was sentenced to 6 months in prison for discharging oil into a navigable stream. He was convicted, despite the fact that he was off duty and not present when the accident occurred.

Lois Alt of West Virginia, she is a poultry farmer. The EPA spotted some feathers and droppings near her chicken houses. Now, having grown up on a farm, I am fairly familiar with that. I think most people who have been around chicken farms would expect to see that. But they told her that she had to get a National Pollution



Discharge Elimination System permit, or she would be fined \$37,500 per day. Ms. Alt, true to her native West Virginia spirit, is fighting it.

Andy Johnson from Wyoming has been mentioned. Mr. Johnson built a stock pond for his horses and cattle on his 8-acre property—a stock pond that a former Army Corps of Engineers enforcement officer inspected and concluded that it provided environmental benefits, including approved wildlife habitat, and that the water flowing out of the pond is three times cleaner than the water flowing into it; yet Mr. Johnson has been fined \$16 million. Now, this is just a small farmer.

Then you have the situation with the Range Resources Corporation in Texas, a natural gas company, being forced to spend \$4.2 million defending itself in 2011, after the EPA issued an emergency order. The EPA accused Range Resources of causing or contributing to the contamination of two water wells. Then, when it was quickly determined that they did not have anything to do with it, despite the incontrovertible evidence to this fact, EPA claimed that it was not required to prove it even alleged any connection between Range Resources and the contamination. You were going to continue on that path to force them to pay that, until you finally relented and gave that up.

You also turned over the personal data of 80,000 farmers to environmental groups.

I do not understand why you can come before this committee and sit there and say that you are sorry for what you have done in the context of how you have treated private companies. You really ought to be sorry.

Mr. Chairman, I yield.

The CHAIRMAN. Thank you. Mr. Westerman.

Mr. WESTERMAN. Thank you, Mr. Chairman. Despite efforts to try to minimize the significance of this spill, the facts cannot be ignored that 3 million gallons of acidic, heavy metal-laden water were released into the Animas River. This was not because of an accident; it was because of mistakes made by the EPA, mistakes caused by neglect because of a culture of arrogance, where the EPA assumes they can operate outside the rules and regulations that others must adhere to.

Quite simply, the EPA did not have those responsible charged with the education and professional experience, licensure, and continuing education required to do this job properly to safeguard life, health, and property, and to promote general welfare.

Administrator McCarthy, we cannot put this water back in the hole, but I hope we can hold everyone accountable who negligently let it out.

Along with that, I hope you will make procedural changes, taking competence out of the equation, and prevent future spills. Under current procedures and practices, I have concern in your ability to safeguard the public's interest.

Administrator McCarthy, do you believe that the activities conducted at the Gold King site would require engineering design work?

Ms. MCCARTHY. I am sorry, sir, I do not know whether I am qualified to answer that question, but I will certainly respond—

Mr. WESTERMAN. Maybe I can help you out. Colorado defines the practice of engineering as the “performance for others of any professional service or creative work requiring engineering education, training, and experience, and the application of special knowledge in the mathematical and engineering sciences to such professional services or creative work including consultation, investigation, evaluation, planning, design, and the observation of construction to evaluate compliance with plans and specifications in connection with the utilization of the forces, energies, and materials of nature, and the development, production, and functioning of engineering processes, apparatus, machines, equipment facilities, structures and buildings, works, or utilities, or any combination or aggregations thereof employed in or devoted to public or private enterprises or uses.”

Again, I will ask you. Do you agree activities conducted at the Gold King site would require engineering design work?

Ms. MCCARTHY. I think that I am well aware that there was a work plan that involved a significant amount of engineering expertise. What you asked me were the exact actions at the site. I am not prepared to answer that portion of the question.

Mr. WESTERMAN. So, you are saying you cannot—

Ms. MCCARTHY. Clearly—

Mr. WESTERMAN. You do not have the expertise to determine whether professional services were required there; but you did say in your earlier testimony that the on-site coordinator had significant mine engineering experience. And you did say that engineering expertise—

Ms. MCCARTHY. That is my understanding—

Mr. WESTERMAN [continuing]. Went into preparing this work plan.

Ms. MCCARTHY. Yes, that is correct.

Mr. WESTERMAN. Colorado law also further goes on to say that it requires that “only a professional engineer may practice engineering, and that all engineering documents, plats, and reports issued in connection with engineering work performed must bear the seal and signature of a Colorado-licensed professional engineer who is in responsible charge of, and directly responsible for, the engineering work.”

Did a professional engineer design or stamp drawings or the plan for the work being conducted at the Gold King site which resulted in the blowout?

Ms. MCCARTHY. I am happy to follow up on that. I cannot answer that—

Mr. WESTERMAN. I would think that, if an engineer did that, if you contracted those services, or if you had someone on staff to do that, that you would have those documents with you, and say, “We followed the procedures that were outlined by a competent professional in charge of this.” So far, all I have heard is that you had a project coordinator overseeing work at this site. Who is this person?

Ms. MCCARTHY. I do not have his individual name, sir.

Mr. WESTERMAN. Do you know what their credentials are?

Ms. MCCARTHY. I do not have his bio in front of me, sir, but I do know that the work plan itself was not developed at the site.

It was developed with the state of Colorado after significant public input from the Animas River Stakeholder—

Mr. WESTERMAN. Well, public input and professional expertise are not the same thing. This is a serious matter that you should have had a professional design person in charge of, to stamp these plans or drawings or whatever it was that you had—

Ms. MCCARTHY. I am not suggesting we did not, but I am suggesting I cannot answer your question at this point, but I am happy to follow up.

Mr. WESTERMAN. In looking at data, you have 15,326 employees in the EPA as of March 2015. In Region 8, you have 642. Across the country, you only have 12 civil engineers on staff. You have two geologists and one civil engineer working in Region 8.

Ms. MCCARTHY. Wow.

Mr. WESTERMAN. I think this is unacceptable, and I think you are at fault for not having the required design professional in charge of this work.

The CHAIRMAN. See what happens when you have an engineer on the panel? Ms. Lujan Grisham, you snuck in right on time. You are recognized for 5 minutes.

Ms. LUJAN GRISHAM. Thank you, Mr. Chairman. It is nice to see you again.

I realize this is a difficult hearing, Administrator McCarthy, but we all want the same thing: we do not want to have these kinds of issues and mistakes going forward

Quite frankly, I personally appreciate EPA's attitude about taking full responsibility. But, for the 3 million gallons of toxic—and I am sure that everyone has repeated this over and over again—into the Animas River and surrounding area. I really want to focus my question on making sure that we are as holistic as possible about identifying just exactly what the harm is, how we identify and address that harm, and how we assess the long-term impacts.

Specifically—and I hope that President Begaye from the Navajo Nation will forgive me for this, because, as he spoke in his testimony about the Navajo principle of Hózhó—it is very important, I think, not to overlook the beauty, order, and harmony of these very beautiful, pristine areas. In the legal context, if we do not deal with actual damage and future damage, and make it completely whole, then it cannot be available for the kinds of economic and personal activities that we know are critical to this entire area and region. I know that that is going to be a complicated process, to place a monetary damage from this kind of spill that are more—traditional damaged crops, suspended outdoor recreation and tourism. I am looking at making sure that we restore the area to its original aspect, and the potential that it had prior to the spill.

Can you talk to me a little bit about how you are going to identify both the long-term impacts that are yet unknown, and about how you are going to encompass this Hózhó, if you might, aspect that we are interested in getting full compensation for in this entire region for all the states that are affected?

Ms. MCCARTHY. Well, there are two long-term issues that we need to address. I know time is constrained, so I will try to keep this limited.

We have a long-term responsibility to deal with the sediment issue. That has been one of the major concerns of President Begaye and the Navajo, which we appreciate, and others, because we know that that river has not been of high water quality for some time. Sediment has been a concern. We have to monitor that closely. We now have a long-term concern about that that we share, and we are developing a plan to do that that we will get input from everybody on, so we can address that. So—

Ms. LUJAN GRISHAM. So you—oh, I am sorry.

Ms. MCCARTHY. I am sorry. The second long-term issue is what happens in the Upper Animas. We are not close to resolving the challenges associated with the ongoing discharge, which, frankly, dwarfs the spill we have. We have to address that.

In terms of looking at this more broadly than a technical challenge, one of the challenges that the Navajo and, frankly, the Southern Ute, and others have expressed to us is that we have a trust responsibility with the tribes, which makes this more important. We have—

Ms. LUJAN GRISHAM. Not only more important—I am going to reclaim my time, Administrator—but also there is a culture of mistrust.

Ms. MCCARTHY. Yes.

Ms. LUJAN GRISHAM. Not just for all trust responsibilities, but a specific culture of mistrust between the EPA and our nations. Particularly in this case, I hope, again, I do not overstep my authority here, but particularly for the Navajo Nation.

I am expecting in that plan, Administrator, that you identify very specifically monetary aspects and monetary damages related to the long-term impacts. While I completely respect that you are looking at the continuation of environmental problems—which is absolutely your job, and I want you to do that job as effectively as you can—I want everybody made whole. And I am not feeling as confident about that, particularly.

In your plan—because I am running out of time—I am going to need you to address how individuals process their claims and what you are going to do to make that a non-painful process. The unemployment rate of the Navajo Nation is upwards of 42 percent. People cannot wait and wade through a terrible, bureaucratic aspect to process, file, and wait for their claims. And to use all of our collective offices—I see my colleague here, Congressman Pearce—to try to do the appellate work that I am sure will be necessary to get fair review. You have just a few seconds to assure me that we are going to do that.

Ms. MCCARTHY. We will do the best we can. Thank you.

Ms. LUJAN GRISHAM. Thank you.

The CHAIRMAN. You can still go for 7 seconds, if you want. I am kidding.

Mr. Newhouse.

Mr. NEWHOUSE. Thank you, Mr. Chairman. Thank you, Administrator, for being here.

One of the risks of being a freshman is I am right down here in the line of fire with you. I just had one question, in light of the Chairman's wanting to get to the other people who have been so patiently waiting here.

Certainly, this is an unfortunate incident, one that we must do all we can to prevent from happening again. We need to learn from this. But also, the word “accountability” has been thrown around a lot this morning. You have said as much yourself, that you will follow this wherever it goes, and I appreciate that.

Could you tell me how do you define the “accountability” here? What would that look like in the end?

Ms. MCCARTHY. Well, there will be accountability in two ways: whether or not we had administrative and management failures, or whether we had any criminal concerns that arise out of the independent review. Those are two related but separate issues.

Mr. NEWHOUSE. Well, I can say, having run an agency myself in a former life, that I believe the ability of the Agency, and the credibility of the Agency, its ability to perform its duties, is truly on the line here. It is as much at risk as anything else. So, I would hope that we can take you at your word that the accountability aspect of this will be followed to wherever it goes, and that we are satisfied that the people that are in charge are held accountable.

Ms. MCCARTHY. Well, I know that we have both the Inspector General, who looks at these issues, and the Oversight Committee. I expect we will be able to walk through the accountability issues when all the facts are on the table.

Mr. NEWHOUSE. Could you tell me a little bit about the protocol when the spill happened? Could you talk about what the Agency’s first actions were? What are the protocols for this kind of a spill?

Ms. MCCARTHY. The sequence that we expect from the Agency, or anybody in this situation, is, first and foremost, to protect the folks that are on the site, to make sure that there is no potential for safety issues to arise.

Then, the second issue is the challenge to minimize the spill as much as you can to get that under control.

And the third is to take a look at the impacts downstream, so that you can address those and mitigate those, as well. Then, obviously, there is a longer-term challenge of making sure that there is appropriate compensation through the Claims Act. In the case of EPA, where we had partners working with us, states and tribes, to also reimburse them for their expenses.

Mr. NEWHOUSE. Can you say whether or not these protocols were all followed? And were there any, just as importantly, that were not followed as well as they should have been?

Ms. MCCARTHY. I—

Mr. NEWHOUSE. Hindsight, I know, is 20/20.

Ms. MCCARTHY. Yes. I am not aware that we did not follow the correct procedures. I am certainly aware that we could have done better on notification. I think we will have to learn from those lessons, and we have already started to do that. We will learn from whatever DOI says about what caused the incident, what were the precipitating factors, and what we need to do about it.

Unfortunately, sometimes you learn from some of the worst things, and this is one of them.

Mr. NEWHOUSE. I would agree with that. Thank you, Mr. Chairman, I yield back my time.

The CHAIRMAN. We now have three other Members who are not a part of our committees who are here to ask questions.

Mr. Pearce, we will start with you.

Mr. PEARCE. Thank you, Mr. Chairman. Thanks, Administrator, for being here today.

We had some difference of opinion on whether or not the EPA was pushing for these Form 95s to be signed. President Begaye's testimony says that, apparently, EPA was trying to obtain releases for members. Since we have a difference of opinion, would you declare here today that any of these forms filled out before today and signed maybe unknowingly by members of the Navajo Nation would simply be disallowed, and they would be allowed to resubmit that paperwork?

Ms. MCCARTHY. Those can be changed at any point in time.

Mr. PEARCE. OK.

Ms. MCCARTHY. I am unaware that they have been submitted—

Mr. PEARCE. All right.

Ms. MCCARTHY [continuing]. But we have been working to explain the form—

Mr. PEARCE. OK, all right, sounds great.

Ms. MCCARTHY [continuing]. And how to do that—

Mr. PEARCE. Also, in order to dilute down the spill, 1.3 billion gallons of water was dumped that belongs to the Navajo Nation. Are you going to reimburse that?—1.3 billions of gallons of water into Mexico is a big deal.

Ms. MCCARTHY. I do not know what you are referring to. I am sorry, sir.

Mr. PEARCE. OK. I would expect, then, for you to look into that—

Ms. MCCARTHY. OK, sure.

Mr. PEARCE [continuing]. And get back with our office. That water was released in order to dilute—

Ms. MCCARTHY. Oh, the water released at the dam.

Mr. PEARCE. Yes. So now you are familiar?

Ms. MCCARTHY. Well, I did not know what you were referring to.

Mr. PEARCE. OK.

Ms. MCCARTHY. I am aware that that happened.

Mr. PEARCE. Are you going to be reimbursing the tribe for that?

Ms. MCCARTHY. I do not know whether that is something that—

Mr. PEARCE. You are going to follow up and find out—

Ms. MCCARTHY. The Navajo has not raised that issue with me, so, I will find out what—

Mr. PEARCE. OK. It would be practical to understand that.

Ms. MCCARTHY. OK.

Mr. PEARCE. Also, to Chairman Bishop's point earlier that we needed everybody on the same panel—evidently you made the assertion that EPA helped New Mexico shut off the intakes for public water systems?

Ms. MCCARTHY. I indicated that the notifications—

Mr. PEARCE. No, I did not ask about the notification. I asked about the help.

Ms. MCCARTHY. That is what I was talking about.

Mr. PEARCE. All right. Secretary Flynn's comment was that you are not involved at all in the decision, it was done entirely by New Mexico, and we could prosecute that decision——

Ms. MCCARTHY. No, the state——

Mr. PEARCE [continuing]. If we had everybody on the same panel together.

Ms. MCCARTHY [continuing]. Does that. No——

Mr. PEARCE. So, the whole idea of accountability.

Ms. MCCARTHY. Yes.

Mr. PEARCE. Your comment was if anybody is negligent, or if a criminal activity—a different time you said that any administrative oversights will be dealt with.

Ms. MCCARTHY. Yes, that is part of the——

Mr. PEARCE. About how long would you think that would be, before we would know the outcome of that? How long will that investigation take?

Ms. MCCARTHY. Well, they are anticipating to be completed in October.

Mr. PEARCE. OK. So then, my point to the others who maybe distrust that you will actually follow through on that, does the name Robert Beale or John Beale mean anything to you?

Ms. MCCARTHY. It very much does, sir.

Mr. PEARCE. OK. He is thrown in jail for 3 years for bilking the taxpayers out of about a million dollars, minimum. Has any money been received back from him? Did you, as an agency, go and claw back money that he had fraudulently filed for?

Ms. MCCARTHY. We actually have, and we continue to look——

Mr. PEARCE. OK.

Ms. MCCARTHY [continuing]. At that, and——

Mr. PEARCE. So, there were people in the Agency who had to sign leave, travel, salary, bonuses, all that sort of stuff. Right?

Ms. MCCARTHY. I am aware of that, yes.

Mr. PEARCE. Has anybody been held accountable for that?

Ms. MCCARTHY. The processes were in place. If there is additional that we need to do, I——

Mr. PEARCE. No, no. Are any of the supervisors that signed off for him coming to work, or him going someplace that he did not actually go, traveling first class—has anybody been held accountable for that?

Ms. MCCARTHY. There was a process in place——

Mr. PEARCE. No. Has anyone been held accountable for that? Are any of the management people who signed those things, knowing that he was at work, or not knowing——

Ms. MCCARTHY. Well, one of——

Mr. PEARCE. Again, going back to this situation, that oversight would be negligence, wouldn't it, if somebody signed a leave form or signed a performance bonus when he did not deserve it?

Ms. MCCARTHY. I do not know what the exact term is, sir, but that is absolutely an administrative responsibility for us to look at that——

Mr. PEARCE. Yet no one has been held accountable to date. So, people on this committee have a distrust that your study, which is going to be complete, you said, in October, will actually result in anyone doing anything—having any consequence to them at all.

Now, you were his direct supervisor for 4 years—2009 through 2012. Three years, four, I don't know. Something.

Ms. MCCARTHY. Something, yes, sir.

Mr. PEARCE. So, again, if people here have a little difficulty in believing that you are going to actually follow through on this issue, they look at that issue and say, "The highest paid employee of the EPA simply gets to skate for 20 years, not showing up for work, and no one is held accountable, no one."

Ms. MCCARTHY. Actually, I was the person who held John Beale accountable.

Mr. PEARCE. Yes—

Ms. MCCARTHY. I was the one that referred this, and I really—

Mr. PEARCE. I understand that you were the one who discovered it, but you also signed off fraudulent payments to him that he did not deserve—

Ms. MCCARTHY. No, I did not, sir.

Mr. PEARCE [continuing]. And nothing has happened to you or anyone else.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you. Mr. Tipton.

Mr. TIPTON. Thank you, Mr. Chairman.

Ms. McCarthy, you had recently stated on August 13 that, "We are going to be fully accountable for this in a transparent way."

Ms. MCCARTHY. Yes, sir.

Mr. TIPTON. That was your quote. Just as a follow-up, we had sent a letter to you on August 15, signed by 29 other Members, listing out specific questions regarding the spill. When can we expect an answer? You have yet to respond.

Ms. MCCARTHY. I will—I am sorry, when did you say you sent that?

Mr. TIPTON. August 15.

Ms. MCCARTHY. OK. I will double-check, and we will get you a tentative date, and—

Mr. TIPTON. No, that will be great. Mr. Westerman, Mr. Pearce, you are citing you are going to get back to people. I think that is a lot of frustration of the committee work. We hear, "We will get back to you," but you never do—

Ms. MCCARTHY. Well, sir, I have not seen it, and I do not want to give you a date that I would then have to explain away, because—

Mr. TIPTON. Well, terrific. If you can get back to us on that, we would appreciate it.

Ms. MCCARTHY. All right.

Mr. TIPTON. In regards to transparency, you said that the EPA was examining different sites that could suffer an EPA meltdown, as we saw at the Gold King Mine. You have identified 10 different mines now, but that did not come forward until such time as there was an AP report. How is that feeding in with transparency?

Ms. MCCARTHY. I am sorry, I do not exactly know the context in which you are referring, but—

Mr. TIPTON. Well, the context of the question is that you have identified 10 mines—

Ms. MCCARTHY. That is correct.



Mr. TIPTON [continuing]. That have the potential to be able to have a spill.

Ms. MCCARTHY. No. What we did was, when this happened, I issued a memo to put a hiatus on all mining operations—mining recovery or, what is the word I am looking for, cleanups—that we were involved in. As a result of that, those cleanups stopped, and we have identified 10 that look similar to this, where we have to make sure we do not—

Mr. TIPTON. OK. Are you revealing the locations of all these mines?

Ms. MCCARTHY. Say that again.

Mr. TIPTON. Are you revealing the locations of all the mines?

Ms. MCCARTHY. If folks want to have that, I think the states were revealed—

Mr. TIPTON. OK.

Ms. MCCARTHY [continuing]. And they may have the—

Mr. TIPTON. We have—

Ms. MCCARTHY [continuing]. Locations, as well.

Mr. TIPTON. In the AP report, one of the mines was the Standard Mine, near Crested Butte in Colorado, which is in my district. Is that information correct, that that is one of the suspect mines?

Ms. MCCARTHY. I do not know, sir, but I can go back and take a look.

Mr. TIPTON. OK. We would appreciate having the follow-up on that.

What about districts other than mine, for other Members on this committee? Do you feel that it is going to be important to be able to reach out and give that notification in advance of potential spill areas, just as we saw at the Gold King Mine, to let people know in these districts?

Ms. MCCARTHY. Yes. The Gold King Mine was raised to us, rather than the other way around. We got involved, is my understanding, because there was identified to be a blowout problem. So, we will continue to work cooperatively, there were no secrets here; that work was being done in a very transparent and publicly-accessible way.

Mr. TIPTON. I would like to change gears just a little bit here. I would like to know how many mining engineers does the EPA employ?

Ms. MCCARTHY. I cannot answer that right now, sir, but I—

Mr. TIPTON. Do you know if there are any?

Ms. MCCARTHY. I—

Mr. TIPTON. You do not have to give me a specific number. Do you employ any?

Ms. MCCARTHY. I know we have a mining team, a national mining team that works on these issues, and I know that we work on—

Mr. TIPTON. But the team—

Ms. MCCARTHY [continuing]. Mining sites.

Mr. TIPTON. Do you have any engineers?

Ms. MCCARTHY. I do not know, sir.

Mr. TIPTON. You do not know. Can you get back to us on that?

Ms. MCCARTHY. Yes, sir.

Mr. TIPTON. OK. You have cited a number of times that you work with a lot of people with a lot of expertise in this area. I think a lot of the concern that we see is, just given some of the protocols that you put into place when we want to be able to juxtapose this to a private company that is meeting rigid standards, that your organization puts together those standards.

When you, through the document dump that came out about 2 weeks ago on a Friday, cited that there was a potential for a blow-out at the Gold King Mine, why was there no effort to be able to determine how much water had actually backed up?

Ms. MCCARTHY. Well, that—

Mr. TIPTON. If we are talking about having the expertise.

Ms. MCCARTHY. Well, I would have to go back and identify what both Colorado and EPA were basing their judgments on, but it was a concern of the entire community, including the Animas River Stakeholder Group, that there was a—

Mr. TIPTON. It was a concern. I am just trying, really, to get to the point of prudence, in terms of your position on it. It is your job, you are the one that is heading this up.

Ms. MCCARTHY. Well, I—

Mr. TIPTON. When we are looking through your documents, saying that there was a potential for a—

Ms. MCCARTHY. Yes.

Mr. TIPTON [continuing]. Blowout at the Gold King Mine—

Ms. MCCARTHY. That is why we were there.

Mr. TIPTON [continuing]. Would it have been prudent to have measured how much water is behind the wall that was built up?

Ms. MCCARTHY. Well, that is one of the issues—did we take all the prudent steps we needed to? That is where the Department of the Interior is going to be able to help inform us.

Mr. TIPTON. Can you understand some of the frustration, the position that you put yourself in—

Ms. MCCARTHY. Yes, yes.

Mr. TIPTON [continuing]. As being the enforcers, the experts in the field, and you are saying, “This is a mystery. We are having now to look back and see what went wrong.”

You know, actually, this is in my district.

Ms. MCCARTHY. Yes, sir.

Mr. TIPTON. I have talked to engineers, miners that work in that area. They would not have proceeded the way that the EPA did. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you.

Ms. MCCARTHY. Thank you, sir.

The CHAIRMAN. Ms. McCarthy, let me save you some time in getting back with him. According to your Web site, you have zero mining engineers. Actually, Scott, our committee has more mining engineers than EPA does.

Mr. Hardy.

Mr. HARDY. Thank you, Mr. Chairman. Along that same line of questioning, I would like to know how many hydrological engineers you have on your team?

Ms. MCCARTHY. I do not know that answer, sir.

Mr. HARDY. How about how many geological engineers?

Ms. MCCARTHY. I do not know that answer, either.

Mr. HARDY. I guess the question that would go along with that, then, is how do we have the expertise in hiring a contractor to do this, or why does the EPA figure that they have that expertise, if you do not know? Isn't it your responsibility to know?

Ms. MCCARTHY. Not on every site, sir. But it is my responsibility to manage the Agency appropriately.

Mr. HARDY. Did you know that the EPA requires that mines, before they can be open, have an environmental, a NEPA process done? And, in order to do that, they have to have geological engineers, hydrological engineers, and mining engineers to go along with that. Is that true?

Ms. MCCARTHY. I am not that familiar with it, sir. But those are the issues that the Department of the Interior—

Mr. HARDY. You are the head of the department? Don't you feel that is your responsibility, to know what you need in your department?

Ms. MCCARTHY. Again, it is my responsibility to manage the Agency effectively.

Mr. HARDY. So, before you hire somebody—what is the hiring process of a contractor before they begin work on such a project as this?

Ms. MCCARTHY. I cannot say that I have ever been directly involved in that hiring process; but I am aware that we set criteria for the credibility of the contractors, we look for those with experience and background that is appropriate, and we do that through an RFP process.

Mr. HARDY. How would we know what that experience and process is, if we potentially do not have the experience on our own staff, the EPA's own staff, to be able to hire that type of a contractor, to understand what you need in that process?

Ms. MCCARTHY. Well, I am not assuming that we do not have expertise to understand what is necessary for—

Mr. HARDY. I would just like an answer to that question.

Through this process, when a mine is open and it has gone on—at least in the state of Nevada—for 60, 70, 80 years, you have to provide documentation, the environmental process, the NEPA process. It was called something in those days, but those processes are there.

What happens to those records that are provided by those mine folks? What happens to that information that they have to provide the EPA or any other entity that is with the Federal Government?

Ms. MCCARTHY. Any information that is provided with the Federal Government has to be properly retained, in accordance with the law.

Mr. HARDY. Do you believe that would be pertinent to the investigation of this mine, and how to handle the situation, before we just hire a contractor to go do something?

Ms. MCCARTHY. Whatever appropriate steps we should take should be documented.

Mr. HARDY. I think those questions should all be asked before you start that process. I believe there has been a real violation here, a real problem. I see it happening within EPA; they are more worried about the environmental side of this situation than under-

standing the responsibility you have before these become contractors themselves.

So with that, I yield back. Thank you.

The CHAIRMAN. Thank you, I appreciate that. If Mr. Luján were to come in here at some point—we have another panel—we will make sure that he has a chance of asking some questions.

Ms. McCarthy, appreciate you being here. This is now 3 hours into this hearing. Once again I will state, and I do not want to sound like a teacher berating a student; but had you been willing to share the panel with the other four witnesses that were here, it would have been an enlightening opportunity and discussion. Those other witnesses who had some expert testimony could have added some expertise and some answers to the questions that had been here. So, I am very sorry that you were not able to do that.

At the beginning, I said you might want to apologize to those for not being willing to sit on the same panel with them. I will give you that same opportunity. But, if not, this panel is expended, and we will invite the other four witnesses to come before us and take a position at the table.

Ms. MCCARTHY. Thank you, Chairman.

Mr. GRIJALVA. Mr. Chairman, if I may, a point of privilege. I will have to be leaving. I have questions for the additional witnesses that we will submit to the committee in writing. It is a conflict I cannot resolve. My apologies to the witnesses who are coming up. With that, thank you.

The CHAIRMAN. I totally understand, and we will submit your questions to these witnesses in writing.

We will take a brief pause here as we change panels. The faster we can make that exchange, the better it would be.

[Pause.]

The CHAIRMAN. While we are coming down let me introduce very quickly Mr. Russell Begaye, who is the President of the Navajo Nation; Mr. Mike Olguin—I hope I pronounced that close—Treasurer of the Southern Ute Indian Tribe; Dr. Larry Wolk, who is Executive Director of the Colorado Department of Public Education and Environment; and Mr. Ryan Flynn, who is the Secretary of the Environment for the state of New Mexico. Appreciate the four of you being here.

Since you do not want to—don't sit down yet. I am trying to save you some extra space here. Pursuant to the rules of the Oversight and Government Reform Committee—and only that committee—all witnesses will be sworn in before they testify. Would you please raise your right hands?

Do you solemnly swear or affirm that the testimony you are about to give will be the truth, the whole truth, and nothing but the truth?

Let the record reflect that all witnesses answered in the affirmative. Thank you, you may be seated.

Once again, anything that you have submitted in writing is part of the record, and will be there. We will ask you each to make a quick statement, if you could, limited to 5 minutes. As you noticed, we will try and be kind of arbitrary with the gavel coming down; but we do appreciate you being here as part of this discussion.

We will start with President Begaye. You have 5 minutes to give an oral testimony to the committee.

**STATEMENT OF RUSSELL BEGAYE, PRESIDENT, NAVAJO NATION, WINDOW ROCK, ARIZONA**

Mr. BEGAYE. Good afternoon, Chairman Chaffetz and Chairman Bishop. Good to see you all, always. Thank you for your support, and also Ranking Members of the committees. My name is Russell Begaye [speaking native language], and I am the President of the Navajo Nation.

I was born and raised along the San Juan River in Shiprock. Years ago, when I was a little boy, we saw hundreds of fish, dead fish, floating down the river. As boys, we would jump in the river, catching the dying fish. I had been asking for years why those fish were dead. I did not get an answer until August 13, when Administrator McCarthy came to visit our nation: 1.5 million gallons of radium 226 spilled from the uranium mill site located by the bridge in my hometown, Shiprock. We not only swam in that radioactive water, but my brothers ate the contaminated fish.

I am asking members of these two committees to not allow history to repeat itself. Hold the EPA accountable for the toxic spill that occurred on August 5, about a month-and-a-half ago. Do not let them get away with their negligence. Our people are suffering. Much of the organic crops have been lost. Our livestock are penned up. Our farmers and ranchers are exhausted from hauling water. Our children are afraid of the river.

We have been told by the EPA that cleanup will take decades. This is what we will have to live with for years to come.

Today, we come to ask for help. The White House is silent. FEMA, DOI, and other Federal agencies are being told to not use their own resources to help us by the U.S. EPA. The U.S. EPA has made promises, but we have not seen any of these promises fulfilled. The promises were made empty. They are like the thunder we hear over our land, but with no rain.

What our people need, first and foremost, is compensation now. The farmers and ranchers cannot wait months before they are compensated for their damages. I know this year's bills will not be paid by these families, clothing for children will not be bought, and food will be scarce. Have the EPA set up an emergency compensation fund, and provide ongoing repayment of losses as they are submitted. Do not be a party to this injustice by having our farmers waive future claims after they get their first compensation checks.

Secondly, we need an alternative water source for drinking, for our livestock, and for irrigating our farms. We are asking that wells be drilled, a reservoir built, and water be piped from the Navajo Dam. We want the EPA to build us a laboratory on the Navajo Nation, so we ourselves can continuously test our water, soil, plants, and livestock. We are asking this committee to tell President Obama to declare the San Juan a disaster area. Only then will other Federal agencies besides EPA provide services we need. This will allow FEMA, USDA, DOI, and other Federal agencies to provide resources we need now.

We are asking this committee to hold a follow-up hearing in 6 months, because we do not want this to become old news a week

from now. The Navajo Nation will not let any and all negligent parties get away with this disaster. We will stand our ground until our river and river beds are safe once again for our children to play in, and for our people to use as a drinking source. The Navajo Nation will no longer stand back when these types of atrocities are done to our people, our land, and our water—for water is life.

I just want to thank you for your time and attention, and we will look to your leadership to right this injustice. [Speaking native language.] Thank you.

[The prepared statement of Mr. Begaye follows:]

PREPARED STATEMENT OF RUSSELL BEGAYE, PRESIDENT, NAVAJO NATION

I. INTRODUCTION

Yá'át'ééh (hello) Chairman Bishop, Chairman Chaffetz, and members of the committees, my name is Russell Begaye. I am the President of the Navajo Nation. I was raised on a farm along the San Juan River in Shiprock, New Mexico, one of the communities directly impacted by the subject of this hearing. Thank you for this opportunity to testify before your committee on a matter that is of utmost importance to the Navajo Nation.

As you know, on Wednesday August 5, 2015, the United States Environmental Protection Agency (USEPA), and other parties, caused a massive release of toxic contaminants from the Gold King Mine into Cement Creek. The toxic sludge—which included harmful contaminants such as lead and arsenic—flowed south from the Cement Creek into the Animas River, then into the San Juan River (River), a major water source for the Navajo Nation. The San Juan River flows through 215 miles of some of the richest farmland in the Nation's territory, and provides much of the Nation's northern border. The impact to the Navajo Nation from this drastic release is compounded by the fact that much of this portion of the River is slower moving than upstream.

Today, in the brief time I have, I would like to cover only a few critical areas of concern for the Navajo people. The critical areas of concern are as follows:

- The USEPA's, among others', mishandling of the spill and the emergency response; USEPA's lack of timely notice, transparency, and consistency; and the resulting culture of distrust;
- History of contamination of the San Juan River and the need for cleanup;
- Our preliminary findings on the short-term and long-term impacts of the spill on the Navajo people and environment, including economic, health, cultural, and spiritual impacts.

To address the serious impacts of this spill and the continued threat to the Navajo people from future contamination, we request the following:

- Resources from USEPA, FEMA and BIA to address the immediate emergency;
- Assurances that USEPA will fairly and timely compensate the affected farmers and livestock owners for their damages, both in the near term and long term;
- Resources to conduct our own water, sediment, and soil monitoring, and recognized authority for the Navajo Nation EPA to do the necessary work;
- That the USEPA address all the contamination that is flowing into the River;
- Resources to address near- and intermediate-term environmental and health impacts;
- Resources to study and address the long-term environmental and health impacts of the spill, and to restore the River to a safe and healthy state; and
- A fair and independent assessment of the role USEPA, and others, played in the events leading up to the Gold King Mine spill, and the establishment of a different lead agency.

It is important to realize that in addition to the many known and yet unknown physical, chemical, biological, and economic effects of this spill, this spill has taken a cultural and spiritual toll on our society, disrupting our *hozho*. *Hozho* encompasses beauty, order, and harmony, and expresses the idea of striving to maintain balance

in the Navajo universe. The trauma from this spill will be felt for years to come, and we need immediate and sustained help to restore the balance for our people.

## II. THE USEPA'S MISHANDLING OF THE SPILL AND CREATION OF A CULTURE OF DISTRUST

The NNEPA works in close partnership with USEPA to facilitate the Nation's 12 environmental programs, which are largely, if not completely, funded by the USEPA. A good and close working relationship with USEPA has always been critical to the success of the NNEPA. However, recent events relating to this spill have led to a complete shift in that relationship as USEPA has sought to quiet our legitimate concerns, and has made repeated missteps in its response efforts. We have serious concerns about the strong conflict of interest USEPA has with respect to this investigation and the emergency response necessary. No other environmental bad actor would be given leeway to investigate itself and determine to what extent it will be held accountable. We are encouraged that USEPA's Office of Inspector General will be reviewing this incident, but we believe another agency should take the lead on the on-ground response, and an independent body should conduct the investigation.

To begin with, the USEPA inexplicably delayed notification of the spill to the Navajo Nation. The spill occurred the morning of August 5, 2015, but the Nation was not informed of the release until August 6, a full day later, and not even by the USEPA but by the state of New Mexico. It took the USEPA almost 2 full days to notify us. We view this as a violation of the government-to-government relationship between the Federal Government and the Navajo Nation.

The USEPA also demonstrated a complete lack of transparency. Our initial warning from USEPA was of an "acid mine drainage spill in the Animas River north of Durango" of "[a]pproximately 1 [million] gallons." USEPA's initial focus appeared to be on pH levels. This served to downplay the magnitude of risk to human and animal health, and later reports by USEPA of released contaminants were incomplete. The media was receiving faster and fuller information from USEPA than the Navajo Nation. For example, the *New York Times* reported the spill hours before USEPA provided the Nation with notice of the spill. And media sources reported that USEPA confirmed the presence of arsenic on Friday, August 7, whereas USEPA still had not reported the presence of arsenic to the Nation even by Sunday, August 9.

USEPA on Friday, August 7 informed the Nation that "the water in Cement Creek and the Animas River near Silverton is clearing," but the Vice-President and I nonetheless made plans to travel to the Gold King Mine Sunday to assess the situation for ourselves.<sup>1</sup> We requested a tour from USEPA, but faced immediate resistance. USEPA staff indicated they would only take us to the confluence of Cement Creek with the Animas River in Silverton, Colorado, but the water at the confluence remained bright orange. It did not appear to be "clearing." We thus urged USEPA to take us to the point of release. They again refused, this time compromising by offering to take us to the treatment pools below the mine adit. We finally convinced them to take us within a half-mile of the point of release. We walked the rest of the way to the point of release. There we saw a completely unblocked mine adit with an estimated 550 gallon per minute flow of bright, opaque orange liquid pouring forth. We have since learned that prior to the blocking of the nearby Sunnyside Mine and the Red and Bonita Mine, Gold King Mine was releasing water at only 7 gallons per minute.<sup>2</sup> We took video footage and photos at the point of release and shared these with the public. This appeared to be the first time USEPA Region 9 staff visited the point of release.

While USEPA was slow in notifying the Nation of the initial spill and its associated risks, it was quick in dispatching staff to Navajo communities to hand out Standard Form 95 and encouraging members of the Navajo Nation to fill out forms to expedite settlement of their claims under the Federal Tort Claims Act and apparently to obtain releases from members of the Navajo Nation. But this was only *after* I announced that the Navajo Nation would be suing the USEPA and other liable parties for the spill. The Navajo Nation Attorney General reviewed the form and identified plain and clear language on the form asserting that individuals submitting the forms would be filing the forms in pursuit of "FULL SATISFACTION AND FINAL SETTLEMENT" of their claims for damages and injuries that yet remain unknown.

<sup>1</sup>Email from Harry Allen, Chief, Emergency Response Section, USEPA Region 9, to Russell Begaye, President, Navajo et al. (Aug. 7, 2015, 11:58 PT) (on file with NNDOJ).

<sup>2</sup><http://fox6now.com/2015/08/13/gold-king-mine-owner-i-foresaw-disaster-before-epa-spill-into-animas-river-in-colorado/>.

This presented our people with a difficult choice. The economics of farming makes the cashing out of harvests time-critical. Our farming families were expecting to sell their harvests along a predictable timeline that was disrupted by the closing of the San Juan River to irrigation use. They relied on the predictability of this timeline to defer bills and expenses until harvest time. Now that time is passing, and many of them need their anticipated harvest returns immediately to catch up on bills and to buy school clothes, among other things. Yet if they fill out Standard Form 95 and receive a settlement check, they may not be able to defer cashing that check while they wait for additional damages or injuries to accrue. I, along with the Vice-President and Attorney General, have thus asked USEPA for an interim claims process that will allow for ongoing claims filings, and our Attorney General has asked for a U.S. Attorney General opinion confirming that the filing of Standard Form 95 and the settling of a claim filed under that form or process does not in fact fully satisfy and settle the claim. None of this has happened while the Navajo people continue to suffer. Despite our requests, the USEPA has yet to confirm to us that it will fully and fairly address all damages and injuries to members of the Navajo Nation who have been impacted by the spill.

These instances—but a few among many—have led to distrust by the Navajo Nation toward USEPA, both among our farmers and our leadership. The NNEPA, in contrast, continues to have the trust of our farmers and our leadership. Despite the NNEPA's limited resources, we turn to the NNEPA for honest data assessments and technical answers.

### III. HISTORY OF CONTAMINATION OF THE SAN JUAN RIVER AND THE NEED FOR CLEANUP

This incident is one of many where responsible parties have contaminated Navajo land and water. I was born and raised in Shiprock, and as a child one summer, I once saw hundreds of dead fish floating down the San Juan River. We knew something was not right with all these dead fish in the River. But the next day we were back in the water, playing in it. There was no one to tell us to stay out of the water—that it was dangerous. We always wondered why all the fish died in the River, and it was not until USEPA Administrator Gina McCarthy visited Shiprock on August 13, that I learned the story of why this occurred. There is a 1.5 million ton uranium tailings pile above a floodplain feeding into the San Juan River in the middle of Shiprock. That summer, a dam holding a pool of tailing-contaminant filled water burst into the River. But no one told us what had happened. We cannot tolerate this contamination of our sacred lands.

Yet the recent spill threatens to recur, either from unsettling of contaminated sediment in our River waters, or from ongoing contaminated releases from upstream mines. USEPA stated early on that we will be dealing with the effects of USEPA's Gold King Mine chemical spill "for decades." Gold King Mine is just one of over 300 abandoned hardrock mines in the heavily contaminated 140-mile-area known as the Upper Animas Mining District (District).<sup>3</sup> The District includes private, Federal, and state lands, and the town of Silverton.<sup>4</sup> Gold King Mine was twice considered for inclusion on the National Priorities List (NPL), both as part of the District, and as a narrower carve-out from the District, and the recent spill was preceded by two spills in the 1970s. We sent a letter to Administrator McCarthy on Monday, September 7, requesting that this District be made a Superfund site so that USEPA will make the cleanup and containment of the site a priority, and thereby protect us downstream communities.

The Mine's first Superfund site assessment was conducted in the 1990s, and the assessment concluded, "that water quality standards were not achieved" in the District.<sup>5</sup> The assessment also identified "severe impacts [of the District] to aquatic life in the Upper Animas and its tributaries."<sup>6</sup> Despite the serious harm being caused by the District, USEPA postponed listing the District on the NPL in order to allow a "community-based collaborative effort" to clean up and mitigate harm from the District "as long as progress was being made to improve the water quality of the Animas River."<sup>7</sup>

Yet in 2005, the "water quality ha[d] declined significantly" in the area, and so in 2008, USEPA performed another NPL assessment, this time on the Upper

<sup>3</sup> <http://www2.epa.gov/region8/upper-animas-mining-district>.

<sup>4</sup> <http://www2.epa.gov/region8/upper-animas-mining-district>.

<sup>5</sup> <http://www2.epa.gov/sites/production/files/2015-08/documents/goldkingminewatershedfact-sheetbackground.pdf> at 2.

<sup>6</sup> <http://www2.epa.gov/sites/production/files/2015-08/documents/goldkingminewatershedfact-sheetbackground.pdf> at 2.

<sup>7</sup> *Id.*



Cement Creek alone.<sup>8</sup> The study again confirmed, “that the area would qualify for inclusion” on the NPL.<sup>9</sup> Despite the additional confirmation that the Mine area should be listed on the NPL, “EPA postponed efforts to include the area on the National Priorities List,” again “after receiving additional community input.”<sup>10</sup> USEPA’s repeated denial of the facts with respect to the level of harm posed by the Gold King Mine and its surrounding mines has placed downstream jurisdictions such as the Nation at undue risk. This further contributes to a lack of trust in USEPA’s ability to protect the health and well-being of Navajo people.

The threat of a spill from the District remains under the existing management scheme. The chemicals found in the District pose significant human health risk as they contain known carcinogens and elements, like lead and arsenic, that can affect major organ systems such as cardiovascular, respiratory, gastrointestinal and reproductive systems. The risks to the Navajo people are very real. Neither my people nor the other communities living near the rivers can tolerate a recurrence of the unprecedented damage caused by the Gold King Mine spill.

Based on our extrapolation of known data, over 20 million gallons of aggregate contaminated flow has spilled from the Mine since August 5. If the USEPA does not address these sites through designation as a Superfund site, contaminants will continue to flow freely into the Nation’s waters, and the concentration of contaminants in our waters will increase, extending the duration of exposure for our people, which is already significant now, even further into the future. Metals poison people slowly, and sediments eventually make their way downstream. We are thus gravely concerned that the metals coming from Gold King Mine and the District are making their way down to us, and will settle in our slow waters. We are also concerned that efforts to flush contaminants out of the Farmington area flushed contaminated sediments into our territory, and that those contaminants will remain here for a long time. We do not want our people to be poisoned, so we urge you to do what you can to help us secure NPL listing for the District.

#### IV. SHORT- AND LONG-TERM IMPACTS

The impacts of this spill, as well as the ongoing contamination from mines in the area, are devastating and myriad. The reliance of our people on the San Juan River and the significance of the River to our people cannot be overstated. The Navajo Nation as a whole is a largely agricultural society, and our people have traditionally farmed and ranched since pre-contact. The San Juan River Basin is a bastion for ancient Navajo seed strains that our people have carefully refined over centuries to thrive in our arid region. Farming and ranching are the backbone of our culture and economy, and are both heavily dependent on the San Juan River. Indeed, in our arid region with little water distribution infrastructure in place, our farmers rely heavily on the San Juan River and ditch irrigation practices to keep their fields hydrated and their crops growing. I want to lay out for the committee some of the impacts of the contamination on the Navajo Nation. But I want to stress that, because of the historic and long-term nature of the contamination caused by the spill and the lack of full transparency, all of the economic, health, cultural, and other impacts to the Navajo people are not yet known.

*First*, our farmers and ranchers and our traditional people felt the most immediate impact from the spill. You can imagine the significant economic and emotional toll on our farming families, who mostly live on their farmlands and consume their crops as a matter of subsistence. These families have lost a significant portion of a full growing season’s worth of work. Now these families have to look at their dead crops each day, and are constantly reminded of the loss.

As I visited farmers and ranchers, I saw a lot of farms where corn had not fully matured due to lack of water. As a result, the corn crops had only the stalk but no corn. The corn pollen that is so critical to everyday Navajo spiritual life did not develop properly for many of these crops. A lot of Navajo melons only grew to a fifth of their size. One family was forced to abandon all but a single acre of their 32-acre field, opting to save plants with cultural significance.

*Second*, the spill has already severely impacted our economy and may continue to do so for years to come. The Navajo Nation already faces a daunting unemployment rate of 42 percent. Yet along the San Juan River, many of our people are able to make a life for themselves and support their families through farming and ranching. Many of our farmers create additional economic value for themselves by

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

carefully growing profitable organic crops, or raising grass-fed and organic beef or mutton product. Now their livelihoods have been significantly disrupted by the spill. Growing cycles and field rotations have been disrupted, and farmers who are used to producing their own farm goods will now need to buy fruits and vegetables for themselves, and hay and alfalfa for their livestock, to replace what was lost. Our farmers will also lose income from the expected sales that did not or will not occur. Even farmers who have been able to salvage their farm goods now face a stigma developing with respect to fruits and vegetables grown along the San Juan River. This triggers a cycle of economic losses for the community.

*Third*, the long-term health effects of the spill are ominous and not fully understood. Heavy metals like lead, arsenic and others that were discharged during the spill are known to be dangerous to humans, animals, and plants. These metals persist in the environment and are particularly harmful to fetuses and children. To provide a sense of the magnitude of exposure to these harmful metals just from the spill, one report of EPA data indicated that lead was found near the Cement Creek/ Animas River confluence “at more than 200 times higher than the acute exposure limit for aquatic life, and 3,580 times higher than Federal standards for human drinking water.” And arsenic was found “more than 24 times the exposure limit for fish and 823 times the level for human ingestion.”<sup>11</sup> Human consumption of farm products and livestock raised on contaminated water is therefore of grave concern. We are especially concerned about sheep because sheep liver and kidney are cultural delicacies, and are organs that are most likely to concentrate contaminants. In addition, long-term effects on wildlife that live in or rely on the River for water must be understood because we hunt and fish these animals to put food on our tables, and as part of our traditional cultural practices. Although USEPA has stated that surface water returned to its previous condition, many of the contaminants have merely settled to the bed of the River, and will be remobilized later during storm events, for example.

*Fourth* are the cultural and spiritual losses that we have sustained. Indeed, the Navajo Nation’s impacts are felt most pointedly in the disruption of our cultural principle of *hozho*, which encompasses beauty, order, and harmony, and expresses the idea of striving to maintain balance in the Navajo universe. We connect to our land, our water, and each other through ceremonies and gatherings. We grow four types of corn, each used for a specific purpose in our ceremonies, and those seeds are protected by the strong culture of farming that has persisted in the San Juan River Basin. Navajo corn husks are mixed with tobacco to create ceremonial smoke, and our corn pollen is used as an essential element in all Navajo ceremonies. One of our corn seed strains is utilized in our critical kinaalda ceremonies (the coming of age ceremonies for our women). We also grow an array of heirloom fruits and vegetables that our people eagerly anticipate selling and purchasing during our popular fair season each fall. Those fruits and vegetables are shared over family tables, and are a part of the cultural glue that keeps our families and way of life intact. Families travel for hours across the Nation to the San Juan River Basin to access these ingredients for our ceremonies and celebrations. But the spill destroyed many of these crops so critical to our prayers, ceremonies, and our way of life.

*Fifth*, the impairment of the River and the adverse impacts to our farmers and ranchers, and our community as a whole, will mark a moment of community trauma that will be endured for years to come. This new trauma will compound our already significant historical trauma, and raises new and troubling public health concerns. Already three suicides have occurred in the course of the last 2 weeks in affected communities along the River. Our Department of Health is researching the connection of the suicides to the spill, and we are concerned that these might be the first of a larger cluster. This tragedy affects all of our Nation because so many of us have relatives in Northern Navajo. Compounding this trauma, are the repeated response failures and withdrawals of aid (and blockage of aid) by USEPA, which have sent a strong message to our people that Navajo lives don’t matter, that our health and well-being don’t matter, and that our way of life doesn’t matter. We will be dealing with the effects of this spill for decades and rebuilding the shattered sense of self so many of our people are experiencing as a result of this disaster.

---

<sup>11</sup> <http://m.startribune.com/nation/321518301.html>.

## V. SIGNIFICANT RESOURCE NEEDS

In light of the devastating impacts from this spill, both known and yet unknown, we need to act quickly and thoughtfully to protect our Navajo citizens, our natural resources, the Navajo way of life, and most importantly our future generations. We need assistance from the responsible parties to address the short- and long-term impacts, to make us whole, and to return the beauty and *hozho* to our River and our people. In addition to oversight and national attention, Congress can provide forward-thinking legislative solutions to some of these issues. We therefore ask for the following:

1. **We continue to need resources from USEPA, FEMA and BIA to address the ongoing need.** We still need continued delivery of water for both livestock and farming, as well as the delivery of hay to impacted ranchers. Farmers and livestock owners are essentially fed water from two point sources along the San Juan River. Although we have allowed the waterways to be opened for irrigation only, the farmers who are fed water from one point source have unanimously voted not to use the San Juan River water because they lost all faith in the USEPA's data. These farmers still need water for both their crops and livestock and hay for their penned livestock. The USEPA's actions in this matter have spread fear, and our farmers and ranchers should not be penalized for their lack of trust in the USEPA.

On the other point source, the water was reopened for irrigation purposes only. Based on the data samples our Navajo Nation Environmental Protection Agency has seen, the contaminant levels were still above Navajo standards and therefore the water is not safe for consumption by livestock. As such, livestock owners in the area need to pen up their animals in order to prevent them from drinking the River water. They will still need water delivery and hay for their penned livestock.

Even in light of the above, the USEPA has essentially withdrawn assistance. The Bureau of Indian Affairs has been helpful, but they had to pull out because they ran out of funds. FEMA has denied assistance to Navajo, deferring to USEPA as the lead response agency. As it currently stands, there are no Federal services being provided to farmers and ranchers in the area. We as a Navajo Nation government, and our farmers and livestock owners, are left to deal with not only the contamination, but the financial and emotional mess left behind by the USEPA's actions. I ask, why should we bear that burden?

2. **If USEPA will not continue its services to mitigate the harm to farmers and ranchers, we need assurances that they will fairly and fully compensate the affected farmers and livestock owners for their damages.** Many farmers and ranchers have lost crops. Many have expended their own funds to try and mitigate their damages. Some have lost economic value of their goods, among a whole host of other possible damages. We are unsure as to whether the FTCA claim process will provide fair, full, and ongoing compensation to our people. As previously stated, we have asked USEPA for an interim claims process or a relief fund that will allow for ongoing claims and quick remuneration. And we have asked the U.S. Attorney General for an opinion confirming that the filing of Standard Form 95 and the settling of a claim filed under that form or process does not in fact fully satisfy and settle the claim as the plain language of the form and the FTCA itself indicates. Despite the urgency with which our people need to be compensated for their already experienced losses, to date we have received no response or confirmation from the USEPA or USDOJ.
3. **We need resources to conduct our own water, sediment, and soil monitoring, and authority for the NNEPA to do the necessary work.** Due to our lack of trust in the USEPA and the conflict of interest that exists with the USEPA, we want to be able to monitor their work and confirm their results. We will require an on-site lab, and additional staffing to manage the sampling and lab performance. We are already expanding our scope of work into the realm of sediment testing, but testing and lab work is expensive, so we need additional funding to facilitate that work. This will enable us to provide our farmers and our leaders with the answers they deserve, and with answers they can trust.
4. **The U.S. Environmental Protection Agency needs to clean up all the contamination that is flowing into the River.** As we have discovered, along with the Gold King Mine, there are many hundreds of hardrock mines along the River that continually release contaminants into the River. We

suspect that the volume of contaminants they release over time is much greater in magnitude than this latest burst from the Gold King Mine. USEPA needs to develop a plan to clean up these sources of contaminants, share their plan, and implement and complete that plan. We request, as part of the plan, that USEPA designate these mines as Superfund sites.

5. **We need resources to address near- and intermediate-term impacts.** We need assistance to create redundant and auxiliary water supplies, at least two treatment plants, additional drilling for wells, repair of windmills and new reservoirs to guard against the negative impacts of future contamination. Until there is a plan in place from the USEPA that would prevent future contamination of the San Juan River, and that plan is implemented, we need these water supplies and reservoirs in case we need to shut off water from the River again. For the sake of our people and our Nation, we hope we do not ever have to do that again, but for now, that risk remains. We also need treatment plants to filter out contaminants to make the water safe for human, animal and agricultural consumption, including a water treatment plant at the head of our waters in the communities of Upper Fruitland and Shiprock.
6. **We need resources to study and address the long-term health, economic and environmental impacts of the spill and to return the River to a safe and healthy state.** While long-term health and economic impacts have not yet been quantified, we believe they will be substantial. We will need assistance monitoring health impacts, including mental health impacts, as well as the resources necessary to fund this monitoring effort and to fund treatment, if necessary. Extensive planning and study will be needed to return the San Juan River to a safe and healthy state.
7. **We demand a fair and independent assessment of the USEPA's and others' role in the spill, and the establishment of a different lead agency.** Since they were the cause of this contamination, we have serious concerns about the strong conflict of interest USEPA has with respect to this investigation and the emergency response. An independent body should conduct the investigation, and FEMA should take over as lead responding agency.
8. **We ask that Congress revisit this important issue and the Federal response in 6 months.** This complex issue will not disappear overnight for the Navajo people; we request Congress hold another hearing in 6 months to ensure the Federal Government, starting with the responsible party, the USEPA, has made sufficient progress.

*Ahéhee.* Thank you for your time and attention to this important issue.

---

QUESTIONS SUBMITTED FOR THE RECORD TO THE HONORABLE RUSSELL BEGAYE,  
PRESIDENT, NAVAJO NATION

#### **Questions Submitted by Rep. Grace Napolitano**

*Question 1.* Tribes have a special relationship with the Animas and San Juan Rivers. They withdraw water that does not have go through traditional water treatment before it is used to irrigate crops, water stock or be used directly by the tribal people. What specific actions has the EPA given Navajo Nation and the Southern Ute Tribal Council to ensure that the tribes are funded, supported, and worked with as required—in a nation-to-nation relationship to track the impacts of this spill over the years it will take to move the sediment downstream?

Answer. Thank you for the question, Congresswoman Napolitano. As far as we know, USEPA has not targeted specific funding for tracking the impacts of the Gold King Mine spill to the San Juan River over the next few years. Generally, our Navajo Nation Environmental Protection Agency (NNEPA) receives about \$20,000–\$50,000 per year from the USEPA to contract with an analytical lab to analyze ambient water quality samples taken from waters across the Navajo Nation. In Fiscal Year 2015, the NNEPA has directed these funds (about \$20,000) to analyze samples collected from portions of the San Juan River to determine its metal concentrations and compare it to levels from past water quality sampling efforts. This funding amount is much too small to provide an appropriate level of analysis of the spill impacts to the San Juan River. The Navajo Nation should receive funding similar

to states, in a set-aside form, and in an amount of about \$1.7 million (approximately equivalent to West Virginia) for its water quality monitoring program, NNEPA would then have a budget of about \$450,000 for its sampling efforts, which would lead to a better assessment of the impacts of contamination to the Navajo Nation's water supplies.

The Navajo Nation is also in the process of negotiating a Cooperative Agreement with the USEPA that we hope will provide reimbursement of some of the significant cost of the Navajo Nation's response efforts and for some future monitoring. There may be difficulties in our negotiations because we do not expect that USEPA will support reimbursement of all our costs. For example, they have indicated that they will fund water and sediment monitoring, but not other studies that the Nation considers important such as monitoring of human health, livestock, wildlife and agricultural impact studies. Nonetheless, we will continue to work toward a fair and equitable agreement for the Navajo Nation.

In addition, USEPA has recently invited the affected Indian tribes and states to be part of a team to design and implement its long-term monitoring plan. We will participate and hope that the outcome is an effective plan that will be funded at a sufficient level to be effective.

Other than as stated above, we are not aware of any other current actions from USEPA in supporting or working with the Navajo Nation in directly tracking spill impacts. There is a possibility of future efforts, but that depends on the outcome of negotiations on the cooperative agreement and development and implementation of the long-term monitoring plan.

*Question 2.* EPA has been working to fix this local issue that has been polluting the Animas River at a rate of approximately 330 million gallons per year. Has either tribe become aware of any short- or long-term effects on health, livestock, etc. from this polluted water?

Answer. At present, some of the specific impacts we are aware of include, but are not limited to, significant crop losses, some animal losses, market effects (a stigma is developing with respect to purchasing farm goods from the affected communities), excessive wear and tear on vehicles and equipment used to haul water, increased reporting of domestic violence in the affected communities post-incident, seven suicides post-incident (four of the first were in affected communities), and other financial and health issues. There are many impact concerns. As such, there are impact studies currently being conducted and proposed. In addition, you can refer to Section IV of my written testimony submitted to the committee, which highlights some of the short- and long-term impacts. As I stated before, not all of the impacts of the spill are currently known or knowable as our first priority has been to respond to the immediate needs of the Navajo people as a result of this historic event.

#### **Question Submitted by Rep. Dan Newhouse**

*Question 1.* Could you detail the impact this EPA-caused environmental disaster will have on farmers in the Navajo Nation?

Answer. Thank you for the question, Congressman Newhouse. Our written testimony submitted to the committee highlights many of the impacts Navajo farmers have and will face as a result of the Gold King Mine (GKM) spill. At the outset, I note that given the historic nature of the GKM spill, not all impacts are known or knowable today, and many impacts have not yet been quantified. Our priority as a Nation has been to respond to the crisis while we are working toward a fuller assessment of the scope and magnitude of the impacts. With that in mind, some of the impacts include the following. From the date when the plume of contaminants from the spill were estimated to be moving through Navajo waters (August 8) until our waters were determined suitable for irrigation and livestock use by our Navajo Nation EPA, the gateways to the Nation's irrigation canals along the San Juan River were turned off. Our waters were reopened to irrigation use on August 28. However, a number of Navajo farming communities took extra precautionary measures, given the uncertainty regarding the level of contaminants in the River and their possible effects. These farmers left their irrigation canal gates closed to avoid contaminating their canal and their crops (which contamination would and could have long-term impacts). The Navajo Nation honored their wishes for taking this precautionary measure by not opening the irrigation gates that would have allowed water to flow by farmer's individual head gates. During the period that the River was closed to irrigation use, crops were lost or their growth stagnated. Some lost crops, such as alfalfa, cannot be replanted for another 2 to 3 years because of necessary soil preparations. In addition, even though some crops were saved, there

appears to be continued concern about market confidence in those crops. There have also been significant mental health impacts caused by the GKM spill, as well as impacts on the non-farming community. I know that recovery is going to be a long process, but I hope that one day, all these farmers will have their confidence restored in the water that they use to irrigate their crops.

---

The CHAIRMAN. President, thank you for your testimony.  
 Mr. Olguin, probably the correct title is Councilman, right?  
 Mr. OLGUIN. Yes.  
 The CHAIRMAN. Councilman, you are recognized for 5 minutes.  
 Mr. OLGUIN. Thank you.

**STATEMENT OF MIKE OLGUIN, MEMBER, TRIBAL COUNCIL,  
 SOUTHERN UTE INDIAN TRIBE, IGNACIO, COLORADO**

Mr. OLGUIN. Good morning, Chairmen Bishop and Chaffetz, Ranking Members, and committee members. My name is Mike Olguin. I am honored to be here. I am an elected member of the Southern Ute Indian Tribal Council, which is the governing body of the Southern Ute Indian Tribe. Thank you for the opportunity to appear before you today on behalf of the tribe, to discuss the Gold King Mine spill and its impacts on the tribe and our community.

Before I begin, I would like to thank Congressman Young and Chairman Bishop for last week's action improving the Native American Energy Act, and reporting it to the Full House. The tribe was active in developing that bill, and supports enactment.

My testimony at this time, Mr. Chairman, I would like to mention a few key items from my written statement. Then I would like to answer questions that you and the committee members may have.

The Animas River crosses the tribe's reservation downstream of Durango, Colorado, and upstream of New Mexico. Since the Gold King Mine blowout on August 5, the tribe has been extensively engaged in responding to the spill. We first learned of the Gold King Mine release when the Colorado Department of Natural Resources notified the tribe on the afternoon of the spill. We immediately responded by implementing our Emergency Management Plan, contacting the County Office of Emergency Management and EPA, and sampling water quality before the spill reached the reservation.

In the first days after the spill, it was largely the local jurisdictions who were responding to the incident. The tribe issued a disaster declaration on Saturday, August 8. Other jurisdictions followed suit.

In the days that followed the release, we attended to the needs of the tribal membership. We posted signs, closing access to the river on the reservation. We delivered water, bottled water, provided water tanks, and water for livestock. We also held informational meetings with tribal members, and offered temporary housing for our affected tribal members.

Additionally, we coordinated EPA testing of tribal member domestic water wells. For the duration of the response, tribal staff actively participated with personnel from other affected governments

in the unified incident command, and remains engaged in the incident command to this day.

As of the Friday after the spill, the EPA still did not have a coordinated effort in Durango. In the absence of a Federal presence, local jurisdiction, including the tribe, worked together. For example, on August 6, the tribe's water quality program called the New Mexico spill reporting hotline and reported the spill to New Mexico. At that point, neither EPA nor Colorado had notified New Mexico. The county and our tribe notified our sister tribe, the Ute Mountain Ute Tribe, of the spill. We also shared information with downstream tribes in the Lower Colorado Basin.

For the period from August 5 through September 8, the tribe incurred approximately \$170,000 in cost responding to the spill, mostly in staff time. We understand neighboring community businesses suffered losses, and our neighboring local governments also incurred costs. We are working with EPA to obtain reimbursement for costs already expended, and future costs that will be incurred, including the cost of continued water quality monitoring.

The tribe has long had an active water sampling program funded by EPA Tribal Assistance Program and Clean Water Act grants. The tribe's water quality data provided valuable information to all the parties affected by the Gold King Mine spill. We tested before the plume hit the reservation, and for 2 weeks after the spill. During that time, we were testing daily for over 25 substances, including aluminum, silver, magnesium, arsenic, lead, and mercury.

Coincidentally, just 2 weeks before the Gold King spill, we had collected tissue samples from fish in the Animas to conduct metals analysis on those samples. We shared our water quality data and continued monitoring, which should provide important information on long-term impacts.

Like others, we favor a full evaluation of events leading to the spill, and the EPA's performance responding to the spill. However, it is important to keep this incident in perspective and understand its point to a much larger problem. There are estimated to be 23,000 abandoned mines in Colorado alone, causing water pollution problems. Federal leadership, assistance, and cooperation among downstream community stakeholders is key to avoiding another blowout and addressing the problem of abandoned mine drainage polluting the Upper Animas River watershed.

Thank you for this opportunity to appear before you today.

[The prepared statement of Mr. Olguin follows:]

PREPARED STATEMENT OF JAMES M. "MIKE" OLGUIN, SOUTHERN UTE INDIAN TRIBAL COUNCIL MEMBER, SOUTHERN UTE INDIAN TRIBE

Good morning Chairmen Bishop and Chaffetz, Ranking Members Cummings and Grijalva, and committee members. Thank you for the opportunity to appear before you today on behalf of the Southern Ute Indian Tribe to discuss the Gold King Mine spill and its impacts on the Tribe and our community.

My name is Mike Olguin. I am an elected member of the Southern Ute Indian Tribal Council, which is the governing body of the Southern Ute Indian Tribe. The Southern Ute Indian Reservation encompasses approximately 710,000 acres in southwestern Colorado. The Tribe is blessed by eight rivers traversing its Reservation in five main drainage basins. One of those rivers is the Animas River, which bisects the western half of the Tribe's Reservation, downstream of Durango, Colorado, and upstream of New Mexico.

Since the Gold King Mine blowout on August 5, the Tribe has been actively and extensively engaged in responding to the spill. Because of this experience, the Tribe

has learned some lessons and is prepared to share our observations with the committees.

TRIBAL AND LOCAL GOVERNMENTS WERE PARTICULARLY RESPONSIVE AND EPA WAS  
COOPERATIVE IN RESPONDING TO THE SPILL

The Tribe first learned of the Gold King Mine release when the Deputy Director of the Colorado Department of Natural Resources notified the Tribe's Wildlife Resources Division on Wednesday afternoon, August 5, 2015. Our Tribe immediately responded by implementing its emergency management plan, contacting the La Plata County Office of Emergency Management, estimating when the contaminant plume would reach the Reservation, contacting EPA to determine the appropriate analyte list for water quality sampling, and commencing baseline water quality monitoring activities before the spill reached the Reservation. On Thursday and Friday, August 6 and August 7, tribal staff coordinated with EPA and La Plata County personnel, attended meetings, gathered information, and continued daily sampling on the Animas River. In the first days of the spill, however, it was largely the local jurisdictions who were responding to the incident. As of Friday, August 7, EPA still did not have a coordinated effort in Durango. In the absence of a Federal presence, local jurisdictions, including the Tribe, worked together as members of the Southwest Incident Management Team in coordinating a response.

In accordance with the Tribe's Incident Management Plan, Tribal Chairman Clement Frost issued a disaster declaration on Saturday, August 8. Other jurisdictions followed suit. In the days that followed the release, the Tribe attended to the needs of the tribal membership. The Tribe posted signs closing access to the Animas River on the Reservation, commenced bottled water delivery to affected tribal members, provided water tanks for affected livestock owners, commenced delivery of water for livestock (the Tribe commenced delivering water to the tribal membership when the EPA contractor delivered water that was not suitable for livestock consumption), held informational meetings with tribal members, and offered temporary housing for affected tribal member families. The Tribe also coordinated and supported EPA testing of tribal member domestic water wells and irrigation ditches in the impacted area within the Reservation. Subsequently, the Tribe purchased and installed 14 reverse osmosis systems on the kitchen taps of tribal member homes.

For the duration of the response, tribal staff communicated, coordinated, and actively participated with personnel from other affected governments in the Unified Incident Command. The Tribe's Incident Management Team was fully engaged in the Incident Command effort, which was headquartered in Durango, and worked closely with local, state and Federal agencies throughout the response effort. Tribal Incident Management Team members staffed the center virtually around the clock to ensure that the Tribe was contributing its expertise to the response effort, as well as to ensure that the Tribe was treated as an affected jurisdiction. The Tribe has since received acknowledgement and thanks for its participation, expertise, efficacy, and professionalism in responding to the incident, and remains engaged in the Incident Command to this day.

The spill response highlighted the importance of relationships between state, tribal, and local governments. The state of New Mexico first learned of the spill on August 6 when the Southern Ute Indian Tribe's Water Quality Program called New Mexico's Spill Reporting Hotline. New Mexico had not received notification from either EPA or Colorado at that point. The County and City attorneys reached out to tribal attorneys to share information and meeting notifications that they knew had not been shared with tribal attorneys. The Southern Ute Indian Tribe coordinated with its sister tribe, the Ute Mountain Ute Tribe, which draws water from the San Juan River. Other downstream tribes in the lower Colorado River Basin, including Chemehuevi, Fort Mohave, Quechan, and Cocopah reached out to the Southern Ute Indian Tribe for information about the spill and the Tribe's water quality sampling, which the Southern Ute Indian Tribe shared.

Today, water quality monitoring results show the water of the Animas River on the Reservation has returned to pre-spill conditions and the River has been reopened for all activities. Our primary concern remains the potential long-term impact on human health and the environment caused by the deposition of heavy metals on the Animas Riverbed.

THE TRIBE INCURRED SIGNIFICANT COSTS FROM RESPONDING TO THE SPILL BUT  
EXPECTS FULL REIMBURSEMENT FROM EPA

For the period from August 5 through September 8, the Tribe incurred approximately \$170,000 in costs responding to the spill, mostly in staff time. We understand neighboring community businesspersons suffered losses and our neighboring



local governments, La Plata County and the city of Durango, with whom the Tribe shares many interests, likewise incurred costs. Long-term, we expect to incur costs for continued water quality and sediment monitoring. The Tribe is working with EPA to enter into a Cooperative Agreement whereby the EPA will reimburse the Tribe for costs already expended, as well as future costs that will be incurred, including the costs of continued water quality monitoring.

THE TRIBE'S WATER QUALITY DATA PROVIDED IMPORTANT INFORMATION FOR ASSESSING THE SPILL'S SHORT-TERM IMPACTS AND CONTINUED MONITORING SHOULD PROVIDE IMPORTANT INFORMATION ON LONG-TERM IMPACTS

The Tribe has long had an active water sampling and monitoring program, and for over 15 years has been monitoring water quality in the rivers that cross the Reservation, including the Animas. Before the Gold King spill, the Tribe's Water Quality Program had been maintaining three stations in the River with equipment that continuously collects pH, oxygen, temperature, and conductivity data. EPA funds this monitoring through a Clean Water Act tribal assistance grant. In response to the spill, the Tribe's Water Quality Program established additional monitoring stations and expanded the list of substances for which the Tribe tests. The Tribe tested before the plume hit the Reservation, and for 2 weeks after the spill, the Tribe was testing daily for over 25 substances, including aluminum, iron, silver, magnesium, arsenic, cadmium, selenium, zinc, lead, mercury, barium, and molybdenum. The Tribe has since resumed its routine monthly sampling of water quality, quarterly sampling of macroinvertebrates, and taking pH, oxygen, temperature, and conductivity readings every 30 minutes.

On Thursday, August 13, 2015, the Tribe shared the water quality data it had collected on the Animas River since the spill. The data from the lab was encouraging. The Tribe assessed the results against tribal and state water quality standards, as well as historical data. Initial pH data showed no dip below pH 7.4 on the Reservation. Aquatic life prefers waters in the 6.5–8.0 range. The Tribe shared data with EPA, the state of Colorado, La Plata County, local officials, and community stakeholder groups. The Tribe also prepared and shared historical water quality data to provide information on pre-release—or normal—river conditions.

The Tribe also has historical data regarding aquatic life in the River. Coincidentally, just 2 weeks before the Gold King spill, the Tribe had collected tissue samples from fish in the Animas River to conduct metals analysis on those samples. While the purpose of the testing was initially to assess potential human consumption concerns, the Tribe will continue to conduct these fish tissue studies to determine any toxicity impacts from the spill. This will allow the Tribe to assess the extent of bioaccumulation of toxins in the aquatic life in the River.

The Tribe has been able to develop a highly successful water quality program, which has provided valuable support to the community in this response, due principally to EPA Tribal Assistance Program grant funding. We hope Congress and the EPA will see the benefits that the Tribal Assistance Program grants have provided to Indian Country and its surrounding communities and continue to appropriately fund these tribal grant programs.

THE PROBLEM OF ABANDONED MINE DRAINAGE PREDATES THE GOLD KING INCIDENT, AND ADDRESSING THE PROBLEM IS COMPLEX AND EXPENSIVE

Like others, the Tribe favors a full evaluation of events leading to the spill and the EPA's performance responding to the spill. We can all learn from mistakes made and, based on a thorough evaluation of the incident and response, hopefully, EPA, the Tribe, and other responders can improve emergency response preparedness.

It is important to keep this incident in perspective and understand it points to a much larger problem, one that has been 100 years in the making. In the late 19th century, the discovery of valuable minerals in the San Juan Mountains led to widespread trespass on lands set apart for the Utes under an 1868 treaty. As a result, the United States negotiated another agreement with the Utes in 1873 that carved 3.7 million acres out of the middle of the Ute Reservation. That agreement, along with the 1872 mining law, paved the way for hardrock mining in the San Juan Mountains, one legacy of which is mining-related pollution of the Animas River.

The Gold King is not the only abandoned mine polluting the Animas River basin. There are many others, and reportedly many thousands of abandoned mines that similarly degrade water quality in rivers across the West. There are an estimated 23,000 abandoned mines in Colorado alone. We hope that the new light being shined on the long-standing problem of acid mine drainage in the Animas River basin will cause interested parties to develop a permanent solution.

FEDERAL LEADERSHIP AND ASSISTANCE, AND COMMUNICATION, COLLABORATION, AND COOPERATION AMONG DOWNSTREAM COMMUNITY STAKEHOLDERS AND FEDERAL, STATE, AND TRIBAL GOVERNMENTS, IS KEY TO AVOIDING ANOTHER BLOWOUT AND ADDRESSING THE PROBLEM OF ABANDONED MINE DRAINAGE POLLUTING THE UPPER ANIMAS RIVER WATERSHED

Without congressional support and Federal leadership, the problem of acid mine drainage polluting the Animas River and other rivers will not be solved. The Tribe, state of Colorado, local governments, and stakeholders need Federal assistance in exploring options for cleaning up the acid mine drainage problem, including possible Superfund designation for the San Juan Mountain area surrounding the Gold King Mine. The Tribe urges the committees to support continued dialog and collaboration and to provide direction in how the Tribe and other interested parties can help EPA respond to contamination threats, in order that EPA may fulfill its mission to protect, preserve and, where necessary, proactively remediate contamination sites that continue to threaten the Animas and other rivers.

#### CONCLUSION

The Tribe, through its Incident Management Team and Water Quality Program has made a significant contribution to the response effort on the Gold King incident. Based on ongoing discussions, we anticipate EPA will reimburse the Tribe for its direct costs incurred responding to the spill. The Tribe hopes Congress will fund, and EPA will assist in providing support for, long-term monitoring for impacts caused by the Gold King Mine spill. We also hope Congress will support EPA continuing to work cooperatively with Colorado and affected tribes, local governments, and community stakeholders to develop a permanent solution to the acid mine drainage problem in southwestern Colorado.

Thank you for the opportunity to appear before you today. I am glad to answer questions the committees may have.

---

QUESTIONS SUBMITTED FOR THE RECORD TO THE HON. MIKE OLGUIN, MEMBER,  
SOUTHERN UTE TRIBAL COUNCIL

#### Questions Submitted by Rep. Grace Napolitano

*Question 1.* Tribes have a special relationship with the Animas and San Juan Rivers. They withdraw water that does not have go through traditional water treatment before it is used to irrigate crops, water stock or be used directly by the tribal people. What specific actions has the EPA given Navajo Nation and the Southern Ute Tribal Council to ensure that the tribes are funded, supported, and worked with as required—in a nation-to-nation relationship—to track the impacts of this spill over the years it will take to move the sediment downstream?

Answer.

(a) On September 21, 2015, the Southern Ute Indian Tribe received an invitation from EPA Region 8 for a government-to-government consultation conference call regarding the EPA's proposed monitoring plan titled, *Draft Post-Gold King Mine Release Incident: Conceptual Monitoring Plan for Surface Water, Sediments, and Biology*. The consultation call was held on October 7, 2015.

(b) On October 8, 2015 the Tribe submitted comments to the EPA's proposed monitoring plan. In addition to providing technical comments to the plan, the Tribe has also requested that the EPA agree to: (1) have the Tribe's Water Quality Program perform the plan's sampling and monitoring activities within the exterior boundaries of the Southern Ute Indian Reservation, and (2) expedite approval of the Tribe's Application for Treatment in the Same Manner as a State for Purposes of the Water Quality Standards and Certification Programs (submitted to EPA on March 2, 2015) and the Tribe's Water Quality Standards and Application for § 401 Certification Authority, which are currently in development.

(c) The Tribe is preparing to submit a Cooperative Agreement that will request payment of the Tribe's expenses-to-date related to the Gold King Mine release incident, as well as future expenses related to long-term monitoring and recovery. After the spill, EPA sent contract and finance staff to Durango to meet with affected jurisdictions to discuss the cooperative agreement process, and those staff have followed up with the Tribe's staff to see if the Tribe has any questions regarding the process.

*Question 2.* EPA has been working to fix this local issue that has been polluting the Animas River at a rate of approximately 330 million gallons per year. Has either tribe become aware of any short- or long-term effects on health, livestock, etc. from this polluted water?

*Answer.* The Southern Ute Indian Tribe is currently not aware of any conclusive evidence of short- or long-term effect from these waters, however, there have not been any human health or toxicological studies conducted to assess these effects. Results from sampling of the water column appear to show no exceedances of primary drinking water standards for the analytes sampled in surface water, with the possible exception of the leading edge of the Gold King Mine Release contaminant plume. There has not been sufficient sampling performed to assess current or future impacts to groundwater resources or drinking water wells in the Animas River alluvium. There are concerns that remobilization of sediment may have an impact on water quality. The Tribe will continue to monitor surface and groundwater conditions along the Animas River for short- or long-term impacts and may recommend additional studies, if appropriate.

---

The CHAIRMAN. Thank you very much.  
Dr. Wolk, you are recognized for 5 minutes.

**STATEMENT OF LARRY WOLK, EXECUTIVE DIRECTOR AND  
CHIEF MEDICAL OFFICER, COLORADO DEPARTMENT OF  
PUBLIC HEALTH AND ENVIRONMENT, DENVER, COLORADO**

Dr. WOLK. Thank you, Chairman Bishop, Chairman Chaffetz, Ranking Member Cartwright, and members of the committees. Good afternoon. My name is Dr. Larry Wolk, I am the Executive Director and Chief Medical Officer for the Colorado Department of Public Health and Environment. I appreciate the opportunity to share with you my testimony on behalf of the Department, regarding the water quality impacts from the recent Gold King Mine spill into Cement Creek and the Animas River near Silverton, Colorado.

The Upper Animas River Basin has a long and storied mining history. As with many watersheds in Colorado, legacy mining in the basin has resulted in significant water quality impacts. For years, drainage from the numerous mining areas above Silverton has contributed heavy metal loads into Cement Creek, which eventually flows into the Animas River.

Our Water Quality Control Division within the Department has routinely, but somewhat infrequently, sampled the water quality in Cement Creek and the Animas River as part of our Water Quality Program. These samples have consistently shown that the quality of the water in Cement Creek and the Animas River is, and has been for years, impacted by the mine waste coming from the legacy mines.

The Gold King Mine is a historic gold mine located approximately 11,300 feet above sea level in the southwest mountains of Colorado near the town of Silverton. On August 5, 2015, an estimated volume of up to 3 million gallons of mine wastewater, containing dissolved metals and sediment, was unexpectedly released from the Gold King Mine adit into Cement Creek. Water Quality Division staff from my department almost immediately traveled to Silverton and the mine site to respond to and evaluate the water quality impacts from the release.

Our staff took several surface water samples the week after the mine release throughout the river basin, from upstream of Silverton and down river from Durango to the New Mexico border,

over a period of 11 days, to determine the extent of the impact of the release. In total, our staff took 63 samples of surface water.

Initial monitoring indicated levels of copper, lead, manganese, and zinc were higher than when previously monitored in June 2015, prior to the release. By August 11, however, the levels of monitored metals in the Animas River had returned to pre-release levels. In Cement Creek, cadmium, copper, and zinc continued to be above the historic range for these metals.

Throughout 2016, we will continue to monitor the level of metals in Cement Creek and the Animas River. At this time, we do not anticipate adverse health effects from exposure to the metals detected in the river water samples from skin contact or incidental and unintentional ingestion.

Our water quality staff has also worked with our Division of Parks and Wildlife of the Colorado Department of Natural Resources to monitor the effects on aquatic life and wildlife. Assessments will continue, but, at this point, there appears to be no obvious impacts. There were no fish kills along the Animas River during the plume event, and there were no effects observed on terrestrial animals, such as ducks or mammals.

Parks and Wildlife also placed fingerling rainbow trout in cages in three separate locations in the Animas River in Durango before the mine spill plume reached the city. Of the 108 fish placed in these cages, only 1 died, and the others remained healthy during the passing of the plume, and after the plume passed through the city. The one fish that died was not due to water quality.

Long-term impacts from the effect of metals deposited in sediments will also continue to be monitored. These sediments may pose a risk, especially to aquatic life and fish during high-water events. We also understand there is concern about the risks to recreational users on the river. Sediment is just one indicator of the health of the river. There is some level of contamination in most, if not all, of Colorado rivers, because of past mining activities and the geology of the state. We do not anticipate adverse health effects from exposure to contaminants detected in the water and sediment during typical recreational activities.

We also understand that, based upon current information, the Department of Agriculture believes the Animas River may be used for crop irrigation and livestock watering. We are unsure of the long-term impacts, but the spill at the Gold King Mine does not appear to have significantly affected or changed the water quality of Cement Creek or the Animas River.

We are fortunate that the spill did not result in an immediate environmental disaster. However, this does not mean that Cement Creek and the Animas River have not already been impacted by prior damage from the legacy mines.

The spill only serves to underscore the issues faced by many states, particularly in the West, where thousands of legacy mines affect the quality of our rivers and streams. High levels of acid-mine drainage can have a detrimental impact on aquatic life. The Division of Parks and Wildlife has reported a noticeable decline in the number of trout in the Animas River over the last 10 years. Cement Creek and the Animas River are only two of many water bodies in Colorado that receive historic mine drainage.

In the interest of time, I will close my comments and be open for questions.

[The prepared statement of Dr. Wolk follows:]

PREPARED STATEMENT OF LARRY WOLK, MD MSPH, EXECUTIVE DIRECTOR AND CHIEF MEDICAL OFFICER, COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

Chairman Bishop, Ranking Member Grijalva, Chairman Chaffetz, Ranking Member Cummings and members of the committees, good morning. My name is Dr. Larry Wolk, I am the Executive Director and Chief Medical Officer for the Colorado Department of Public Health and Environment. I appreciate the opportunity to share with you my testimony on behalf of the department regarding the water quality impacts from the recent Gold King Mine spill into Cement Creek and the Animas River near Silverton, Colorado.

The Upper Animas River basin has a long and storied mining history, and as with many watersheds in Colorado, legacy mining in the basin has resulted in significant water quality impacts. For years drainage from the numerous mining areas above Silverton has contributed heavy metal loads into Cement Creek which eventually flows into the Animas River. The Water Quality Control Division within my department has routinely, but somewhat infrequently, sampled the water quality in Cement Creek and the Animas River as part of our water quality program. These samples have consistently shown that the quality of the water in Cement Creek and the Animas River is, and has been for years, impacted by the mine waste coming from the legacy mines.

The Gold King Mine is a historic gold mine located at approximately 11,300 feet above sea level in the southwest mountains of Colorado near the town of Silverton. On August 5, 2015, an estimated volume of up to 3 million gallons of mine wastewater containing dissolved metals and sediment was unexpectedly released from the Gold King Mine adit into Cement Creek. Water quality division staff from my department almost immediately traveled to Silverton and the mine site to respond to and evaluate the water quality impacts from this release. Water quality staff took several surface water samples the week after the mine release throughout the river basin from upstream of Silverton and down river from Durango to the New Mexico border over a period of 11 days to determine the extent of the impact of the release.

In total, the water quality staff took 63 samples of surface water. Initially monitoring indicated levels of copper, lead, manganese and zinc were higher than when previously monitored in June 2015 prior to the release. By August 11, however, the levels of monitored metals in the Animas River had returned to pre-release levels. In Cement Creek, cadmium, copper and zinc continue to be above the historic range for these metals. Throughout 2016, we will continue to monitor the level of metals in Cement Creek and the Animas River. At this time we do not anticipate adverse health effects from exposure to the metals detected in the river water samples from skin contact or incidental and unintentional ingestion.

The department's water quality staff also worked with the Division of Parks and Wildlife of the Colorado Department of Natural Resources to monitor the effects from the spill on aquatic life and wildlife. Assessments will continue, but at this point there appears to be no obvious impacts: there were no fish kills along the Animas River during the plume event and there were no effects observed on terrestrial animals such as ducks or mammals.

The Division of Parks and Wildlife placed fingerling rainbow trout in cages in three separate locations in the Animas River in Durango before the mine spill plume reached the city. Of the 108 fish placed in these cages only 1 died, and the others remained healthy during the passing of the plume and after the plume passed through the city. The one fish that died was not due to water quality.

Long-term impacts from the effect of metals deposited in sediments will also continue to be monitored. These sediments may pose a risk, especially to aquatic life and fish during high-water events. We also understand there is concern about the risks to recreational users on the river. Sediment is just one indicator of a healthy river. There is some level of contamination in most Colorado rivers because of past mining activities and the geology of the state. We do not anticipate adverse health effects from exposure to contaminants detected in the water and sediment during typical recreational activities.

We also understand that based upon current information, the Colorado Department of Agriculture believes that the Animas River may be used for crop irrigation and livestock watering.

We can't be sure of the long-term impacts, but the spill at the Gold King Mine does not appear to have significantly affected or changed the water quality of Cement Creek or the Animas River. We are fortunate that the Gold King spill did not result in an immediate environmental disaster; however, this does not mean that Cement Creek and the Animas River have not already been impacted by prior drainage from the legacy mines.

The Gold King spill only serves to underscore the issues faced by many states, particularly in the West, where thousands of legacy mines affect the quality of our rivers and streams. High levels of acid-mine drainage can have a detrimental impact on aquatic life: the Colorado Division of Parks and Wildlife has reported a noticeable decline in the number of trout in the Animas River over the last 10 years. Cement Creek and the Animas River are only two of many water bodies in Colorado that receive historic mine drainage.

Spills or blowouts, although typically not as large or dramatic as the Gold King spill, are not uncommon events in mining districts throughout the West. In Colorado millions of gallons of contaminated water are discharged from abandoned mines on a daily basis. Tackling the issues created by these legacy mines requires significant resources and raises liability issues.

My agency is very familiar with the technical, financial and liability challenges of addressing environmental impacts from historic mining. In addition to our Water Quality Control Division, the Hazardous Materials and Waste Management Division, in my agency, actively partners with the Environmental Protection Agency to address such sites in Colorado. Unfortunately, the existing programs, regulations and funding are limited and do not provide us with the means we need to adequately address abandoned mine contamination in Colorado. Nonetheless, we will continue to work with the local communities affected by the Gold King Mine spill and with the EPA and others to identify potential next steps in addressing the legacy mine issues in the Upper Animas River basin and elsewhere in Colorado.

Chairman Bishop, Chairman Chaffetz, and members of the committees, I hope that my testimony today sheds light on the water quality impacts from the Gold King Mine spill and on the need for additional attention to legacy mining issues throughout the West. I look forward to any questions you may have. Thank you.

---

QUESTIONS SUBMITTED FOR THE RECORD TO LARRY WOLK, COLORADO DEPARTMENT OF HEALTH AND ENVIRONMENT, EXEC. DIRECTOR AND CMO

**Questions Submitted by Rep. Dan Newhouse**

*Question 1.* According to EPA documents that have been made public, prior to the spill the concept of drilling into the mountain from above to take a pressure reading indicating the amount of water that was currently sitting inside the plugged Gold King Mine was discussed. The arguments against conducting the drilling were that it was too costly and would take too much time. Do you believe the EPA should have ordered this drilling in order to measure the amount of water in the mine before work began? How much would this drilling have cost and is this amount prohibitive enough to not to get such a pressure reading?

Answer. While the state of Colorado's usual practice is to investigate volumes and pressures where feasible, it is difficult to say whether EPA should have done so here. We do know that, given the geology, topography and location of the mine, it would have been with significant cost and delay. Such an assessment at that site would be technically very challenging due to expensive drilling techniques needed to drill in the loose rock, as well as the difficulty of angling into the mine workings given the steep landscape. The assessment would have taken 1 to 2 years to complete due to very short construction seasons in the San Juan mountain high country resulting in the likely need for two seasons.

*Question 2.* If EPA had ordered this drilling into the mine shaft containing water at the Gold King Mine site to determine the amount of pressure, would it have prevented this blow out?

Answer. Knowledge of volume and pressure could possibly have prevented this blowout, but that knowledge alone would not likely have prevented a blowout from occurring on its own at some point. It is also important to note that it is possible that the mine would have blown out during the time it took EPA to do the assessment and at a time when workers were not present and available to alert those downstream.

The CHAIRMAN. Thank you. Finally, Mr. Flynn.

Mr. FLYNN. Thank you.

The CHAIRMAN. You are recognized for 5 minutes.

**STATEMENT OF RYAN FLYNN, SECRETARY OF ENVIRONMENT,  
AND NATURAL RESOURCE TRUSTEE, STATE OF NEW  
MEXICO, SANTE FE, NEW MEXICO**

Mr. FLYNN. Thank you, Chairman Bishop, Chairman Chaffetz, members of the committees. Before I begin, I want to thank our representative from New Mexico, Mr. Pearce, who has been here the entire day. I know this is not part of your district, but you are a New Mexican, and I really appreciate your interest, as well as your willingness to stay all day. Thank you very much, Mr. Pearce.

I am the Secretary of Environment for the state of New Mexico, as well as the Natural Resource Trustee for the state of New Mexico, and I was on the ground in Farmington, New Mexico, within 18 hours of receiving notice of the spill from the Southern Ute Tribe.

Almost immediately after being notified, our governor, Susana Martinez, appointed an Emergency Response Team, which I had the honor of serving as the leader of for the 9-day ordeal that the state of New Mexico, as well as other downstream users, including the Navajo Nation and the state of Utah, was forced to endure as a result of the EPA spill on the Animas River.

It has been said that pressure reveals true character, and I am extremely proud of the manner in which the state of New Mexico, as well as the local communities, responded to this event. New Mexicans demonstrated compassion, courage, determination, and grit throughout this 9-day ordeal. Having been there and in the community, I cannot underscore how frightened people were by the toxic plume that was traveling through the river. The river literally goes through the heart of these communities. It is the heart of the community in Farmington, in Aztec, and in the Navajo Nation.

Without water at home, and with this toxic yellow sludge floating through the river in the center of town, people literally were confronted by the spill at home and outside. In the face of these circumstances, New Mexicans responded as I would have expected. They came together with a well-orchestrated and selfless plan to move forward and respond to the emergency at hand.

In particular, I want to commend the efforts of the local officials from San Juan County, New Mexico, the city of Farmington, and the city of Aztec. From the very top to bottom, these officials responded admirably. They integrated themselves into our Emergency Response Team; and they took initiative and acted heroically throughout the process at all levels, from their leaders, the CEO, the COO of San Juan County, the mayors, all the way down the line. Their staff, from top to bottom, really were essential to this effort.

I also need to compliment my staff. I had dozens of employees mobilized in the field. People literally were supposed to be dropping their children off at college that weekend; and because New Mexico needed them, they traveled hours from around the state to be there in Farmington during this ordeal to help. As the temperatures were well into the 90s on most days, we had set up a mobile lab

that I talk about in my testimony, and I had, literally, over a dozen employees out there from morning until late at night, working in very cramped and hot conditions in a makeshift lab. At no point did anybody complain, lose their temper, or do anything other than ask what more could they do—“Can I stay an extra day? I have changed around my vacation plans, I will stay next week.”

That was the type of response from my employees. I set a high standard for them, I push them hard, and I could not have been more humbled by their response, as well as the response of all of the other agencies from around the state. The Department of Agriculture, the state engineer, the New Mexico Department of Game and Fish, the New Mexico Department of Health, and the New Mexico Department of Homeland Security all performed admirably throughout this process.

By Saturday, thanks to the state and local communities’ swift actions, we had been able to secure all the public water systems and private domestic wells in the area. We were able to preserve and protect our local agricultural resources. We had established direct lines of communication with downstream communities. We established teams with local farmers and ranchers to provide water for livestock. We had set up watering stations across the area, and we had deployed various teams of scientists to monitor the water quality and wildlife in the Animas River. We had also authorized emergency funding.

Again, these swift, well-orchestrated activities are a testament to the local communities and the leadership at every level of the state. It is an honor, and thank you for having me here today.

[The prepared statement of Mr. Flynn follows:]

PREPARED STATEMENT OF RYAN FLYNN, SECRETARY OF ENVIRONMENT AND NATURAL RESOURCE TRUSTEE FOR THE STATE OF NEW MEXICO

Chairman Bishop, Chairman Chaffetz, Ranking Member Cummings, Ranking Member Grijalva and other members of the committees, I appreciate the opportunity to testify about Environmental Protection Agency’s Animas Spill (“Spill”). I was on the ground within 18 hours of receiving notice of the Spill and did not leave the area until the Animas River was fully re-opened in New Mexico on August 15, 2015. I served as the leader of Governor Martinez’s Emergency Response Team and my testimony is based on my personal experience and observation.

The Spill occurred at approximately 10:40 a.m. on August 5, 2015, when contractors working under the direction of the Environmental Protection Agency (“EPA”) breached a barrier serving to contain wastewater within the abandoned mine. The breach caused millions of gallons of wastewater containing dangerous levels of sediment and metals, such as lead, arsenic and cadmium, to surge into Cement Creek before ultimately being deposited in the Animas River, which flows more slowly in the piedmont of northern New Mexico.

The state of New Mexico (hereafter, “State” or “New Mexico”) was first notified about the Spill at approximately 9:30 a.m. on August 6, 2015, when officials with the Southern Ute Indian Tribe contacted my staff. EPA did not contact any officials from New Mexico until 11:30 a.m. on August 6, 2015, more than 24 hours after the Spill occurred.

Like other downstream communities, New Mexico was severely impacted by the Spill. San Juan County, the area in the New Mexico most directly impacted by the Spill, is home to approximately 124,000 people. Within it is the city of Farmington, with approximately 45,000 people, and the city of Aztec, with approximately 6,500 people. Drinking water systems pulling from the Animas River serve both Farmington and Aztec. Additionally, there are five other small communities in the area who rely on the Animas River to meet their drinking water needs. The rest of the rural residents rely on domestic wells.

Immediately following notification of the Spill, New Mexico took a series of aggressive actions to protect human health, notify local residents and downstream



communities about the situation, preserve agricultural resources, and collect contamination data.

Within 12 hours of our notification of the Spill, New Mexico accomplished the following actions:

- Established a multi-agency Emergency Response Team named by Governor Susana Martinez, led by the Environment Department and comprised of officials from the Environment Department, Health Department, Office of the State Engineer, Department of Agriculture, Department of Game and Fish, and Department of Homeland Security;
- Contacted all seven of the public water systems diverting water from the Animas River and advised them to shut off their intakes until additional information was gathered;
- Contacted officials from San Juan County, the Navajo Nation, the state of Arizona and the state of Utah to inform them of the situation and begin coordination of public communications;
- Contacted local farmers and ranchers, and advised them to close irrigation ditches and to stop irrigating crops and watering livestock with water from the Animas River; and
- Deployed a team of scientists to San Juan County who immediately began taking background samples of water at three different locations on the Animas River.

Within 36 hours of receiving notice of the Spill, New Mexico accomplished the following additional actions:

- Provided informational briefings for the public in Farmington, NM, and Aztec, NM, regarding the situation;
- In conjunction with officials from San Juan County, closed the Animas River for recreational use;
- In conjunction with officials from San Juan County, the city of Farmington and the city of Aztec, set up locations at fire stations and community centers throughout the area where residents could obtain free drinking water and take showers;
- Issued health, hygiene, recreational, and livestock precautions for the communities;
- Issued an emergency order authorizing up to \$500,000 in emergency funds to conduct activities to respond to the spill;
- Deployed two additional teams of scientists from the Environment Department to continue sampling surface water in the Animas River and started sampling private, domestic wells within the floodplain of the Animas River;
- Deployed teams from the Office of State Engineer and the Department of Agriculture to work with farmers and ranchers to identify alternatives for watering livestock; and
- Deployed a team from the Department of Game and Fish to monitor potential impacts on wildlife caused by the spill.

By Saturday, August 8, 2015, when the spill had fully arrived in our communities, turning the Animas River from its usual dark brown to a bright mustard color, New Mexico had secured all of the public water systems and private domestic wells, worked with local farmers and ranchers to secure all of the local agricultural resources, established direct lines of communication with downstream communities, established teams to work with local farmers and ranchers to provide water for livestock, set up stations across the area where residents could receive free drinking water and take showers, deployed various teams of scientists to monitor water quality and wildlife in the Animas River, and authorized emergency funding to pay for our response activities. We also had a Web site up and running with real time information for the public regarding the spill, and we had organized a series of public meetings to educate and defuse fear by allowing residents to obtain information and ask questions of the on-the-ground experts present.

The Spill had a devastating impact on our local communities. Thousands of residents were without water. The bright, mustard color of the Animas River inspired fear and anger in the local communities. Without water at home and with the mustard colored Animas River flowing directly through the center of Farmington and Aztec, people were literally forced to confront the situation every place they went.

Over the next few days, New Mexico's Emergency Response Team continued to deploy resources into the area in order to mitigate the impacts of the Spill. On Saturday, August 8, 2015, when EPA informed me they were having trouble getting the contracts in place to be able to deploy their mobile lab to the area, we went ahead set up our own makeshift mobile lab at the San Juan County Fairgrounds. In a little over 24 hours, the State mobilized all of the necessary platform and technical equipment as well as a dozen environmental scientists to the area and began setting up our own mobile lab so we could begin providing free tests for local residents the next day. The mobile lab was supposed to begin testing at noon on Monday, August 10, 2015. When I arrived at the mobile lab at 7 a.m. to help staff finish setting up, a large line had already formed as frightened residents waited to have their well water tested. We ended up opening the mobile lab by 8:00 a.m. that morning and essentially ignored the hours we originally posted for the rest of the week, remaining open and taking samples late into the night for the first few days. By the end of the week, we had tested 724 domestic well samples at the mobile lab and personally contacted every single person to discuss their test results.

In addition, our scientists in the field took over 240 surface water samples over the course of the week. The men and women staffing the mobile lab and working in the field literally worked around the clock in cramped, hot conditions and never complained. Instead, they kept asking to do more or to stay longer. This sort of dedication and kindness was not uncommon during this emergency situation as New Mexicans from all over of the state rallied to help San Juan County.

New Mexico re-opened the Animas River on August 14, 2015, about 9 days after the Spill occurred. While my testimony focused on the immediate actions taken by our emergency response team in the hours after being notified of the Spill, the closely coordinated effort described above continued throughout the 9-day ordeal. In particular, I must commend the efforts of San Juan County, the city of Farmington and the city of Aztec, who all played a huge role in the State's emergency response effort and seamlessly integrated their staff members into our team. Local assistance, leadership and expertise were essential to this effort. And at no point during the 9-day emergency response effort did I ever witness any territorialism or in-fighting among the various state and local officials working on this effort. To the contrary, everyone understood the gravity of the situation and simply focused on performing their tasks at a high level.

While New Mexico's response was swift and well-coordinated, EPA's response was slow and disorganized. For example, EPA waited until Sunday, August 9, 2015, 4 days after the breach at the Gold King Mine and a day after the Spill had already arrived in New Mexico, to escalate the event to a Regional Emergency Operation. EPA also struggled to mobilize staff and resources to the area. For example, on August 18, 2015, almost 2 weeks after the Spill, EPA requested my agency to supply 10 staff members to assist them with field work they wanted to begin performing at 8 a.m. the next day. At 4 a.m. the next morning, 12 staff members from my agency departed from Santa Fe to meet EPA in Farmington. When they arrived in Farmington 4 hours later, EPA was totally unprepared and stated "it was difficult for them to be ready in such short notice."<sup>1</sup>

EPA's communication with New Mexico was also poor and at times counter-productive. Some of EPA's communication problems have been well-publicized, such as the fact that they did not contact anyone from New Mexico for more than 24 hours after the Spill. EPA's efforts to initially downplay the Spill have also been well-documented and EPA was ultimately forced to admit that their initial comments were "not appropriate," "not fully accurate" and "cavalier."<sup>2</sup> However, a number of internal communication battles occurred behind the scenes. These internal struggles made it more difficult for my team to make important decisions and move forward with our emergency response efforts.

For example, EPA repeatedly refused to share data with New Mexico for weeks after the Spill. Some of the data EPA refused to provide included results from surface water samples taken upstream of New Mexico. And when they did share such information, it was summary level data, cherry-picked and presented to create the appearance that Safe Drinking Water Act Maximum Contaminant Levels were not crossed, post event, specifically for lead. EPA also refused to share its sediment sampling plan with New Mexico for over 2 weeks.

For the first 2 weeks after the Spill occurred, EPA blamed these communication breakdowns on poor coordination among the various EPA Regions involved in the

<sup>1</sup>King, Jack, "Re: Farmington EPA water sampling." Message to Ryan Flynn, 19 Aug. 2015, E-mail.

<sup>2</sup>Finley, Bruce, "Animas River spill 'huge tragedy,' EPA officials tell Durango gathering." The Denver Post, 7 Aug. 2015.

response effort.<sup>3</sup> EPA's Region 6 staff members repeatedly blamed EPA's Region 8 staff members for failing to provide information. Later, the finger-pointing gave way to new excuses, such as the difficulties posed by the size of the documents or the time constraints associated with EPA's data validation policy. The most remarkable excuse for refusing to share information came on August 21, 2015, 16 days after the Spill, when an EPA staffer informed my staff that she was not authorized to provide sediment sampling plans, which we had been requesting for over 2 weeks, because the plans contained "business confidential information."<sup>4</sup> These communication breakdowns hindered New Mexico's efforts to understand the nature and extent of the contamination associated with the Spill and made it difficult to assess the adequacy of certain critical response actions undertaken by EPA, such as sediment sampling.

While the immediate public health risks posed by the Spill have passed, it is too early to understand or even begin to quantify the long-term impacts of the Spill. Dangerously high concentrations of arsenic, cadmium, lead, and other heavy metals were released in the Spill and settled out as the wastewater traveled downstream, layering the bottom of the Animas River with contaminants. Every time there is a high flow, such as after a storm event or snow melt, the contamination will be mobilized and move downstream.

Under the direction of Governor Martinez, New Mexico has formed a Long-Term Impact Team to monitor the Spill's impacts on human health and the environment. The work of this Long-Term Impact Team will be critical to understanding the full extent of the damage caused by the Spill. We expect EPA to fund the work of the Long-Term Impact Team.

Thank you for the opportunity to serve as a witness at this important joint hearing.

---

QUESTIONS SUBMITTED FOR THE RECORD TO RYAN FLYNN, SECRETARY OF  
ENVIRONMENT AND NATURAL RESOURCE TRUSTEE FOR THE STATE OF NEW MEXICO

**Question Submitted by Rep. Dan Newhouse**

*Question 1.* It has been reported that the appropriate Federal agencies failed to notify stakeholders regarding the scope of the negative economic and environmental consequences of this spill. How has the EPA or the Department of the Interior failed to assist your state in responding to and assessing this disaster?

Answer. Apart from agreeing with our request to discharge more water from Navajo Lake immediately following the Animas spill, the Department of the Interior (DOI) has provided zero assistance to the state of New Mexico and has not communicated with us at all. Moreover, the state has received no information from DOI about the "independent" investigation they are performing. For example, we would like to know the scope of DOI's investigation and how they plan to go about performing this investigation. We would also like to know who will be performing this investigation and how we will be able to access all of the materials DOI develops through this investigation. Unfortunately, we anticipate DOI will simply provide a highly filtered investigation report and refuse to provide the state or the public with any of the other materials that were generated through their investigation. New Mexico believes the DOI investigation is fundamentally flawed because one executive branch agency investigating another is not truly an independent investigation. Moreover, the secrecy with which DOI is pursuing this investigation only serves to validate our concern that this entire investigation was intentionally designed to exonerate EPA for their actions.

EPA has provided little assistance following this disaster and appears more focused on managing the negative publicity they have received. For example, New Mexico, in conjunction with the Navajo Nation, is working on a Long-Term Monitoring Plan to assess the long-term impacts associated with the spill and has requested EPA to fund our effort, which is supported by the local communities. Instead of supporting the state's effort, EPA plans to monitor itself regarding the long-term impacts of the Animas Spill. In addition, the plan EPA put forward is to-

---

<sup>3</sup>There were three EPA Regional Offices involved in the Spill response effort: EPA Region 8 covers Colorado, EPA Region 6 covers New Mexico and EPA Region 9 covers the Navajo Nation.

<sup>4</sup>Smith, Monica, "Re: sediment sampling—need your thoughts." Message to Trais Kliphuis, 21 Aug. 2015, E-mail.

tally deficient, which is why we do not allow responsible parties to monitor themselves when they create environmental disasters. For example:

- EPA's plan does not appear to acknowledge that much higher concentrations of contaminants and sediment exist in Colorado and over likely *many* years of storm events and spring run off this will migrate to New Mexico and other downstream states. This may accumulate in New Mexico farming soils and low flow areas in the Animas River. EPA proposes only a single year of monitoring, which is irresponsible.
- EPA's plan does not propose any monitoring of heavy metals in irrigated croplands.
- EPA's plan does not contemplate any groundwater monitoring.

We believe EPA needs to scrap this bad idea and support the plan the state is developing with local governments, public institutions and the Navajo Nation. EPA has not provided any support for the state plan and continues to move forward with their ill-conceived plan.

---

The CHAIRMAN. Thank you. Thank you for your testimony. With the possible exception of your shout-out to Congressman Pearce—I do not want him to get a big head about this—he may be accurate, but that is beside the point.

We are now going to turn to questions of the committee. We will start with Chairman Chaffetz for his questions.

Chairman CHAFFETZ. Thank you all for being here; and to those most directly affected, our hearts and prayers go out to those people. We thank you for your willingness and your time to come testify today. I am going to focus—given that it is part of Utah's Third Congressional District, affects a lot of districts and states, but, President Begaye, I want to ask you: the EPA Administrator said, "The EPA has closely coordinated," and she goes on, to include the Navajo Nation. What is your assessment of the close coordination of the EPA?

Mr. BEGAYE. Thank you for the question. First of all, the coordination, if it means waiting 2 days before you are notified, I would not label that as coordination.

The first time we had conversation was at a conference call on Friday afternoon, where EPA told us that the cleanup would take decades to complete. I was stunned by that statement, because I thought that, as EPA said before at a public hearing on Saturday evening, the next day they said that at the base of the mountain, the water was clearing up. Excuse me, that was Sunday afternoon. We had just returned from the mountain, and were taking photos of the river, and we went to the mouth of the mountain and looked inside. It was still very much the color of orange juice, very much yellow.

I told the EPA person that this is what we saw, and the person that was answering the question to the public at that public forum in Durango, he said, "Well, I was told different. I was told that it was clearing up." If that is coordination, and if that is what they thought, it was completely false.

Chairman CHAFFETZ. What happened when you tried to go visit the site? Describe to us—and our time is short, we have to be quick, but what happened when you went to go visit the site?

Mr. BEGAYE. We decided to go up there on Saturday—and to go up there on Sunday, but we decided to do that on Saturday. So, we started making calls to Region 6, or to the Denver office; and they

said, "Well, you can only go up to the first blockade, and that is it."

So we kept driving toward the location; and I told that individual that is on my staff, I said, "Call Region 9, see what they say." So, they start talking to the person from Region 9. At that point, we realized that the regions were not talking to one another.

As we got up to the mountain, we were given clearance to the blockade, and then they say, "You can only get down to the base, down to the bottom." And you could not see very much of what took place.

We proceeded to drive up—and it was not a really difficult drive up to the area—and I did not realize that the mouth of the mine was just a little ways further from where we stopped. I thought it was further up, so I jumped out of the SUV and started walking up the hill. When I got up to the top, that is where the mine was.

We were first told we could only go up to the blockade, which is at least 2 miles away. You cannot see a thing, it is all tall pines and so forth, but it was through the other region, Region 9, that gave us a little bit more clearance to move a little bit farther up the stream. Even at that point, I did not realize that we were supposed to stop there. No one told me that was a stopping point, so I just kept walking, and no one said—

Chairman CHAFFETZ. I want to get the full accounting of this, but this is absolutely ridiculous. The President of the Navajo Nation is not allowed to go see what is happening to his people. It is a terrible embarrassment, and demands an apology, as well.

The last thing that I have time for, explain this Standard Form 95 and what was happening in the days after the spill to the people there in the Navajo Nation.

Mr. BEGAYE. On that Sunday afternoon, I got a call and they were saying, "We are sending people. They will come and help you. They will be on the ground to assist you." I was very thankful that EPA responded so quickly, and that they sent two people to help us monitor the situation. So they flew into Durango, they took a car down from there to Farmington on to Shiprock—that is what they told me.

Later on, we discovered that they were in the communities up and down the river, giving out this Standard Form 95. We did not know that was taking place until one of the local officials in one of the communities called us up and said, "This is what they are passing out. What do we do with it?"

Our Navajo attorney general took a look at the form, and immediately caught the waiver language. I asked to see it, they explained what that meant to me, or what that meant to our farmers and our ranchers. So, we immediately put the word out. We got on the radio. Immediately I called the radio station and, in my Navajo language, explained to the people not to sign that form. I told them if you do, you are not going to get full compensation for the damages that you incurred. We did news releases, we put the word out there, some of the local papers ran that story on our behalf, because this was just a slap in the face, we felt that the EPA was trying to minimize the damage payments that they were going to make. That was our experience with Standard Form 95.

The CHAIRMAN. OK. We went over a little bit there, but I think we can handle it with this size of a panel.

Mr. Cartwright, do you have any questions?

Mr. CARTWRIGHT. Thank you, Mr. Chairman; and thank you to the witnesses for coming today: President Begaye, Councilman—is it Olguin?

Mr. OLGUIN. Yes.

Mr. CARTWRIGHT. Dr. Wolk, Mr. Flynn. Now, Councilman Olguin, you have testified that there are approximately 23,000 abandoned mines in Colorado. I mentioned earlier in this hearing today that the advocacy group Earthworks estimates that there are more than 500,000 abandoned hardrock mines within the United States.

Ranking Member Grijalva is not here, but his bill, H.R. 963, the Hardrock Mining Reform and Reclamation Act of 2015, would establish a hardrock minerals fund, funded as an extraction fee taken from the mine owners, the mine operators, for reclamation to repair and fix these toxic situations.

President Begaye, would you support the establishment of that kind of dedicated fund, paid for by the mining industry that would be used to clean up abandoned hardrock mines?

Mr. BEGAYE. Yes, Congressman Cartwright. Whoever caused these types of spills, they ought to be held accountable, whoever they are. And—

Mr. CARTWRIGHT. How about Councilman Olguin. Do you feel the same way? Would you support the establishment of a hardrock minerals fund, along the lines that Ranking Member Grijalva's bill suggests?

Mr. OLGUIN. Well, without reviewing it, just from the initial intake, I could see us probably supporting it, just from the standpoint of cleanup.

Mr. CARTWRIGHT. OK, thank you. One thing I wanted to clear up for my own mind is to see if there is any disagreement among the panel. We had Dr. Wolk testifying that, by August 11, the levels of monitored metals in the Animas River had returned to pre-release levels, that there was no fish kill involved in this release. I wanted to get your take on that, President Begaye and Councilman Olguin. Do you agree with that?

Mr. BEGAYE. Well, we do not put dollars before the health of our people, our land, and our water. In our own testing, Navajo Nation EPA has told us that there are high levels of metals, sediments, and contaminants that are unhealthy for our animals. So, we have become a dumping ground of wastewater, because the Animas River is quite different from the San Juan. The San Juan is slow moving; anything that comes down the Animas, because it is high altitude, gets into our slow-moving water, and that is where they settle.

Mr. CARTWRIGHT. Thank you, Mr. President.

Councilman Olguin, I think you testified that you knew about this spill that afternoon, because local officials had notified you; and that, because of that early knowledge, you were able to take steps to do testing before the plume hit the affected area that you are concerned with. Is that what your testimony was?

Mr. OLGUIN. That is correct.

Mr. CARTWRIGHT. OK. So, what is your take on what Dr. Wolk says? Was there a fish kill? He says there was not.

Mr. OLGUIN. Well, based on the collaboration, coordination we had there, that same information was reported to us; and we, as Southern Ute, do not have any information contrary to that.

Mr. CARTWRIGHT. OK. Then he said that by August 11—6 days after the release—that the metals levels had returned to pre-release levels. Any basis to dispute that?

Mr. OLGUIN. No, based on our testing, again, we came up with probably similar information, particularly with pH.

Mr. CARTWRIGHT. OK. And either of you gentlemen, President Begaye, Councilman Olguin, do you support increased levels of funding to EPA in cleaning up problems like this into the future?

Mr. BEGAYE. For the Navajo Nation, we have the expertise, we have the engineers, we have scientists running our Navajo Nation EPA. EPA can provide the funds, or whatever entity, whatever Federal agency can provide us the funds, and we can do our own cleanup, and we will do it in the way it should be done properly. Thank you.

Mr. CARTWRIGHT. Councilman Olguin, do you support additional increased funding for cleanup?

Mr. OLGUIN. Yes, we would.

Mr. CARTWRIGHT. Thank you, gentlemen. I yield back.

The CHAIRMAN. Mr. Grothman.

Mr. GROTHMAN. Thank you. I have some questions for Secretary Flynn. I spent a lot of time in Wisconsin government, and I know how important it is for the EPA and the local—I guess you call your Department of Environment and Natural Resources—to work together.

Go over some of the things you said before. When did you first hear about the spill?

Mr. FLYNN. I heard about it on Thursday morning at about 9:30 in the morning from the Southern Ute Tribe. Actually, I heard about it from a staff member who had just received notice from the Southern Ute Tribe.

Mr. GROTHMAN. You did not hear about it from the EPA first?

Mr. FLYNN. No.

Mr. GROTHMAN. And how long was it after the spill first took place?

Mr. FLYNN. It was about 24 hours when we received notice.

Mr. GROTHMAN. By somebody other than the EPA?

Mr. FLYNN. Yes.

Mr. GROTHMAN. How did that delay affect your ability to respond?

Mr. FLYNN. Well, it is difficult to quantify. When you are in an emergency situation, every second counts. EPA had initially put out some information regarding the velocity the plume was traveling in the river, which, based on their initial estimates, suggested the plume was going to arrive late in the night on Thursday, or in the very early morning hours of Friday.

Based on that information, we began taking action, such as closing irrigation ditches. That information proved to be wrong. As a result of that incorrect information, we lost time where farmers

could continue to withdraw into their irrigation ditches to build up their supply when we did have to shut the river down.

Mr. GROTHMAN. I do not know whether anything similar to this would have ever happened—anywhere near this horrible would have happened in New Mexico—but could you maybe compare that to how quickly you would have notified, say, adjacent landowners, or people downstream of a spill, if it was something that you were responsible for?

Mr. FLYNN. Immediately, within an hour. I would have personally called—well, I can just tell you what we did here. We contacted the Navajo Nation, we contacted the state of Utah, we contacted the state of Arizona. We immediately contacted San Juan County and the local communities. That did not occur over hours. We did not have a phone call list that we needed to—I mean we drill emergency responses, we have a protocol that is in place, and we just move forward with our plan. And literally, within hours, we had notified all the downstream communities and had taken steps to immediately stop withdrawing public water systems from the river and other actions.

Mr. GROTHMAN. I do not know that you have any employees that callous, but how would you have responded if, say, you found out one of your employees knew about an equivalent spill and just did not tell anybody about it for a day?

Mr. FLYNN. They would be former employees.

Mr. GROTHMAN. You heard the testimony that came before you. Do you want to comment in general on her testimony, or did you feel her testimony was what you would describe as an accurate recount of what you saw on the ground?

Mr. FLYNN. Sure—yes, I do have a great amount of respect for Administrator McCarthy. I think one of the flaws, you know, hindsight is 20/20; but this was an issue that we raised immediately on the ground during the emergency, and is one issue or a couple of issues that we continue to face.

I do think the Administrator is tenacious and absolutely holds herself to a very high standard. I do not think that the employees who were actually charged with managing the situation held themselves to that same standard. I think that the lack of involvement from headquarters actually hindered this effort, and there is a lot of infighting among—they chose to handle this as a regional emergency. They did not actually elevate it to a regional emergency operation, as I mentioned in my testimony, until the day after the contamination plume had already arrived in the state of New Mexico.

I think that the reluctance of EPA headquarters and management to become directly involved in this certainly played a huge role in hindering our efforts. I do not think there has been close work with the state, or close collaboration.

For example, just today I understand EPA is going to unroll a long-term monitoring plan. First of all, we have told them all along for the past couple of weeks that we have a long-term monitoring plan, and they should be supporting our plan, not developing their own plan in a vacuum, without consulting or collaborating with the state.



My time is almost up, or your time, sorry, sir, is almost up, so I—

Mr. GROTHMAN. Well, just leave it at that.

The CHAIRMAN. Thank you. Are you done?

Mr. GROTHMAN. No.

The CHAIRMAN. We are a little bit—

Mr. GROTHMAN. Just one more question.

The CHAIRMAN. I will give you 1 more minute. I have given the others 1 minute; go for it.

Mr. GROTHMAN. Frequently, as we had kind of the same interaction in the state of Wisconsin—frequently you have situations in which the Environmental Protection Agency, or the local DNR, would deal with something. Do you think this country would be well served if, insofar as we could, we would give responsibilities for protecting our Nation's resources to local and state natural resource departments, rather than the EPA? Do you guys feel, at least in New Mexico, that you seem to exhibit more of a sense of urgency or care about our natural resources?

Mr. FLYNN. Absolutely. I think it is just human nature, that the people who actually live on the land, whose neighbors live on the land, who depend on the land, have the most skin in the game and are going to do the best job to conserve and manage those resources. So, we absolutely believe that states should be given strong deference.

I think that when the Clean Air Act, the Clean Water Act—I think that Congress envisioned there to be a cooperative Federalist model when they adopted these statutes, and actually spoke to deferring to states on these decisions. I do not think that has been the case, certainly over the past couple of years in particular, on the Waters of the United States rule. That is an issue where New Mexico was among the coalition of states that did successfully sue and enjoin EPA in the North Dakota District.

I do think states should have greater control over these resources, because we are in the best position to manage and understand their impacts.

Mr. GROTHMAN. I agree with you, and we will see if we can do something about that.

The CHAIRMAN. All right, now I am going to cut you off, even though you were answering one of my questions. I am going to break the rules again here.

Mr. Pearce, let me come down to you before—I have a lot of questions for you. Let me go to the other members of our panel here. Mr. Pearce, you are recognized.

Mr. PEARCE. Thank you, Mr. Chairman, and I appreciate that courtesy.

President Begaye, you heard me try to get assurances that these Form 95s will, if they were signed mistakenly, or people were not sure—I did not get a clear answer from the Administrator. Maybe you understood it better. Just take my word that if they try to hold people to signatures that they did not know what they were signing, or they have tried to enforce waivers, then know that we will be a partner with you in that; and we will also work on individual cases, so it is not kind of a generality. Refer those people to our office, and we will stand side by side with them until we get that

answer. We have found that to be more effective than just writing a letter on behalf of something.

Then also, with respect to the water that was released out of the Navajo Dam, just again understand that we will help push that question. That is going to be a significant question downstream. I am familiar enough with some of the agencies that I think you might have a lot of difficulty getting resolution to that.

Secretary Flynn, thank you very much for the kind comments coming in, but your leadership in this, I really appreciate that.

Now, we have heard testimony today that the spill at Gold King Mine does not appear to have significantly affected or changed the water quality of the Cement Creek or Animas. Is that something you would agree with, as they come into New Mexico, that basically this is no big deal?

Mr. FLYNN. No, absolutely not. I agree that the pollution passed with the water column, and that was expected. Nobody has ever stated that the water quality would not rebound as the toxic plume moves through the river.

The issue, which my colleague from Colorado did acknowledge, is what is left after that plume moves through the river. So, you have high levels of dangerous metals such as arsenic and lead, which have now been deposited in the sediment; and each and every time there is a stormwater event, or there is a spring runoff following snowpack, that contamination, that sediment, will become agitated and potentially mobilize those contaminants, and create a public health issue.

There is also the—again, while the wildlife—I am sorry, I am speaking too long, but the water quality has rebounded. Again, the sediment that has been deposited, the impacts on wildlife—macroinvertebrates, in particular—are unknown, and will not be understood for years.

So, while I agree that the water quality has rebounded to background levels, that is not really the issue. The issue is what was left over in the sediment that is now all along the river.

Mr. PEARCE. New Mexico Tech, also known as Mining Institute in New Mexico, went into Colorado. If you back up the pictures on the screen one, they discovered those heavy metals that you are describing on the bottom of these rocks there, in the stream bed. And, the next picture shows they took a sample of that groundwater, which is right there. So, definitely the effects are in the groundwater. I think I share the President's concern, and also your concern for the residents of New Mexico.

Now, we heard from the Administrator that all of the processes were followed, that it is typical, Secretary, for you to be notified by someone different than the EPA when they were describing the process. And the question was that you were not notified; she said, "That is the way that we do it. We use someone else to notify." Is that your experience, really?

Mr. FLYNN. No.

Mr. PEARCE. OK. I did not think so. There were many things there.

Can you describe that process of closing off the inputs? Again, you heard my questions to the Administrator, and she kept trying

to kind of give us bureaucratic doublespeak. So, can you describe the process that you all went through.

Mr. FLYNN. Sure. Once we were notified about the plume, and we saw the pictures, had conversations with some of the people who were on the ground, and had witnessed what had occurred, we immediately contacted—there are seven public water systems in San Juan County that withdraw water from the river—we immediately contacted those systems and told them to stop diverting from the river. We did that unilaterally. That was done by the state without any consultation or coordination with EPA.

After that, though, one of the EPA communication staffers from Region 6 did berate one of my communication staffers that we did not do a joint press release, or otherwise publicize that decision, because they felt like it was a lost opportunity to develop some positive publicity in response to the spill. I then berated the EPA regional office for wasting time getting into a public relations issue when we are dealing with an emergency.

Mr. PEARCE. Dealing with the question. Mr. Chairman, if possible, I have one more question.

Dr. WOLK, in your testimony you say, “Unfortunately, the existing programs, regulations, and fundings are limited, and do not provide us with the means we need to adequately address the abandoned mine contamination in Colorado.” If the funds were unlimited, what would the course of action be to remedy the problem?

Dr. WOLK. Thank you, sir. I think it depends on the situation, because—

Mr. PEARCE. Well, if you have the situation we are facing right now, with the Gold King Mine, unlimited funds, what would the solution have been and would be?

Dr. WOLK. I think there is a short-term solution to continue to treat the water and find more of a longer standing treatment facility solution that could go in place, and then remediation at the mine, itself.

Mr. PEARCE. OK. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you. Mr. Tipton.

Mr. TIPTON. Thank you, Mr. Chairman, and thank the panel for sitting there for an extended period of time.

Councilman Olguin, we had an opportunity to be able to visit just a little bit. The Southern Ute Tribe, Ute Mountain Ute Tribe, small communities in southwest Colorado; would you describe for us—When did the EPA reach out to you? I believe you had cited earlier you heard from the city of Durango. When did the EPA reach out to you?

Mr. OLGUIN. Well, first off, let me just acknowledge and thank you for your leadership on this.

EPA, to my knowledge, had not officially contacted the Southern Ute Tribe—and I am talking the Administrator—had not made a call to the tribe, the Chairman’s office, until this Monday, September 14.

Mr. TIPTON. September 14. That is an extended period of time. Is that showing due respect to a governmental entity out of the EPA?

Mr. OLGUIN. In my opinion, when you look at the government-to-government relationships and trust responsibility, that is way too long.

Mr. TIPTON. Would you care to expand? I thought it was actually pretty impressive out of the Southern Ute Tribe being proactive, taking the initiative to be able to respond, and to be able to meet the needs of the community. Is there something that the EPA could maybe learn from you?

Mr. OLGUIN. That is going to be hard to answer, because from our perspective, we really do not heavily depend on the Federal Government to do our work, to protect our interests. For us, you know, we always roll our sleeves up, get in the middle of it, and address our needs immediately. Then, of course, whatever information we gather, we do hire the best people, the most qualified people; and, of course, we deal with people that are not producing the level and quality that we expect, as well. So I think, if nothing else, it is definitely holding people accountable and responsible for actions.

Mr. TIPTON. Great. President Begaye, I do want to applaud you for getting the word out on that Form 95. We had heard that, as well, and found it incredibly disturbing that the EPA was trying to be able to get a waiver for the Navajo Nation people in particular, to be able to respond and to be able to seek real responsibility and accountability out of the EPA.

Dr. Wolk, I would like to maybe ask you a couple of questions. Do you think Colorado does a pretty good job, in terms of monitoring? We have engineers in Colorado, do we not?

Dr. WOLK. Yes, sir, we do. Depending on the situation, we have water quality engineers, mine engineers, and we work collaboratively with the EPA and others to provide those resources so that, as you know, we have a Colorado solution.

Mr. TIPTON. And we have a Colorado solution. Part of your job is to make sure that the people of the state of Colorado—and we obviously have a concurrent responsibility to our neighboring states, as well, that the water is going to actually be safe.

Does it concern you when we hear that, as Chairman Bishop noted in follow-up to my question, that they have zero engineers at the EPA, that they were up working on a mine that they said had the high potential to be able to blow out? Would the state of Colorado have handled it that way?

Dr. WOLK. It concerns me, but I am not sure that does not mean that engineers were not involved in some capacity. So not—

Mr. TIPTON. You are in the government. It is your job to have some actual oversight. Wouldn't it have been prudent for the EPA to have had their engineers to be able to have the oversight, to be able to make some good choices before we had a catastrophe?

Dr. WOLK. I do not know how they structure or operate, and whether they rely on other resources to provide that engineering—

Mr. TIPTON. But you would handle it very differently, as the state of Colorado?

Dr. WOLK. As I said, our department has its own engineers, depending on the situation.

Mr. TIPTON. Right. You know, when we were talking—I would like to follow up on my colleague, Mr. Pearce's, comments there. If you had an unlimited budget, what do we do, going forward, given what we have seen out of the Gold King Mine? Would you be supportive of a Good Samaritan legislation?

Dr. WOLK. Well, I serve at the pleasure of the Governor, and so I am not sure it is my position to say, but I know the Governor and our congressional delegates in the past, and most of the western states, have been very active in trying to promote and support Good Samaritan legislation to help address these kinds of situations.

Mr. TIPTON. Councilman Olguin, would you describe a little bit some of the challenges and the economics for us in maybe a little more depth that you are facing, as a Southern Ute Tribe, based off of the EPA spill, and how it is impacting us in southern Colorado, and for you, specifically?

Mr. OLGUIN. Well, economic impacts for us, aside from any cost that we have incurred, is still to be determined, particularly when you have this particular area of Durango, Silverton, the Four Corners, southwest Colorado, and even New Mexico. You know, it is a tourist area. For us, some of our—well, our casino, as an example, the same people that visit Durango, possibly visit Silverton, the Four Corners, are the same people that visit us.

Particularly, when you have the world news saying, “Here is a toxic waste site,” well, it scares people. People cancel reservations, cancel trips. The economy goes down, based on that. I think that is something we have to really look at, what really was our impact, when it comes to those economic events that happened because of the spill.

Mr. TIPTON. Great. Thank you for being here. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you. Mr. Luján.

Mr. LUJÁN. Mr. Chairman, thank you so very much, and to you, Chairman Bishop, Chairman Chaffetz, all the members of both committees, for allowing us to be here, members that are not on this committee. I thank you so very much for holding this critical hearing.

To all the witnesses here, I want to thank you for taking time away from home and responsibilities that I know are pressing, so that you can be here to testify on what needs to happen to make people whole; to make sure that there is adequate response and real communication between each and every one of you and the people that we are so honored to represent; and how we can prevent this from happening again in the future, where there are several pieces that we have been able to identify.

I want to associate myself with the comments and questions that Cynthia Lummis, our colleague from Wyoming, shared with the line of questioning that was with EPA Administrator McCarthy, as well.

One of the points I want to make, Mr. Chairman, I do not know if this has been shared, but there is a memo that came out from the U.S. Environmental Protection Agency Region 8 dated August 17, 2015. If we may be able to submit this into the record?

The CHAIRMAN. Without objection.

[The information follows:]

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 8**

1595 Wynkoop Street  
Denver, CO 80202-1129  
Phone 800-227-8917  
www.epa.gov/region08

August 17, 2015

Ref: 8EPR-ER

**MEMORANDUM**

**SUBJECT:** Gold King Mine [REDACTION]  
**FROM:** On-Scene Coordinator [REDACTION]  
**TO:** Site File

The following is a partial chronology of events from the Gold King Mine Release incident that occurred on August 5, 2015, and covers approximately the first 48 hours of the incident. I was in the Denver EPA Office serving as phone duty officer. I received the notification from the National Response Center and found two related e-mails on the Region 8 RRC e-mail box (e-mails attached) from CDPHE. All other events noted below were based on conversations with others such as the EPA OSC at the mine site, EPA employees serving in the REOC during the subsequent days of the incident, conference calls with stakeholders such as La Plata County, and written information from EPA's START contractor and an e-mail from personnel at the Colorado Division of Reclamation, Mining and Safety (DRMS).

8/5/2015

- Release occurs (10:51 a.m.).
- Safety of on-site personnel is secured.
- The road at the mine site was destroyed and the crew was trapped with no cell phone coverage. The EPA crew radios to an EPA ERRS contractor who was off-site to notify him of the situation. The contractor finds the DRMS team who was off-site. EPA and DRMS communicate via radio (approximately 11:45 a.m.) and the OSC instructs DRMS to make notifications.
- 11:50 a.m. The EPA OSC and the ERRS contractor response manager left the Gold King Mine on foot to get picked up and driven to an area with phone reception to notify authorities. The START contractor stayed at the mine adit area to monitor the mine for additional surges of water and to provide support to the ERRS operator rebuilding the road.
- 12:20 p.m. The ERRS contractor began reconstructing the exit road from the site to help demobilize the equipment, vehicles, and personnel.
- CDPHE is notified by DRMS (12:40 p.m.).
- CDPHE makes notifications to Durango, San Juan Basin Health Dept., and water intakes, and notifications are complete by 1:39 p.m. The EPA Phone Duty Officer also notifies Colorado downstream water intakes (the same ones that CDPHE notified) later in the afternoon. The DRMS e-mail indicated that CDPHE was supposed to ensure agricultural users were also notified.
- DRMS notifies the National Response Center (12:27 p.m.). The NRC makes notification to the EPA Region 8 phone duty officer. (NRC reports are automatically forwarded to a number of other agencies including CDPHE, Colorado Information Analysis Center, U.S. Department of Interior which includes the U.S. Fish & Wildlife Service, and others).
- The DRMS e-mail states that they coincidentally met the San Juan County Sheriff as the release was flowing down Cement Creek at approximately 12:47 p.m.

- There is an EPA and contractor team in the area for another project and they are familiar with Animas River sampling locations. They are diverted to the incident and begin collecting river water samples (first round collected at 6 p.m., second round near midnight, another round the following morning).
- The plume reaches Silverton.
- EPA issues first press release (11:26 p.m.).

8/6/2015

- EPA Region 8 stands up the REOC (10:00 a.m.).
- EPA Headquarters, Region 6 and Region 9 are notified (11:00 a.m.).
- The Animas River is closed to recreational users (there was coordination with local agencies and ATSDR to make this decision at approximately 10:30 a.m.; EPA saw an official printed release later in the afternoon).
- EPA Region 8 Acting Water Program Director confirmed that the State had notified water users the previous day.
- The OSC met with the Town of Silverton at 11:00 a.m. He was also going to meet with La Plata County/Durango at 2:00 p.m.
- EPA Region 8 conference call with the La Plata County Emergency Manager around 11:00 a.m. or so. He reported that major irrigation users had shut their head gates.
- The Durango Treatment Plant is secure per reports from the EPA Water Program (3:45 p.m.).
- Conference call with EPA Region 6 in the afternoon before 2:00 p.m. They reported that their Water Program had contacted New Mexico.
- The plume reaches Durango (late afternoon).
- EPA deploys an additional OSC, two START contractors, the ASPECT plane (Airborne Spectral Photometric Environmental Collection Technology), and Community Involvement Coordinator personnel (varied, beginning at 12:30 p.m.).
- EPA issued SitRep (approx. 3:30 p.m.).

8/7/2015

- ASPECT flyover (initiated at 7:30 a.m., found extent of plume at 8:30 a.m.; lat/longs received, map pending).
- Coordination call with R6, R9 and HQ. Region 9 was planning to sample at the Navajo Reservation.
- Preliminary results for sampling and monitoring is expected to be received on this day.
- As of 8:30 a.m. the plume had not yet reached New Mexico.
- OSC in the field reports that private residential wells were showing yellow color and requests ERRS support for alternative water (distribution began that evening).
- EPA requests information from USGS regarding a stream gauge on Cement Creek and USGS reports that the release was larger than 1,000,000 gallons.
- Region 8 receives a call from FEMA R8 because their tribal liaison was getting calls from the Navajo Nation and EPA Region 8 provided Region 9's OSC contact info to FEMA.
- EPA Region 8 holds call with the Region 8 Regional Response Team (including the U.S. Department of Interior from R6 and R8, and multiple Forest Service representatives).

Attachments

Submit Action Report    Spill Summary Report

NATIONAL RESPONSE CENTER 1-800-424-8802  
 \*\*\*GOVERNMENT USE ONLY\*\*\*GOVERNMENT USE ONLY\*\*\*  
 Information released to a third party shall comply with any  
 applicable federal and/or state Freedom of Information and Privacy Laws

Incident Report # 1124824

INCIDENT DESCRIPTION

\*Report taken by: CIV (b) (6) at 14:27 on 05-AUG-15  
 Incident Type: FIXED  
 Incident Cause: OTHER  
 Affected Area: ANIMAS RIVER  
 Incident occurred on 05-AUG-15 at 11:30 local incident time.  
 Affected Medium: WATER ANIMAS RIVER

REPORTING PARTY

Name: (b) (6)  
 Organization: STATE  
 Address: 1313 SHERMAN STREET  
 FM 215  
 DENVER, CO 80203

PRIMARY Phone: (303)8663567  
 Type of Organization: STATE GOVERNMENT

SUSPECTED RESPONSIBLE PARTY

Name: UNKNOWN

Type of Organization: UNKNOWN

INCIDENT LOCATION

County: SAN JUAN  
 City: SILVERTON State: CO  
 10 MILES NORTH OF THE TOWN OF SILVERTON

RELEASED MATERIAL(S)

CHRIS Code: NCC Official Material Name: NO CHRIS CODE  
 Also Known As: MINE WATER  
 Qty Released: 0 UNKNOWN AMOUNT Qty in Water: 0 UNKNOWN AMOUNT

DESCRIPTION OF INCIDENT

CALLER IS REPORTING A RELEASE OF MINE WATER FROM AN UNDER GROUND MINE

INCIDENT DETAILS

Package: N/A  
 Building ID:  
 Type of Fixed Object: OTHER  
 Power Generating Facility: UNKNOWN  
 Generating Capacity:  
 Type of Fuel:  
 NPDES:  
 NPDES Permit Number: UNKNOWN  
 Sheen Color:  
 Sheen Odor Description: MINE WATER  
 Sheen Travel Direction:  
 Sheen Size Length:  
 Sheen Size Width:  
 ---MINE INFORMATION---  
 Body of Water: ANIMAS RIVER



Tributary of:  
 Nearest River Mile Marker:  
 Water Supply Contaminated: UNKNOWN

IMPACT

Fire Involved: NO    Fire Extinguished: UNKNOWN  
 INJURIES: NO    Hospitalized:    Empl/Crew:    Passenger:  
 FATALITIES: NO    Empl/Crew:    Passenger:    Occupant:  
 EVACUATIONS: NO    Who Evacuated:    Radius/Area:  
 Damages: NO

Closure Type	Description of Closure	Hours Closed	Direction of Closure
Air:	N		
Road:	N		Major Artery: N
Waterway:	N		
Track:	N		

Passengers Transferred: NO  
 Environmental Impact: NO  
 Media Interest: UNKNOWN    Community Impact due to Material:

REMEDIAL ACTIONS

CALLER ALSO STATED THAT ANYONE THAT IS USING THE WATER FOR IRRIGATION PURPOSES SHOULD NOT USE THE WATER, PERSONNEL ARE ONSITE AT THE MINE, THE COUNTY AND LOCAL POLICE HAVE BEEN MOBILIZED  
 Release Sourced: UNKNOWN  
 Release Rate:  
 Estimated Release Duration:

WEATHERADDITIONAL AGENCIES NOTIFIED

Federal:  
 State/Local: STATE, LOCAL POLICE, COUNTY  
 State/Local On Scene: STATE, LOCAL POLICE, COUNTY  
 State Agency Number:

NOTIFICATIONS BY NRC

CENTERS FOR DISEASE CONTROL (GRASP)  
 05-AUG-15 14:37 (770)4887100  
 DHS NOC (NOC)  
 05-AUG-15 14:37 (202)2828114  
 CGIS RAO ST. LOUIS (COMMAND CENTER)  
 05-AUG-15 14:37 (314)2692420  
 CO DEPT OF HEALTH AND ENVIRONMENT (MAIN OFFICE)  
 05-AUG-15 14:37 (877)5195608  
 COLORADO INFO ANALYSIS CENTER (FUSION CENTER)  
 05-AUG-15 14:37 (720)8526705  
 DOT CRISIS MANAGEMENT CENTER (MAIN OFFICE)  
 05-AUG-15 14:37 (202)3661863  
 U.S. EPA VIII (MAIN OFFICE)  
 05-AUG-15 14:39 (303)2931788 ACKERMAN  
 NATIONAL INFRASTRUCTURE COORD CTR (MAIN OFFICE)  
 05-AUG-15 14:37 (202)2829201  
 NOAA RPTS FOR CO (MAIN OFFICE)  
 05-AUG-15 14:37 (206)5264911  
 NATIONAL RESPONSE CENTER HQ (AUTOMATIC REPORTS)  
 05-AUG-15 14:37 (202)2671136  
 CO OIL & GAS CONSERVATION COMM (MAIN OFFICE)  
 05-AUG-15 14:37 (303)8942100  
 DOI/OEPC DENVER (MAIN OFFICE)

05-AUG-15 14:37 (303)4452500  
 USCG DISTRICT 8 (MAIN OFFICE)  
 05-AUG-15 14:37 (504)5896225

ADDITIONAL INFORMATION

\*\*\* END INCIDENT REPORT # 1124824 \*\*\*  
 Report any problems by calling 1-800-424-8802  
 PLEASE VISIT OUR WEB SITE AT <http://www.nrc.uscg.mil>



**COLORADO**  
**Office of Emergency**  
**Preparedness & Response**  
 Department of Public Health & Environm

Print date: 8/5/2015

CASE NUMBER: 2016-0462 DATE ENTERED: 8/5/2015 TIME ENTERED: 12:52  
 WHO TOOK REPORT: (b) (6) NRC DATE REPORTED: 8/5/2015 TIME REPORTED: 12:40:00 PM  
 NRC NUMBER: 1124624

CALLER: (b) (6) CONFIDENTIAL: N PHONE: (b) (6)  
 ORGANIZATION: DRMS  
 STREET:  
 CITY: DENVER COUNTY:  
 STATE: CO ZIP CODE:

POTENTIALLY RESPONSIBLE PARTY: GOLD KING MINE  
 PRP CONTACT: EPA SUPERFUND SITE PRP PHONE:  
 ADDRESS: EMAIL:  
 CITY: COUNTY:  
 STATE: CO ZIP CODE:

EVENT DATE: 8/5/2015 EVENT TIME: 10:40:00 AM  
 LOCATION: GOLD KING MINE, EPA SUPERFUND SITE MILE MARKER:  
 CITY: GLADSTONE COUNTY: SAN JUAN  
 STATE: CO ZIP CODE Latitude:  
 Longitude:

TYPE OF MATERIAL	OTHER	QUANTITY1:	UNIT1:	QUANTITY2:	UNIT2:	QUANTITY3:	UNIT3:
MATERIAL1: MINE BLOW OUT WATER		1	MILLION GALLO	QTY TO WATER1:	1	UNIT1:	O
MATERIAL2:				QTY TO WATER2:			UNIT2:
MATERIAL3:				QTY TO WATER3:			UNIT3:

SOURCE: X  
 SOURCE TYPE: GOLD KING MINE  
 CAUSE: OTHER

CAUSE INFORMATION: While working on the portal for this mine/EPA Superfund Site, over a million gallons of water surged out to Upper Cement Creek, which leads to the Animas River. The water is very orange, carrying dissolved iron and zinc. Caller wanted WQ to notify downstream users that the surge is expected to reach Silvertown and downstream users shortly. (b) (6) was reached and is working on calling downstream users. They do not expect the water to exceed the banks of the river. Water is still being released more slowly from the mine site.

MEDIUM IMPACTED: WATER  Fixed Facility  Land  Air  Groundwater  
 Surface Water Waterway Impacted: UPPER CEMENT CREEK  
 NUMBER OF DEATHS: NUMBER OF INJURIES: EVACUATION: NUMBER EVACUATED:

ACTION TAKEN:

CDPHE NOTIFIED: WQCD: (b) (6) DRMS:  
 (b) (6) CPW: (b) (6) HMMWD: (b) (6)

COMMENTS: San Juan County EH: (b) (6)

RESPONDERS:  
 RESPONDER COMMENTS:

ADDITIONAL COMMENTS:



the next day, 24 hours later, where it states at 11:00 a.m. EPA headquarters Region 6 and Region 9 are notified. I am not even talking about the notification to the state of New Mexico, what happened up in Colorado, to the Ute Tribe and to the Navajo Nation. We have a problem here that has to be corrected.

One of the areas—Secretary Flynn, I know I shared this with you yesterday, I have shared this with Secretary McCarthy, I mentioned this to my colleague, Mr. Tipton out of Colorado, as well—is for us, Mr. Chairman, to potentially look at the system that is put in place today for the Amber Alert System for abducted children, as well as the NATIONAL Weather System alerts when there is a system like this, so we have alerts on there.

Do you think, Mr. Secretary, that that would be helpful in pushing out as much information as we can—Secretary Flynn and President Begaye, especially, as constituents? What are your thoughts there, if there would have been real time, instant notification? Would that have been beneficial?

Mr. FLYNN. Congressman Luján, absolutely. I think that is a great idea.

Mr. LUJÁN. And, Mr. President, rapid communication, if there is an urgency like this, that did not occur, and we need to correct that. Is this something that would make a difference in being able to prepare for anything that may be coming our way?

Mr. BEGAYE. Absolutely. It would help. In this case, we are the ones that took action to close irrigation gates, not the EPA. We are the ones that made those decisions based on information that came down to us. So, if we had received that quicker, we would have responded better and prepared better; and our people would have been ready, rather than being thrust into a state of uncertainty, yes.

Mr. LUJÁN. I appreciate that. I also want to thank Councilman Olguin for our brothers and sisters up in Colorado at the Ute Tribe, for alerting many of the communities in New Mexico. It was through the leadership of being good neighbors that you alerted some of the neighbors in New Mexico, sir. So, to you and to the tribal leaders, just thank you so very much.

Secretary Flynn and President Begaye, is there anything, as you sat through this hearing today—and I know it was a long one—with all the questions and testimony today and in the Senate, with the several hearings that you have heard, is there anything that is coming out of the EPA that you have concerns with, or that you heard today that you have concerns with?

And what is it that we can do to make sure that there is someone from headquarters appointed, Mr. Chairman, from the EPA to be corresponding directly with the state of New Mexico, state of Colorado, the Ute Tribe, Navajo Nation as well, that you would like to see done that maybe we can convey?

To give the rest of my time—I have a little bit under a minute. Mr. Secretary, if you could quickly jump on that, and maybe submit things in writing; then we will visit with the President of the Navajo Nation, so we can fulfill all of those requests, and make sure that we are able to convey that.

The CHAIRMAN. I have been giving extra time. You have 2 minutes.

Mr. LUJÁN. Thank you, Mr. Chairman. I appreciate that, sir.

Mr. FLYNN. Congressman Luján, I think that, based on a lot of the discussions and debate that I have seen, the real question that needs to continue to be pressed, which I have heard a lot of today, is what types of institutional reforms can we put in place, as a result of this incident. So, things like early notification, ways to improve that, I think that is really focusing on how we can evaluate the performance and move forward.

I think there is a lot of PR and spin that is coming out to try to put a bow on this and move on, instead of really asking the difficult questions on institutional reforms; so that is a concern I have.

I also have a major concern about the structure of the "independent investigation" being conducted by the Department of the Interior. I do not truly believe that is an independent investigation. It would be difficult for me to investigate another member of my cabinet, working under Governor Martinez. I think that a truly independent investigation should occur, so that the great questions that will bring about institutional improvements can be asked, and we can make government work better. We all have a stake in government working better and learning from this.

Mr. LUJÁN. Thank you very much.

Mr. BEGAYE. Congressman Luján, thank you for the questions.

Number one, do not let this happen again—Superfund site, clean that thing up, do not let yellow water come down into our river again.

Second, on Standard Form 95, we need the U.S. Attorney General's opinion saying that that waiver is not final and you can continue to submit claims for damages. We need that opinion. We do not trust the word of Administrator McCarthy. We need a legal opinion from the U.S. Attorney General, so that we can feel much better about telling our people that they can continue to submit the form, and also that they be compensated continuously until all of this is resolved.

Also, dilution is not the solution; and that is what the EPA's term of cleanup is. It is not ours. They need to get out there, remove soil that is contaminated, remove that yellow soil from our land, and make sure that it is clean. Just diluting it by releasing more water from the dam is not the way to clean up the spill that has taken place on our land. Thank you.

Mr. LUJÁN. Thank you and, Mr. Chairman, again, for the time and your thoughtfulness. I look forward to working with you to address all these issues. We need to get to the bottom of this.

I am also working on a piece of legislation with my counterparts in the U.S. Senate from New Mexico that would ask and require for expeditious carry-out of the claims process, and for the establishment of those offices in these communities. That way, there can be technical assistance to the individuals that will be also asking for support there.

So thank you so much, again, for the indulgence, Mr. Chairman. To the witnesses, thank you for your testimony and for being here today.

The CHAIRMAN. Thank you; but we will not treat you seriously until you come back to the committee.

Mr. LUJÁN. Yes, sir.

[Laughter.]

The CHAIRMAN. Mr. Palmer, do you have questions?

Mr. PALMER. Thank you, Chairman Bishop. Secretary Flynn made the point that, though the water levels rose, the plume moved downstream. When it receded and water levels returned to normal level, it left contaminated sediment.

My question to the tribal leaders, Mr. Begaye and Mr. Olguin, is—does any of this impact any of the sacred places, places sacred to the Navajo Nation or to the Southern Ute Tribes?

Mr. Begaye?

Mr. BEGAYE. Thank you, Congressman Palmer. Pollen from corn is sacred to us. It is used for early morning prayers. It is used in ceremonies, extensively; and by the corn maturing quicker, it has hurt the pollen from germinating, from maturing. Our people are very concerned that they are not going to have enough pollen for their ceremonies, for their morning prayers, to be used in that way.

Also, you have all of these plants that our medicine people use that grow along the river. Those are being tainted, and they are no longer wanting to gather these herbal plants that are used in ceremonies along the river.

So, yes, it has definitely damaged that part of our culture that is sacred to us.

Mr. PALMER. Mr. Olguin?

Mr. OLGUIN. Well, I would have to say that, when we look at the Ute ancestors, those mountains were our homelands. So, I think it starts right there, when the mining industry came about and we were removed from that area.

Where we are located now, the water is a sacred source of life for us—water produces life. That is one of the eight rivers that crosses the reservation; and, of course, we do have cultural sites along the river. We do not make those public by any means, but the people that live along the river, the tribal people, I mean, this is sacred in all aspects.

Mr. PALMER. There really is not any way that you could put a price on the damage in that regard.

Let me ask you this, and this question will go to the gentlemen from Colorado and New Mexico, as well; but I will start back with Mr. Begaye. Considering this in terms of your culture and what is sacred to you, if the EPA were to declare these Superfund sites, what would the long-term ramifications be in that regard?

Mr. BEGAYE. For us, they need to clean up the mines that are up there; because if not, another blowout will occur, as we were told when we were standing alongside the person that actually was working the backhoe when the blowout occurred. He was saying there are other mines on the other side that are ready to blow out. So, we do not want that to occur again and again and again. And if it does, it will really hurt our sacred areas, our sacred plants, and our people's lives will be disrupted continuously.

Mr. PALMER. Mr. Olguin?

Mr. OLGUIN. At this point it is probably going to be hard for us to say, but I guess cleaning up the river, cleaning up the water, it is of utmost importance.

Mr. PALMER. I will let Dr. Wolk answer next, and I have a final point, and we will be out of here.

Dr. WOLK. Just on the notion or the decision to make it a Superfund site, it is a little bit more complicated, because the local community, obviously, has a very large voice in that, as well as the state. We have very successful examples of Superfund sites that have been restorative, and have a sustainability plan now going forward. So, it is certainly a viable option.

Mr. PALMER. Mr. Flynn, Secretary Flynn?

Mr. FLYNN. Congressman, I think Superfund sites certainly have a place in environmental cleanup. However, I do not think that Superfund is really designed to solve all of the problems. In fact, when you have a responsible party who is doing work, I think Superfund adds levels of bureaucracy that can actually slow down environmental cleanup projects.

I think Superfund is most effective when there is not a responsible party who is actually there doing cleanup work. We have 14 Superfunds in our state. It can absolutely be used effectively, but there is a huge fuel spill that we are cleaning up in our largest metropolitan area, where we have avoided designating it a Superfund site, and we have actually moved much faster by not—I do not think it would be appropriate to be a Superfund site, but we have a responsible party, and we have been able to get a lot more work done by not declaring it a Superfund site.

Mr. PALMER. If the Chairman will indulge me just for a final statement here. My sense of this would be it would be beneficial to all of you to avoid a Superfund site because of what it is going to do, in terms of people viewing your tourist sites, property values, and things of that nature.

I think the most important thing is something Secretary Flynn touched on and that, in the previous hearing, Congressman Bruce Westerman touched on—and that is making sure that whoever is dealing with the cleanup is qualified, that they have the engineering and technical expertise. You just do not send anybody out there with a backhoe to do this.

Thank you, Mr. Chairman. I yield the balance of my time.

The CHAIRMAN. Thank you. Let me—oh, Mrs. Lummis, do you have some questions for these witnesses before I do mine?

Mrs. LUMMIS. Thank you, Mr. Chairman. I do.

The CHAIRMAN. Go for it.

Mrs. LUMMIS. I appreciate your accommodation. Thank you all for attending. I, of course, had an opportunity to ask Director McCarthy some questions this morning, and I would like to pose some of those same questions to you. I am going to start with Mr. Flynn.

Could you explain to me how the EPA's lack of communication affected your ability to respond?

Mr. FLYNN. Sure. You know, Congresswoman, I guess I have already discussed kind of the short-term issues; but, really, the bigger problems occurred as we were working through the emergency. We were constantly having to fight to get information and data from EPA. You know, the more information we could receive, the quicker we could make decisions about when it would be

appropriate to start withdrawing water from the river again, for example.

So, the lack of timeliness with respect to providing data—we had all kinds of excuses, but the bottom line is we just really needed that information in order to help develop a response plan. For some of these issues, we needed the supply of water for the public water systems; some of the smaller systems were extremely limited, so they had a couple days of reserve. In order to really make decisions, we had to be able to plan out 7, 10 days, just to mobilize people to actually put physical infrastructure in place to create an alternative supply, a backup resource.

So, not having data in the first couple of days, and then continuing to have to make that fight, put us in a position where we had to take very conservative actions. In one case, we had to actually lay pipe and connect one system, because we were not sure we were going to be able to allow the system to withdraw from the river because of an absence of information.

Mrs. LUMMIS. OK. Councilor Olguin—and excuse me if I mispronounced your name—welcome to our committee. Could you tell us generally how the disaster has affected the Southern Ute Tribe?

Mr. OLGUIN. Well, generally, the way I can express it is, of course, we have to respond to it. First and foremost, we have to deal with the disaster by having to implement our emergency management plan and our team, and start incurring costs to address our needs for our membership. That is probably the biggest thing, that hit us right away. Of course, you never plan for a disaster, but when you do have the plan, it really kicks in.

Mrs. LUMMIS. OK. President Begaye, same question. How has the disaster affected the Navajo Nation? Also, do you have any estimates at this point how much you think it will cost to fix it, to return you to the pre-spill condition?

Mr. BEGAYE. It has really devastated our nation. Two hundred and fifteen miles of the river lies on our nation. A third of the population utilizes it in varying ways: ranching, medicine, and farming.

Our farmers, when you look into their faces, and you stand alongside them, and they are telling you that they are still giving water to a melon that is this size—they know it is gone, I know it is gone—but they continue to give water to it, because it is like children, their family, a watermelon plant, a corn stalk, all of that. They are very closely connected to their farm, to their crops, in a spiritual way. It is very difficult to place a price on that type of relationship with nature that we have.

So, it will be extensive, and we cannot at this moment put a price on it. We really are reluctant to do so in many ways, culturally; but we will do that, we will do so.

Our people are hurting. And when you see EPA pulling out, and you have water tanks that are being pulled off, you have hay that is not being provided because of the spill that was caused by their workers, it is really devastating. At this moment, our nation is hurting.

Mrs. LUMMIS. Has either tribe received any initial compensation for direct out-of-pocket expenses incurred by either tribe immediately after the incident?



Mr. BEGAYE. Navajo Nation, we have not received a single penny yet.

Mr. OLGUIN. We have not received anything, but we are working with the EPA on a cooperative agreement to be reimbursed.

Mrs. LUMMIS. So, you are working on something that is in the nature of ongoing compensation, or is the Federal Government demanding that it be a complete settlement, cutting off future reimbursement or compensation for injury? Has anyone approached you about those kinds of proposals?

Mr. BEGAYE. Congresswoman, thank you. Our leaders in one community contacted our office, saying that there is a form being passed out by EPA workers—two workers—and we do not know what it is or whether we should fill this out or not.

Mrs. LUMMIS. OK.

Mr. BEGAYE. We got hold of one. The Navajo Nation Attorney General, who is also a graduate of Harvard Law, he reviewed it, looked at it, determined that this was a final settlement form, and that if they filled it out and were compensated, that was it. So I got on the radio in Navajo language, explained what it was to them, and everyone stopped filling out the forms.

But, we need an interim form now. We need the Attorney General to give us a legal opinion. We will not take the word of Administrator McCarthy, that the compensation will continue. We do not believe that until we see it in writing, clearly spelled out by the Attorney General of the United States.

Mrs. LUMMIS. My time has expired, Mr. Chairman. Thank you for your accommodation of my questions.

The CHAIRMAN. You are welcome. Mr. Grijalva. You are the second-to-the-last question.

Mr. GRIJALVA. Thank you, Chairman Bishop. To the Councilman and Mr. President, thank you very much for being here. The Navajo Nation is rightfully concerned and vigilant about contamination related to mining, given the legacy, and how members have suffered through the uranium contamination issues and other issues. So, Mr. President, your points are well taken. Cultural resources, sacred sites issues, are quite vital. The San Juan, and assurance that that flow is nurturing and not hurtful is essential. Reimbursement and the settlement of claims as they appear needs to be expedited.

Earlier in the questions, one of my colleagues said that this incident is now causing distrust with the Federal Government, in terms of notification and consultation. I do not think it happened 'now'. This is a pattern, and I think that we need to codify how this notification happens into law. We need to codify how consultation happens with Native nations, so that there is a process and a checklist, that it is not left to somebody's subjective analysis. That is the law, and that is what should be followed. So, I want to thank you for bringing that today.

I wanted to ask Dr. Wolk. Describe, if you can, as quickly as you can, the condition of the Animas River over the past decade or so. Had the water quality been getting better or getting worse, as we look at that period of time? Or is that a possible question?

Dr. WOLK. Thank you, sir. I think, over the past 10 years, the water quality has been gradually deteriorating, and that is using

as a resultant the decreased amount of fish in numbers, as well as certain species of trout, so mostly, as it relates to aquatic life. It has not deteriorated to the point of not being suitable for intake for drinking water or for use of recreational purposes or irrigation purposes, but certainly it has been deteriorating.

Mr. GRIJALVA. The present 428 on the priority list, 428 sites that are being worked on, constructed, reclamation issues, that did not tell us. So, whatever a waiting list is is really hard to gauge; because until those are done with the resources available, more and more can be piling on, waiting for an opportunity to get on that priority list.

I am glad for all the witnesses today. I wish that a representative of the National Mining Association would have been here, so that we could inquire as to what role the private sector should have going down the future, how they feel about extraction on public lands and a royalty attached to that extraction, so it goes toward those 428 and these incidents like what happened in Animas, and how it has affected communities across the board.

In closing, let me say there was a ticking bomb, and that was the abandoned mines and the abandoned Gold King Mine that affected the Animas. People called the bomb squad. In this case, unfortunately, the bomb squad set it off when they were trying to diffuse it. My colleagues on the other side of the aisle today gather to attack the bomb squad. Our side of the aisle very urgently, with everyone involved, the states, the Native nations, want to work together to try to diffuse the other bombs we know are out there. That is what we are looking for in the future.

I think, before we make the bomb squad the bad guys, let's come to some conclusions as to how we go forward, dealing with a backlog and a catalog of similar situations across this country and across the West.

With that, thank you very much, and I yield back, Mr. Chairman.

The CHAIRMAN. Thank you. I have a series of statements and documents that I wish unanimous consent to put into the record.

[No response.]

The CHAIRMAN. And, hearing no objection, I get to do it.

Let me be the last to actually ask a few questions to you.

President Begaye, if I can start with you, has President Obama reached out to your tribe, called, talked to you, or visited?

Mr. BEGAYE. President Obama has been silent. Similarly, he closed his door on the Navajo Nation in its greatest time of need. So, we have yet to hear from the White House.

The CHAIRMAN. I also have—well, let me go on. Thank you.

Now, let me clarify one thing. When you were prohibited from going closer to the site by EPA, that was on your sovereign territory, where they said you could not go any further. Is that correct?

Mr. BEGAYE. This was up above Silverton, and it was on Colorado land.

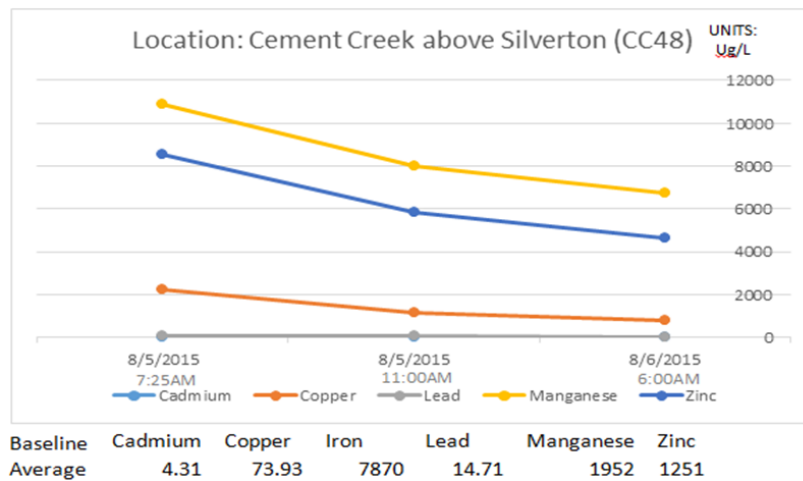
The CHAIRMAN. All right, thank you. That clarified it.

Secretary Flynn, the EPA has asserted that they have sought to be transparent and work with states in supplying the information. Has that really been your experience?

Mr. FLYNN. Chairman, no. I think there is a lot of room for improvement by the EPA on this effort. I have a good graph, or a series of graphs, that I would like to show you and submit into the record.

This first graph was actually developed by EPA on August 7, the Friday right before the plume actually hit New Mexico. This was based on information that EPA had taken from Colorado, just south of the spill. They quickly put this graph out with a message to the public as, like, a PR gesture.

**EPA's Graph of Dissolved Metals Data  
(Provided by EPA to NMED on August 7, 2015)**

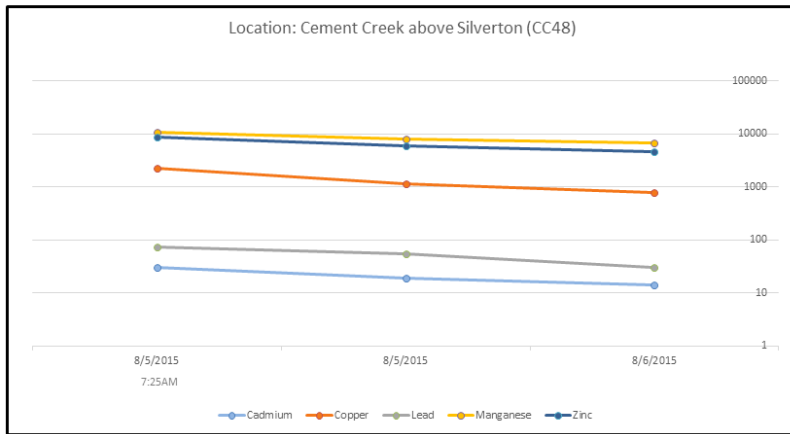


There are a couple notable things about it. The first is that—well, my scientists were insulted by this graph for a variety of reasons—the first was that it plotted all the metals on a linear scale. So, if you just look at the bottom, it looks like lead and cadmium are totally flatlined, like, zero; and you cannot really see, but the very bottom line is actually two metals that it is representing. They only provided dissolved metals when the EPA's drinking water maximum contaminant levels are based on total not-dissolved concentrations. Also, the graph does not have anything about arsenic, which we knew was over 823 times the maximum contaminant limit at the time of the spill.

So, if you look at that graph—and then I had a second graph that my staff actually developed, a second series of graphs that—I do not know if they are available on the record; but this is what would be a logarithmic graph, which is really what would be the scientifically valid way to present this information.

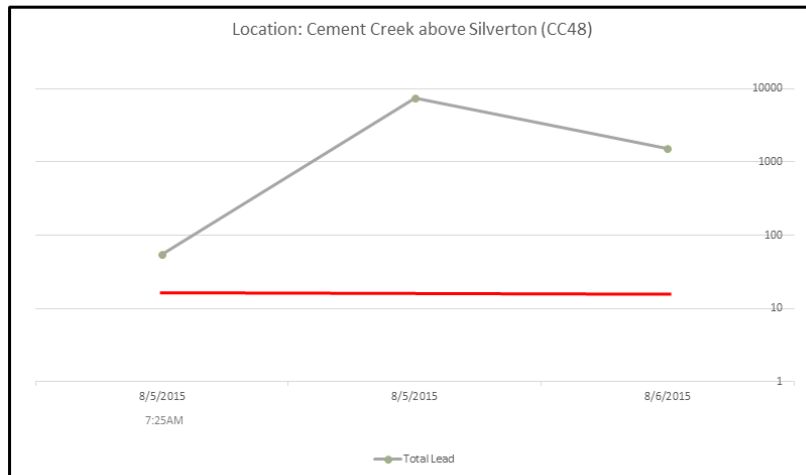
**Dissolved Metals Plotted on Logarithmic Graph**

A logarithmic graph of exactly the same data shows that cadmium and lead were detected at significant concentrations.



If you could go to the final graph, because this really illustrates a point. This is actually how you would represent the concentrations of lead, using the same exact information EPA presented in that first graph, that was EPA's, where you saw lead just like it was right at zero, flatlining along the line. This last graph shows you the actual concentrations of lead from their data; and that orange line shows you what the maximum contaminant levels are in the Safe Drinking Water Act.

**Total Lead Plotted on Logarithmic Graph with the Drinking Water MCL**



Drinking Water MCL for lead is 15 ug/L.

So, that was not done by any scientist. That was a PR stunt that was done immediately after the plume had hit, based on data that we repeatedly asked for and were not provided. I do not think any scientist at EPA had any hand in this, because it was so insulting to my staff that I just cannot imagine a scientist would be involved in this development. And, that was the first of a number of instances where I do not think EPA certainly was forthcoming with information.

The CHAIRMAN. If those are not part of the record, we will make them part of the record under unanimous consent, as well.

So, there are times that they provided you data in a way that is not really helpful. I am assuming there are also times when EPA would not provide you data, or important information, or excluded you from the response process?

Mr. FLYNN. Yes, Chairman Bishop. On Friday, August 21—this was now well over 2 weeks after the spill occurred—we had been fighting back and forth for a copy of EPA's sediment sampling plan, because like I said before, the plume moves with the water column. The water quality is going to rebound. But, really, the sediment sampling is what tells you what has been left over, and that is critical.

So, we have been fighting with EPA, and my staff—this is on a staff-to-staff level—has been asking for this plan for weeks. On August 21, EPA claimed that they could not provide it because it contained “business confidential information,” and raised a number of other excuses. I was incredulous at that response; I just cannot imagine that.

They had also claimed that they were concerned about New Mexico's open records law. We have a very broad Public Records Act that does not contain the same degree of exclusions that EPA's Freedom of Information Act allows; so, they were concerned about the breadth of our Public Records Act, and that we would be disclosing more information than would otherwise be required.

Those are just a couple of the reasons, and I would be happy to supplement the record with documents, if—

The CHAIRMAN. So you guys are too transparent?

Mr. FLYNN. Yes, that was essentially one of the concerns that was raised.

The CHAIRMAN. Let me ask you about the Department of the Interior, the Forest Service, BLM, Park Service, BIA. What was their reaction? Could they have been more helpful?

Mr. FLYNN. On Friday morning about 5:00 a.m., I was in the area and I did speak to some local staff, two people there. We had asked them to release more water from the Navajo Lake in order to help preserve two of the endangered species in the area, the Colorado pikeminnow and the razorback sucker. Those staffers were great; they kind of acted first without asking, my sense is they kind of just acted on their own.

Other than that contact that we initiated right away, I would say Interior's involvement was non-existent, other than seeing a press release that they are now investigating. And, I do not really understand what they are investigating, because the press release did not really provide a lot of information.

The CHAIRMAN. That was one of the reasons why we were hoping they would be part of the panel today—and they chose not to be—to ask those questions, like what are they actually planning on doing somewhere around here.

Has EPA been any more straightforward with the issue of reimbursement of the cost to New Mexico?

Mr. FLYNN. No. Last week, I was really taken aback when lower level staffers at EPA reached out to lower level—I am, obviously, just referring to the organization chart—these are non-management employees. EPA had made some contact to a couple of my staffers, as well as a couple of staffers from the homeland security, trying to gather information about the total costs that were expended related to this. And the Navajo Nation, as well as the state of New Mexico, the state of Colorado, the state of Utah, and others, are considering legal action.

As an attorney myself, it was very surprising to me that they would seek to try to gather this information in that manner. I would expect that it would be done at a high level. I instructed my staff, and the Governor instructed all of the other staff, that communication needs to be flowing through leadership, at a kind of leadership level, and that we were not going to communicate in that way. It just seemed like kind of bad faith. As a lawyer, those are certainly not the tactics I would use in litigation, to kind of secretly or quietly try to reach out for info without contacting a management-level employee.

The CHAIRMAN. Dr. Wolk, let me ask you as well—the EPA said that, as far as notification—I am glad that Mr. Grijalva kind of summarized that, the problem—that they could have done a better job in notification. Kind of a low bar, but did they actually notify Colorado, or was it you were fortunate enough to have somebody in Colorado who was at the right place at the right time that heard it?

Dr. WOLK. Thank you, sir. We were fortunate enough to have a member of our State Department of Natural Resources there at the site, who activated our notification system in-state through our spill line. So, we were able to follow our protocol with regard to in-state notifications for downstream users.

The CHAIRMAN. So, what you really did is you got notification by serendipity. New Mexico did not know about it until the Southern Utes recognized that. Right?

And the Navajo Nation, who actually notified you?

Mr. BEGAYE. We were notified by the state of New Mexico.

The CHAIRMAN. And then you notified Utah, as well?

Mr. BEGAYE. Yes.

The CHAIRMAN. And New Mexico. So, actually, when the EPA talks about their notification process, it basically was non-existent. They did not notify squat. It had to be done by other people doing that process.

We do have one other Member that I think is—I am stretching here to see if I can get one other person to ask some questions. Is she coming? All right. Let me just kind of end and pontificate this, if I could.

We also have had votes that are called, so we are going to end this very quickly.

I appreciate the notification. I want to also emphasize the fact that you have three districts of the EPA that are involved in this area. They also were very late in getting notified, the people on the ground doing that kind of work, they did not have a great notification process, either.

So, as Congresswoman Lujan Grisham is getting ready, I will give her the last chance of asking some questions.

Let me just say that I have tried to emphasize how frustrated that I am that the EPA insisted on having their own panel that consumed 3 of the 4½ hours in which we have been here. I do not actually allow that in my committee, because I think it is important that the Administration—or any administration, actually—sits at the same table with those people over whom they make decisions.

And had your testimony—which I think is riveting and far more informative than the last 3 hours—had your testimony been given at the same time, we could have had the chance of actually going back to Administrator McCarthy and maybe try to get at some of the root issues that are here. I think sometimes we are saying the same words, but we are not actually meaning the same words. That is extremely frustrating to me, and it is why I tried to emphasize that so significantly. And it is not just Ms. McCarthy, it is the entire Administration that believes they have to be separate, and have to go first. I find that arrogant, and I find that disgusting.

So, I want to apologize for the fact that the four of you were cooling your heels for so long, because the testimony you have given and the questions that you have answered, I think, were fascinating. They would have been beneficial, not only for all of the Members who were here at the beginning to have heard, but it would be good for the entire EPA entourage who was here to actually hear the responses that you have given, because, in many cases, they are at sharp contrast with what EPA is telling us has or has not taken place. That is my last rant for the day.

Ms. Lujan, I will recognize you for the last questions before we go vote.

Ms. LUJAN GRISHAM. Mr. Chairman, thank you very much for your patience, and providing me the last word, if you will, which is actually quite an honor. I get to start by thanking the panel and by all of you being incredibly aware and involved in doing everything we can to help clean up, and also look at how we mitigate these kinds of issues in the future, and also address the long-term impacts.

I have a couple of questions, and the first is actually to our own Secretary of Environment for New Mexico, Secretary Flynn. I am delighted to have you here, and I can tell you that—and I am sure the committee heard—you were very involved from the very beginning. As soon as you received notice, your office has been instrumental in assisting the EPA, but also New Mexicans, to address these issues and figure out what we do, going forward.

And although the data is showing that the surface water contamination is now back to pre-spill levels, we know that the concentration of arsenic, cadmium, lead, and many other heavy metals actually settled to the bottom of the river; and they can be,

then, as a result, mobilized, depending upon a variety of factors, frankly, at any time.

While I would love to control—and I am sure you would, too—the natural flow of rivers and sediment movement and weather conditions, I think it is critical that we prepare for the long-term environmental consequences and impacts. We need to continue to monitor and to collect data, and to do the research, so that we know that we are protecting the long-term environmental and health impacts for New Mexicans and the other states' surrounding populations.

Secretary Flynn, I know that you are working with a coalition of stakeholders. I want you to tell us a little bit more about that, and how I can help you make sure that you keep that coalition together to continue their important work.

Mr. FLYNN. Congresswoman, first of all, thank you so much for your interest and all of your time. You have been extremely generous on every issue that we have ever worked on together. I really appreciate that, and I appreciate the question.

I think we do it the same way that you and I have personally tackled some of these issues before, such as the fuel spill covering Albuquerque and Kirtland Air Force Base. The way that we have tackled that problem is by including local communities, including local expertise that we have available through our public institutions and our national laboratories, and by including local stakeholder groups.

The state of New Mexico has developed a long-term monitoring plan with multi-agencies and multi-groups. We have a number of outstanding NGOs in the area, like the Animas Watershed Group and the San Juan Soil and Water Conservation District. We have the New Mexico State University, New Mexico Tech, and the University of New Mexico. We have Sandia National Lab, Los Alamos National Laboratory, as well as state resources. So, we have the expertise in our state, as you are fully aware of. It is how do we coordinate that effort and, most importantly, get it funded. So, I think we would like—

Ms. LUJAN GRISHAM. And your opinion, Secretary Flynn, is that if left to its own—and I understand that the financial implications for the Federal Government are significant, but it is their responsibility—that if we do not push for that issue, that there may not be those kinds of investments. Representing, as we both do, a very poor state, the notion that we can pick up a \$200,000 or \$300,000 annual effort—and I may not get that number right, so correct me and clarify, please—that needs to be in their plan back to us, about how they propose to continue to monitor and assess the environmental and health impacts of the spill.

Mr. FLYNN. Congresswoman, I think that their plan should be to support our plan. I really do not think the fox should be guarding the hen house here. They created the situation. We would never allow a private entity that we are regulating to do its own investigation of itself and accept those results. In order to really build public confidence in the outcome of the long-term monitoring plan, there needs to be an independent entity like, you know, multi—

Ms. LUJAN GRISHAM. Right. I am running out of time, and I totally agree with you.



I just want to make sure that I thank, again, President Begaye and your incredible work. I am very upset that the EPA took even longer to notify the Navajo Nation. I appreciate the work by our two Senators to look at notification legislation; and, because I am running out of time, perhaps the best thing is that I intend to support you.

I think there will be many Members of Congress, and I hope it is a bipartisan effort, to require the EPA to have much better relationships and a government-to-government, recognizing the sovereignty of the Navajo Nation. You should expect from your Federal Government and the state that level of one-to-one collaboration, so that you have your plan, your efforts, and your own independent process; and that should be respected and supported, sir. You are welcome.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you. I am sure private citizens hope that same thing will take place. Let me thank the four witnesses for being here. I appreciate the long distance you have traveled, for how long you have stayed here.

Your written testimony is part of the record. Your oral testimony and answers to these questions were excellent. I appreciate the detail in which you did that.

There may be other questions that Members may have of you. We will keep our record open for 10 days. If there are questions, we may ask for your written responses within that time period, as well.

Again, we thank you for your testimony. I promise you that both committees are not going to let this issue go through the cracks. We are going to maintain it until we get some definitive answers and some changes before we go forward.

So, with no other business, and without objection—and since I am the only one here, no one is going to object to it—this committee stands adjourned.

[Whereupon, at 2:45 p.m., the committees were adjourned.]

[ADDITIONAL MATERIALS SUBMITTED FOR THE RECORD]

PREPARED STATEMENT OF TODD HENNIS, PRESIDENT, SAN JUAN CORPORATION AND OWNER OF THE GOLD KING MINE

Dated September 11, 2015.

My name is Todd Hennis. I am the President of San Juan Corporation of Colorado, the owner of the Gold King Mine, and I would like to thank the committee for giving me the opportunity to submit testimony regarding EPA's Animas spill on August 5, 2015.

Specifically, I will describe the circumstances leading up to the Gold King Mine spill, my experience with the EPA before and directly following the incident, and the potential for a much more catastrophic incident in the future if a permanent solution addressing root causes is not implemented. In addition, I've included my support for responsible regulation of the mining industry and the importance of domestic mining to the United States.

First, there are three mines that are critical to this testimony: the Gold King Mine, the Mogul Mine, and the Sunnyside Mine.

San Juan Corp. owns both the Gold King Mine and the adjacent Mogul Mine. I have never mined either of those mines. The only work I've performed at the Gold King Mine has been at the explicit direction of either the Colorado Department of Reclamation, Mining and Safety, or the EPA to grade roads or restore ditching. San Juan Corp. has never worked on the Gold King portal.

Both of these mines are directly connected to the neighboring Sunnyside Mine owned by Sunnyside Gold Corp. which is now a subsidiary of Kinross Gold of Canada.

THE ROOT CAUSE OF THE ANIMAS SPILL WAS APPROVED BY REGULATORS:  
THE SUNNYSIDE MINE

In 1978, mining operations in the Sunnyside Mine led to the collapse of an alpine lake into the Sunnyside Mine workings. This collapse caused 500 million gallons of water to rush out the American Tunnel of the Sunnyside Mine over 3 days. The incident led Sunnyside to treat the water that continued to flow from the lake and water created by general ground seepage in the Sunnyside Mine and which then flowed out the mouth of the American Tunnel.

In 1996, Sunnyside and the state of Colorado entered into a Consent Agreement giving Sunnyside permission to place concrete plugs, or "bulkheads," in the American Tunnel and a few other parts of the Sunnyside Mine in exchange for freedom from potential future responsibilities/liabilities related to the bulkheads. In addition the Agreement required Sunnyside to perform other cleanup projects in the San Juan Mountains. This was pollution trading in all senses of the term. The U.S. Solicitor General Office was copied on the settlement documents, and EPA was fully cognizant of the settlement.

At the time of the Agreement, the Gold King Mine was a "dry" mine, which is to say, there was little to no water draining out of its portal.

FIRST EVIDENCE OF LOOMING DISASTER AND REGULATOR DISINTEREST:  
THE MOGUL MINE

In 2000, a large flow of water started coming out of the Mogul Mine, and a U.S. Geological Survey person informed me that the water contained a very high level of fluorine, an element only found in the discharge water from the Sunnyside Mine.

In 2001, Mr. David Holm, the director of the Colorado Water Quality Control Division (WQCD, which had negotiated the mine bulkheading plan with Sunnyside Gold Corp.) threatened me with an enforcement action over the Mogul Mine discharge. I informed Mr. Holm that the water was from Sunnyside, and that he and Sunnyside needed to find a solution to the problem. Mr. Holm told me during the second telephone call that he had persuaded Sunnyside out of the goodness of its heart to pay for bulkheading the Mogul Mine. I informed Mr. Holm that I would not agree to this without compensation for the loss of the Mogul Mine resources due to the bulkheading. Mr. Holm continued to threaten me with an enforcement action.

By September 2001, the pressure from WQCD became so intense that I went back into the Mogul Mine to prove where the water flow was coming from, and I had a near fatality attempting to enter the Mine. Later that month, I and a Colorado Division of Mining and Geology employee entered the mine successfully. We determined the last 300 feet of the accessible part of the main drift had a large volume of water flowing down from the connection with Sunnyside, and the Mine floor was deep in orange metal precipitates. This 300 feet of drift had been dry and sandy in 1996.

I then investigated historical records on the Mogul Mine and found two large World War II era exploration drill holes that connected the Sunnyside Mine to the Mogul Mine property on a U.S. Bureau of Mines map. However, Sunnyside denied any knowledge of the two drill holes. I also found a Simons Hydrosearch study commissioned by Sunnyside to justify bulkheading of the American Tunnel that stated a large flow of water would occur if there was an unknown direct connection through faults or other connections from the Sunnyside Mine to the Mogul Mine.

By late 2001, it was clear that the Sunnyside bulkheading had failed and that the problem would only get worse as the level of the water pool rose in the Sunnyside Mine. My company received no help, encouragement or action from either the EPA or the state of Colorado in this matter. Rather I continued to receive threats of an enforcement action by the state against the water coming from the Mogul Mine portal.

Consequently, San Juan Corp. filed a lawsuit in San Juan District Court alleging water trespass by Sunnyside into the Mogul property. My attorney asked me to contact the EPA and ask them to join this lawsuit. I telephoned Ms. Carole Russell of EPA Region 8 to ask the EPA to join the lawsuit and avert further environmental damage. Ms. Russell informed me that EPA would not consider joining the lawsuit under any circumstances. I told Ms. Russell that I would send a letter to her requesting EPA join the lawsuit. Ms. Russell told me explicitly, "If you send that letter, I will make you truly sorry." In the face of this threat, I obviously did not dare send the letter.

Being a small company, I did not have the resources to pursue a lawsuit against one of the largest gold mining companies of the world (at that time Echo Bay Mines of Canada, acquired by Kinross Gold in 2004). I had to take the settlement proposed by Colorado WQCD and Sunnyside Gold Corp which included bulkheading the Mogul Mine.

Since then, I have been raising the alarm about the growing danger created by the Sunnyside bulkheads as the water backup in the mountain continues to rise. This rising water is increasing the pressure on the bulkheads and is now much higher than assumed in their original design.

I have raised this issue in direct calls to Sunnyside owner Kinross. I have also written and distributed documents, made presentations, and participated actively in public meetings. These meetings have been attended by representatives of Kinross, and by a wide assortment of regulatory agencies, such as: the EPA, Bureau of Land Management, Colorado Department of Reclamation, Mining and Safety, and Colorado Department of Public Health and Environment.

#### STATE OF COLORADO SIGNS AWAY ITS RIGHTS TO REGULATORY ENFORCEMENT AGAINST SUNNYSIDE

By 2002 the last bulkhead was installed in the American Tunnel, and in 2003 the Consent Decree issued by the state of Colorado was vacated. In vacating the Decree, the state signed way its rights to all future regulatory enforcement against Sunnyside.

#### EPA MONITORS SITUATION

After the Consent Decree was vacated, the EPA monitored the situation by taking water samples. They also evaluated it for Superfund status, but it failed to meet the criteria. At any point in time, they could have pursued non-Superfund measures against Sunnyside Gold Corp. and its owners, but they did not. I can only assume they were more interested in working under a Superfund designation than they were in solving the problem quickly.

#### CONDITIONS WORSEN: THE GOLD KING MINE

In 2005, I became the owner of the Gold King Mine through the resolution of a bad loan. The Gold King was well above the advertised maximum height of the Sunnyside Mine pool and should have been “dry” with negligible discharge of 7 gallons per minute. What I didn’t know was that the Gold King discharge had increased to 40 gallons a minute. From that point in time until the EPA started work on the Gold King in 2014, the water flows steadily increased to approximately 250 gallons per minute of heavily metal laden water.

The metal content of this water show that the water is coming from the Sunnyside. In an estimated 98 percent of the mineralization in the Gold King Mine there is 1 percent or less base metal content. However, the water flowing from the Gold King portal was very high in the base metals zinc, cadmium, lead, copper and manganese. These are the metals that are present in very large quantities in the Sunnyside Mine.

In addition, maps and public documents tell us that Sunnyside Gold Corp mined the 2150 vein of the Sunnyside Mine into the Gold King property in 1989–1991. These mine workings were left open and are now filled with the Sunnyside Mine pool water, which is now flowing either by faults, fissures, or drill holes. There are 29 drill holes from the Sunnyside workings across the Gold King property or from the end of the Gold King 7 level toward the Sunnyside Mine. In addition, the end of the Gold King 7 level is only approximately 1,000 feet from the Sunnyside 2150 vein workings. The fact is that the mountain that hosts the Sunnyside, Mogul, and Gold King Mines is a “swiss cheese” of faults, fissures, fractures and exploration drill holes.

#### THE EPA USES COERCION TO GAIN ACCESS TO THE GOLD KING

In 2011 the EPA requested access to the Mogul, Gold King, and other properties that I own in the area. I refused for fear they would create a pollution disaster. This worry came from the fact that the EPA had illegally dumped thousands of tons of highly reactive mine dump material down the shaft of a mine I own in Leadville, CO. This material caused the metal readings in the water flowing through the Leadville Drainage Tunnel to skyrocket.

On May 12, 2011 the EPA issued “Administrative Order Directing Compliance with Request for Access, CERCLA Docket No.: CERCLA–08–2011–0008” against

Todd C. Hennis, San Juan Corp., and Salem Minerals Inc. The Order called for fines up to \$37,500 per day as long as I refused them access.

I had to surrender and grant access to the properties to the EPA, together with EPA taking environmental and operational management of the sites. The Access Agreement has been renewed at least twice and expires December 2015. I now have approximately 10 settling ponds created by the EPA over three locations on my lands, with unknown environmental consequences.

#### EPA WORK BEGINS IN EARNEST ON THE GOLD KING AND DISASTER STRIKES

In 2014, the EPA started to work on the Gold King portal and then they stopped work due to the coming of winter. The EPA placed a very large amount of rock and dirt over the Gold King portal to prevent a "blowout" during the winter. I believe they blocked off the discharge pipes at that time, which caused a large amount of water to back up behind the backfill.

When the EPA resumed their work in August 2015 the backed up water blew out, sending 3 million gallons of metal laden, orange water downstream in a rush.

While the emergency team on site has been doing a good job addressing the blowout, the situation should never have occurred in the first place. Contrary to previous EPA testimony before another congressional committee, the blowout was not an act of nature. It was an act of man, specifically created by the actions of the EPA at the Gold King site.

#### CURRENT SITUATION

The Gold King water flows now appear to have increased to 600 gallons a minute as a result of the blowout. I believe the sudden release of the water from the Gold King portal caused a flow to further open a fault connecting the Sunnyside and Gold King workings, by eroding the clay in the fault and increasing the flow directly from the Sunnyside Mine into the Gold King 7 level workings.

As the EPA Access Agreement expires in December, 2015, I am attempting to negotiate a full settlement agreement with the EPA to lease them the latest site of the settling ponds to treat Gold King and other potential waters for a period of time.

In addition, I see increasing environmental danger caused by the bulkheading of the Sunnyside Mine. The waters of the Sunnyside Mine appear to have risen to at least twice the height of the mine pool for which the Sunnyside bulkheads were originally engineered. I am very fearful that the estimated billions of gallons of heavily metal laden waters impounded behind the bulkheads could be released by a bulkhead failure due to a seismic event or just from hydrostatic pressure. If such a release happens, the water volumes could be on the order of 1,000 times greater than the water released by the EPA at the Gold King. The effects on the Animas, San Juan and Colorado River systems would be catastrophic.

#### THE SOLUTION

The only solution to the environmental problems created in the American Tunnel of the Sunnyside Mine is for the EPA, the state of Colorado, and Kinross to admit that bulkheading the American Tunnel has been a failure. They need to carefully draw down the Sunnyside Mine pool and to treat the water resulting from the drawdown.

In addition, a great deal can be done to prevent water inflows into the Sunnyside Mine, using common industry practices in use since the 1990s.

#### IN SUMMARY

The EPA has known all of this from 2001–2002. Instead, they allowed the state of Colorado to enter into a pollution trading settlement with Sunnyside Gold Corp., and they allowed this situation to steadily worsen over time. I almost lost my life due to the waters from the Sunnyside Mine Pool, and EPA was lucky no one got killed in the August 5 blowout they triggered. We might not be so lucky when the bulkheads ultimately fail at the American Tunnel. The damage to the Colorado River system and the downstream users has been catastrophic.

#### IN CLOSING, MY PERSPECTIVE ON REGULATION

In spite of this story of disaster, I am a believer in responsible enforcement of responsible regulations. More regulation would not have prevented the Gold King blowout. Proper action by either the state of Colorado or the EPA against Sunnyside Gold Corp. would have prevented the situation in the first place.

I include this perspective in my statement because it is imperative that the United States retain access to its strategic mineral resources. Today, American industry is heavily dependent on strategic metals imports, including the green tech, high tech, and national defense industries. To make matters worse, most of those imports come from China. We can't afford to shut down mining in this country. The Gold King may contain the largest, most accessible source of the metal tellurium in the United States. Tellurium is the fifth rarest metal on the planet and is the critical element for thin film solar panels and other applications.

This concludes my testimony as president of San Juan Corporation, owner of the Gold King and Mogul Mines.

---

**Task Order Statement of Work**  
**EPA Region 8 ERRS Contract No. EP-S8-13-02**  
Environmental Restoration, L.L.C.  
06/25/14

Name: Gold King Mine  
Task Order No. 051  
Site Name: Gold King Mine  
Superfund Site ID (SSID): 085M (OU01)  
Federal Project Number (FPN): Not Applicable  
City/County/State: Twp. 42N, R7W, NMPM, San Juan County, Colorado  
Removal Type: Time Critical Removal  
Funding Source: Removal Assessment  
Anticipated Start Date: 07/07/2014  
Anticipated End Date: 12/01/2014

The conditions at the Gold King Mine present an endangerment to human health and the environment and meet the criteria for initiating a removal action under 40 CFR section 300.415(b)(2). All activities directed by EPA's On-Scene Coordinator must remain consistent with The National Oil and Hazardous Substances Pollution Contingency Plan (40 CFR 300).

**Background**

The Gold King Mine location in Twp. 42N, R7W, NMPM, San Juan County, Colorado is characterized by a mine discharge that is a significant contributor of manganese, copper, zinc and cadmium into the Cement creek drainage of the Animas River watershed.

The Gold King Mine has not had maintenance of the mine working since 1991, and the workings have been inaccessible since 1995 when the mine portal collapsed. This condition has likely caused impounding of water behind the collapse. In addition, other collapses within the workings may have occurred creating additional water impounding conditions. Conditions may exist that could result in a blow-out of the blockages and cause a release of large volumes of contaminated mine waters and sediment from inside the mine, which contain concentrated heavy metals.

The Division of Reclamation, Mining and Safety (DRMS) performed work under a bond to stabilize the existing adit opening to allow mine water drainage. The flow exits the mine through a culvert pipe and enters a concrete flume on the waste dump surface and flows to half pipe culvert eventually discharging to the North Fork Cement Creek. The existing conveyance channel shall be protected and maintained during the work. If it becomes necessary to remove these drainage features, then suitable measures must be installed to control flows during the work. A replacement conveyance system is required to be installed after the portal and underground work are completed.

It is proposed to re-open the Gold King Mine portal and workings to investigate the conditions to assess the ongoing releases. This will require the incremental dewatering and removal of such blockages to prevent blowouts. The work is intended to take place in September–October, 2014.

In addition, the secondary purpose of the work is to attempt to identify and characterize specific water flows into the mine and evaluate potential means to mitigate those flows if possible.

**Objectives**

The work will be conducted by qualified contractors with the assistance and cooperation of the landowner, San Juan Corp. In addition to compliance with applicable OSHA standards, the work is to be conducted in compliance with appropriate Mine Safety and Health Administration (MSHA) regulations inclusive of establishing a safe underground working environment for personnel and the rehabilitation of underground workings and escapeways. (Note: MSHA regulations are not applicable to inactive mines; however certain standards are relevant to the propose work.)

All work will be performed under the conditions as described in an approved Work Plan to be submitted to the OSC for approval that will be prepared by the Contractor and submitted to the Agency before mine rehabilitation work begins.

The purpose of this Removal Work is to complete the following tasks:

*Site Preparation:*

Roadways and staging areas will be prepared to allow for safe access to the work area for heavy equipment and vehicles. Building debris and structural hazards will be removed or secured to eliminate physical hazards associated with such.

Water management systems will be set up and operational before any construction work begins. Initial measures must include standard best management practices (BMPs) for stormwater run-off along roads requiring improvement. Mine water management is required to prevent additional impacts from release during performance of work under this scope. Appropriate plans to manage the water must be developed and included in the work plan.

*Portal Rehabilitation:*

Engineering specifications and geotechnical assessment of the structural requirements to stabilize the portal structure and underground support systems must be provided. The appropriate engineered specifications must be developed including typical designs for structural support systems (e.g., steel sets, and arch supports and timbers), identify the materials and construction requirements for structural supports. In addition, specify the anticipated approach for removing overburden, debris and re-establishing a safe structure that can be used for entry and egress and secured when not in use. This includes installing a portal gate with a secured locking system.

Measures will be taken to control water and metal precipitate sludge and sediment that are impounded behind any blockage at the portal or in the mine. This will include the treatment of surge water discharge as necessary to prevent an uncontrolled release and impact to surface water.

*Underground Work:*

Adit rehabilitation includes removing the collapsed structures and colluvial overburden blocking the historic adit opening. This must be performed by an experienced contractor with required mine safety training for working underground. Standard measures for communication, ventilation and power will be provided for crews as necessary.

Collapse blockage material removal will be performed in a controlled manner in order to control the rate of release of water and allow for appropriate treatment and sludge management. This is to include the ability to pump water from behind the blockage and lower the water level in a controlled manner before the blockage is destabilized by removal of material.

This scope includes the plan to rehabilitate as far in as 75 feet inby of the portal opening. Underground conditions are uncertain, and the amount of blockage is not known. The initial objective is to establish a portal shed structure for safe access to the underground workings and continue rehabilitating the workings as needed for 75 feet, if this is determined possible. Beyond that point, a determination will be made as to what additional work is required to allow safe access into the mine. As determined appropriate by the OSC, work may continue on an incremental basis to install the necessary structural supports as specified.

All materials and equipment necessary to implement this work will be present on site and inspected before operations are initiated.

*Water Treatment:*

A temporary water retention and sludge management pond must be prepared and operated, as necessary, on site to manage mine water and sludge removed from the adit. This will be used to manage impounded mine water and base flows and metal precipitate sludge from the mine workings during the construction activities. If necessary, water treatment may include pH adjustment and flocculent to assist precipitation/settling of elevated metals levels to meet existing water quality in the discharge from the mine. (The START contractor is responsible for overseeing the water treatment operations and for all environmental data, including sampling, associated with the water treatment objectives and activities.)

*Site Stabilization:*

The site work area must be graded and appropriate erosion control measures must be in place before demobilizing. This will include appropriate BMPs for construction site stormwater controls and post construction stabilizations. These are to be specified in the Work Plan submitted to EPA.

**Reporting**

A final report is required to include a description of the work performed with detailed information on the distances underground accessed and the number of structures installed. A description of all materials used in the support structures and quantities of material removed and locations where it is placed are required. List all the equipment used and personnel involved in the operation. A description of the water management system is also to be included. The report is to be provided within 60 days of demobilizing.

**Data Requirements**

All environmental data including site characterization and waste characterization, mitigation, and disposal that is collected, generated, and used will be documented by the START 4 contractor in accordance with the Weston Quality Management Plan (QMP) Sections 2.3 and 7.0 (May 2013). The ERRS contractor will not be gathering the environmental data.

Hazardous categorization of wastes? No.

**Activities Under Contract Statement-of-Work: The contractor shall accomplish the following tasks as required under the Contract:**

1. Project Planning (SOW II.A.1)
  - Provide a detailed work plan to accomplish the project in the most effective, efficient and safe manner based on existing information. This work plan shall, at a minimum, define the types and quantities of cleanup personnel, equipment and materials that will be needed, the proposed project schedule by sub-task, and the estimated cost.
  - Provide a detailed Health and Safety Plan to protect the workers on site from the hazards with the contaminants and physical threats associated with the removal actions.
2. Containment, Countermeasures, Emergency and Removal Response (SOW II.A.2)
 

NA.
3. Decontamination, Response Mitigation (SOW II.A.3)
  - Provide for appropriate removal of contamination if appropriate, in consultation with the OSC.
4. Treatment and Transportation and Disposal Operations (SOW II.A.4)
  - Provide for appropriate disposal and transportation of all contaminated debris, if appropriate. Treatment of the water may be required, however will be overseen and managed by the START contractor.
5. Restoration and Soil Stabilization (SOW II.A.5)
  - Provide for appropriate refurbishment of affected areas, as appropriate and in consultation with the OSC.

6. Analytical Services (SOW II.A.6)  
NA.
7. Demolition Services (SOW II.A.7)  
NA.
8. Construction and Support Facilities in Support of Removal Actions (SOW II.A.8)
  - Provide for office trailer, including support equipment, communications, power, as needed.
9. Marine Operations (SOW II.A.9)  
NA.
10. Trans-boundary Response (SOW II.A.10)  
NA.
11. Response Times (SOW II.A.11)  
NA.
12. Regional Cross-Over (SOW II.A.12)  
NA.

#### **Deliverables**

Detailed Work Plan	08/22/2014
Health and Safety Plan	NLT the Date of Mobilization
Construction & Implementation	N/A
Daily Work Orders	Daily
Daily Cost Summary Reports (55s)	Daily
Removal Activities Report	NLT 30 days after Demobilization
Final Daily Cost Summary Report (55s)	NLT 90 days after Demobilization

#### **Schedule**

The work plan preparation is expected to begin on July 7, 2014, and the current estimated schedule is to begin work on site is September 3, 2014. A work plan must be submitted to EPA by August 22, 2014. The Task Order expiration is set for December 1, 2014.

#### **Other Task Order Requirements**

1. Provide for application of Service Contract Act Labor rates and David-Bacon Labor rates in consultation with the RS ERRS Contracting Officer.
2. Provide all site cost documentation within 90 days after demobilization date, with the exception of 'pending costs'. Use RCMS Windows Version 2.0 for Site cost accounting purposes.

---

## **SUMMARY REPORT**

EPA Internal Review of the August 5, 2015 Gold King Mine Blowout  
8/24/2015

#### **Purpose:**

The purpose of this report is to provide the EPA Internal Review Team's (Team) assessment of the events and potential factors contributing to the blowout from the Gold King Mine (GKM) in Colorado on August 5, 2015. This report provides the Team's observations, conclusions, and recommendations that regions may apply to ongoing and planned site assessments, investigations, and construction or removal projects at similar types of sites across the country.



**Team Charge:**

The Assistant Administrator of the Office of Solid Waste and Emergency Response (OSWER) charged a subgroup of the National Mining Team on August 14, 2015 to conduct a rapid analysis of the Gold King Mine (GKM) release and provided them with the following charge:

*The EPA Gold King Mine Internal Review Team (Team) is charged with conducting an internal review of the August 5, 2015, release of approximately 3,000,000 gallons of mine wastewater from the Gold King Mine near Silverton, CO. This review will entail developing a detailed, chronological description of events as well as identifying potential factors contributing to the release. The review may include recommendations that regions may apply to ongoing and planned site assessments, investigations, and construction or removal projects. The review will include:*

- *A visit, during the week of August 16, 2015, to the Gold King Mine site to observe post-August 5 site release conditions.*
- *Interviews with the on-site EPA On-Scene Coordinator and other appropriate EPA staff, appropriate contractor representative(s) (e.g., Emergency Response and Rapid Services [ERRS], Superfund Technical Assessment and Response Team [START] contractor), and others, e.g., State, other Federal agency/departmental personnel, as appropriate, to document their recollections of the event. Interviews shall not interrupt response. [See Attachment B for a list of people interviewed.]*
- *Interviews to be conducted using guidelines to be included in a briefing from the Office of the General Counsel.*
- *Review of pertinent site documentation, (e.g., work plan, schedule, quality assurance response form, other pertinent technical/engineering/contractual documents/any photographic records) to identify potential factors contributing to the release.*
- *Potential coordination with the subsequent external review being conducted by the U.S. Department of Interior/Bureau of Reclamation and U.S. Army Corps of Engineers thereby minimizing the impact to response operations.*
- *Any recommendations to implement at similar sites, both ongoing and new, based on the results of the Team's review.*

*A senior manager from OSRTI will be identified to facilitate the identification of individuals to be interviewed, agencies to engage, etc. The Team will develop a preliminary report addressing the information above and deliver it electronically to the OSWER Assistant Administrator by Monday, August 24, 2015. If necessary, the team may also indicate if additional gaps need to be filled, and the timeframe it would take to fill those gaps.*

**Scope of Team Review:**

The Team was asked to conduct a one week rapid assessment of the GKM Blowout. From August 15 to August 24, 2015, the Team performed a site visit, interviewed key individuals, reviewed available information, and drafted a report.

EPA's Internal Review Team consisted of the following individuals:

John Hillenbrand, CEG, EPA Region 9—Team Leader  
 Joshua Wirtschafter, Assistant Regional Counsel, EPA Region 9  
 Ed Moreen, P.E. Civil, EPA Region 10  
 Lisa Price, Geologist, EPA Region 6  
 Shahid Mahmud, Environmental Engineer, EPA Headquarters

The following are the attachments included in this report:

Attachment A: List of documents reviewed by the Team  
 Attachment B: List of interviewees  
 Attachment C: Map of Mine Workings  
 Attachment D: Working Assumptions Diagram of conditions at new Gold King Mine Level 7 Portal  
 Attachment E: Gold King Mine Flow Data and Chart  
 Attachment F: Report Photos  
 Attachment G: Photo log from 2014 and 2015 Removal Investigation activities

In addition, the Team conducted a limited review of internet resources to determine if there are existing guidelines or procedures for investigating sites with similar characteristics as this site.

**Background Information:**

The following is the chronology of pertinent site events.

1880s—The Gold King Mine began operation.

Mid-1900s—The Gold King Mine operations ceased; mining had occurred at seven (7) different elevations (levels) through three (3) adits: the Level 7, Number 1, and Sampson. Historical mine water levels could not be ascertained by the team during the review period.

Mid-1900s—The American Tunnel was constructed below the lowest mine workings in the area (Attachment C: Map of Mine Workings). It runs from the drainage adit discharge point in Gladstone, beneath the Gold King Mine and eventually reaches the Sunnyside mine complex approximately two (2) miles northeast. During operation of the American Tunnel it effectively drained the Gold King and Red and Bonita Mines. It passes 500 feet directly beneath the Gold King Mine Level 7 adits. Anecdotal information puts construction in the early to mid-1900s. A treatment plant was constructed to treat the water from the tunnel prior to release to Cement Creek. The date of construction of both the water treatment plant and the American Tunnel could not be ascertained during the review period.

1986—A permit was issued to the Gold King Mines Corporation (Permit Number M-1986-013) by the state of Colorado to re-work the historic interconnected adits. During the permitted mine operations, another adit was driven at the Gold King Level 7 (the Adit) to bypass a collapse in the original Gold King Level 7 Adit (the Old Adit).

2002—Treatment of the discharge water from the American Tunnel ceased after installation of the last bulkhead. Flow from the American Tunnel continued after the installation of the bulkhead at approximately 100 gallons per minute (gpm). Since closure of the American Tunnel, the water quality in the Animas River has degraded progressively due to the impact of drainage from the American Tunnel and other newly draining adits.

2005—No documentation of flow for the Adit is available before July 2005. Anecdotal information suggests that the Red and Bonita Mine, which did not have any previously documented mine water discharge, began releasing approximately 300 gpm of water after the American Tunnel closure. The Adit also experienced an increase after the American Tunnel closure from no significant flow to flow rates of approximately 42 gpm in July and 135 gpm in September.<sup>1</sup> (See Attachment E: Gold King Mine Flow Data and Chart)

2006—Mine water flow rate from the Adit was approximately 314 gpm<sup>1</sup> in October.

2007—Release of mine water from the Old Adit breached the existing discharge ditch and saturated the mine waste pile. The saturated conditions led to a slope failure that partially blocked access to the site and filled the North Fork of Cement Creek with mine waste. The quantity of mine water discharged is not known.

2008—The Colorado Division of Reclamation, Mining & Safety (DRMS) constructed a discharge diversion structure (flume channel) to prevent future mine water saturation of the Gold King Level 7 mine waste pile at the Old Adit. This work was paid for by the forfeiture of the bond associated with the permit issued in 1986, M-1986-013.

2009—The DRMS's Gold King Mine Reclamation Plan called for all four (4) adits of the Gold King complex to be backfilled and the installation of a flume to divert the discharge. The two (2) Gold King Level 7 adits (Adit and Old Adit) were partially collapsed already but additional closure work was conducted. This work was paid for by the forfeiture of the bond associated with the permit issued in 1986, M-1986-013. DRMS stated in the project summary for the activities that "[a] future project at the site may attempt to cooperatively open the Level 7 Old Portal in an effort to alleviate the potential for an unstable increase in mine pool head within the Gold King workings." The Old Adit was releasing roughly 200 gpm.

<sup>1</sup>The Team could not ascertain in the time allowed if flow rates represent composite for both the Old Adit and the Adit or just the Adit.

2010—The average mine water flow rate from the Gold King Level 7 mine was 206 gpm.<sup>1</sup>

2011—The average mine water flow rate from the Gold King Level 7 mine was 140 gpm.<sup>1</sup>

2014—EPA planned to expose the Adit in 2014—EPA was working with DRMS and the Animas River Stakeholder Group (ARSG), which is composed of industry, agency and citizens including former miners and equipment operators who have worked on some of the mine adit closures in the area of Gold King, to identify actions that may be needed to reduce contaminant loading to Cement Creek and downstream waters. This included a plan to install bulkheads at the Red and Bonita Mine. It was determined appropriate to attempt to open the Adit prior to restricting flow at the Red and Bonita Mine with a bulkhead and potentially changing the water level elevations in the Red and Bonita Mine. To accomplish this objective, EPA planned to expose the Adit behind the external blockage, build a portal structure, and convey Adit flows into the existing channel (see Attachment D). This was being done to allow access for further investigation of the Adit. The flow rate data from the Gold King Level 7 mine was approximately 112 gpm in August, 2014, however, on September 11, 2014 prior to the beginning of site work, the flow rate was less than 13 gpm.<sup>1</sup>

A retention pond was constructed to capture solids that might be released during the Adit work. On September 11, work began to remove the material that was blocking the Adit. The excavation extended approximately 20 feet into the Adit entrance. The work stopped when it was determined that the elevation of the Adit floor was estimated to be six (6) feet below the waste-dump surface elevation. EPA determined that Adit drainage would need to be managed in a larger settling pond(s) requiring additional treatment.

The excavation in 2014 revealed that two (2) 24-inch pipes were in the tunnel blockage adjacent to the top (roof) of the maximum 10 foot tall Adit. (See Diagram in Attachment D). The presence of water below the two (2) 24-inch pipes indicated the current flow of water was coming out at least four (4) feet below the roof of the Adit, indicating approximately six (6) feet of impounded water above the estimated Adit floor elevation.

On September 12, two (2) drain pipes were placed at the base of the blockage to capture the ongoing mine water drainage and direct flow into the existing flume channel installed in 2008 by DRMS. Geo-fabric, crushed rock, and quick-dry concrete was used to secure the pipes in place. The Adit area was backfilled and compacted with additional loads of crushed rock to maintain a stable surface at the Adit for potential future work. Field work was suspended for the rest of the year.

2015—Based on information acquired in 2014, EPA, again, planned to reopen the Adit and workings to investigate the conditions to assess the ongoing releases of mine water. This would require incremental de-watering and removal of internal blockages that were preventing the release of impounded water. A secondary purpose of the work is to attempt to gain access to the mine workings and to mitigate flows, if possible.

In January and May, 2015, the ARSG held meetings, open to the public, where DRMS and EPA presented their plans for removal investigation at the Adit. The Meeting Summaries posted by ARSG do not record any stakeholder criticism of the planned approach.

EPA returned to the Adit in late July, initiating site preparations with reconstruction of the access road and installation of an alternative mine drainage pipe at a deeper depth in anticipation that the Adit floor is lower than the other drainage pipes installed in 2014.

On August 4, excavation began above the top of the Adit to remove consolidated soils and debris. The goal was to find competent bedrock within which to anchor a support structure for the Adit. During this first day of excavation, according to the OSC, mine timbers and the external Adit blockage were newly exposed.

On August 5, excavation resumed. The OSC observed a solid rock surface and constructed a ramp above the external Adit blockage to remove soil from the bedrock surface. During the excavation, the lower portion of the bedrock face crumbled away and there was a spurt of water from the area in the lower part of the excavation area. Shortly after the water spurted, more water started coming from the localized area of the spurt. The color of the water was initially clear but then changed to red/orange. The OSC speculated that the excavation might have knocked something loose when removing the soils from the rock face.

The time lapse between the spurting to the flow of red/orange water was 3 to 4 minutes. It took approximately 1 hour for the peak flow to subside.

**Observations Related to the Release:**

The Team interviewed key personnel involved with the Adit blowout from EPA Region 8 on August 17, 2015, to document their recollections of the event and to get pertinent site documents and other information on the site. EPA Region 8's personnel provided a package of key site-related documents, pictures of the site, and site diagrams. On August 18, 2015, the lead OSC from Region 8 led a site visit of the Gold King Mine. Senior mining experts from the DRMS also participated in this site visit. The Team asked the State experts about their understanding of the site and recollection of the events at the Adit and the upper Animas River mining district.

The August 18 tour included stops at: the American Tunnel entrance with an explanation of the underground working by DRMS; the road above the series of ponds that treat the post-blowout drainage from the Adit (see Appendix F, photo 1); the Gold King Mine area; and both the Old Adit and the Adit. No stop was made at the Red and Bonita Mine (Appendix F photo 2 and Attachment C, map of workings).

In addition to bringing an understanding to the chronology of events listed above, the site visit and work plan provided the following supplemental information:

- The work plan accounted for the possibility of pressurized (mine water with a head high enough to cause water to exit the Adit at high velocity) mine water conditions. In the introduction, the work plan states:

“Conditions may exist that could result in a blow out of the blockages and cause a release of large volumes of contaminated mine waters and sediment from inside the mine, which contain concentrated heavy metals.”

- The work plan outlined the steps to be taken such as gradually lowering the debris blockage and the use of equipment (stinger) that would help control drainage from the mine under non- or slightly-pressurized conditions. A stinger is a metal pipe that is inserted from above the top of the mine adit front at an angle, through the debris and collapse blockage into the void behind the blockage, allowing drainage and control of mine water.
- For the Adit, a determination of no or low mine water pressurization was made by experienced professionals from EPA and the DRMS. Based on discussions with the EPA and State people associated with the site, this determination was based on the following conditions:
  1. The hill above the Adit was inspected for seeps which would have indicated outward flow from mine water that had a pressure head above the top of the Adit. It was reported that there were no seeps.
  2. The mine was draining, which indicated that since water was able to escape, buildup of pressure was less likely.
  3. The DRMS experts, XXXXX who supported the removal investigation, had worked in the area for years, were familiar with the site and knew the details of the operation and area hydrology.
  4. The Animas River Stakeholders Group (ARSG) had been given a presentation by XXXXX, EPA's On-Scene Coordinator (OSC), and XXXXX with DRMS, as documented in the May ASRG Meeting Summary.
  5. The DRMS experts supported the removal investigation at the Adit and were present at the site during the operations on August 4 and 5.
  6. The “seep” level coming from the Adit during excavation seemed to be at the mid-level of the material blocking the Adit, indicating a partially filled adit as opposed to a pressurized one (See Attachment D, bottom of two metal pipes).
  7. The Red and Bonita Mine Adit was lower in elevation (a few hundred feet) and found to be unpressurized after it was accessed by drilling from above.
  8. The DRMS experts indicated that similar techniques have been employed at other similar mine sites. One DRMS expert noted that a similar investigation technique was implemented at the Captain Jack Mine in Colorado but did not result in a blowout.

- Despite the available information suggesting low water pressure behind the debris at the Adit entrance, there was, in fact, sufficiently high pressure to cause the blowout. Because the pressure of the water in the Adit was higher than anticipated, the precautions that were part of the work plan turned out to be insufficient. The inability to obtain an actual measurement of the mine water pressure behind the entrance blockage seems to be a primary issue at this particular site. If the pressure information was obtained, other steps could have been considered. However, the Team cannot determine whether any such steps would have been effective, or could have been implemented prior to a blowout.
- Mine water pressurization data from behind the blockage potentially could have been obtained through a drill hole inserted further back into the Adit from above the mine tunnel. Such a technique was performed at the nearby Red and Bonita Mine and found no pressurization. Consequently, it was determined that the tunnel was not full of water and excavation of the Adit at that mine could proceed. Such a technique was not used at the Adit. Based on the site topography (steepness and ruggedness) observed by the Team and conversations with the OSC and the DRMS experts, (See Attachment F, first photo) the use of such a technique would have been very difficult and expensive at the Adit. The unstable and steep slope above the Adit had loose soils and rock and the underlying bedrock was prone to cave-ins, as observed over the nearby Old Adit (See Attachment F, photo 3). Because of the soil and rock conditions, the access and drilling of a hole into the Adit from above would have been quite costly and require much more planning and multiple field seasons to accomplish. Although difficult and therefore expensive and technically challenging, this procedure may have been able to discover the pressurized conditions that turned out to cause the blowout.
- An additional potential clue of potential pressurization was the decrease in flows from the Gold King Adits over the years (Attachment E). That decrease could have been an indication of impounded water from a blockage. The mine drainage flow before 2005 was understood to be zero and increased from 42 gpm in 2005 to 135 gpm in September 2005 and peaked at 314 gpm in October 2006. This increase is attributed to rising groundwater in the Gold King Mine workings from plugging of the back portion of the American tunnel in 1995 and possibly 2002. The average flows in 2010 dropped to 206 gpm, further dropped to an average of 140 in 2011 and finally to about 70 gpm or less in the past year. These conditions may indicate some type of internal change to the mine such as additional cave-ins, or a restriction due to already caved material, perhaps by chemical precipitates, or some other cause. It is also possible that the reduced flows could have been attributed to decreased precipitation in the area or increased flows from the American Tunnel.
- The Team was not able to identify any calculations made on the possible volume of water that could be held behind the portal plug. This calculation could have been useful in determining possible response scenarios for unexpected releases.
- The Request for Proposals (RFP) that included the work at the Adit project requested a plan for dealing with mine water flow and also states that the blockage in the Adit must be removed in a manner to prevent a surge of impounded mine water from being released. It called for the water impounded behind the blockage to be drawn down in a controlled manner as the blockage is removed. Upon review of the work plan, the contractor provided a description and conceptual drawing for dealing with the water (Attachment D). However, the Team believes that Emergency Action Plan (EAP) included with the site plan did not anticipate or plan for the volume or pressure encountered and contained only limited emergency procedures in case of a mine blowout. This lack of information about a blowout in the EAP could indicate the low expectation of its occurrence by the contractor and reviewers. These procedures and contacts may have been included in the Site Health and Safety Plan but this document could not be obtained in time for this report.

**Conclusions:**

Based on the review of the available information, including the interviews, documents and site visit, the Team is providing the following conclusions:

1. The EPA site removal investigation team had extensive experience with the investigation and closure of mines. The EPA site removal investigation team had consulted with and had the field support of the DRMS. The EPA site removal investigation team also performed outreach to the ARSG, to provide an opportunity for additional input regarding the planned activities. The EPA site removal investigation team and the other entities consulted or who

provided information about the proposed activities had extensive site knowledge of the mine workings and extensive experience evaluating and working on mine sites. None of those participating or informed parties raised any significant concerns with the proposed activities.

2. In preparation for the investigation activities, EPA had collected and analyzed flow data, was familiar with site topography, and had inspected the site for signs of seeps, including the area above the Adit, prior to implementing the execution of the work plan.
3. It is not evident that the potential volume of water stored within the Adit had been estimated. Given the maps and information known about this mine, a worst case scenario estimate could have been calculated and used for planning purposes. When adequate information is available, performing such calculations may aid the site management team in instances where water is anticipated to be trapped in an adit. The interconnectivity of mine workings could be used to estimate potential water volume prior to opening up a collapsed adit.
4. Additional expert opinions may be warranted for sites with collapsed adits, complex interconnectivity of mine workings, and highly transmissive bedrock groundwater systems.
5. The work plan contained an EAP which included provisions for mine emergencies including cave-ins. However, based on the documents reviewed by the Team, it was lacking emergency protocols in the case of a significant flow or blow out. It should be noted that the site team responded appropriately during and after the blowout by moving personnel and equipment and diverting mine water discharge. Such provisions are an important component of an EAP on sites such as the Gold King Mine. There may have been some contingencies planned in case of a blowout, but it could not be ascertained by the Team during the review period.
6. The Adit is located in a remote, rugged mountain location in the Rocky Mountains. The level of effort necessary to mobilize a drill rig and create a drill pad to undertake drilling or other investigative techniques to determine pressure (hydrostatic head) within the mine would require significant resources and add additional time to the implementation schedule and may not be successful in ascertaining water levels or pressure within the mine. Safety is a key consideration for drilling at the Gold King site, and establishing a safe location for the drill pad would be very challenging given the steepness and instability of the slopes above and in proximity to the Adit. Drilling to hit a target such as an adit or tunnel can be very challenging if the drill pad cannot be located in close proximity the adit entrance. It can also be a lengthy process and require considerable effort and expense. However, if it could be performed successfully and safely, drilling could provide the information needed to ascertain the pressure behind the collapsed workings within the mine.
7. In reviewing the pertinent documents provided, interviews conducted, visiting the site and evaluating the photo logs, the Team concludes that the Adit blowout was likely inevitable. Actions taken by the EPA OSC to pull out the site personnel and crew from and near the Adit, just prior to the blowout, probably avoided any fatalities from the pressurized Adit blowout.
8. Although the removal investigation team was quite experienced and followed standard procedures of a well thought out work plan that included state and ARSG involvement, the underestimation of the water pressure in the Gold King Mine workings is believed to be the most significant factor relating to the blowout.
9. A limited review of internet resources did not reveal any existing guidelines or procedures for assessing highly pressurized mine adits or tunnels, such as Gold King Mine.

#### **Recommendations:**

1. EPA should develop guidance to outline the steps that should be undertaken to minimize the risk of an adit blowout associated with investigation or cleanup activities. The guidance, at a minimum, should:
  - a. Identify a tiered approach that requires increased detail regarding the proposed action based on the complexity of the site conditions or the potential nature of any release.

- b. Provide criteria to identify whether a proposed investigation or cleanup action presents a low, moderate, or high risk with respect to the potential for an adit blowout and significant release of acid mine drainage or mine waste.
  - c. Require that a management review meeting(s), including the key state (and other Federal agencies when appropriate) be held to determine whether sufficient information exists to meet the criteria established in the guidance or whether additional information is necessary before undertaking the investigation or cleanup activity.
  - d. Outline the outreach activities to inform the local community and stakeholders.
  - e. Identify the contingency planning that may be appropriate based upon the risk of blowout and the nature of the potential release.
2. Even though the chance of encountering pressurized mine water was investigated in many ways at the Gold King Mine, the Gold King Mine blowout suggests that EPA should develop a toolbox of additional investigative tools such as remote sensing or drilling into the mine pool from the top or side that should be more seriously considered at similar sites. It's important to recognize that underground mines may be extremely complex, making characterization of the internal hydraulic conditions and flow paths challenging. Adding to this complexity is that older mine workings are often not well mapped and that some underground mines may also be structurally unstable and prone to cave-ins and internal plugging making them very difficult to assess. The toolbox should identify techniques which could be used to minimize uncertainties associated with these types of mines. Site specific conditions may make certain investigative tools prohibitive or extremely challenging and costly. In the end, while additional information gathering may reduce the uncertainty, a complete understanding of the underground conditions may not be attainable.
3. Emergency Action Plans should include protocols should a blowout occur at those mine sites where there is a potential for such an event to occur.
4. Information and rationale developed by a site team in anticipation of an investigation or cleanup action for sites where an adit blowout could be a concern (e.g., available pressure information, a reasonable estimate of the volume of water within the mine workings, or adit drainage flow rate data) should be critically reviewed by a qualified and experienced Regional Mining engineer and or Mining Hydrologist/Geologist. The Region may want to consider getting assistance from qualified outside parties such as other Federal agencies, state agencies, or outside consultants in conducting this critical review.
5. The Team also recommends that subsequent reviews of the Gold King Mine Adit Blowout by an Independent External Review Group or the Office of Inspector General consider the possibility of assembling a panel of experts consisting of mining industry experts, other federal and state mining experts, academia, consultants, non-governmental organizations and tribal governments to further analyze the situation encountered at this site and come up with recommendations on additional safeguard measures to reduce the risk and minimize the consequences of such incidents in the future.

[LIST OF DOCUMENTS SUBMITTED FOR THE RECORD RETAINED IN THE  
COMMITTEE'S OFFICIAL FILES]

- Final Site Health and Safety Plan form of Emergency and Rapid Response Services at the Gold King Mine prepared for the U.S. Environmental Protection Agency Region 8 by Environmental Restoration, LLC. Dated September 4, 2013.
- Letter from the Environmental Protection Agency addressed to Chairman Chaffetz and Ranking Member Cummings as follow-up to an April 30, 2015 hearing entitled “EPA Mismanagement.”
- PowerPoint slides used in the hearing by Rep. Matt Cartwright.
- Audio recording of conversation between National Response Center and Allen Sorenson of the Colorado Division of Reclamation regarding notification of the Animas spill.
- E-mails documenting correspondence between the Natural Resources Committee Subcommittee on Oversight and Investigations staff and the Department of the Interior’s Office of Inspector General and the Fish and Wildlife Service regarding consultation under the Endangered Species Act from the Environmental Protection Agency.
- E-mails presented by Mr. Flynn documenting correspondence between the Environmental Protection Agency and the New Mexico Environment Department regarding expenditures by the Department on the Animas spill.
- E-mails presented by Mr. Flynn documenting correspondence between New Mexico state officials and the EPA regarding water sampling and testing.
- Written Statement from DOI regarding their response to the Gold King Mine Release.
- Salt Lake Tribune—Editorial: Chaffetz, Bishop owe us real answers on EPA failure, not another Benghazi.

