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EPA, THE DEPARTMENT OF THE INTERIOR, AND THE GOLD KING MINE DISASTER

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EXECUTIVE SUMMARY

In August 2015, an Environmental Protection Agency (“EPA”) crew triggered a mine blowout near Silverton, Colorado. Since then, the Majority staff of the Committee on Natural Resources (“Committee”) has been investigating the disaster and the Obama Administration’s subsequent response to and reports on the event. The Committee’s investigation has found:

- EPA intentionally dug into and breached the plug at the Gold King Mine on August 5, 2015. Why the EPA crew did so and what they expected to happen remains unclear, however the direct result of their actions was the release of approximately 3 million gallons of contaminated mine water into Cement Creek and the Animas and San Juan Rivers.
- The three reports issued by the Administration, EPA’s *Internal Review* and *Addendum* and the Department of the Interior’s (“DOI”) *Technical Evaluation*, offer shifting accounts of the events leading up to the spill and contain numerous errors, omissions, and inconsistencies, some of which are not attributable to error or incompetence alone.
- Neither EPA nor DOI has offered a substantive explanation of EPA’s decision to forego hydrostatic testing – a precautionary measure which, if it had been conducted, could have revealed that the mine was pressurized and prevented the blowout. In fact, the agencies have not even provided documentation that EPA actually considered testing the pressure prior to beginning work.
- EPA incorrectly concluded in 2014 that the floor of the tunnel (the “adit”) into the mine was six feet below the surface of the waste dump. This erroneous conclusion, which conflicts with both the purpose of the adit and available information about the mine, was central to EPA’s assumption that the mine was only partially full of water in 2015.
- In contrast to both DOI’s *Technical Evaluation* and EPA’s *Internal Review* and *Addendum*, the EPA On-Scene Coordinator (“OSC”) in charge of work at



the time of the spill has stated that he knew there was at least “some pressure” in the adit. His statement was not disclosed in EPA’s December 2015 *Addendum* – even though he made the statement in an October 2015 email addressed to numerous other EPA officials, including one of the three individuals who produced the *Addendum*.

- DOI concealed a critical EPA error regarding the elevation of the adit floor through misleading statements and distorted illustrations in its *Technical Evaluation*.
- In its October 2015 *Technical Evaluation*, DOI claimed that on August 5 EPA was carrying out a plan to remove water from the mine using a stinger and pump – although neither item was on-site on the day of the blowout.
- DOI and the lead author of DOI’s *Technical Evaluation* both had conflicts of interest that should have precluded their participation in any “independent” review of the spill.
- EPA considered several sister federal agencies to lead an independent review of the blowout, but eventually settled on DOI leading the effort and the U.S. Army Corps of Engineers (“USACE”) participating in only a peer review capacity. The details of this decision are unclear, but contemporaneous emails indicate that USACE had reservations about the degradation of the site. Later, USACE expressed serious reservations about the scope and contents of DOI’s *Technical Evaluation*.
- DOI has refused to provide the USACE peer review documents to the Committee and has sought to withhold USACE emails regarding the *Technical Evaluation* and the USACE peer review, raising questions about the Administration’s commitment to transparency and the propriety of the federal government’s actions surrounding the spill.
- EPA’s actions at the Gold King Mine violated the Clean Water Act and the Endangered Species Act.

The Gold King Mine is located in southwestern Colorado approximately 50 miles north of Durango. Mining operations in the area proliferated during



and after a gold rush in the 19th Century. Many of these mines are connected through mine workings, exploratory drill holes, or naturally occurring faults.

Following the installation of a bulkhead in the nearby American Tunnel in the 1990s, the Gold King Mine, which was historically a dry mine, began to emit high volumes of drainage.¹ The mine's easternmost Level Seven portal in particular began to experience drainage of mine water that saturated and destabilized the steep, waste rock dump in front of the mine and contributed to poor water quality in Cement Creek and the Animas River.

Concerns grew about the additional negative impacts of drainage from the inactive Gold King Mine, so in 2009, the Colorado Division of Reclamation, Mining, and Safety ("DRMS") altered the existing portal by backfilling the adit and installing a drainage pipe, an observation pipe, and a metal stinger.² Despite DRMS's efforts to manage the drainage, the flow from the mine continued to affect Cement Creek and the Animas River.



The adit portal (left) prior to DRMS's work in 2009 (right). Source: DRMS.

After monitoring and assessing the Gold King Mine for years, EPA began excavation at the Gold King Mine's easternmost Level Seven adit in September

¹ COLORADO DIVISION OF RECLAMATION, MINING & SAFETY, PROJECT SUMMARY: GOLD KING BOND FORFEITURE M-1986-013, PHASE II – 2009, RECLAMATION AT THE SAMPSON, NUMBER ONE, AND LEVEL SEVEN PORTALS 2 (2009), <http://www.epa.gov/sites/production/files/2015-10/documents/1570604.pdf> [hereinafter 2009 DRMS PROJECT SUMMARY].

² *Id.* at 3.



2014.³ EPA intended to reopen the adit and eventually investigate the mine.⁴ However, the excavation lasted only two hours, at which point the crew stopped working because EPA determined that more time and resources would be necessary to complete the project.⁵ The remaining work was postponed until the following year.⁶

During its brief excavation of the portal in 2014, EPA appears to have misinterpreted the conditions in the adit and incorrectly concluded that the adit floor was six feet below the surface of the waste rock dump. The EPA crew observed “timbers . . . on the sides,” and an EPA contractor reportedly saw “a cap timber.”⁷ Presumably, the EPA crew took into account the adit’s 10 foot maximum height, saw what they assumed were the sides and roof of the portal structure extending about four feet above the waste dump, and concluded that the floor of the adit must have been six feet below the surface of the waste rock dump.⁸ They also assumed that the drainage and observation pipes that DRMS had installed in 2009, which EPA noted were each 24 inches in diameter and were stacked one on top of the other, occupied the top four feet of the



portal structure. In other words, EPA believed that the upper pipe was flush with the adit roof and the lower pipe, the drainage pipe, was close to the elevation of the waste rock dump surface. If that were the case, the remaining six feet of the adit would be below the surface of the waste rock dump.

Perhaps the timbers along the sides of the portal structure had been sheared off

³ STEVEN WAY, U.S. ENVIRONMENTAL PROTECTION AGENCY, POLREP #1 (INITIAL POLLUTION REPORT) – PEMOVAL ASSESSMENT GOLD KING MINE SITE 4 (2014), http://www.epa.gov/sites/production/files/2015-08/documents/goldkingmine_polrep1_9-23-14_redacted.pdf [hereinafter 2014 WAY REPORT].

⁴ *Id.* (“The mine is currently inaccessible due to a blockage at the portal. Initial work is needed to expose the adit behind the blockage, build a portal structure, and ensure water flows into the existing channel. Subsequent work will include entering and investigating the adit to identify actions that may be performed to reduce the volume or improve the quality of water released from the mine and thus reduce contaminant loading to North Fork Cement Creek and downstream waters.”).

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ Here and elsewhere, unless noted, this report uses EPA’s assumption that the adit was 10 feet high by 10 feet wide. The basis for this assumption is not explained in any of the documents the Committee has reviewed. DRMS records from 2009 indicate that the adit was 8 feet high by 8 feet wide, and DOI claimed in its *Technical Evaluation* that the adit was slightly higher than 8 feet tall.



during previous work at the mine, and later it was not apparent to the EPA crew that the remaining portal timbers were not their original height. Whatever the case, having found the drainage pipe exactly where it should have been – near the adit floor at an elevation similar to the surface of the waste rock dump, and connected to the existing drainage system – EPA did not conclude that the upper part of the portal structure was demolished in 2009 when DRMS backfilled the adit. Rather, EPA came to the strange conclusion that they were looking at the top of the adit and that the bottom of the adit was somehow recessed 6 feet. Reaching this conclusion, in light of the evidence against it, is remarkable.

Having made these unfounded conclusions, EPA then misinterpreted the conditions inside of the adit. The EPA crew observed water pooling near the level of the drainage pipe where it discharged onto the waste dump.⁹ EPA then assumed that the water pooling on the waste rock dump was essentially reaching equilibrium with the impounded water behind the blockage.¹⁰ Given EPA's assumption that the floor of the adit was six feet below the drainage pipe at the elevation of the waste rock dump surface, EPA mistakenly believed that the pooling water indicated that there was only about six feet of water impounded inside of the adit.¹¹

Following the abrupt decision to halt work at the site in September 2014, Steven Way, the EPA On-Scene Coordinator ("OSC") who was the Gold King Mine project leader, drafted a report for his EPA Region 8 superiors.¹² In the report, Mr. Way documented the work that the EPA crew had performed and indicated that he, DRMS personnel, and EPA's contractors had inspected the site.¹³

⁹ 2014 WAY REPORT, *supra* note 3, at 4, 6.

¹⁰ *Id.* at 4 ("The presence of the 2 – 24 inch pipe indicated the current flow of water was coming out only four feet below the roof, and then there was approximately 6 feet of impounded water below the level of the dump surface.")

¹¹ *Id.*

¹² *Id.* at 1. The two EPA On-Scene Coordinators who were responsible for the Gold King Mine project, Steven Way and Hays Griswold, have been identified in numerous news articles and videos. See, e.g., U.S. Environmental Protection Agency, *GKM 8*, YouTube (Sep. 11, 2015), <https://www.youtube.com/watch?v=WwQsRANIG24&feature=youtu.be>; U.S. Environmental Protection Agency, *GKM 5*, YouTube (Sep. 11, 2015), <https://www.youtube.com/watch?v=hldZX40fiDA&feature=youtu.be>; Jesse Paul, *EPA Works to Identify Mines Like Gold King*, DENVER POST, Aug. 25, 2015, http://www.denverpost.com/news/ci_28696659/epa-works-identify-mines-like-gold-king (identifying Hays Griswold as "an EPA supervisor who was at the scene of the Gold King blowout"); Jonathan Romeo, *Gold King Water Treatment to Begin*, DURANGO HERALD, Oct. 15, 2015, <http://www.durangoherald.com/article/20151015/NEWS01/151019766/Gold-King-water-treatment-to-begin> (identifying Steve Way as an EPA On-Scene Coordinator).

¹³ 2014 WAY REPORT, *supra* note 3, at 4.



Mr. Way also documented in his report the EPA crew's conclusions about the location of the DRMS pipes and the elevation of the adit floor. Inexplicably, those conclusions directly conflicted with DRMS records that were available at the time. DRMS's records of the work performed in 2009, which are archived and accessible on DRMS's website, show that the drainage pipe was to be installed on the floor of the adit at a slight slope to encourage drainage from the mine.¹⁴ The observation pipe was to be placed above the drainage pipe.¹⁵

The EPA's conclusions about the elevation of the adit floor and the location of the pipes are also inconsistent with the purpose of the drainage pipe and DRMS's reason for installing it. If the drainage pipe had been placed six feet above the adit floor, as EPA assumed, it could not have fulfilled its intended drainage function until the adit was more than half full of impounded water.

Over the next year, EPA began planning its 2015 work at the mine based on its 2014 assumptions, without bothering to confirm that those assumptions were correct. EPA's erroneous conclusions about the elevation of the adit floor and the location of the pipes strongly shaped EPA's thinking regarding its 2015 work plan. For example, the assumption that the adit floor was six feet below the surface of the waste dump was foundational to EPA's rationale that the mine was only partially full of water – even though the crew could not explain why the drainage from the mine was steadily decreasing.¹⁶ They speculated that the decline in flow was due not to a potential blockage causing a buildup of water in the mine, but to “seasonal inflows.”¹⁷ Thus, the team assumed the adit was not pressurized and did not test the pressure prior to beginning excavation again a year later.

In late July or early August 2015, Mr. Way left for a planned vacation and another EPA OSC, Hays Griswold, took over management of the site during Mr.

¹⁴ COLORADO DIVISION OF RECLAMATION, MINING & SAFETY, IMP BOND FORFEITURE/RECLAMATION DOCUMENTS 100 (2009), <http://drmsweblink.state.co.us/drmsweblink/0/doc/922249/Page1.aspx> [hereinafter DRMS FILES] (“Install a . . . pipe on the floor of the mine to provide drainage. . . . The drainage pipe will be set [at] a slight slope to the outside, ensuring drainage.”). The contractor who performed the work for DRMS in 2009 corroborated the DRMS records, stating that the crew placed the pipes on the floor of the adit. See also Telephone call with Roger Prock, K and P Property Design (Jan. 29, 2016).

¹⁵ *Id.* (“Install a . . . pipe at least 12 inches (12”) above the top of the drainage pipe.”).

¹⁶ 2014 WAY REPORT, *supra* note 3, at 4 (“The reason for reduced discharge is unknown but may be related to seasonal inflows to the mine.”).

¹⁷ *Id.*



Way's absence. Incidentally, this also was when EPA reinitiated excavation of the adit. On July 29, 2015, Mr. Way emailed instructions for the week of August 3 to the crew;¹⁸ these instructions appeared to differ from the team's existing work plan.¹⁹

Notably, Mr. Way sent the email to the EPA contractors and DRMS personnel, but not to Mr. Griswold, the EPA OSC who was scheduled to take his place.²⁰ Perhaps Mr. Way forwarded his instructions to Mr. Griswold later, but if so, EPA has not released any emails clearly showing that he did so. In any event, the EPA *Addendum* claims that the two "coordinated closely on the planned work"²¹ prior to Mr. Way's departure.

Regardless, photographs documenting the team's work at the site on August 4 and 5 demonstrate that Mr. Griswold followed neither the existing work plan nor Mr. Way's emailed instructions. For instance, the EPA crew, under Mr. Griswold's direction, excavated toward the adit floor at the level of the drainage pipe. Mr. Way had specifically directed that this should not be done unless there was a pump "prepared and available."²² On August 5, the pump was not on site.²³

The combination of EPA's decision not to test for hydrostatic pressure, Mr. Griswold's failure to follow instructions, and Mr. Way's erroneous conclusions about the adit was a recipe for disaster. In contrast to Mr. Way's emailed instructions, the EPA crew dug directly at the adit plug on August 4 and 5. If they were working under the assumptions Mr. Way documented in 2014, they would have been excavating at a level they believed was about six feet above the floor of the adit. In reality, because the drainage pipe was closer to the floor

¹⁸ Email from Steven Way, On-Scene Coordinator, U.S. Environmental Protection Agency, to Matt Francis, Response Manager, Environmental Restoration LLC (July 29, 2015, 07:04 a.m.), <http://www.epa.gov/sites/production/files/2015-12/documents/gkmaddendumattachment1.pdf>.

¹⁹ *Compare* Email from Steven Way, On-Scene Coordinator, U.S. Environmental Protection Agency, to Matt Francis, Response Manager, Environmental Restoration LLC (July 29, 2015, 07:03 a.m.) (providing instructions for excavation of the adit during the week of August 3), *with* ENVIRONMENTAL RESTORATION, ACTION/WORK PLAN (2015), http://www.epa.gov/sites/production/files/2015-08/documents/08-1573795_0.pdf (indicating that excavation and reopening of the adit would not occur until later, when the expert subcontractor was on-site).

²⁰ Email from Steven Way, *supra* note 18.

²¹ U.S. ENVIRONMENTAL PROTECTION AGENCY, ADDENDUM TO EPA INTERNAL REVIEW OF GOLD KING MINE INCIDENT 6 (2015), <http://www.epa.gov/sites/production/files/2015-12/documents/gkmaddendumfinal.pdf> [hereinafter EPA ADDENDUM].

²² Email from Steven Way, *supra* note 18 ("[T]he piping / hose must be in place to allow flow to be directed to the [Red and Bonita Mine] pond before removing any adit blockage at or below 24" pipe in the adit debris. And, the steel stinger pipe . . . must be prepared and available.").

²³ Two individuals who were on-site on the day of the spill have confirmed that the EPA crew did not have this equipment at the Gold King Mine on August 5, 2015.



of the adit, so was the EPA crew. Furthermore, the removal of material that the crew assumed was six feet above the adit floor offered no margin of safety, since EPA believed there was about six feet of water impounded in the adit.

Even if the conclusions Mr. Way documented in 2014 had been accurate, the EPA crew's excavation of the adit on August 4 and 5 do not make sense in light of Mr. Griswold's statement that he knew the mine was pressurized ("but not much").²⁴ EPA curiously did not include his statement in its subsequent *Addendum*. EPA's own *Internal Review* makes contradictory assertions regarding EPA's assumptions about the pressure in the mine. For example, the *Internal Review* asserts that part of the rationale for not testing the pressure in the adit was the assumption that the water inside the adit was only about 6 feet deep (based on the crew's observation of water pooling near the drainage pipe). At the same time, EPA hedges by claiming the crew was operating under the assumption that there was "no or low mine water pressurization" in the adit.²⁵ Similarly, DOI's *Technical Evaluation* claims that the crew believed the adit was only partially full of water.²⁶

On August 4, 2015, the EPA crew excavated at approximately the level of the drainage and observation pipes until they exposed the plug at about 4:00 p.m. Photographs of the site taken around that time show that the adit plug, composed of



In this photo from 4:08 p.m. on August 4, the EPA crew has unearthed the plug (highlighted in yellow). The end of a section of pipe is visible in the mound in front of the plug. Source: EPA.

²⁴ Email from Hays Griswold, On-Scene Coordinator, U.S. Environmental Protection Agency, to David Ostrander, Program Director, Preparedness, Assessment & Emergency Response Program, Region 8, U.S. Environmental Protection Agency (Oct. 28, 2015, 12:24 a.m.) ("I also knew there was some pressure behind the blockage but not much.").

²⁵ U.S. ENVIRONMENTAL PROTECTION AGENCY, SUMMARY REPORT: EPA INTERNAL REVIEW OF THE AUGUST 5, 2015 GOLD KING MINE BLOWOUT 6 (2015), http://www.epa.gov/sites/production/files/2015-08/documents/new_epa_nmt_gold_king_internal_review_report_aug_24_2015fnldated_redacted.pdf [hereinafter EPA INTERNAL REVIEW].

²⁶ BUREAU OF RECLAMATION, U.S. DEPARTMENT OF THE INTERIOR, TECHNICAL EVALUATION OF THE GOLD KING MINE INCIDENT 46 (2015), <http://www.usbr.gov/docs/goldkingminereport.pdf> [hereinafter DOI TECHNICAL EVALUATION] ("Once again, [the EPA crew] observed conditions similar to what was seen the previous year - water was seeping out at an elevation about 5 or 6 feet above the floor of the adit . . . an elevation corresponding to that of a partially full adit.").



compacted clay, sand, and other materials, as well as visible remnants of the portal structure, was *above* the excavated pipes that EPA believed occupied the top four feet of the adit. In other words, the crew discovered that the adit plug was higher than where they thought the roof of the adit was located. At this point, the EPA crew should have realized that their assumptions about the elevation of the adit floor and the location of the pipes were dangerously inaccurate.



On morning of August 5, 2015, the plug is still visible (left). Shortly thereafter, it was buried with backfill (right). Source: Environmental Restoration/EPA.

After revealing the plug on the afternoon of August 4, the EPA crew paused overnight to consider the situation. The following day, they continued excavating. Photographs of the work performed at the site on the morning of August 5 appear to show that EPA removed the remaining portions of the DRMS pipes closest to the portal and then backfilled the excavated area until the plug they had exposed the day before was hidden behind a mound of backfilled earth.

Although the water management system was not yet in place, as both Mr. Way²⁷ and the contractor's work plan²⁸ had specified,



The initial spurt of water from the adit appears in the excavated area, just below a white mark on the rock face. The plug is no longer visible because EPA backfilled the excavation. Source: EPA.

²⁷ Email from Steven Way, *supra* note 18 (instructing the team to wait to excavate the adit until the water management system was completed).

²⁸ ENVIRONMENTAL RESTORATION, ACTION/WORK PLAN 2-3 (2015), http://www.epa.gov/sites/production/files/2015-08/documents/08-1573795_0.pdf (indicating that the water conveyance system to the Red and Bonita Mine should be completed before the crew excavated the adit).

the EPA crew prepared a drainage channel for water from the mine by backfilling in front of the adit and creating a large earthen berm. The drainage channel, which is shored with planks, appears to lead toward the ditch that DRMS had previously constructed on the right side of the adit. EPA then continued excavating, ultimately breaching the plug.



The flow of water escaping from the adit has increased and turned orange. Wood planks, placed to direct water towards the channel on the right side of the adit, are also visible. Source: EPA.

In a photograph time-stamped at 10:51 a.m. on the morning of the spill, none of the crew or machinery is visible in the excavated adit area, there are no equipment tracks on top of the berm, and the initial spurt of water from the adit is perfectly captured. The spurt began to erode the plug, and by 10:54 a.m., orange water had begun to pool behind the berm and flow toward the drainage channel on the right.

Within minutes of EPA digging into the adit's plug, it violently blew out and an estimated 3 million gallons of contaminated water began to spew out of the mine. (See App. 12) The deluge also swept away thousands of cubic yards of the mine's waste rock dump, further contaminating Cement Creek and the Animas River system. (See App. 27)

The blowout made national headlines, and news photographs showed that the blowout had turned vast stretches of the Animas and San Juan Rivers an unnatural shade of orange.²⁹ Despite the disaster, EPA quickly retained the contractors who were working at the site at the time of the blowout to help EPA address the disaster it had just caused.³⁰

²⁹ Zoë Schlanger, *EPA Causes Massive Spill of Mining Waste Water in Colorado, Turns Animas River Bright Orange*, NEWSWEEK, Aug. 7, 2015, <http://www.newsweek.com/epa-causes-massive-colorado-spill-1-million-gallons-mining-waste-turns-river-361019>.

³⁰ EPA contract modifications on August 4, August 5, and August 13, 2015, awarded Environmental Restoration an additional \$2.2 million. *EPA Coming Clean, but Gold King a Gold Mine for Contractors*, PROJECT ON GOVERNMENT OVERSIGHT (Sept. 8, 2015), <http://www.pogo.org/blog/2015/09/gold-king-gold-mine-for-contractors.html>. See also Ethan Barton, *Gold King Mine Spill Contractor Cashed In after the Disaster*, DAILY CALLER, Nov. 12, 2015, <http://dailycaller.com/2015/11/12/gold-king-mine-spill-contractor-cashed-in-after-the-disaster/>.



The reports EPA and DOI subsequently released are misleading, factually inaccurate, and omit discussion of critical issues and information. This report documents the Committee's many concerns with the shifting, inaccurate, and misleading EPA and DOI accounts. It also presents the Committee's clearest understanding of the blowout to date.



TERMS AND ABBREVIATIONS

Adit – A passage or tunnel driven into a mine from the side of a hill by which mine workings are accessed, water is drained, and the mine is ventilated.

ARSG – Animas River Stakeholders Group; a collaborative group of stakeholders from mining companies, land owners, and local, state, and federal agencies interested in addressing the effects of inactive mines and improving water quality in the Animas River.

BOR – Bureau of Reclamation, a bureau of the U.S. Department of the Interior.

Bulkhead – A watertight dam, comprised of stone, steel, wood, or concrete, primarily designed to resist water pressure and prevent water from exiting a mined out area.

DOI *Technical Evaluation* – The Bureau of Reclamation’s *Technical Evaluation of the Gold King Mine Incident*, prepared by BOR’s Technical Service Center and released by the U.S. Department of the Interior on October 22, 2015.

Cap Timber – A timber rested upon two vertical timbers to support the adit roof.

DRMS – Division of Reclamation, Mining, and Safety, a unit of the Colorado Department of Natural Resources.

EPA *Addendum* – An addendum to EPA’s *Internal Review*, released on December 8, 2015.

EPA *Internal Review* – EPA’s *Summary Report: EPA Internal Review of the August 5, 2015 Gold King Mine Blowout*, an initial evaluation of the Gold King Mine blowout, released on August 24, 2015.

EPA OSC – On-Scene Coordinator; an EPA official responsible for monitoring and directing activities at EPA sites, including the Gold King Mine.



Hydrostatic – Relating to the pressure of equilibrium of fluids.

Lagging – Planks or small timbers placed along the roof of a tunnel or adit to prevent rocks and other loose material from falling.

Portal Structure – Support structure at the entrance of an adit, often constructed from logs, concrete, timber, or masonry arches, to support the roof and sides of the adit.

Rock Face – A more or less vertical surface of competent rock on the slope of a mountain; comprised of the bedrock of the mountain, devoid of loose dirt and other unstable materials.

Set – A timber frame used for supporting the sides of a mine adit, shaft, or tunnel.

Stinger – A perforated steel pipe, used to de-water mines.

USACE – U.S. Army Corps of Engineers, a peer reviewer of the DOI *Technical Evaluation*.

Waste Rock Dump – The area where mine waste or spoil materials are disposed of or piled immediately outside the entrance to a mine.

Workings – The entire system of tunnels and shafts in a mine.



BACKGROUND

History of the Gold King Mine

The mineral-rich volcanic soil in southwest Colorado's San Juan Mountains prompted a gold rush in the late 19th Century that led to the proliferation of mines in the area. Many of these mines are connected through mine workings, exploratory drill holes, or naturally occurring faults. The region continues to experience drainage from the interconnected mines into Cement Creek, a tributary of the Animas River.

The Gold King Mine, located north of Silverton, Colorado, operated intermittently between 1887 and 1922 and became one of the most productive mines in the region.³¹ After it closed in 1922, the mine and its waste rock dump were left unattended. Ownership of the Gold King Mine property changed hands several times in the following years. Currently, the mine is owned by Todd Hennis through the San Juan Corporation.

Though the mine was inactive for decades, its potential for additional mineral development was occasionally reassessed. A collapse within the original Level Seven adit made the workings inaccessible, so in the 1980s a new Level Seven adit was driven a short distance away from the original adit to restore access to the mine.³²

After a bulkhead was installed in the nearby American Tunnel in the 1990s, the Gold King Mine, which was historically a dry mine, began draining.³³ Over time, the drainage saturated and destabilized the steep waste rock dump in front of the adit and contributed to worsening water quality in Cement Creek. Concerns about the drainage from the Gold King Mine led the Colorado Division of Reclamation, Mining, and Safety ("DRMS") to backfill the adit and install drainage and observation pipes in 2009, preceding EPA's later excavation of the adit that triggered the blowout on August 5, 2015.

³¹ Julie Turkewitz, *Colorado Spill Heightens Debate Over Future of Old Mines*, N.Y. TIMES, Aug. 16, 2015, <http://www.nytimes.com/2015/08/17/us/animas-river-colorado-mine-spill-epa.html>.

³² 2009 DRMS PROJECT SUMMARY, *supra* note 1, at 2.

³³ *Id.*



Consequences of EPA's Blowout

The disaster sent approximately 3 million gallons of contaminated water from the mine into Cement Creek and the Animas and San Juan Rivers. It also washed a large portion of waste rock from the mine's waste rock dump into Cement Creek. Over the course of several days, the orange plume traveled through four states, multiple reservations, and hundreds of miles of waterways.

Although the blowout occurred during the height of summer, agricultural users along the Animas and San Juan Rivers stopped withdrawing water in order to prevent harm to their crops and livestock.³⁴ Municipal water systems also halted withdrawals to avoid contamination and adverse health effects.³⁵

The Bureau of Reclamation released approximately 1.3 billion gallons of water from the Navajo Dam to dilute the spill in an effort to mitigate harm to federally protected species of fish and critical habitat in the plume's wake.³⁶ The unscheduled release made that water unavailable for other uses during the hottest part of the year. Additionally, recreational use of the rivers was shut down, crippling rafting companies and other small businesses that depend on access to the waterways.³⁷

Many tribes, states, and local authorities expended significant resources responding to EPA's disaster.³⁸ The Navajo Nation, the Southern Ute Indian

³⁴ See, e.g., Jesse Paul, *Navajo Farms Suffer after Colorado Mine Fouls Southwest Rivers*, DENVER POST, Aug. 18, 2015, http://www.denverpost.com/news/ci_28656860/navajo-farmers-suffer-after-colorado-mine-fouls-southwest.

³⁵ See, e.g., Julie Turkewitz, *Environmental Agency Uncorks Its Own Toxic Water Spill at Colorado Mine*, N.Y. TIMES, Aug. 10, 2015, <http://www.nytimes.com/2015/08/11/us/durango-colorado-mine-spill-environmental-protection-agency.html> ("Soon after the spill was detected, city officials stopped pumping water from the Animas into the reservoir that provides drinking water for Durango's 17,000 residents – taking action swiftly enough that the contamination did not reach the drinking supply.").

³⁶ Press Release, Bureau of Reclamation, U.S. Department of the Interior (Aug. 7, 2015), <http://www.usbr.gov/newsroom/newsrelease/detail.cfm?RecordID=49968> ("Increased releases may help dilute mine contaminants in the San Juan River and alleviate concerns for endangered species and wildlife, while helping with other river issues.").

³⁷ Jonathan Romeo, *Financial Claims Add Up after Gold King Mine Spill*, DURANGO HERALD, Nov. 21, 2015, <http://www.durangoherald.com/article/20151121/NEWS01/151129923/Financial-claims-add-up-after-Gold-King-Mine-spill> ("[T]he hardest hit are rafting companies and their employees, who were forced to shut down for nine days as the orange plume containing heavy metals passed through Durango.").

³⁸ *EPA's Animas Spill: Joint Hearing before the House Committee on Natural Resources and the House Committee on Oversight and Government Reform*, 114th Cong. (Sept. 17, 2015) [hereinafter *Joint Hearing*] (statements of the Honorable



Tribe, and the State of New Mexico all have well-documented complaints regarding EPA's failure to appropriately notify downstream users and reliably provide information and assistance following the spill.³⁹

While it is clear that EPA's spill of 3 million gallons of contaminated mine water was a disaster with very real consequences for those living and working along the Animas and San Juan Rivers, it is equally clear that the long-term effects of the disaster are still unknown. Further study, particularly of the sediments deposited in the creek and riverbeds, is needed to ensure that the full magnitude of the damage EPA caused is known and addressed.⁴⁰

In addition, further review of EPA's potential violations of federal law is needed, since EPA:

- Violated the Clean Water Act by unlawfully discharging pollutants into navigable waters without a permit and in violation of water quality standards;
- Violated the Endangered Species act by failing to consult with the U.S. Fish and Wildlife Service before carrying out actions at the Gold King Mine that may affect a listed species, even though EPA had long acknowledged the possibility of "a blow-out [that could] cause a release of large volumes of contaminated mine waters and sediment from inside the mine, which contain concentrated heavy metals;"⁴¹ and likely
- Violated the Endangered Species Act by adversely modifying designated critical habitat for multiple listed species in the Animas River.

Ryan Flynn, Secretary, New Mexico Department of Environment; the Honorable Russell Begaye, President, Navajo Nation; and the Honorable Mike Olguin, Tribal Council Member, Southern Ute Indian Tribe).

³⁹ *Id.*

⁴⁰ *Id.* (statement of the Honorable Ryan Flynn, Secretary, New Mexico Department of Environment).

⁴¹ TASK ORDER STATEMENT OF WORK FOR GOLD KING MINE (June 25, 2014), <http://www.epa.gov/sites/production/files/2015-09/documents/08-1574701.pdf>.



EPA must be held accountable for the consequences of its actions, just as it penalizes and prosecutes ordinary Americans for violating environmental laws and regulations.⁴²

SUMMARY OF COMMITTEE OVERSIGHT

The U.S. House Committee on Natural Resources (“Committee”) has jurisdiction over mining interests generally, fisheries and wildlife, public lands, irrigation and reclamation, and relations with Native American tribes.⁴³ The Committee began conducting oversight of EPA’s disaster immediately after the spill. On August 31, 2015, the Committee, along with the Committee on Oversight and Government Reform, sent two letters requesting information, documents, and communications relating to the disaster.⁴⁴ One letter was sent to EPA, and the other letter was sent to Environmental Restoration, an EPA contractor that was conducting work at the site under EPA’s direction.⁴⁵

In addition, the Committee requested information and documents from the U.S. Department of the Interior on September 3, 2015, particularly information relating to DOI’s role in the Gold King Mine project, its affected trust resources, and DOI’s then-pending technical review of the spill.⁴⁶ Of the documents provided by the EPA and DOI, hundreds of pages were fully redacted and thousands of pages were entirely irrelevant to EPA’s work at the Gold King Mine in recent years. The Committee continues to seek documents that EPA and DOI have not provided.

⁴² Paul Larkin & John-Michael Seibler, *Sauce for the Goose Should be Sauce for the Gander: Should EPA Officials be Criminally Liable for the Negligent Discharge of Toxic Waste into the Animas River?*, HERITAGE FOUNDATION, Sept. 10, 2015, <http://www.heritage.org/research/reports/2015/09/sauce-for-the-goose-should-be-sauce-for-the-gander-should-epa-officials-be-criminally-liable-for-the-negligent-discharge-of-toxic-waste-into-the-animas-river>.

⁴³ House Rule X(1)(m).

⁴⁴ Letter from the Honorable Rob Bishop, Chairman, U.S. House Committee on Natural Resources, the Honorable Jason Chaffetz, Chairman, U.S. House Committee on Oversight and Government Reform, and the Honorable Cynthia Lummis, Chairman, Subcommittee on the Interior, U.S. House Committee on Oversight and Government Reform, to the Honorable Gina McCarthy, Administrator, U.S. Environmental Protection Agency (Aug. 31, 2015), http://naturalresources.house.gov/uploadedfiles/nrc-ogr_letter_to_epa.pdf; Letter from the Honorable Rob Bishop, Chairman, U.S. House Committee on Natural Resources, Jason Chaffetz, Chairman, U.S. House Committee on Oversight and Government Reform, and the Honorable Cynthia Lummis, Chairman, Subcommittee on the Interior, U.S. House Committee on Oversight and Government Reform, to Dennis Greaney, President, Environmental Restoration LLC (Aug. 31, 2015), http://naturalresources.house.gov/uploadedfiles/nrc-ogr_letter_to_environmental_restoration.pdf.

⁴⁵ *Id.*

⁴⁶ Letter from the Honorable Rob Bishop, Chairman, U.S. House Committee on Natural Resources, the Honorable Jason Chaffetz, Chairman, U.S. House Committee on Oversight and Government Reform, and the Honorable Cynthia Lummis, Chairman, Subcommittee on the Interior, U.S. House Committee on Oversight and Government Reform, to the Honorable Sally Jewell, Secretary, U.S. Department of the Interior (Sept. 3, 2015), http://naturalresources.house.gov/uploadedfiles/joint_letter_to_jewell.pdf.



The Committee also reviewed hundreds of pages of records related to the work that DRMS performed at the Gold King Mine in 2008 and 2009. DRMS has made these documents publicly available on its ePermitting website.⁴⁷

Oversight Hearings

On September 17, 2015, the Committee held a joint oversight hearing with the Oversight and Government Reform Committee to obtain information about the spill and EPA's response to the disaster. Witnesses included Mike Olguin, Member of the Tribal Council of the Southern Ute Indian Tribe; Russell Begaye, President of the Navajo Nation; Ryan Flynn, Secretary of the New Mexico Environment Department; Dr. Larry Wolk of the Colorado Department of Public Health and Environment; and Gina McCarthy, Administrator of the U.S. Environmental Protection Agency. Administrator McCarthy refused to appear alongside the tribal and state witnesses and demanded to testify alone, on her own panel.⁴⁸

During the hearing, Administrator McCarthy responded to numerous questions about the nature of the EPA crew's actions and whether they were negligent or criminal, usually by deferring to the Department of the Interior's then-ongoing review of the blowout. For example, regarding EPA's failure to test the pressure in the mine prior to excavation, Administrator McCarthy stated:

That was one of the key findings of our *Internal Review* and I'm sure that's one of the key areas in which the Department of the Interior is going to look. . . . They made a judgement that turned out to be wrong. Whether or not they did due diligence in making that or missed factors that they should've looked at, that's what the Department of the Interior is hopefully going to be able to advise us, and we will follow up and they will be held accountable if there were mistakes made, if they could've avoided this, if they forgot to

⁴⁷ COLORADO DIVISION OF RECLAMATION, MINING & SAFETY, <http://drmsweblink.state.co.us/drmsweblink/Browse.aspx?startid=1114191>.

⁴⁸ *Joint Hearing, supra* note 38 (statement of the Honorable Rob Bishop, Chairman, U.S. House Committee on Natural Resources). Not only did Administrator McCarthy refuse to testify on a panel with the other witnesses, she also did not remain at the hearing to hear their testimony.



look at something, or made a judgment that wasn't based on profound engineering and science.⁴⁹

When asked whether EPA would pursue criminal prosecution of those employees who violated environmental laws and regulations, Administrator McCarthy replied, "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."⁵⁰

Similarly, the Administrator responded to a question from Congressman Mica by stating: "One of the reasons why we asked DOI to do an independent investigation was to make sure somebody has independently looked at that and provided us with information so that we could follow up to see if there was any lack of judgment or lack of oversight."⁵¹

Likewise, she told Congressman Walberg, "EPA is the one ultimately taking responsibility for this and DOI will tell us whether mistakes were made at the site, or whether there was any misjudgment."⁵²

After repeatedly assuring the Committees that the pending DOI report would answer such questions about EPA's potential negligence or wrongdoing, Administrator McCarthy testified that to ensure the report would get to the bottom of things, EPA was "going with the agencies that have significant expertise, the Department of the Interior, the Army Corps [of Engineers]. One of the things we did was to make sure we weren't the ones defining the scope of work. . . . We actually consulted with a number of agencies, and those agencies agreed to it."⁵³

DOI Secretary Sally Jewell declined to attend the September 17, 2015, oversight hearing, citing the desire to remain "independent" during her agency's ongoing technical review of the disaster.⁵⁴ She did testify at the

⁴⁹ *Id.* (statement of the Honorable Gina McCarthy, Administrator, U.S. Environmental Protection Agency).

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *Id.*

⁵³ *Id.*

⁵⁴ *The Department of the Interior's Role in the EPA's Animas Spill: Hearing before the U.S. House Committee on Natural Resources*, 114th Cong. (Dec. 9, 2015) [hereinafter *Oversight Hearing*] (statement of the Honorable Sally Jewell, Secretary, U.S. Department of the Interior).



Natural Resources Committee's oversight hearing on December 9, 2015.⁵⁵ That hearing focused specifically on DOI's *Technical Evaluation* of the blowout.

The day before the hearing, DOI indicated that it would not provide previously-requested documents related to the U.S. Army Corps of Engineers ("USACE") peer review of the DOI *Technical Evaluation*. A counsel for DOI's Office of Congressional and Legislative Affairs obtusely wrote:

We produced the documents that were available related to the USACE participation in the BOR review to the extent that they were captured as responsive to the Chairman's letter. As we discussed, we prioritized producing documents consistent with your priority interests, as you spelled out orally during our meeting, that were responsive to the Chairman's request. Just so that there is no misunderstanding, we did not add items to the list of the Chairman's requests. What we did was prioritize compiling and producing documents responsive to the Chairman's requests that would likely yield documents consistent with your priority interest.⁵⁶

DOI's less-than-forthcoming attitude also was on display at the hearing the following day. David Palumbo, the Bureau of Reclamation official who accompanied Secretary Jewell, shrugged off bipartisan requests for the USACE peer review documents by stating that they were still under review by DOI lawyers.⁵⁷ Secretary Jewell then rebuffed Chairman Bishop's request that DOI make the lead author of the *Technical Evaluation*, Michael Gobla, available for an interview: "I believe we have provided all of the relevant information to this Committee that is appropriate. I think if you want to make that request, we would take it under advisement, but I don't have an answer for you at this time."⁵⁸

⁵⁵ *Id.*

⁵⁶ Email from Jason Powell, Senior Counsel, Office of Congressional and Legislative Affairs, Office of the Secretary, U.S. Department of the Interior, to Rob Gordon, Staff Director, Subcommittee on Oversight & Investigations, U.S. House Committee on Natural Resources (Dec. 8, 2015).

⁵⁷ *Oversight Hearing, supra* note 54 (statement of David Palumbo, Deputy Commissioner for Operations, Bureau of Reclamation, U.S. Department of the Interior). The Department of the Interior has not provided any additional documents or information following the hearing. In addition to stonewalling Congress, the Administration has failed to provide documents sought through public-records requests. Matthew Brown, *Interior Secretary: No Criminal Acts in Gold King Mine Spill*, DURANGO HERALD, Dec. 9, 2015, <http://www.durangoherald.com/article/20151209/NEWS02/151209569/Interior-secretary-No-criminal-acts-in-Gold-King-Mine-spill> ("Federal officials have not released documents related to the Gold King investigation that The AP has sought through a public-records requests. That includes criticisms over the scope of the Interior evaluation, from a U.S. Army Corps of Engineers geotechnical engineer who peer-reviewed the agency's work.").

⁵⁸ *Oversight Hearing, supra* note 54 (statement of the Honorable Sally Jewell, Secretary, U.S. Department of the Interior).



The Department's determination to withhold information from Congress is troubling, particularly in light of Secretary Jewell's statements about the nature of the blowout. For example, in her written testimony, the Secretary painted EPA's Gold King Mine disaster as an inevitable event: "As is so often the case, it is unfortunate that *an incident like this has to happen* to highlight an issue that land managers in both the state and federal governments have been grappling with for years."⁵⁹

Secretary Jewell went on to directly contradict Administrator McCarthy's previous testimony that DOI was responsible for investigating whether EPA had acted negligently or criminally leading up to the spill. Concerning DOI's role, Secretary Jewell stated: "My understanding is the EPA is doing a thorough investigation with people that are trained to do that. The people that did our report are trained engineers, and they delivered exactly what we agreed to do with the EPA, sir."⁶⁰ She reiterated that DOI "did exactly what the agreement with the EPA was, in terms of providing a technical review."⁶¹

In contrast to her own statements about the non-investigative nature of DOI's *Technical Evaluation*, Secretary Jewell did not hesitate to proclaim her own personal belief that EPA had strictly innocent intentions. In response to a question from Congressman McClintock, Secretary Jewell asserted: "We did not see any deliberate intent to breach a mine. It was an accident."⁶² In a separate exchange, Chairman Bishop asked Secretary Jewell: "When you talked to Mr. Beyer you said you didn't think there was any negligence in effect. Since you have already said that [the issue of negligence] was outside of the scope of your report, and the report didn't actually go into that, is that your personal opinion, that there was no negligence, or is that an official opinion that is not actually in the report?"⁶³ She replied, "That is my personal opinion, based on what I have read."⁶⁴

Committee Seeks U.S. Army Corps of Engineers Peer Review Documents

⁵⁹ *Id.* (emphasis added).

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² *Id.* Although Secretary Jewell unequivocally called the blowout an "accident," EPA has been very careful to refer to the event as a "release" or an "incident."

⁶³ *Id.* (statement of the Honorable Rob Bishop, Chairman, U.S. House Committee on Natural Resources).

⁶⁴ *Id.* (statement of the Honorable Sally Jewell, Secretary, U.S. Department of the Interior).



After Secretary Jewell failed to assure interested Congressmen that DOI would provide the USACE peer review documents, the Committee requested those documents directly from USACE on December 10, 2015.⁶⁵ The USACE eventually provided some documents to the Committee, but at DOI's insistence, many were redacted and some were withheld in their entirety. The documents that were provided raise serious questions about the Department of the Interior's *Technical Evaluation* and its peer review process.

Emails between EPA, DOI, and USACE officials reveal that USACE had reservations about the review from the outset. On or around August 12, 2015, EPA initiated communications with DOI and USACE concerning their potential involvement in an independent review of the blowout.⁶⁶ After a few days of discussing the details, DOI and EPA agreed that DOI would lead the review and USACE would be "part of the team."⁶⁷

During this time, USACE began identifying experts who could support the effort, including Dr. Richard Olsen, an engineer who eventually led the USACE peer review of the DOI *Technical Evaluation*. Emails from August 2015 show that Dr. Olsen expressed concerns about the project almost immediately. After receiving an email that

Rick,

I appreciate your concerns. We have not committed to this as of yet.

I do think the best way to facilitate the right outcome is have you talk directly with the folks at Reclamation. Do you have Lowell's information? I think the two of you should discuss.

Karen

Sent from my BlackBerry 10 smartphone.
Original Message
From: Olsen, Richard S HQ02
Sent: Tuesday, August 18, 2015 8:58 PM
To: Baker, Karen J HQ02; Bank, Robert HQ02; Dalton, James C SES HQ02
Subject: RE: [EXTERNAL] Fwd: Reclamation Scope of Work - Gold King Mine (UNCLASSIFIED)

Classification: UNCLASSIFIED
Caveats: NONE

Karen,

I reviewed USBR proposed work effort below (tluebke@usbr.gov to Stalcup.Dana@epa.gov).

[REDACTED]

[REDACTED]

Rick Olsen, PhD PE
USACE Senior Geotechnical Engineer • Richard.S.Olsen@usace.army.mil • HQ USACE E&C (Washington, DC) •
from my Desk

⁶⁵ Letter from the Honorable Louie Gohmert, Committee on Natural Resources, to Lieutenant General Thomas J. Bostick, Commanding General and Chief of Engineers, U.S. Army Corps of Engineers (Dec. 10, 2015), http://naturalresources.house.gov/uploadedfiles/bostick_letter_12_10_15.pdf.

⁶⁶ See, e.g., Email from Dana Stalcup, Director, Assessment and Remediation Division, Office of Superfund Remediation and Technology Innovation, U.S. Environmental Protection Agency, to Karen Baker, Environmental Division Chief, U.S. Army Corps of Engineers (Aug. 12, 2015 12:17 p.m.) ("Hi Karen. I am one of Jim Woolford's division directors and taking the lead on looking at a study of the recent mining water release. . . . I was wondering if you might have a few minutes this afternoon . . . for a quick follow up.").

⁶⁷ Email from Dana Stalcup, Director, Assessment and Remediation Division, Office of Superfund Remediation and Technology Innovation, U.S. Environmental Protection Agency, to Karen Baker, Environmental Division Chief, U.S. Army Corps of Engineers (Aug. 14, 2015, 04:06 p.m.).



included a brief paragraph detailing the proposed scope of work and referring to his participation as a peer reviewer, Dr. Olsen emailed Karen Baker, Chief of USACE's Environmental Division and one of EPA's original USACE points of contact for the review, stating: "I reviewed the USBR proposed work effort below."⁶⁸ A few minutes later, Ms. Baker responded to Dr. Olsen: "I appreciate your concerns. We have not committed to this as of yet. I do think the best way to facilitate the right outcome is to have you talk directly with the folks at Reclamation."⁶⁹ Most of Dr. Olsen's email was redacted at DOI's request, but in the context of Ms. Baker's response, it is clear that he had reservations about the review.

Exactly what Dr. Olsen was concerned about is unclear due to DOI's redactions. His email was one of many redacted emails provided by USACE in response to the Committee's request. According to USACE, "the Department of Interior counsel expressed the view that some of the documents should be withheld entirely or partially (redacted) as they may 'represent important executive branch confidentiality interest.' In accordance with DOI counsel's request, the Corps redacted and withheld certain documents that contained peer review comments."⁷⁰

On August 28, 2015, Dr. Olsen sent an email to Thomas Luebke, Director of the Bureau of Reclamation's Technical Service Center, which was spearheading the DOI review, to confirm the scope of USACE's participation as a peer reviewer.⁷¹ Shortly thereafter, Dr. Olsen received a response from Michael Gobla, one of Mr. Luebke's engineers at the BOR Technical Service Center and the lead author of the DOI review, stating, "Mr. Olsen: As the project lead for the bureau of reclamation Gold King mine work I agree with the scope of the

⁶⁸ Email from Dr. Richard Olsen, Senior Geotechnical Engineer, U.S. Army Corps of Engineers, to Karen Baker, Environmental Division Chief, U.S. Army Corps of Engineers (Aug. 18, 2015, 08:58 p.m.).

⁶⁹ Email from Karen Baker, Environmental Division Chief, U.S. Army Corps of Engineers, to Dr. Richard Olsen, Senior Geotechnical Engineer, U.S. Army Corps of Engineers (Aug. 18, 2015, 09:08 p.m.). In a separate email to other USACE colleagues, Ms. Baker herself expressed USACE's concerns "about getting to perishable info on the site immediately," since at that point nearly two weeks had elapsed since the blowout. Email from Karen Baker, Environmental Division Chief, U.S. Army Corps of Engineers, to Lloyd Caldwell, Director of Military Programs, U.S. Army Corps of Engineers (Aug. 17, 2015, 05:20 p.m.)."

⁷⁰ Memorandum from CECC-E, to Chief Counsel, U.S. Army Corps of Engineers, "Gold King Mine Documents Withheld from Release" (Jan. 21, 2016). USACE provided an index of withheld documents.

⁷¹ Email from Dr. Richard Olsen, Senior Geotechnical Engineer, U.S. Army Corps of Engineers, to Thomas Luebke, Director, Technical Service Center, Bureau of Reclamation, U.S. Department of the Interior (Aug. 28, 2015, 03:38 p.m.).



USACE involvement as outlined. Please proceed.”⁷²

⁷² Email from Michael Goble, Senior Civil Engineer, Bureau of Reclamation, U.S. Department of the Interior, to Dr. Richard Olsen, Senior Geotechnical Engineer, U.S. Army Corps of Engineers (Aug. 28, 2015, 05:41 p.m.).



USACE Peer Reviewer Requested Information about Gold King Mine from DOI

Internal USACE emails show that Dr. Olsen sought information about the Gold King Mine in addition to whatever materials DOI and EPA provided originally. To facilitate Dr. Olsen's peer review, a USACE librarian contacted the DOI Library, as well as a BOR contact, writing:

Our Senior Geotechnical Engineer presented me with a reference request for any available information relevant to Gold King Mine, prior to the August 5, 2015 incident occurrence, to help his team in its "assist and peer review" role with its Bureau of Reclamation colleagues. We have the internal documents recently released by the EPA, but nothing beyond this that is of relevance. *I know this request is vague, but the engineer said the information he was given to act on was even more so...go figure.*⁷³

The emails USACE provided in response to the Committee's request do not indicate that the USACE librarian ever received a response from the DOI Library or BOR.

DOI Failed to Allow Army Corps Adequate Time to Review Report

On October 6, 2015, Dr. Olsen provided the USACE's peer review comments to BOR, curiously stating: "Attached are the USACE comments for the USBR 'internal' report."⁷⁴

After business hours on October 13, 2015, Mr. Luebke sent the final draft of the *Technical Evaluation*, totaling over 100 pages, to Dr. Olsen and the other non-BOR peer reviewer.⁷⁵ He included a reminder that their comments were due by the close of business on October 15 – less than two days later.⁷⁶ Dr.

⁷³ Email from Emily Wegrzyn, Librarian, U.S. Army Corps of Engineers, to Library of the Office of the Secretary of Interior (Sept. 4, 2015, 01:26 p.m.) (emphasis added).

⁷⁴ Email from Dr. Richard Olsen, Senior Geotechnical Engineer, U.S. Army Corps of Engineers, to Thomas Luebke, Director, Technical Service Center, Bureau of Reclamation, U.S. Department of the Interior, and Michael Goble, Senior Civil Engineer, Bureau of Reclamation, U.S. Department of the Interior, et al. (Oct. 6, 2015, 08:26 p.m.).

⁷⁵ Email from Thomas Luebke, Director, Technical Service Center, Bureau of Reclamation, U.S. Department of the Interior, to Dr. Richard Olsen, Senior Geotechnical Engineer, U.S. Army Corps of Engineers, and Dr. Randall Jibson, Research Geologist, U.S. Geological Survey, U.S. Department of the Interior (Oct. 13, 2015, 07:09 p.m.). Mr. Luebke copied Michael Goble and the other *Technical Evaluation* authors, as well as the BOR peer reviewer, on this email.

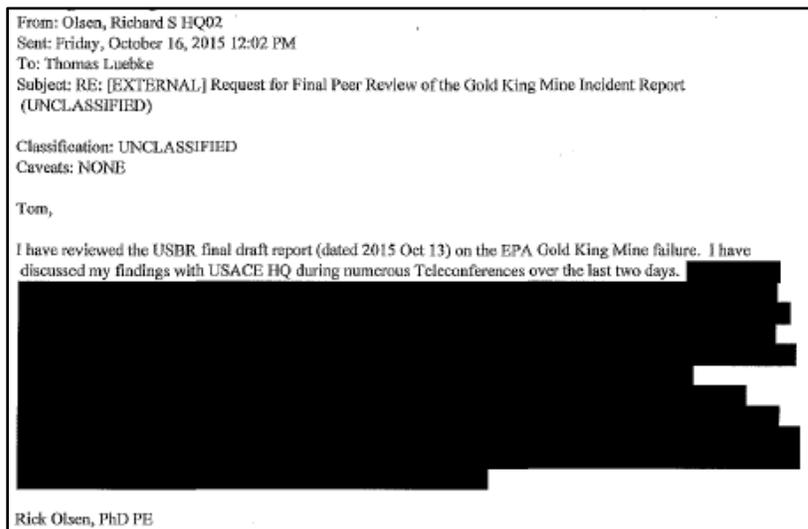
⁷⁶ *Id.*



Olsen promptly replied: “Thanks for [the] report but 1-1/2 days to review the final version is really not enough time. . . . What does the signature page state; reviewed only, agree 100%, agree in general, etc?”⁷⁷

The following morning, Mr. Luebke sent a blank copy of the peer review signature page to Dr. Olsen.⁷⁸ Dr. Olsen then advised his USACE colleagues that he had received the draft report the evening before and had begun reviewing it.⁷⁹ Yet, as with so many of the emails provided to the Committee, the remainder of this email also is redacted.

On October 16, 2015, Dr. Olsen emailed Thomas Luebke: “I have reviewed the USBR final draft report (dated 2015 Oct 13) on the EPA Gold King Mine failure. I have discussed my findings with USACE HQ during numerous Teleconferences over the last two days.”⁸⁰ The remainder of the email is redacted.



A few minutes later, Dr. Olsen forwarded the email he had sent to Mr. Luebke to his USACE colleagues, noting: “Below is what I sent to the USBR coordinator for the EPA failure investigation.”⁸¹ One of Dr. Olsen’s USACE colleagues, Dr. Joseph Koester, replied almost immediately:

⁷⁷ Email from Dr. Richard Olsen, Senior Geotechnical Engineer, U.S. Army Corps of Engineers, to Thomas Luebke, Director, Technical Service Center, Bureau of Reclamation, U.S. Department of the Interior (Oct. 13, 2015, 06:39 p.m.).

⁷⁸ Email from Thomas Luebke, Director, Technical Service Center, Bureau of Reclamation, U.S. Department of the Interior, to Dr. Richard Olsen, Senior Geotechnical Engineer, U.S. Army Corps of Engineers (Oct. 14, 2015, 09:23 a.m.).

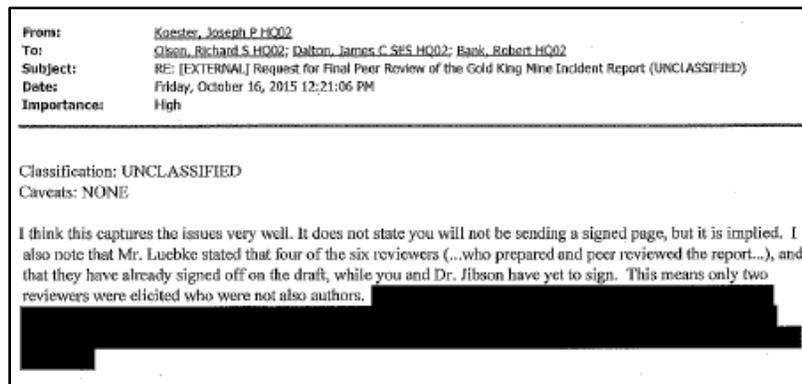
⁷⁹ Email from Dr. Richard Olsen, Senior Geotechnical Engineer, U.S. Army Corps of Engineers, to James Dalton, Chief of Engineering and Construction, U.S. Army Corps of Engineers, and Robert Bank, Chief of Civil Works Branch, Engineering and Construction, U.S. Army Corps of Engineers (Oct. 14, 2015, 01:13 p.m.).

⁸⁰ Email from Dr. Richard Olsen, Senior Geotechnical Engineer, U.S. Army Corps of Engineers, to Thomas Luebke, Director, Technical Service Center, Bureau of Reclamation, U.S. Department of the Interior (Oct. 16, 2015, 12:02 p.m.).

⁸¹ Email from Dr. Richard Olsen, Senior Geotechnical Engineer, U.S. Army Corps of Engineers, to James Dalton, Chief of Engineering and Construction, U.S. Army Corps of Engineers, et al. (Oct. 16, 2015, 12:05 p.m.).



I think this captures the issues very well. *It does not state you will not be sending a signed page, but it is implied.* I also note that Mr. Luebke stated that four of the six reviewers (...who prepared and peer reviewed the report...), and that they have already signed off on the draft, while you and Dr. Jibson have yet to sign. This means only two reviewers were elicited who were not also authors.”⁸²



Minutes later Dr. Olsen received a reply from Mr. Luebke, thanking him for his comments.⁸³ Following a large block of redacted text, Mr. Luebke then asked Dr. Olsen, “Please discuss this possible approach with your folks and let me know if this will satisfy your needs and permit you to sign the signature sheet [and] send me back the scanned version so that we can finalize the report today.”⁸⁴ In a subsequent, heavily redacted email, Dr. Olsen advised Mr. Luebke, “We will talk about the suggestions you mentioned below.”⁸⁵

After exchanging several more emails with Mr. Luebke regarding his peer review comments, almost all of which DOI has heavily redacted, Dr. Olsen agreed to sign off on the peer review.⁸⁶ A few minutes later, he forwarded the chain of emails he had exchanged with Mr. Luebke to his USACE colleagues, writing: “Joe [and] I had a long telephone call about finalizing this effort. The

⁸² Email from Dr. Joseph Koester, Geotechnical and Materials Community of Practice Lead, U.S. Army Corps of Engineers, to Dr. Richard Olsen, Senior Geotechnical Engineer, U.S. Army Corps of Engineers (Oct. 16, 2015, 12:21 p.m.) (emphasis added).

⁸³ Email from Thomas Luebke, Director, Technical Service Center, Bureau of Reclamation, U.S. Department of the Interior, to Dr. Richard Olsen, Senior Geotechnical Engineer, U.S. Army Corps of Engineers (Oct. 16, 2015, 12:32 p.m.).

⁸⁴ *Id.*

⁸⁵ Email from Dr. Richard Olsen, Senior Geotechnical Engineer, U.S. Army Corps of Engineers, to Thomas Luebke, Director, Technical Service Center, Bureau of Reclamation, U.S. Department of the Interior (Oct. 16, 2015, 01:52 p.m.).

⁸⁶ Email from Dr. Richard Olsen, Senior Geotechnical Engineer, U.S. Army Corps of Engineers, to Thomas Luebke, Director, Technical Service Center, Bureau of Reclamation, U.S. Department of the Interior (Oct. 16, 2015, 03:32 p.m.).



suggestion by USBR of inserting my comments into the report will be good for the total USBR effort – see my email below. I have sent USBR my signature as requested (and attached).”⁸⁷ Dr. Olsen also presciently noted, *“This email trail documents our comments, concerns, and actions for any future inquiries.”*⁸⁸

DOI’s desperate efforts to bury the comments of the only non-DOI peer reviewer, whose concerns about the *Technical Evaluation* were apparently so serious that he almost did not sign the report, are appalling and demonstrate DOI’s determination to resist transparency and accountability. DOI’s unwillingness to release the comments of an outside expert who was specifically engaged to offer an objective critique of the *Technical Evaluation* makes clear that the peer review process DOI concocted for its report was a sham from start to finish.

EPA’s Potential Interference in the OIG’s Investigation

On the eve of the Committee’s December 9, 2015, oversight hearing, EPA released an *Addendum* to its *Internal Review* that purported to “provide[] clarity” regarding issues raised in the *Technical Evaluation*.⁸⁹ The *Addendum* was based on a December 2, 2015, interview EPA officials conducted with the two EPA On-Scene Coordinators who were in charge of the Gold King Mine site.⁹⁰ EPA’s description of the circumstances surrounding this interview is extremely troubling.

On December 18, 2015, the Committee sent a letter to the EPA Office of Inspector General (“OIG”) calling attention to EPA’s potential interference in the OIG’s investigation of the Gold King Mine incident, which was ongoing at the time of the December 2 interview. The Committee also inquired about EPA’s

⁸⁷ Email from Dr. Richard Olsen, Senior Geotechnical Engineer, U.S. Army Corps of Engineers, to James Dalton, Chief of Engineering and Construction, U.S. Army Corps of Engineers, et al. (Oct. 16, 2015, 3:39 p.m.).

⁸⁸ *Id.* (emphasis added). Ironically, this is one of the few emails that DOI apparently did not object to USACE providing in response to the Committee’s “inquiry.”

⁸⁹ EPA ADDENDUM, *supra* note 21, at 1 (“This addendum provides clarity pursuant to additional information that has become available since the initial EPA Internal Review report was issued on August 26, 2015. This includes information presented in the October 2015 Department of the Interior/Bureau of Reclamation (BOR) Technical Review of the Gold King Mine Incident (DOI Report), as well as reservations expressed by the US Army Corps of Engineers (USACE) peer reviewer regarding internal EPA communication and coordination, especially in light of the work at the site on August 4 and 5 and the planned August 14 consultation with the Bureau of Reclamation (BOR).”).

⁹⁰ *Id.* (“[W]e . . . conducted a follow up interview with the two On-Scene Coordinators (OSCs) most closely associated with the event. . . . The meeting took place on December 2, 2015, in EPA Region 8 office in Denver.”).



communications with the OIG concerning the December 2 interview.⁹¹ In its January 20, 2016, response, the EPA OIG stated that “*EPA did not notify the OIG of its plans to conduct an interview with Mr. Way and Mr. Griswold on December 2, 2015.*”⁹² The OIG also stated that it did not request that EPA hold its *Internal Review* in abeyance “because the OIG understood the EPA’s internal review team was only ‘assess[ing] . . . the events and potential factors contributing to the blowout’”⁹³

The Committee also has requested a U.S. Government Accountability Office (“GAO”) evaluation of the DOI *Technical Evaluation*.⁹⁴ The results of GAO’s review are pending.

Committee Interviews

In addition to reviewing relevant documents and records, Committee Majority staff spoke with multiple individuals with firsthand knowledge of the Gold King Mine, the EPA crew’s activities at the site, and the peer review process for the DOI *Technical Evaluation*.

On October 22, 2015, Committee staff spoke with Bruce Stover, Director of the Colorado Division of Reclamation, Mining, and Safety’s Inactive Mine Reclamation Program. Mr. Stover is one of the two DRMS employees who were at the Gold King Mine on the day of the spill.⁹⁵

On November 10, 2015, Committee staff spoke with USACE engineer Dr. Richard Olsen about his peer review of the DOI *Technical Evaluation*.⁹⁶ Then, on November 13, 2015, Committee staff conducted a conference call with

⁹¹ Letter from the Honorable Rob Bishop, Chairman, U.S. House Committee on Natural Resources, and the Honorable Louie Gohmert, Chairman, Subcommittee on Oversight & Investigations, U.S. House Committee on Natural Resources, to the Honorable Arthur A. Elkins, Jr., Inspector General, U.S. Environmental Protection Agency (Dec. 18, 2015), http://naturalresources.house.gov/uploadedfiles/letter_to_epa_oig_12_18_15.pdf.

⁹² Letter from the Honorable Arthur A. Elkins, Jr., Inspector General, U.S. Environmental Protection Agency, to the Honorable Rob Bishop, Chairman, U.S. House Committee on Natural Resources, and the Honorable Louie Gohmert, Chairman, Subcommittee on Oversight & Investigations, U.S. House Committee on Natural Resources (Jan. 20, 2016) (emphasis added).

⁹³ *Id.*

⁹⁴ Letter from the Honorable Rob Bishop, Chairman, U.S. House Committee on Natural Resources, to the Honorable Gene Dodaro, Comptroller General, U.S. Government Accountability Office (Dec. 9, 2015), http://naturalresources.house.gov/uploadedfiles/12_9_15_animas_letter.pdf.

⁹⁵ Telephone call with Bruce Stover, Director, Inactive Mine Reclamation Program, Colorado Division of Reclamation, Mining & Safety (Oct. 22, 2015).

⁹⁶ Telephone call with Dr. Richard Olsen, Senior Geotechnical Engineer, U.S. Army Corps of Engineers (Nov. 10, 2015).



several employees of Weston Solutions, the EPA contractor that was responsible for documenting work at the Gold King Mine, among other things.⁹⁷ In January 2016, Committee staff spoke with the contractors who performed work at the Gold King Mine for DRMS in 2009.⁹⁸

Committee staff also spoke with the owner of the Gold King Mine, Todd Hennis, who provided documents and photographs containing valuable information about the conditions of the adit.

In addition, Committee staff spoke with various officials from areas affected by the disaster, including representatives from the Navajo Nation, the Southern Ute Indian Tribe, and the State of New Mexico. Committee staff also consulted with geologists and others with relevant expertise.

While the Committee's findings to date are documented in this report, many questions remain – some of which may only be answered through litigation or a criminal investigation. What is clear is that despite Administrator McCarthy and Secretary Jewell's assurances, EPA and DOI have yet to provide an honest, accurate, and thorough review of the Gold King Mine disaster.

⁹⁷ Telephone call with Elliott Petri, et al., Weston Solutions (Nov. 13, 2015).

⁹⁸ Telephone call with Roger Prock, K and P Property Design (Jan. 29, 2016).



OVERSIGHT FINDINGS

The Gold King Mine began discharging contaminated water following the installation of a bulkhead in the nearby American Tunnel in the 1990s.⁹⁹ Drainage from the mine saturated the waste dump in front of the adit and flowed into Cement Creek, contributing to poor water quality in the area and prompting efforts to mitigate the effects of the drainage.

DRMS Performs Initial Reclamation Work



The portal structure, prior to DRMS's work. Source: DRMS.

In 2008 and 2009, DRMS utilized forfeited reclamation bonds to fund mitigation and closure work at the Gold King Mine.¹⁰⁰ In 2008, DRMS constructed a portal discharge diversion structure.¹⁰¹ The structure was intended to facilitate drainage from the adit and to prevent the flow from further destabilizing the saturated waste rock dump, which had experienced a slope failure the year before.¹⁰² The “diversion structure” that DRMS installed was essentially a half pipe set into a graded ditch that conveyed drainage away from the portal and the waste rock dump.

In September 2009, DRMS returned to the site and backfilled the adit.¹⁰³ To allow for continued drainage from the adit and to prevent pressure from building up dangerously inside the mine, DRMS's plans called for the installation of “a 24 inch (24”) diameter 30 foot (30’) long PVC pipe

⁹⁹ 2009 DRMS PROJECT SUMMARY, *supra* note 1, at 1.

¹⁰⁰ In 2005, the Colorado Mined Land Reclamation Board ordered the forfeiture of the reclamation bonds for Gold King Mine after Stephen Fearn, the owner/operator at the time, failed to maintain financial warranties in good standing for the life of the mining permit and failed to pay outstanding civil penalties associated with the lapsed bonds. The Gold King Mine was later acquired by the current owner, Todd Hennis.

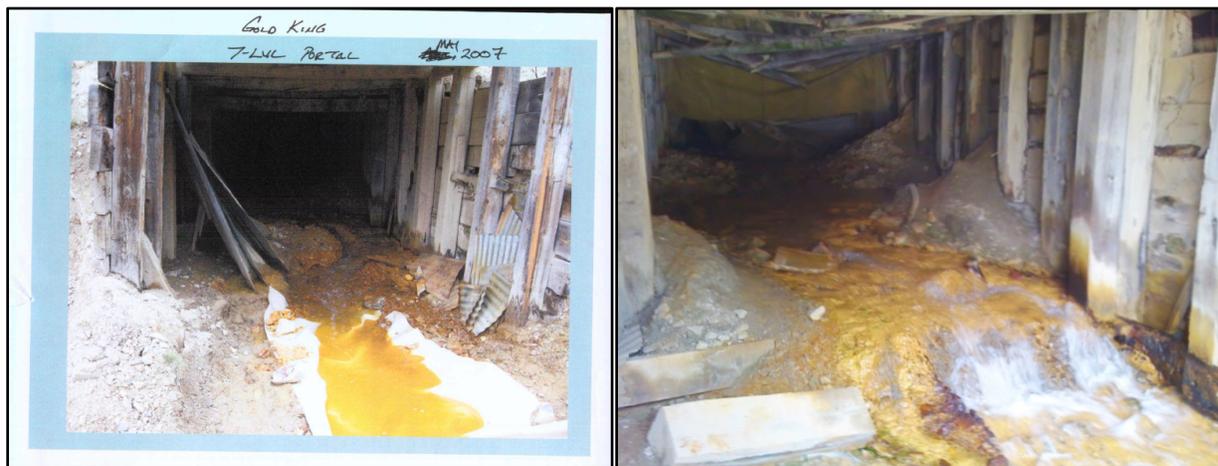
¹⁰¹ COLO. DIV. OF RECLAMATION, MINING & SAFETY, PROJECT SUMMARY: GOLD KING BOND FORFEITURE M-1986-013, PHASE I – ASE PERMANENT PORTAL DISCHARGE DIVERSION STRUCTURE (2008), <http://www.epa.gov/sites/production/files/2015-10/documents/1622631.pdf>.

¹⁰² *Id.*

¹⁰³ 2009 DRMS PROJECT SUMMARY, *supra* note 1, at 3.



on the floor of the mine to provide drainage.”¹⁰⁴ The plans reiterated that the pipe should be “set at a slight slope to the outside, ensuring drainage.”¹⁰⁵



Photographs showing the adit in 2007 (left) and 2009 (right). Source: DRMS (left), Todd Hennis (right).

When work began in September 2009, DRMS observed an existing collapse approximately 30 feet inside the adit.¹⁰⁶ In order to preserve the ability to observe the collapse following closure of the portal, the DRMS plans called for the installation of a “30 inch (30”) diameter 20 foot long (20’) PVC pipe at least 12 inches (12”) above the top of the drainage pipe.”¹⁰⁷

The drainage pipe that DRMS installed near the floor of the adit appears to be a blue PVC pipe.¹⁰⁸ The observation pipe installed above the drainage pipe was corrugated and has often been referred to as the “black HDPE” (high density polyethylene) pipe. As DRMS was installing and “filling around the pipes, the timbers in the portal collapsed and loose colluvial material completely covered the observation and drainage pipes.”¹⁰⁹

DRMS worried that the additional collapse could impound water in the mine and result in pressurization, increasing the possibility of a blowout.¹¹⁰ “In an attempt to alleviate concerns about an unstable increase in mine pool head

¹⁰⁴ DRMS FILES, *supra* note 14, at 100.

¹⁰⁵ *Id.*

¹⁰⁶ 2009 DRMS PROJECT SUMMARY, *supra* note 1, at 3.

¹⁰⁷ DRMS FILES, *supra* note 14, at 100.

¹⁰⁸ Some sources refer to the drainage pipe as the “turquoise” or “aquamarine” pipe.

¹⁰⁹ 2009 DRMS PROJECT SUMMARY, *supra* note 1, at 3.

¹¹⁰ *Id.*

within the Gold King workings,” DRMS decided to drive a well point through the installed drainage pipe and the collapsed material inside the adit.¹¹¹

The “well point” DRMS inserted through the drainage pipe was a 6-inch diameter perforated steel pipe called a stinger.¹¹² According to contemporaneous DRMS records, the stinger was 44 feet long and extended roughly 14 feet past the end of the 30 foot drainage pipe.¹¹³ Another DRMS report differed indicating that the stinger penetrated at least some of the 12 feet of collapsed material.¹¹⁴ Although the 2009 DRMS project summary report notes that the stinger “was unable to penetrate through any of the original collapse in the tunnel,” DRMS stated that the adit continued to drain at approximately 200 gallons per minute, a rate similar to the drainage rate prior to the backfilling and installation of the stinger and the two pipes.¹¹⁵



DRMS drives the stinger through the drainage pipe in 2009.
Source: DRMS.



In addition to backfilling the adit, in 2009 DRMS also constructed a concrete channel and installed a flume on the surface of the waste dump.¹¹⁶ (See App. 16) The flume and channel were located in front of the adit and connected to the drainage ditch DRMS had installed in 2008.¹¹⁷

¹¹¹ *Id.*

¹¹² *Id.*

¹¹³ DRMS FILES, *supra* note 14, at 143, 168.

¹¹⁴ 2009 DRMS PROJECT SUMMARY, *supra* note 1, at 3.

¹¹⁵ *Id.*

¹¹⁶ *Id.* at 4.

EPA Begins to Reopen the Gold King Mine in 2014

EPA began work to reopen and investigate the Gold King Mine adit in September 2014 under the direction of EPA On-Scene Coordinator Steven Way.¹¹⁸ However, after only one day of work, EPA postponed the project until the following year.¹¹⁹ In his report documenting EPA's activities, Mr. Way stated that shortly after excavation began, "the work on [the] blockage was stopped when it was determined the elevation of the adit floor was estimated to be 6 feet below the waste-dump surface elevation."¹²⁰ The report did not specifically explain how that determination was made.

The report also concluded that the two pipes DRMS had installed in 2009 were positioned immediately below the roof of the adit.¹²¹ Mr. Way described the crew's observations as follows:

The condition that was exposed revealed that two 24 inch pipe were in the tunnel blockage adjacent to the top (roof) of the adit. Timbers were observed on the sides and a cap timber was also observed by the contractor. The presence of the 2 - 24 inch pipe indicated the current flow of water was coming out only four feet below the roof, and then there was approximately 6 feet of impounded water below the level of the dump surface.¹²²

The EPA crew grossly misinterpreted these observations. Since EPA began its work with the understanding that the adit was, at most, 10 feet tall, the crew observed that the observation pipe, stacked above the drainage pipe, was at roughly the same height as the tops of the portal timbers and believed it was therefore flush with the roof of the adit. Because the combined diameter of the observation and drainage pipes was approximately 4 feet, EPA

¹¹⁷ *Id.*

¹¹⁸ Years of assessment, monitoring, and planning led up to EPA's work in 2014. EPA has had access to the Gold King Mine since at least 2008. In April 2013, EPA awarded a contract for Emergency and Rapid Response Services ("ERRS"), essentially a contract for project support at the Gold King Mine and other EPA sites in Region 8, to Environmental Restoration. The Task Order Statement of Work for Gold King Mine, which prescribed the general work plan, was dated June 2014.

¹¹⁹ 2014 WAY REPORT, *supra* note 3, at 4.

¹²⁰ *Id.*

¹²¹ *Id.*

¹²² *Id.*



realized that, if the side timbers were still intact, 6 feet of the portal's 10 foot high side timbers were missing.

EPA did not conclude that the drainage pipe nearly level with the waste rock dump was close to the floor of the adit and that the missing portions of the portal structure's timbers had probably been removed when DRMS demolished the portal structure in 2009, although these were reasonable conclusions and comported with available DRMS records of the work previously performed at the mine. Instead, EPA came to the baseless conclusion that the missing six feet of timbers were buried below the elevation of the waste rock dump, the upper observation pipe was flush with the missing roof, and the drainage pipe was six feet above the adit floor. EPA further assumed that the water pooling on the waste dump surface, close to the level of the drainage pipe, indicated that about six feet of water was impounded in the adit.¹²³

These conclusions, that appear to be based only on the crew's observation of some timbers and one contractor's claim that he saw a cap timber, make no sense. The assumption that DRMS originally installed the pipes six feet above the adit floor is discountable because DRMS intended for the pipes to facilitate drainage from the mine. If the pipes were near the roof of the adit, their very purpose would have been defeated, at least until the adit was more than half full of water. The other option, that the surface of the waste dump was raised some six feet after DRMS's closure of the adit in 2009, could be ruled out as well. The concrete channel that DRMS installed in 2009 to direct mine water flowing from the drainage pipe was embedded in the surface of the waste dump, almost immediately in front of the adit. It was still visible when EPA was at the site in 2014. It was not buried by six feet of earth as EPA's erroneous assumption would have required. (See Apps. 19, 21)

Photographs and emails show that EPA also removed part of the stinger that DRMS had installed in 2009 due to concerns about an unstable increase in pressure inside the mine.¹²⁴ Curiously, this fact is not mentioned in Mr. Way's September 2014 report, the EPA *Internal Review*, the DOI *Technical Evaluation*, or the EPA *Addendum*.

¹²³ *Id.*

¹²⁴ Email from [redacted], to [redacted] (Oct. 16, 2014, 03:01 p.m.) ("I had [redacted] pull the stinger out of the muck pile and, as you can see, it is trashed.")





Part of the stinger, following removal in 2014. Source: Environmental Restoration.

Before leaving the site in 2014, EPA concluded its work by backfilling the area it had excavated and installing two adjacent 12 inch drainage pipes in front of the adit to catch any seepage.

EPA Triggers the Blowout in 2015

After nearly a full year of additional planning, EPA began preliminary work at the Gold King Mine in the summer of 2015. In June and July, the EPA crew collected water samples and measured the flow from the adit, conducted safety training at the site, graded the surface of the waste dump, and began to install and connect a water management and treatment system.¹²⁵ During these months of site preparation and safety training, EPA did not test the hydrostatic pressure in the mine before excavating the adit in August.

After Mr. Way left for vacation, the EPA crew was under the interim direction of another EPA On-Scene Coordinator, Hays Griswold. At Mr. Griswold's direction, the EPA crew began excavation of the adit on August 4, 2015.¹²⁶ Photographs show that by the end of the day, the crew had excavated

¹²⁵ Draft Technical Memorandum from [Weston Solutions], to EPA On-Scene Coordinator (Aug. 12, 2015), http://www.epa.gov/sites/production/files/2015-08/documents/draft_technical_memo_august_12_2015_08-1574032.pdf.

¹²⁶ *Id.* ("On August 4, 2015 [Mr. Griswold] arrived on site at 08:45 and [redacted] from Colorado Division of Mining Reclamation and Safety (DRMS) arrived at the Gold King Mine at 09:45. [Redacted] discussed how to proceed with the



all but a small segment of the drainage pipe that DRMS had installed in 2009. (See App. 5) In fact, the EPA crew had excavated all the way to the plug, which Mr. Griswold has acknowledged.¹²⁷ After exposing the plug, the crew paused overnight to consider the situation.¹²⁸



The plug on the afternoon of August 4 (left) and the morning of August 5 (right). Source: EPA (left) and Environmental Restoration (right).

Photographs of the excavated adit show what appears to be wooden debris from the portal structure embedded in the plug. The top of the plug is clearly visible above the level of the drainage and observation pipes. When the crew discovered that the plug was above where EPA's 2014 conclusions indicated it would be, it should have been a clear warning to the EPA crew that their assumptions were incorrect. It also removed the crew's basis for assuming the adit was not pressurized, since that assumption rested primarily on the EPA's (now disproved) beliefs about the location of the adit floor.

The EPA crew returned to the site the next day, August 5, 2015, and continued to excavate. Photographs documenting EPA's progress show that EPA excavated and removed the last remnants of the DRMS pipes that morning - which are notably below the plug. (See Apps. 5-6) At this point, the EPA crew knew they were removing material at least several feet below the roof of the adit.

site. Per their instruction, [Environmental Restoration] began excavating the collapse area while minimizing water discharge at 10:30.”)

¹²⁷ U.S. Environmental Protection Agency, *GKM 5*, YouTube (Sep. 11, 2015), <https://www.youtube.com/watch?v=h1dZX40fiDA&feature=youtu.be>.

¹²⁸ Telephone call with Elliott Petri, *supra* note 97.



Shards of the removed drainage pipe (lower left) in front of the excavated adit. Source: Environmental Restoration.

On the morning of the spill, the crew backfilled the excavated area in front of the plug and constructed a large earthen berm. (See Apps. 6-9, 12) EPA asserts that the mound was a ramp that was being used so that the trackhoe could access and remove loose material from the rock face above the portal.¹²⁹ However, this assertion is inconsistent with a sequence of photographs taken between 9:46 and 10:51 a.m. on August 5, 2015, that reveal little, if any, disturbance or excavation of the rock face above the adit. Moreover, there are no tracks or other signs on top of the mound to indicate that EPA was actually using it as a ramp for heavy machinery at that time. Instead, by that point, the mound was functioning as a berm that might contain or control water released from the mine.

Photographs also show that the EPA crew dug a channel on the right side of the berm and positioned planks so that water flowing from the adit and over the backfill could be directed to the drainage structure that DRMS had

¹²⁹ U.S. Environmental Protection Agency, *GKM 5*, YouTube (Sept. 11, 2015), <https://www.youtube.com/watch?v=h1dZX4OfiDA&feature=youtu.be>.

previously installed. DOI subsequently confirmed but did not explain why EPA constructed this channel.¹³⁰ (See Apps. 8-9)

On the morning of August 5, 2015, the EPA crew backfilled to the top of the adit, with what appears to be one mine timber visible, almost like a marker. With the berm and channel constructed and the adit clear of all machinery and crew, EPA was ready to breach the plug. (See Apps. 7-8, 12) At 10:51 a.m., from a vantage point significantly away from the excavated adit, a member of the EPA crew snapped a photograph that perfectly captured the initial spurt of water from the adit. Low on the rock face, just above the spurt, is a new white mark similar to a mark the tooth of an excavator bucket would have left.

By 10:54 a.m., the slight spurt of water had transformed into a small orange puddle flowing away from the adit. (See App. 8) Within minutes, the wave of water grew, overwhelmed the berm, and began to rush over the waste dump, carrying much of the waste rock with it. The torrent of contaminated water then rushed into Cement Creek and eventually the Animas and San Juan Rivers.

Meanwhile, two members of the EPA crew stopped to record their reaction to the blowout. One crew member used his cell phone to capture video of the water pouring from the mine, while also documenting his conversation with a second crew member. In the video, the two express their surprise at the blowout, given that they had been digging “so high,” “20 feet up.”¹³¹ A few moments later, the same individuals recorded a nearly identical video, again capturing their surprise since they had been “digging high,” “digging really high.”¹³² (See App. 2)

EPA and DOI Reports Conceal EPA’s Mistakes

Shortly after the spill, EPA charged five employees from its National Mining Team with the task of conducting a rapid internal review of the

¹³⁰ *Oversight Hearing, supra* note 54 (statement of David Palumbo, Deputy Commissioner for Operations, Bureau of Reclamation, U.S. Department of the Interior).

¹³¹ U.S. Environmental Protection Agency, *GKM 7*, YouTube (Sept. 11, 2015), <https://www.youtube.com/watch?v=NDeGMIVGVFw&feature=youtu.be>; U.S. Environmental Protection Agency, *GKM 8*, YouTube (Sept. 9, 2015), <https://www.youtube.com/watch?v=Xvrs5f-DVW0&feature=youtu.be>.

¹³² *Id.*



disaster.¹³³ EPA released its *Internal Review* on August 26, 2015, three weeks after the disaster.¹³⁴

On August 18, 2015, nearly two weeks after the spill, and well after response efforts were already underway, EPA announced that it had reached an agreement with DOI for the Bureau of Reclamation to lead an independent review of the incident.¹³⁵ DOI issued its resulting *Technical Evaluation* on October 22, 2015.¹³⁶

On the evening of December 8, 2015 – the night before the Natural Resources Committee held an oversight hearing on DOI’s *Technical Evaluation* – EPA released an *Addendum* to its *Internal Review*.¹³⁷ The *Addendum* included information obtained from a December 2, 2015, interview that several EPA officials conducted with Mr. Way and Mr. Griswold.¹³⁸ EPA’s *Addendum* was purportedly intended to “provide[] clarity” on issues in the *Technical Evaluation*.¹³⁹

The Committee’s oversight of the Gold King Mine disaster has revealed that each of the three reports issued by EPA and DOI in 2015 contains numerous errors and omissions and demonstrably false information.

¹³³ EPA INTERNAL REVIEW, *supra* note 25, at 4. Four of the internal review team members were from EPA regional offices (aside from Region 8, where the spill occurred), and one was an environmental engineer from EPA headquarters.

¹³⁴ *Id.*

¹³⁵ Press Release, U.S. Environmental Protection Agency, EPA Announces U.S. Department of the Interior to Lead Independent Review of Gold King Mine Release (Aug. 18, 2015), <http://www.epa.gov/goldkingmine/epa-announces-us-department-interior-lead-independent-review-gold-king-mine-release>.

¹³⁶ DOI TECHNICAL EVALUATION, *supra* note 26, at 1.

¹³⁷ EPA ADDENDUM, *supra* note 21, at 1.

¹³⁸ *Id.*

¹³⁹ *Id.*



EPA *Internal Review*

EPA's *Internal Review* offers the Administration's earliest written account of the disaster and is problematic for many reasons. First and foremost, it is troubling that the *Internal Review* unquestioningly regurgitates EPA's erroneous 2014 conclusions about the elevation of the adit floor and the location of the pipes without offering any substantive analysis or evidence supporting those conclusions.¹⁴⁰ Not only did EPA fail to verify its unfounded conclusions when they were made in September 2014, EPA failed again in August 2015 when it reviewed the crew's conclusions and still did not check to see if they were consistent with existing Gold King Mine records.

Second, the *Internal Review* fails to discuss EPA's decision not to test the pressure within the mine prior to its excavation of the adit, while at the same time noting that "the underestimation of the water pressure in the Gold King Mine workings is believed to be the most significant factor relating to the blowout."¹⁴¹ The *Internal Review* also acknowledges that although "[m]ine 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," EPA apparently decided not to pursue this precautionary course of action.¹⁴² Thus, the *Internal Review* implies that EPA deliberated, but chose not to test the pressure in the mine, without offering any supporting documentation to support the decision or shed light on EPA's decision making process.

Instead, the EPA *Internal Review* offers a list of rationales for EPA's disastrous assumption that the mine was not pressurized and that pressure testing was therefore unnecessary.¹⁴³ Nothing is too inconsequential to be included in the list, including the fact that EPA had "given a presentation" to the Animas River Stakeholders Group.¹⁴⁴

¹⁴⁰ EPA INTERNAL REVIEW, *supra* note 25, at 4.

¹⁴¹ *Id.* at 7.

¹⁴² *Id.*

¹⁴³ *Id.* at 6-7.

¹⁴⁴ *Id.* at 6. The *Internal Review* does not reveal the ARSC's reaction to said presentation.



Another of the *Internal Review's* rationales for not testing the pressure is that “[t]he ‘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.”¹⁴⁵ A third item states: “The mine was draining, which indicated that since water was able to escape, buildup of pressure was less likely.”¹⁴⁶ Although the *Internal Review* claims that the list explains EPA’s “determination of *no or low mine water pressurization*,”¹⁴⁷ it omits the crew’s other observations which indicated that the mine could, in fact, be pressurized. For example, elsewhere the *Internal Review* acknowledges that the declining flows that the EPA crew documented were a clue that there could be a blockage causing impoundment of water.¹⁴⁸

Third, the EPA’s *Internal Review* includes a document identified as Attachment D – a photograph of a “conceptual drawing” described as EPA’s “Working Assumptions.”¹⁴⁹ Although the drawing is undated, the *Internal Review* explains that it was provided by an EPA contractor “upon review of the work plan,”¹⁵⁰ implying that the drawing was actually used by the crew to guide their actions. In fact, the contractor who provided the drawing stated that he drew it on August 11, 2015, at Mr. Way’s request and using measurements Mr. Way provided.¹⁵¹ It is unclear why EPA would attach an ex post facto drawing to its *Internal Review* in such a misleading fashion.

Attachment D depicts several different views of the adit – from the front, top, and side perspectives. (See App. 4) Although the photograph of the drawing shows an engineer’s scale (triangular ruler) on the left side of the graph paper, the drawing includes the notation “N.T.S.” for “not to scale.”

¹⁴⁵ *Id.*

¹⁴⁶ *Id.*

¹⁴⁷ *Id.* (emphasis added).

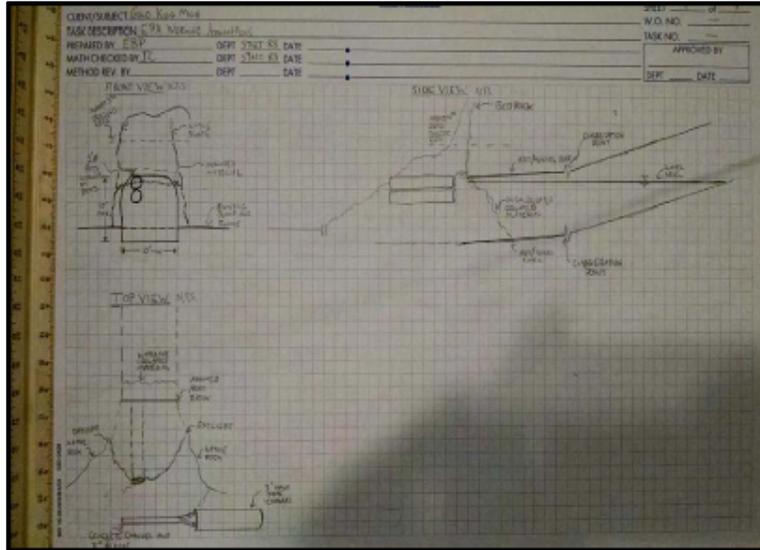
¹⁴⁸ *Id.* at 7 (“An additional potential clue of potential pressurization was the decrease in flows from the Gold King Adits over the years”).

¹⁴⁹ *Id.* at 2, 4, 6, 8; U.S. ENVIRONMENTAL PROTECTION AGENCY, EPA INTERNAL REVIEW OF THE AUGUST 5, 2015 GOLD KING MINE BLOWOUT, ATTACHMENTS A-C: LIST OF DOCUMENTS REVIEWED BY THE TEAM 4-5 (2015), http://www.epa.gov/sites/production/files/2015-09/documents/epa_mnt_gold_king_internal_review_attachments_a-g.pdf [hereinafter ATTACHMENT D].

¹⁵⁰ EPA INTERNAL REVIEW, *supra* note 25, at 8.

¹⁵¹ Telephone call with Elliott Petri, *supra* note 95.





The contractor's August 11, 2015, drawing of EPA's "working assumptions" about the Gold King Mine, included in the *Internal Review* as Attachment D. Source: EPA.

Despite EPA's conclusion that the adit floor was six feet below the surface of the waste dump, and EPA's reassertion of this conclusion in its *Internal Review*, the drawing that EPA attached to illustrate the crew's working assumptions is curiously ambiguous regarding the elevation of the adit floor. The line depicting the adit floor fades away well before the point at which it would connect to the waste dump surface.

Another ambiguity in Attachment D is its depiction of a very short distance between the ends of the DRMS pipes and the adit opening, a distance entirely different than what DOI would later depict in its report.¹⁵² Attachment D may be more accurate in this regard than the "not to scale" figures DOI generated for its subsequent *Technical Evaluation*, but the drawings clearly conflict.¹⁵³ When asked about his depiction of the distance between the pipes and the adit opening, the contractor stated only that the noted measurements were provided by Mr. Way and that the drawing was not to scale.¹⁵⁴

Why does the ex post facto "Working Assumptions" drawing not accurately reflect the conclusions EPA had made about the site in 2014 (and was apparently operating under in 2015), particularly when those conclusions

¹⁵² Compare ATTACHMENT D, *supra* note 148, at 5, with DOI TECHNICAL EVALUATION, *supra* note 26, at 43.

¹⁵³ *Id.*

¹⁵⁴ The figure annotates the obstruction in the adit either incorrectly as "unconsolidated collapsed material" or implies that the EPA crew assumed the actual plug was further recessed in the adit as unconsolidated material would be unlikely to hold back water. DOI's report would later incorporate and reference Attachment D, but DOI's own figures would indicate a much greater distance between the pipes and the adit's opening.



were included in the *Internal Review's* narrative and were foundational to EPA's assumption that only about six feet of water was impounded in the mine? One possibility is that Attachment D represents a deliberate shift away from the nonsensical conclusions documented in EPA's September 2014 report.

As a matter of fact, Attachment D's depiction of a dashed "August 5th digging line" appears to be an attempt to buttress the false claim that the EPA crew was digging well above the adit opening at the time they breached the adit plug. The drawing also includes a presumed water level in the adit well above the six foot level EPA had assumed based on the relative positions of the drainage pipe and pooling water.

Although the higher water level shown in Attachment D might have been intended to reflect an additional margin of safety on paper, it did not reflect EPA's margin of safety in practice. Rather than digging above Attachment D's higher water level, photographs of the work performed on August 4 and August 5 show that the EPA crew excavated at or below the level of the drainage pipe (See App. 5), meaning the crew was operating with a negative margin of safety and willingly took on risk. In fact, circumstances were even worse in reality, given EPA's erroneous conclusion that the drain pipe was six feet above the adit floor.

The *Internal Review* also implies that the EPA crew did not take steps to estimate the amount of water that could be in the mine, forgivingly noting that the review team was unable "to identify any calculations made on the possible volume of water that could be held behind the portal plug."¹⁵⁵ Since EPA abandoned the project in 2014 in part because the crew determined the six feet of water EPA thought was impounded within the adit was too much for the water management system to handle, EPA's failure to conduct more rigorous calculations before returning to the mine in 2015 is inexplicable.

In sum, the *Internal Review* blindly accepts EPA's implausible 2014 assumptions, fails to discuss EPA's critical decision not to test the pressure in the mine, uses an ex post facto drawing that inaccurately portrays EPA's assumptions and, either unwittingly or knowingly, repeats false claims that the EPA crew was digging high when the plug somehow eroded on its own. (See Apps. 1-3) Nevertheless, the *Internal Review* concludes that the EPA crew

¹⁵⁵ EPA INTERNAL REVIEW, *supra* note 25, at 8.



“followed standard procedures of a well thought out work plan” and that “the Adit blowout was likely inevitable.”¹⁵⁶ Cast in the most favorable light, the EPA *Internal Review* sets forth the best possible explanation from EPA’s perspective, but it is not the truth.

¹⁵⁶ *Id.* at 9.



DOI *Technical Evaluation*

The executive branch's next account of the disaster, the DOI *Technical Evaluation*, has similar trouble with the facts. Furthermore, it is not the independent report Administrator McCarthy testified it would be.

DOI was Incapable of Conducting an Objective Review

The Department of the Interior never should have been selected to conduct an independent review of the disaster, because nearly every branch of DOI was either involved in the Gold King Mine project or affected by the blowout, or both. In September 2014, when EPA made its erroneous assumptions about the elevation of the adit floor and the location of the DRMS pipes, the Bureau of Land Management ("BLM") was present and even "participated in performing work at the [Gold King Mine] site."¹⁵⁷ BLM was so involved with EPA's work at the Gold King Mine that a BLM official – rather than an EPA official – updated the Animas River Stakeholders Group on the project.¹⁵⁸ In addition, the Bureau of Reclamation ("BOR") received thousands of dollars from EPA to advise EPA on the Red and Bonita Mine project, a nearby project that was closely related to the Gold King Mine project.¹⁵⁹

Following the blowout, BOR released water from the Navajo Dam in an effort to dilute the contaminated plume and mitigate its effects on threatened and endangered species in the affected rivers.¹⁶⁰ These species are protected by the Endangered Species Act, which the U.S. Fish and Wildlife Service is charged with administering. The U.S. Geological Survey worked closely with EPA after the blowout to determine the volume of contaminated water released from the mine. The Bureau of Indian Affairs and the National Park

¹⁵⁷ 2014 WAY REPORT, *supra* note 3, at 5.

¹⁵⁸ ANIMAS RIVER STAKEHOLDERS GROUP, ARSG MEETING SUMMARY 2 (July 22, 2014), <http://www.animasriverstakeholdersgroup.org/attachments/File/July%2022%202014%20meeting%20summary.pdf> ("Update on Activities Regarding Red & Bonita and Gold King. – Brent Lewis with BLM reported on EPA activities regarding these sites. EPA plans to packer test at proposed bulkhead locations in the Red and Bonita early this fall to help determine hydraulic conductivity of surrounding rock for engineering purposes. EPA is also planning to open up the Gold King #7 level to explore the underground workings this fall.")

¹⁵⁹ DOI TECHNICAL EVALUATION, *supra* note 26, at 44 ("On or about July 23, 2015, the EPA OSC (On Scene Coordinator), who was the project leader, made a brief telephone call (about 2 minutes) to Mr. Gobla at BOR to ask if funding of \$4,000 had finally been transferred to BOR for the Red and Bonita Mine.")

¹⁶⁰ Bureau of Reclamation Press Release, *supra* note 36.



Service also had trust resources and responsibilities that were affected by the blowout.

DOI exacerbated its institutional level conflicts by selecting an individual with his own conflicts to lead the review. Michael Gobla, the BOR engineer tasked with leading the *Technical Evaluation* team, had been working with EPA on the Gold King Mine project and the related Red and Bonita Mine project prior to the blowout. Additionally, Mr. Gobla arrived at the site to assist EPA with its response on August 14, 2015 – days before EPA and DOI agreed for BOR to conduct the independent review. Mr. Gobla’s trip to the Gold King Mine was planned even before the blowout, as he was consulting with EPA on this and related mines.¹⁶¹

Strangely, portions of the “independent” *Technical Evaluation* are dedicated to describing its own lead author’s actions and his conversations with the EPA project leader for the Gold King Mine.¹⁶² While Mr. Gobla’s engineering qualifications are not in dispute, his involvement in EPA’s Gold King Mine project prior to the disaster and his on-site role assisting EPA with its response to the disaster (before later being selected to lead the independent review) unquestionably should have disqualified him from participating in DOI’s *Technical Evaluation*.¹⁶³

Even the peer review of the DOI *Technical Evaluation* lacked independence. Out of the three peer reviewers identified in the report, only one was not a DOI employee.¹⁶⁴ The Department of the Interior employed the other two: a USGS engineer and a BOR engineer who happened to be a subordinate of the *Technical Evaluation* coordinators within the BOR’s Technical Service Center.¹⁶⁵ Seemingly cognizant of this appearance issue, DOI listed the institutional affiliations of the USACE and USGS peer reviewers in the report’s title pages but omitted the BOR peer reviewer’s affiliation until a list of

¹⁶¹ See, e.g., DOI TECHNICAL EVALUATION, *supra* note 26, at 44.

¹⁶² *Id.*

¹⁶³ See U.S. Environmental Protection Agency, Service Agreement for Services of Mike Gobla (May 11, 2015) (On file with U.S. Department of the Interior); U.S. Environmental Protection Agency, Service Agreement for Services of Mike Gobla (Aug. 20, 2015) (On file with U.S. Department of the Interior); and U.S. Environmental Protection Agency, Service Agreement for Services of Mike Gobla (Aug. 24, 2015) (On file with U.S. Department of the Interior).

¹⁶⁴ DOI TECHNICAL EVALUATION, *supra* note 26, at 7.

¹⁶⁵ *Id.*



the individual peer reviewers and their qualifications appeared later in the body of the report.¹⁶⁶

Substantive Shortcomings of DOI's Technical Evaluation

The *Technical Evaluation's* narrative differs from EPA's preceding *Internal Review*, but is similarly inaccurate. Rather than offering an independent assessment of EPA's actions and following up on unanswered questions from the *Internal Review*, the *Technical Evaluation* omits discussion of critical issues and facts, uses cartoonish illustrations to conceal EPA's errors, and is filled with errors of its own.

Like EPA's preceding *Internal Review*, the *Technical Evaluation* does not substantively discuss EPA's failure to test the water pressure within the adit prior to excavation. Although the *Internal Review* had identified the failure to test the pressure in the mine as a critical decision that might have prevented the disaster, the *Technical Evaluation* does not bother to follow up on this issue. DOI merely notes:

A critical difference between the Gold King plan and that used at the Red and Bonita Mine in 2011 was the use of a drill rig to bore into the mine from above to directly determine the level of the mine pool prior to excavating backfill at the portal. Although this was apparently considered at Gold King, it was not done. Had it been done, the plan to open the mine would have been revised, and the blowout would not have occurred.¹⁶⁷

DOI provides nothing more to explain how or why EPA failed to test for hydrostatic pressure. This oversight is particularly curious since EPA only tested the pressure at the Red and Bonita Mine after consulting with the Bureau of Reclamation.¹⁶⁸ If BOR had previously advised EPA to test the pressure at a similar mine, why did BOR not address this same issue when reviewing EPA's actions at the Gold King Mine?

¹⁶⁶ Compare DOI TECHNICAL EVALUATION, *supra* note 26, at 3 (PDF), with DOI TECHNICAL EVALUATION, *supra* note 26, at 7.

¹⁶⁷ DOI TECHNICAL EVALUATION, *supra* note 26, at 2.

¹⁶⁸ *Id.* at 24 (after consulting with the Bureau of Reclamation, EPA changed its approach and decided to drill into the mine from above to test the pressure prior to proceeding).



Central to the *Technical Evaluation's* account of the disaster is a misleading rewrite of EPA's 2014 assumptions about the conditions at the Gold King Mine. EPA's 2014 report stated:

After only two hours of excavation by the sub-contractor the work on blockage was stopped when it was determined the elevation of the adit floor was estimated to be 6 feet below the waste-dump surface elevation. . . . It was determined that adit drainage would need to be managed in a larger settling pond(s) requiring additional treatment.¹⁶⁹

DOI's *Technical Evaluation* rewrites Mr. Way's original account of EPA's conclusions, while seeming to attribute its claims to him:

The work stopped when EPA, DRMS, and others observed that in addition to the seepage from the base of the fill, additional seepage was now flowing from higher up on the face of the backfill. Because the excavation had a lip, the seepage ponded at a level equivalent in elevation to about 4 feet below the top of the adit. It was reportedly concluded by those onsite that there was 6 feet of water impounded in the mine (Way, 2014b).¹⁷⁰

For its own explanation of why EPA stopped work, the *Technical Evaluation* relies either on the very same 2014 EPA report or nothing at all, since DOI provided no other source for its claim. This is not accidental. EPA's 2014 report is a primary source of information for the *Technical Evaluation*.¹⁷¹ It is neither long nor complicated and it is implausible that the authors of the *Technical Evaluation* inadvertently rewrote it. Further, another document with which the *Technical Evaluation* authors were familiar, EPA's *Internal Review*, restated the same inaccurate information.¹⁷² DOI unquestionably knew of EPA's erroneous 2014 conclusions and chose not to repeat them.

In fact, the *Technical Evaluation's* assertions about the "seep" are exactly opposite of the *Internal Review's* statements about the "seep." Where the

¹⁶⁹ 2014 WAY REPORT, *supra* note 3, at 4.

¹⁷⁰ DOI TECHNICAL EVALUATION, *supra* note 26, at 36. It should be noted that DOI's claim that the crew observed seepage higher up directly conflicts with the *Internal Review*, which specifically noted that the team did not observe any seepage from above the adit. EPA INTERNAL REVIEW, *supra* note 25, at 6 ("The hill above the Adit was inspected for seeps. . . . It was reported that there were no seeps. . . . The 'seep' level coming from the Adit during excavation seemed to be at the mid-level of the material blocking the adit.").

¹⁷¹ *Id.* at 89 (listing Mr. Way's 2014 report as a reference).

¹⁷² EPA INTERNAL REVIEW, *supra* note 25, at 4.



Internal Review stated that “[t]he ‘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.”¹⁷³ DOI claimed that the seep was “flowing from higher up on the face of the backfill.”¹⁷⁴ Given EPA’s errant conclusion that the drainage pipe was ‘mid-level’ in the adit, the seep it refers to is the pooling water. This is unquestionable, as after making the statement the *Internal Review* provides the parenthetical reference: “See Attachment D, bottom of two metal pipes.”¹⁷⁵ (See App. 22)

The 2014 EPA report and the DOI *Technical Evaluation* completely diverge in their respective explanations for why EPA stopped work in 2014. The 2014 report’s explanation, that the adit floor was six feet below the surface of the waste rock dump, is egregiously mistaken. DOI avoided repeating EPA’s mistake, but DOI’s own version of why EPA stopped work in 2014 is misleading and must be deconstructed to be understood.

First, the *Technical Evaluation* indicates that EPA assumed that the water in the adit was only about six feet high, even though the *Internal Review* claimed that EPA had determined there might be low pressure in the mine.¹⁷⁶ Although wrong, the assumption that there was only about six feet of

impounded water was central to EPA’s erroneous reasoning that the adit was not pressurized and was inextricable from EPA’s conclusion about the location of the adit. Water pooling four feet below the adit roof, as the *Technical Evaluation* puts it, is the exact same thing as water pooling on the surface of the waste

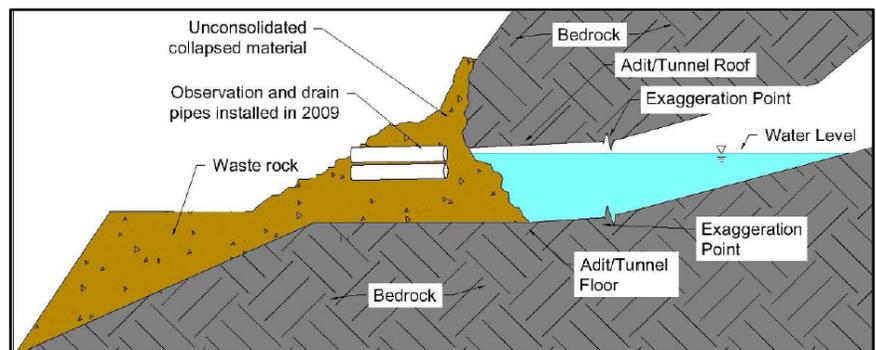


Figure 40.—Cross-section illustration showing the condition of the adit that was assumed by the EPA OSC and the abandoned mine experts from DRMS for use in planning to open the adit (not to scale). The “exaggeration point” means the right side of the drawing has an exaggerated vertical scale in order to show the 1% uphill slope of the adit. If drawn without exaggeration, the uphill slope of the adit would not be obvious on the drawing.

¹⁷³ *Id.* at 6.

¹⁷⁴ DOI TECHNICAL EVALUATION, *supra* note 26, at 36.

¹⁷⁵ EPA INTERNAL REVIEW, *supra* note 25, at 6.

¹⁷⁶ Compare DOI TECHNICAL EVALUATION, *supra* note 26, at 46 (describing the crew’s observations, which led them to believe the adit was “partially full”), with EPA INTERNAL REVIEW, *supra* note 25, at 6 (referencing EPA’s determined that there was “no or low mine water pressurization”).



dump, six feet above the adit floor, as EPA puts it.¹⁷⁷

Second, the *Technical Evaluation* jettisons EPA's indefensible idea that the adit floor was 6 feet below the level of the waste dump. The adit was exposed after the blowout, so it was even clearer to DOI that the adit floor was not 6 feet below the waste rock dump surface. Further, the very purpose of an adit is to facilitate access to and drainage of a mine; if the adit floor was 6 feet lower than the surface in front of the adit, access and drainage would be unnecessarily impeded. Instead of addressing EPA's mistake, DOI simply dropped it and depicted the adit floor gently sloping towards the waste dump surface.

Third, the *Technical Evaluation* retained EPA's erroneous conclusion that the drain pipe was elevated substantially above the adit floor. The difference between the drain pipe and the adit floor was the basis for EPA's estimate of the level of impounded water, deduced by EPA when it observed the pooling water on the waste rock dump surface just beneath the drainage pipe.¹⁷⁸ When DOI produced its *Technical Evaluation* after the blowout, the pipes had long been removed and discarded, and among the thousands of records reviewed by the Committee, not a single diagram, illustration, or photo of the pipes inserted in the portal structure – prior to backfilling – has been identified. Thus, DOI's creativity regarding the location of the pipes is less likely to be noticed.

(At this point a small digression is in order. While EPA was working under the assumption that the adit was, at most, 10 feet tall, the *Technical Evaluation* notes that a timber was measured after the blowout and determined to be eight feet tall.¹⁷⁹ Given the different height, the pipes against the adit roof would have been 4 feet above the adit floor in DOI's scenario, not 6 feet as asserted by EPA.)

Fourth, with the *Technical Evaluation's* new scenario, the adit floor is at about the same elevation as the surface of the waste rock dump and the drain pipe is four feet above the adit floor. This means that the drainage pipe's

¹⁷⁷ Compare DOI TECHNICAL EVALUATION, *supra* note 26, at 36 (“[T]he seepage ponded at a level equivalent in elevation to about 4 feet below the top of the adit.”), with 2014 WAY REPORT, *supra* note 3, at 4 (“[T]he current flow of water was coming out only four feet below the roof, and then there was approximately 6 feet of impounded water below the level of the dump surface.”).

¹⁷⁸ 2014 WAY REPORT, *supra* note 3, at 4.

¹⁷⁹ DOI TECHNICAL EVALUATION, *supra* note 26, at 67 (“The adit was thought to be 10 feet tall, but after the blowout the support timbers were measured and found to be 8 feet tall.”).



exposed end should be about 4 feet above the surface of the waste rock dump. The *Technical Evaluation* had to explain how water seeping out from the adit onto the surface would rise up about 4 feet high, to a level just beneath the exposed drainage pipe and stay there in a pool. The *Technical Evaluation's* solution was to assert that the water was confined by "a lip" – essentially a ridge of dirt that could contain water, forming something like an above ground swimming pool – four feet above the waste rock dump surface.¹⁸⁰ (See App. 20)

DOI's scenario is clearly false. Photographs of the pool that EPA observed in 2014 reveal that it was just a little lower than the surface of the waste rock dump, not four feet higher. (See App. 18) Further, the bottom of the drainage pipe is not four feet above the surface waste rock dump. Photos show that the bottom of the drainage pipe is near the elevation of the waste rock dump surface, where it should be. (See App. 18) The figures DOI produced for its *Technical Evaluation* are a bit different, however.

In the *Technical Evaluation* figures the drainage pipe does not appear to be elevated above the surface of the waste rock dump as DOI's scenario would require. This is done through illusion, by filling the report with figures that are drawn "not to scale."¹⁸¹ (See App. 18) In Figures 21, 23, 27, 30, and 34 of the *Technical Evaluation*, the diameter of the drainage and observation pipes is inflated. The distortion makes it appear that the drainage pipe is not quite so high above the waste rock dump surface, camouflaging what otherwise might reveal the *Technical Evaluation's* false scenario. The report's lack of scaled, or at least accurate, drawings is disconcerting given DOI's emphasis on the purported technical nature of its *Technical Evaluation*. (See App. 18)

Having erased EPA's nonsensical conclusion about the recessed adit floor, while retaining the nonsensical conclusion about the pipes being elevated and thereby protecting the basis for EPA's erroneous conclusion that adit was only partially filled with water, the *Technical Evaluation* presents its explanation of the work EPA was trying to accomplish at the Gold King Mine on August 4 and 5. Specifically, the *Technical Evaluation* asserts:

A key aspect of [the EPA's] plan was to only excavate fill lying above the assumed top of the water inside the adit. This method

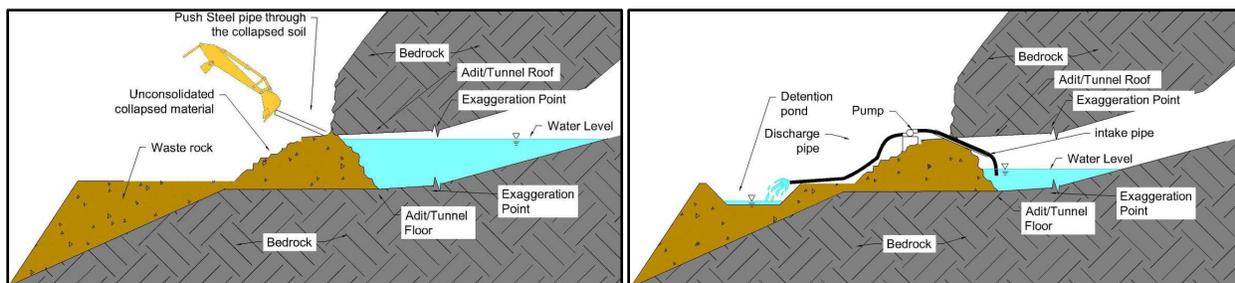
¹⁸⁰ *Id.* at 36 ("Because the excavation had a lip, the seepage ponded at a level equivalent in elevation to about 4 feet below the top of the adit.").

¹⁸¹ *Id.* at 29, 35, 37, 39, 41, 43, 48-51, 54, 58.



would leave in place the fill holding back the water (figure 41). The next step would push a steel pipe called a “stinger” through the top of the fill to gain access to the mine pool (figures 42 and 43).¹⁸²

Quite simply, the EPA crew could not have been executing the plan described in the *Technical Evaluation* because the stinger and pump needed to dewater the mine were not on-site on August 5, 2015,¹⁸³ and it is unclear why the crew would have dug into the plug (thus destabilizing it) without having the necessary equipment to proceed with the plan immediately. Out of the five steps in the plan DOI illustrates, only the first step would have even been feasible for the EPA crew on August 5, 2015. DOI’s failure to include this information in the *Technical Evaluation* demonstrates DOI’s carelessness in ascertaining the facts. (See App. 13)



Figures 42 (left) and 44 (right) in DOI’s *Technical Evaluation* depict steps 2 and 4 of the plan EPA was supposedly implementing when the blowout occurred. EPA could not have been following this plan, because the steel pipe (stinger) and pump were not on-site on August 5, 2015.

The *Technical Evaluation* uses a series of figures to illustrate DOI’s version of EPA’s plan. DOI based these figures on Attachment D from EPA’s *Internal Review*, the ex post facto drawing provided by the EPA contractor at Mr. Way’s request.¹⁸⁴ However, like EPA, DOI fails to clarify that the drawing was not made until after the blowout and therefore could not have been guiding EPA’s work prior to the spill. DOI’s reliance on Attachment D to explain the EPA crew’s actions, instead of whatever drawings or plans EPA was actually using prior to the blowout, suggests that DOI either was ignorant of the drawing’s post-blowout origins or chose to incorporate it anyway.

¹⁸² *Id.* at 47.

¹⁸³ Telephone call with Bruce Stover, *supra* note 95; Telephone call with Elliott Petri, *supra* note 97. See also Email from Elliott Petri, Weston Solutions, to Rob Gordon, Staff Director, Subcommittee on Oversight & Investigations, U.S. House Committee on Natural Resources (Dec. 3, 2015, 12:18 p.m.).

¹⁸⁴ DOI TECHNICAL EVALUATION, *supra* note 26, at 47 (“The cross-section view from [Attachment D] was used as the basis for illustrating the steps that EPA was going to take to open the adit (figures 40-45).”).



Moreover, the *Technical Evaluation* failed to point out that the EPA crew's actions offered no margin of safety. According to DOI, "[a] key aspect of their plan was to only excavate fill lying above the assumed top of the water inside the adit. This method would leave in place the fill holding back the water."¹⁸⁵ The *Technical Evaluation* also states: "To provide a margin of safety, the plan assumes the water was more than 5 feet deep on the upstream side of the blockage, but still below the adit roof."¹⁸⁶ In fact, because EPA assumed that there was about 6 feet of impounded water in the adit, and then excavated at that level (along the level of the drainage pipe), the EPA crew operated with a safety factor of 1.¹⁸⁷ This provides zero margin of safety. If EPA assumed the water level was even higher, as depicted in Attachment D, EPA's excavation of the observation and drainage pipes had a negative safety margin, indicating that EPA willingly took on risk.

In fact, the EPA crew removed both the drainage and observation pipes and excavated all the way to the plug. This meant that, under their incorrect assumptions, they exposed about the top four feet of the plug. Since the drainage pipe was actually closer to the adit floor, the EPA crew exposed more of the plug and was digging deeper relative to the assumed level of water behind the plug, regardless of whether they thought the water level was EPA's assumed six feet, the *Technical Evaluation's* "more than 5 feet," or the vague, but even higher, water level depicted in Attachment D. The photographic record of where the EPA crew was excavating is so clear that it is difficult to understand how an independent technical review team could honestly state: "[T]he bottom of the excavation was about 10 feet above the level of the floor of the adit; this corroborates reports that they were digging high, trying to stay above the assumed water level in the adit."¹⁸⁸

There are many other the errors, omissions, and contradictions in the *Technical Evaluation*, including:

- The *Technical Evaluation* wrongly depicts the portal structure extending several timber sets beyond the slope of the mountain. (See App. 14) The incorrect and inconsistent number of timber sets

¹⁸⁵ *Id.*

¹⁸⁶ *Id.*

¹⁸⁷ The safety factor is determined by the ratio of the level of impounded water the crew anticipated (6 feet) to the level at which they excavated (6 feet, along the level of the drainage pipe). The ratio of 6 feet to 6 feet is 1.

¹⁸⁸ *Id.* at 53.



depicted in the figures is not explained by DOI's "not to scale" disclaimer.

- DOI wrongly depicts the drainage pipe DRMS installed discharging directly into the concrete flume. The DRMS drainage pipe did not directly connect with the concrete channel. DRMS connected the drainage pipe to the concrete channel with an intermediary pipe. EPA subsequently installed two pipes leading from the base of the drainage pipe to the concrete channel in 2014.
- The DOI figures incorrectly depict that EPA removed "most" of the two DRMS pipes in 2014.¹⁸⁹ Not much, if any, of the length of those pipes was removed. (See App. 17)
- DOI's illustrations of its own interpretations likely incorrectly depict a collapse of the vertical timbers near the adit entrance. (See App. 25)
- The *Technical Evaluation* inaccurately indicates that the two 12 inch drainage pipes installed by EPA in 2014 were 24 inches in diameter. (See App. 17).
- DOI, like EPA in the *Internal Review*, fails to mention that in 2014 the EPA crew removed part of the stinger installed by DRMS in 2009. (See App. 23) It is unclear whether DOI was ignorant of this fact or whether it was intentionally omitted from the *Technical Evaluation*. (See App. 15)

DOI Tries to Conceal Peer Reviewer's Comments

At the end of the *Technical Evaluation's* Executive Summary, DOI summarized the USACE peer reviewer's comments.¹⁹⁰ The passage merits inclusion in full:

¹⁸⁹ *Id.* at 39 (asserting that EPA "had torn out most of the drain and observation pipes installed by DRMS in 2009" during the crew's work at the mine in September 2014).

¹⁹⁰ Within the Executive Summary, DOI fended off its own recounting of the USACE peer reviewer's criticism: "The BOR Evaluation Team (evaluation team) believed that it was hired to perform a technical evaluation of the causes of the incident, and was not asked to look into the internal communications of the onsite personnel, or to determine why decisions were made. The evaluation team did not believe it was requested to perform an investigation into a 'finding of fault,' and that those separate investigative efforts would be performed by others more suitable to that undertaking." DOI TECHNICAL EVALUATION, *supra* note 26, at 3.



It is important to note that although the USACE peer reviewer agreed that the report properly describes the technical causes of the failure, he had serious reservations with the chronology of events internal to EPA from the day of the telephone call to BOR and up to the day of the mine failure. He pointed out that the actual cause of failure is some combination of issues related to EPA internal communications, administrative authorities, and/or a break in the decision path, and that the report was non-specific regarding the source of information concerning EPA documents and interviews with EPA employees and the onsite contractor. The USACE believes that the investigation and report should have described what happened internal within EPA that resulted in the path forward and eventually caused the failure. The report discusses field observations by EPA (and why they continued digging), but does not describe why a change in EPA field coordinators caused the urgency to start digging out the plug rather than wait for BOR technical input as prescribed by the EPA project leader.¹⁹¹

An understanding of the *Technical Evaluation's* errors and misleading nature reveals the gravity of the peer reviewer's comments. The USACE comments point out the deficiencies in the *Technical Evaluation* and emphasize that, in contrast to the body of the report, the EPA crew was urgently "digging out the plug."¹⁹² The comments also suggest that the EPA project leader, presumably Mr. Way, may have directed the crew to "wait for BOR technical input" before proceeding with excavation.¹⁹³ The *Technical Evaluation* does not mention any such instruction elsewhere in the report, but if the USACE peer reviewer was aware of it, the DOI authors must have been aware of it as well. Why the authors of the *Technical Evaluation* deliberately chose not to address such a seemingly important topic is mystifying.

The Department of the Interior has repeatedly sought to withhold the USACE peer reviewer's full comments and other related documents from Congress. Despite being personally asked to provide the documents by Chairman Bishop and Congressman Luján during the Committee's oversight hearing on December 9, 2015, Secretary Jewell and DOI have refused to do so.

¹⁹¹ DOI TECHNICAL EVALUATION, *supra* note 26, at 3.

¹⁹² *Id.*

¹⁹³ *Id.*



The Committee also requested the documents directly from the U.S. Army Corps of Engineers, but has been advised by USACE that the Department of the Interior has objected to the release of documents that “may ‘represent important executive branch confidentiality interest.’”¹⁹⁴ If DOI conducted a truly rigorous and independent review, and straightforwardly incorporated the USACE peer reviewer’s comments into its *Technical Evaluation*, DOI should be willing to release the documents immediately.

The *Technical Evaluation* states that EPA considered “the plan to reopen the adit” and then “the contractor began excavating.”¹⁹⁵ It concludes that the blow out was an “excavation induced failure”¹⁹⁶ that was the result of “the excavation shorten[ing] the seepage pathway through the soil initiating an internal erosion failure.”¹⁹⁷

Given its innumerable errors and intentional misdirection, it is difficult to credit the DOI *Technical Evaluation* for a conclusion obscured by its own clinical wording. The misleading content and many errors that pervade the *Technical Evaluation* are inexplicable, particularly given its billing as a rigorous engineering review.¹⁹⁸

In short, the *Technical Evaluation* is the antithesis of what was expected, given EPA Administrator’s McCarthy’s testimony that DOI would deliver an independent review. The many problems with the *Technical Evaluation* also make Secretary Jewell’s statement that she is proud of the report all the more astounding.¹⁹⁹

¹⁹⁴ Memorandum from CECC-E to Chief Counsel, U.S. Army Corps of Engineers, “Gold King Mine Documents Withheld from Release” (Jan. 21, 2016).

¹⁹⁵ DOI TECHNICAL EVALUATION, *supra* note 26, at 52.

¹⁹⁶ *Id.* at 65.

¹⁹⁷ *Id.* at 69.

¹⁹⁸ It is worth noting that the State of Colorado has raised strenuous objections to the *Technical Evaluation*. See Bruce Finley, *Colorado, EPA Clash over State Role in Gold King Mine Deluge*, DENVER POST, Nov. 12, 2015, http://www.denverpost.com/news/ci_29110482/colorado-epa-clash-over-state-role-gold-king.

¹⁹⁹ *Oversight Hearing*, *supra* note 54 (statement of the Honorable Sally Jewell, Secretary, U.S. Department of the Interior).



EPA Addendum

EPA released its most recent narrative of events, in the form of an *Addendum* to its *Internal Review*, on the evening before the Committee's oversight hearing on DOI's *Technical Evaluation*.²⁰⁰ Coincidentally, the *Addendum* was intended to clarify "information presented in the [*Technical Evaluation*], as well as reservations expressed by the US Army Corps of Engineers (USACE) peer reviewer regarding internal EPA communication and coordination."²⁰¹

Specifically, the *Addendum* focuses on EPA's "communication and coordination" regarding the work the EPA crew performed on August 4-5, and the consultation meeting with Mr. Gobla that was scheduled for August 14.²⁰² Rather than clarifying or correcting the *Technical Evaluation's* problems, the *Addendum* instead contains additional contradictory information and raises even more questions about the blowout.

The *Addendum's* chief revelation is that Mr. Way gave verbal instructions to Mr. Griswold and other EPA crew members "not to proceed with any work on actually opening the adit until after his return [from vacation] and the planned consultation [with Mr. Gobla] on August 14."²⁰³ This claim appears to directly conflict with the *Technical Evaluation*, which described EPA's discussion of "the plan to reopen the adit" on August 5 and implied that the contractor then began excavating in furtherance of that plan without pausing until August 14.²⁰⁴

Curiously, neither of the two preceding reports (excluding the USACE peer reviewer's comments) mentioned Mr. Way's pivotal verbal instructions to the crew, even though both the EPA *Internal Review* and DOI *Technical Evaluation* teams surely spoke with Mr. Way, Mr. Griswold, and others who would have been aware of the instructions.

²⁰⁰ EPA ADDENDUM, *supra* note 21, at 1.

²⁰¹ *Id.*

²⁰² *Id.* at 1, 3.

²⁰³ *Id.*

²⁰⁴ DOI TECHNICAL EVALUATION, *supra* note 26, at 52.



Thus, the sudden appearance of the verbal instructions in EPA's *Addendum* – four months after the blowout – is shocking. If Mr. Way gave such directions to wait to begin opening the adit until August 14, either the *Internal Review* and *Technical Evaluation* teams were not thorough enough to learn of them, or they decided to omit them.

The delayed disclosure of Mr. Way's verbal instructions is also troubling because the verbal instructions, as described in the *Addendum*, directly conflict with written directions Mr. Way emailed to the crew on July 29.²⁰⁵ Despite supposedly laying out what the EPA crew was to be doing the week the blowout occurred, the DOI *Technical Evaluation* and the EPA *Internal Review* mention neither the emailed instructions nor the verbal instructions.

Notably, Mr. Way's email was directed to the EPA contractors and DRMS personnel, but not to Mr. Griswold.²⁰⁶ Although the *Addendum* claims that the two "coordinated closely on the planned work,"²⁰⁷ EPA has not provided any communications clearly demonstrating that Mr. Griswold was apprised of Mr. Way's instructions. This raises red flags about how well the interim OSC was briefed before taking charge of the site, particularly in light of the odd conclusions Mr. Way had made the year before.

According to the *Addendum*, the written directions spell out the work Mr. Way wanted the crew to accomplish the week of August 3.²⁰⁸ He specifically identified the following as the "priority and strategy" for the crew: adit drainage control, installation of the water management system, excavation above the adit, and adit face excavation.²⁰⁹

Mr. Way's written directions set forth specific conditions that the crew needed to satisfy before executing the itemized tasks. Under the "Water management system" item, Mr. Way directed the crew to set up the water management system "to handle adit discharge" before excavating "towards the adit floor," and to have "the piping/hose in place to allow flow to be directed to

²⁰⁵ Email from Steven Way, *supra* note 18.

²⁰⁶ *Id.*

²⁰⁷ EPA ADDENDUM, *supra* note 21, at 6.

²⁰⁸ *Id.* at 4.

²⁰⁹ Email from Steve Way, *supra* note 18.



the [Red and Bonita] pond before removing any adit blockage at or below [the] 24” pipe in the adit debris.”²¹⁰

Similarly, he wrote that “the ability to treat water must be set up with [the appropriate water-management contractor] present” before excavation of the adit face could take place.²¹¹ Notably, these conditions did not prohibit the crew from opening the adit itself; rather, they implicitly allowed for the opening of the adit if certain requirements were met. The *Addendum* does not explain why Mr. Way would conditionally authorize the EPA crew to begin opening the adit in his July 29 email and then subsequently issue conflicting verbal instructions.

Regardless of any verbal directions Mr. Way may have given, the photographic record of the work performed on August 4 and 5 clearly demonstrates that the EPA crew did not follow Mr. Way’s directions. For example, Mr. Way’s emailed instructions state: “Before any excavation towards the adit floor between the concrete flume channel and adit, the sump and sump-pump set up to handle discharge must be in place.”²¹²

Photographs of the site clearly show that the EPA crew excavated towards the adit floor for nearly the entire length of the former portal structure. They removed the pipes installed by DRMS, digging down, under their erroneous assumptions, four feet towards the adit floor. Given that the drain pipe was actually closer to the floor, the EPA crew dug much deeper, perhaps near to the floor itself. They did this without accomplishing the water management provisions Mr. Way indicated “must be in place.”²¹³

Similarly, although the water management system was not fully constructed and the infrastructure to carry the water to the nearby treatment pond was also not yet in place, the EPA crew “start[ed] digging out the plug,” as the comments forced into the *Technical Evaluation* by the USACE peer reviewer reveal. Despite this record, the *Addendum* declares: “The work being

²¹⁰ *Id.*

²¹¹ *Id.*

²¹² *Id.*

²¹³ *Id.*



conducted on August 4 and 5 was completely consistent with the direction provided by [Mr. Way].”²¹⁴

The *Addendum’s* description of Mr. Way’s verbal instructions to pause work on opening the adit until August 14 seems tailored to address one of the primary weaknesses of the *Technical Evaluation*. In its *Technical Evaluation*, DOI asserted that EPA planned to use a stinger and pump to dewater the mine but omitted the fact that this plan was impossible because the stinger and pump were not on-site on August 5.

In order to explain away the EPA crew’s excavation of the adit without having the necessary equipment on hand, the *Addendum* claimed that Mr. Way actually told the team to wait until August 14 and that the “stinger or well point pipe installation was to be performed by Harrison Western after they had assessed the area exposed during the initial work on August 4 and 5.”²¹⁵ Harrison Western, an EPA subcontractor, was not scheduled to arrive at the site until the August 14 meeting.

The *Addendum’s* explanation of the *Technical Evaluation’s* missing stinger and pump is unconvincing for two reasons. First, Mr. Way directed the

EPA’s Shifting Stinger Statements

- July 2015, OSC Way: Have a stinger “prepared and available.”
- October 2015, OSC Griswold: “There was no definitive plan to insert a stinger.”
- December 2015, EPA *Addendum*: The subcontractor was going to install the stinger after August 14.

EPA crew to have a stinger “prepared and available” the week of August 3.²¹⁶ If Harrison Western was supposed to install the stinger, and they were not scheduled to be at the mine until August 14, why would Mr. Way tell the EPA crew to obtain the stinger and have it “prepared and available” at the beginning of August?

Second, the *Addendum’s* claims that Mr. Way told the crew to pause until August 14 and that the subcontractor was going to install the stinger sometime afterward directly conflict with Mr. Griswold’s statement, predating

²¹⁴ EPA ADDENDUM, *supra* note 21, at 5.

²¹⁵ *Id.*

²¹⁶ Email from Steven Way, *supra* note 18.



the *Addendum*, that “there was no definitive plan to insert a stinger.”²¹⁷ At least one of the EPA officials responsible for the *Addendum* was aware of Mr. Griswold’s statement, but for some reason it was not addressed. In any case, the *Addendum* offers yet another claim about the stinger that cannot be reconciled with Mr. Way’s and Mr. Griswold’s previous statements.

The *Addendum* also represents EPA’s shift away from Mr. Way’s erroneous 2014 conclusions and is inconsistent with EPA’s *Internal Review*. Although the *Internal Review* reaffirmed that the crew stopped excavating in 2014 because they concluded that the adit floor was six feet below the surface of the waste dump and that pooling water on the waste dump indicated some 6 feet of water impounded, the *Addendum* wanders from this explanation.

The *Addendum* gravitates toward DOI’s *Technical Evaluation*, which asserted that “work stopped when EPA, DRMS, and others observed that in addition to the seepage from the base of the fill, additional seepage was now flowing from higher up on the face of the backfill.”²¹⁸ The *Addendum* echoes: “Work stopped after 2 days when DRMS and EPA staff observed additional seepage.”²¹⁹ Like the *Technical Evaluation*, the *Addendum* avoids any reference to EPA’s conclusion in 2014, or reassertion in August 2015, that the elevation of the adit floor was six feet below the surface of the waste rock dump.

The Committee was alarmed to learn that in the process of crafting its misleading *Addendum*, EPA may have jeopardized the EPA Office of Inspector General’s (“OIG”) ongoing investigation of the Gold King Mine blowout.²²⁰ For example, EPA officials interviewed Mr. Way and Mr. Griswold on December 2, 2015, after the OIG had notified the agency that its review of the Gold King Mine incident was underway. The timing of the December 2 interview calls into question EPA’s respect for the OIG’s investigation and commitment to ensuring the integrity of witness testimony.

²¹⁷ Email from Hays Griswold, *supra* note 24.

²¹⁸ DOI TECHNICAL EVALUATION, *supra* note 26, at 36.

²¹⁹ EPA ADDENDUM, *supra* note 21, at 2.

²²⁰ The OIG notified EPA of its investigation on August 17, 2015, and provided an update on November 4, 2015. Memorandum from Carolyn Copper, Assistant Inspector General, Office of Inspector General, U.S. Environmental Protection Agency, to Shaun McGrath, Regional Administrator, Region 8, U.S. Environmental Protection Agency, and Mathy Stanislaus, Assistant Administrator, Office of Solid Waste and Emergency Response, U.S. Environmental Protection Agency (Aug. 17, 2015); Memorandum from Carolyn Copper, Assistant Inspector General, Office of Inspector General, U.S. Environmental Protection Agency, to Shaun McGrath, Regional Administrator, Region 8, U.S. Environmental Protection Agency, and Mathy Stanislaus, Assistant Administrator, Office of Solid Waste and Emergency Response, U.S. Environmental Protection Agency (Nov. 4, 2015).



In addition, EPA's interview of the two OSCs was conducted not by independent investigators or technical experts from unaffected regions, but by one of their colleagues within the Region 8 office, an EPA spokeswoman from headquarters who was responsible for the Gold King Mine press response, and the EPA official in Assistant Administrator Stanislaus's office who led EPA's coordination with DOI on the *Technical Evaluation*.²²¹ The *Addendum* does not explain who selected these three individuals to conduct the interview of Mr. Way and Mr. Griswold, nor does it provide any basis for their selection given their apparent lack of investigative credentials, technical expertise, or objectivity.

The interviewers' methods were similarly disconcerting. For example, the *Addendum* implies that the interview of the two On-Scene Coordinators was conducted jointly, rather than individually so that their statements could be independently verified.²²² Moreover, the *Addendum* gives no indication that the interview was transcribed or recorded.

The circumstances surrounding this interview are so troubling that it is not far-fetched to assume the interview was more of an off-the-record attempt to reconcile diverging accounts than an effort to honestly and transparently answer questions raised by the USACE peer reviewer in the *Technical Evaluation*.

²²¹ See EPA ADDENDUM, *supra* note 21, at 1 (identifying Laura Williams, Region 8 Supervisor; Nancy Grantham, HQ OPA/OA; and Dana Stalcup, HQ OSWER/OSRTI as the interview "participants").

²²² With one exception, which is presumably a typographical error, the *Addendum* consistently refers to the interviewers' conversation with the OSCs as "the interview," "a follow up interview," and "the meeting."



Mr. Griswold's Email

Even though it predated EPA's *Addendum*, the *Addendum* makes no mention of a troubling email Mr. Griswold sent on October 28, 2015, to his fellow crew members and a number of EPA colleagues, including one of the EPA officials responsible for the *Addendum*. He begins: "Perhaps I can clear up some confusion and questions of the events generated by the [*Technical Evaluation*] from my perspective."²²³

In contrast to the USACE peer reviewer's observation that the EPA crew was "digging out the plug," Mr. Griswold repeatedly emphasizes in his email that the EPA crew made every effort to avoid it. He states: "The truth is we decided to avoid any contact with the blockage whatsoever and simply remove the loose dirt above the blockage for two reasons. First, to prevent it from falling down and covering what we had exposed and second, to reveal the bedrock above the blockage in order to better plan the next steps."²²⁴

Similarly, Mr. Griswold asserts: "[W]e knew that the brow would be somewhat higher than originally constructed, so we built a ramp of rock and soil up in front of and away from the blockage in order to work well above it to remove the dirt."²²⁵ The record does not support these claims.

Rather than avoiding the plug, as Mr. Griswold claimed, the EPA crew under his direction was busy reburying it. The blockage is visible in a photograph taken on the afternoon of August 4. In his email, Mr. Griswold acknowledged that the team had exposed the blockage: "[W]e arrived at what we knew to be the actual blockage. It was apparent to everyone. It was collapsed adit back (roof) material that had caved in and broken and collapsed wood mine timbers."²²⁶

In a photograph taken the following morning, the blockage, or plug, has disappeared. Despite Mr. Griswold's claims that they wanted to avoid contact

²²³ Email from Hays Griswold, *supra* note 24.

²²⁴ *Id.*

²²⁵ *Id.*

²²⁶ *Id.*



with and keep dirt from falling on the plug, the EPA crew had almost entirely buried the plug when they backfilled the excavation to near the top of the adit. As a caption from the *Technical Evaluation* noted, “[t]he fill derived from the excavation had now covered the timbers, lagging, and seep visible in the previous photograph.”²²⁷ Mr. Griswold gave a video account of what happened the day of the blowout stating, “There’s pictures of that, that we have.”²²⁸ Following are two of the pictures Mr. Griswold refers to.



Plug exposed on August 4 (left), and buried by backfill at the time of the initial spurt (right). Source: EPA.

Mr. Griswold also takes issue with the *Technical Evaluation's* assertion that the EPA crew was not aware that the mine was pressurized. In his email, Mr. Griswold makes quite clear that he knew the mine was pressurized, stating:

[T]his material was packed very tightly and impervious to water and could very effectively hold water back. I personally knew it could be holding back a lot of water and I believe the others in the group knew as well. This is why I was approaching this adit as if it were full. . . . *I also knew there was some pressure behind the blockage but not much.*²²⁹

After the *Internal Review* and *Technical Evaluation* both indicated that EPA believed there was only about six feet of water impounded in the mine (although the *Internal Review* contradictorily claimed the crew was proceeding under the assumption that there was no or low pressure in the adit), Mr.

²²⁷ DOI TECHNICAL EVALUATION, *supra* note 26, at 53.

²²⁸ U.S. Environmental Protection Agency, *GKM 5*, YouTube (Sep. 11, 2015), <https://www.youtube.com/watch?v=h1dZX40fiDA&feature=youtu.be>.

²²⁹ Email from Hays Griswold, *supra* note 24 (emphasis added).



Griswold's unequivocal assertion that he knew the mine was pressurized is surprising.

His rationale for his knowledge that the mine was pressurized is troubling as well, because it is predicated on an event that neither the EPA *Internal Review* nor the DOI *Technical Evaluation* disclosed. Mr. Griswold explains that he knew the mine was at least slightly pressurized because he saw "a vertical one to one and one half foot spurt of clear water from one of the pipes that was down low."²³⁰

The spurt Mr. Griswold describes in his email cannot be the same spurt that the *Internal Review* and *Technical Evaluation* indicate immediately preceded the blowout, because the spurt Mr. Griswold references in his email came "from one of the pipes that was down low,"²³¹ whereas the spurt described in the *Technical Evaluation* and the *Internal Review* occurred after the crew had already removed the pipes. Further, Mr. Griswold reports that this spurt influenced how he approached his work at the adit and caused him to treat the mine as if it might be full.²³² On the other hand, the spurt mentioned in the *Technical Evaluation* and the *Internal Review* occurred seconds before the blowout began, and therefore could not have affected Mr. Griswold's work at the adit as he described.

Unless this revelation had never been made prior to Mr. Griswold's October 28, 2015, email, there is no reasonable explanation, regardless of the claim's veracity, as to why it is missing from the *Internal Review* and the *Technical Evaluation*. Even the subsequent *Addendum's* failure to mention the spurt Mr. Griswold described is inexplicable, because one of the EPA officials responsible for the December 2015 *Addendum* had received Mr. Griswold's email in October.²³³

The spurt Mr. Griswold described as coming "from one of the pipes that was down low" raises innumerable questions about the conditions of the mine and EPA's actions. As an initial matter, the exact location and size of the spurt

²³⁰ *Id.*

²³¹ *Id.*

²³² *Id.*

²³³ One of the recipients of Mr. Griswold's email was Laura Williams, a Region 8 Supervisor and contact for Emergency Response questions. She was listed in the EPA *Addendum* as one of the three individuals who participated in the interview of Mr. Griswold and Mr. Way on December 2, 2015. EPA *ADDENDUM*, *supra* note 21, at 1.



should have been a clue to the amount of water that was actually in the mine. The two 24 inch diameter pipes that the EPA crew was excavating were at different elevations, so depending on which pipe the spurt came from, the size of the spurt would indicate different amounts of impounded water.

Simplified, if the 1 ½ foot spurt Mr. Griswold saw came from the lower drain pipe (the top of which EPA believed was 8 feet from the adit floor), it would have indicated that there was approximately 9 ½ feet of impounded water.²³⁴ On the other hand, if the 1 ½ foot spurt came from the upper pipe (which EPA believed was flush with the roof of the 10 foot adit), it would have indicated that the adit was completely full of water and pressurized.²³⁵ An individual in charge of a team tasked with excavating a potentially pressurized mine should be aware of these important distinctions.²³⁶ All this, however, uses EPA's mistaken assumptions about the higher elevation of the pipes from the adit floor. Consequently, if Mr. Griswold did observe an earlier spurt from one of the pipes, it likely would have been much higher than the 1 ½ feet he reported and would surely have signified that the mine was pressurized.

In addition, a spurt of water from the pipe "down low" would mean that the pipe's inward end was somehow connected to the impounded water inside the adit. If Mr. Griswold's claim is false, it severely impugns the credibility of his email account, as well as any information contained in DOI's and EPA's reports derived from him. If, in fact, one of the pipes was connected to the pressurized mine pool, the ramifications are even more alarming.²³⁷ For

²³⁴ An 8 foot elevation of the top of the pipe, plus the 1 ½ foot spurt, suggests 9 ½ feet of impounded water.

²³⁵ A 10 foot elevation of the top of the pipe, plus the 1 ½ foot spurt, suggests 11 ½ feet of impounded water (greater than the height of the adit, indicating that the adit was pressurized).

²³⁶ In fact, the DOI *Technical Evaluation* noted that "a spurt of water into the air" was "evidence of pressure" and an "initial sign of trouble." DOI TECHNICAL EVALUATION, *supra* note 26, at 69.

²³⁷ Exactly where the drainage pipe and the observation pipe end as they run toward the adit's portal (opening) is unclear. In the Attachment D figure from EPA's *Internal Review*, the observation and drain pipes are shown terminating before reaching but close to the adit's portal (*Internal Review*, Attachment D, side view). However, this figure is marked "not to scale". The DOI *Technical Evaluation's* figures are also drawn "not to scale" and as has been addressed elsewhere and gives a distorted impression (Technical Evaluation, F 21, 23, 27, 30 and 34). None the less, it is clear that the DOI figures depict the drain and observation pipes as terminating much further from the adit's portal. The DOI figures show the drain and observation pipes terminating four to five timber sets before reaching the adit's portal. Each timber set is composed of a two vertical timbers supporting a cap timber. These timber sets are spaced at intervals to hold the walls and roof of the portal structure. A timber may be a foot in width. There are several feet between each set. DOI's depiction would easily represent 15 feet, likely much more. Although both reports' figures are drawn not to scale there is clearly a substantial difference.

An EPA aerial image with contour lines annotates the "Upper Gold King Sealed Portal" and the "Estimated Start of Adit". Using the scale included on the image, the distance between these two points appears to be less than 25 feet (Environmental Restoration, Topographical Map, Doc no ER 1131 (2015) (On file with Environmental Restoration LLC). The DRMS 2009 bid for work at the Gold King Mine indicated the "depth to bedrock" as 30 feet. (DRMS FILES, *supra* note 14, at 100).



example, how did the EPA crew stop the pipe from continuing to spurt, and why is there no pipe visibly penetrating the plug in the photographs EPA and its contractors have released? It raises further serious questions about nearly everything that EPA and DOI have claimed about EPA's work at the Gold King Mine and the disaster caused by EPA.

The drain and observation pipes installed by DRMS in 2009 began near the "Upper Gold King Sealed Portal" and ran towards the adit. According to 2009 DRMS site reports the drain pipe was 30 feet long when it was installed (DRMS FILES, *supra* note 14, at 168). Additionally, a stinger was inserted through the drain pipe and extended further towards/into the adit by 14 feet on the 16th of August (Daily Site Report, Kirstin Brown, DRMS, 9/16/09). The Daily Site Report from the following day states: "Remove[d] well point and tried different angles for greater penetration. Able to go two feet further than yesterday." (DRMS FILES, *supra* note 14, at 169). A DRMS change order for the extra cost of the stinger appears reasonably consistent, covering the installation of "44 feet of well casing with a sand point" (DRMS FILES, *supra* note 14, at 142). While EPA's topographical aerial image annotates the "estimated" adit opening, clearly the drain pipe came close to the adit to if not actually passing over the portal's sill and into the adit itself. It would appear that the stinger must have continued into the adit for some distance. DOI *Technical Evaluation's* figures are substantially inconsistent with these reported measurements, more so than those in the EPA's *Internal Review*, although the *Internal Review Attachment D* may be significantly inaccurate as well. The photographic record from EPA's 2015 excavation at the Gold King Mine does not clearly reveal where either the observation or drain pipe terminated relative to the adit's portal or the plug unearthed on August 4. The last image showing the black HDPE pipe was from the 4th at 11:56. It shows one end of the pipe with the other end closest to the adit still buried (Elliott Petri, Photo of Buried Pipe, Photo no 2015-08-1136 (Aug. 4, 2015) (On file with U.S. Environmental Protection Agency). A portion of the blue drain pipe is shown exposed by excavation shortly thereafter at 11:56 (Elliott Petri, Photo of Buried Pipe, Photo no 2015-08-1156 (Aug. 4, 2015) (On file with U.S. Environmental Protection Agency). The last image showing a pipe, which appears to be a section of the blue drain pipe, is time stamped 4:08pm on August 4 (Elliott Petri, Photo of Pooling, Photo no 2015-08-1608 (Aug. 4, 2015) (On file with U.S. Environmental Protection Agency).. The open end of a pipe is visible on the floor of the excavation. The pipe is covered with a mound of material. It cannot be determined with certainty, but it appears the excavation on the other side of the mound is deep enough that the pipe should be visible if present. It is not possible to determine if the pipe ends within the mound or if a section from the other end was removed. The plug is visible beyond the mound in this photograph. There is a fairly large hole in the plug. The cause or significance of the hole is unclear. A photo from the following morning reveals that the last segment of the pipe has been removed (Elliott Petri, Photo of Gold King Mine Adit, Photo no 2015-08-0915 (Aug. 5, 2015) (on file with U.S. Environmental Protection Agency).



CONCLUSION

The blowout caused by the Environmental Protection Agency on August 5, 2015, was a disaster that affected thousands of ordinary Americans and the states and tribes that have jurisdiction over the impacted region. Instead of seeking honest answers about how the blowout occurred, the EPA issued two intentionally misleading reports and used taxpayer dollars to fund a third deceptive report from the Department of the Interior. These attempts to conceal incompetence and negligence under the guise of transparency and accountability are shameful.

Three reports, numerous hearings, and six months later, there is still no explanation for the EPA's failure to conduct hydrostatic testing before excavating the Gold King Mine adit. Likewise, there is no good explanation for EPA's erroneous conclusions that the adit floor was six feet below the elevation of the waste dump and that the drainage pipe installed by DRMS was six feet above the adit floor. That EPA failed to debunk these aberrant and erroneous conclusions between its 2014 work and its return to the Gold King Mine in 2015 is incompetent, at best.

EPA's actions at the site are indefensible. It appears that EPA recognized this. Almost immediately, EPA rehired the contractors who were involved in the disaster to help address the mess.²³⁸ Why?

Exactly what EPA was doing remains unclear, given the ever-shifting and conflicting accounts. What is clear is that the EPA crew dug straight up to the plug with no real knowledge of what lay behind it. Perhaps, based on their errant conclusions from 2014, they believed they were six feet above the floor. But even if those assumptions had been accurate, the crew still would not have had a responsible margin of safety, and the crew had to have realized how wrong their assumptions were upon reaching the plug. After reaching the plug, the EPA crew backfilled the excavation to near the top of the adit. The EPA crew then prepared a berm in front of the excavation, a channel to its side,

²³⁸ Paul L. Larkin, Jr., *Time to Prosecute the EPA Like Any Other Company*, DAILY SIGNAL, Sept. 25, 2015, <http://dailysignal.com/2015/09/25/prosecute-epa-private-company>.



and began digging out the plug. Why they did so and what exactly they expected to happen remains unclear.

It is unclear in part because of the confusion EPA and DOI have sewn. The EPA has repeatedly claimed the EPA crew was ‘digging high’ at the time the blowout began, despite photographs showing the unlikeliness of these assertions.²³⁹ The EPA has not released any actual plans or drawings that the crew used prior to the blowout. Instead, it has offered Attachment D, a drawing that was fabricated after the fact and is “not to scale.” Attachment D raises more questions than it answers, including why there were apparently no scaled drawings in use at the site of an engineering project, or, if there were, why they have not been provided to the Committee. The On-Scene Coordinator who was in charge on the day of the blowout has claimed the crew attempted to avoid the plug after unearthing it, despite reburying it and then digging into it.²⁴⁰ The EPA has claimed the team was following emailed instructions, specifically identified only after the first two reports were released, except in respect to alleged verbal instructions that directly contradicted the written instructions.²⁴¹ All these claims were revealed in a report released on the eve of an oversight hearing on these very topics.²⁴² None of this seems to follow the official Task Order Statement of Work released with the initial account of what happened.²⁴³

For its part, the Department of the Interior, through the Bureau of Reclamation and its Technical Service Center, has generated more fog around the event than clarity. One of the few things that DOI’s *Technical Evaluation* does make clear is that, for some reason, DOI actively sought to hide EPA’s embarrassing, incompetent and possibly even negligent behavior. Through sleight of hand, DOI sought to vanish one of EPA’s most indefensible conclusions about the Gold King Mine – that the adit floor was 6 feet below the waste rock dump – and then fabricated a replacement complete with skewed artistry. DOI filled its “*Technical Evaluation*” with nothing but “not to scale” drawings – strange for a “technical” review – and dozens of pages of pap.

²³⁹ See, e.g., U.S. Environmental Protection Agency, *GKM 7*, YouTube (Sept. 11, 2015), <https://www.youtube.com/watch?v=NDeGMIVGVFw&feature=youtu.be>; U.S. Environmental Protection Agency, *GKM 8*, YouTube (Sept. 9, 2015), <https://www.youtube.com/watch?v=Xvrs5f-DVW0&feature=youtu.be>.

²⁴⁰ Email from Hays Griswold, *supra* note 24.

²⁴¹ See Email from Steve Way, *supra* note 18. See also EPA ADDENDUM, *supra* note 21.

²⁴² EPA ADDENDUM, *supra* note 21, at 1.

²⁴³ TASK ORDER STATEMENT OF WORK FOR GOLD KING MINE, *supra* note 41.



EPA's selection of DOI as an independent reviewer strains credulity. Nearly all of DOI's numerous bureaus were directly involved in the Gold King Mine project or affected by the event. These range from the Bureau of Land Management, which was directly involved in EPA's work at the site and may, according to EPA, bear some CERCLA (Superfund) liability for property BLM owns in the area; the U.S. Fish and Wildlife Service, which administers the Endangered Species Act, a law EPA ran afoul of by failing to consult regarding its activities at the Gold King Mine; to the BOR, which was directly involved both before and after the disaster. The lead author BOR supplied for the report had been sufficiently involved in the Gold King Mine that he appears not only as one of the preparers of the report, but also repeatedly within the report's narrative.²⁴⁴ He also played a pivotal role in the scenario offered by EPA's *Addendum*.²⁴⁵

The scope of the *Technical Evaluation* appears to have been carefully crafted to avoid asking the most important questions about EPA's decisions and actions. As to the question of why no hydrostatic testing was conducted by EPA prior to excavation, all DOI has to offer is that it was "apparently" considered.²⁴⁶ When it came time to say exactly what caused the failure, the authors made it as mind-numbingly bureaucratic as possible – it was an "excavation induced failure."²⁴⁷ But for the tenacity of the U.S. Army Corps of Engineers peer reviewer, who considered withholding his signature, the true meaning of this finding would have slipped by those not familiar with the subject matter and unwilling to plow through the thick nest of superfluous information. Largely because of the USACE peer reviewer, it became clear that what DOI called "excavation induced failure" was actually the EPA crew "digging out the plug."²⁴⁸ Otherwise, DOI offered what might be a plausible scenario as to EPA's triggering the blowout, save for the fact that it was impossible for the EPA crew to execute since the crew did not have the necessary equipment on-site. The *Technical Evaluation* displays an exceptional ability to weave intricate, subtle illusions.

²⁴⁴ See, e.g., DOI TECHNICAL EVALUATION, *supra* note 26, at 44-45.

²⁴⁵ EPA ADDENDUM, *supra* note 21, at 3, 5.

²⁴⁶ DOI TECHNICAL EVALUATION, *supra* note 26, at 2.

²⁴⁷ *Id.* at 65.

²⁴⁸ *Id.* at 3.



Without question, the concerns of the USACE reviewer were incorporated into the *Technical Evaluation* only when the Department of the Interior feared he would refuse to provide his signature as a peer reviewer.²⁴⁹ Since the deadline for the report's release was days away and DOI had already publicized USACE's involvement as a peer reviewer, adding the USACE comments into the *Technical Evaluation's* Executive Summary and Findings section was apparently judged less damaging than the failure to obtain even a single peer review signature from someone outside of the Department of the Interior.

DOI continues to obfuscate attempts to understand exactly what transpired between the USACE reviewer and the *Technical Evaluation's* preparers. The USACE reviewer emailed his USACE colleagues that the email chains would serve as a record of their concerns in case of future inquiry.²⁵⁰ So far, this has not been the case, because DOI has refused to provide the documents directly to the Committee and has insisted that USACE redact some documents and withhold others in their entirety because DOI claims the records "represent important executive branch confidentiality interests." The executive branch's "important" interests contained in the requested documents likely include some combination of embarrassment, incompetence, negligence, and dishonesty.

In addition, the On-Scene Coordinator who was in charge of the site at the time of the blowout has made highly questionable claims, such as that he knew the mine was somewhat pressurized.²⁵¹ This claim, although coming from someone whose accounts do not seem to square with the facts in other instances, is extremely troubling.²⁵² Its complete absence from all three official accounts is hard to believe in and of itself, and it is particularly inexplicable that it was not addressed in the EPA's subsequent *Addendum* since one of the *Addendum's* preparers almost certainly was aware of the OSC's claim. Should the claim be true, it may crumble what little remains of these reports' foundations and all we think we already know about the disaster and the

²⁴⁹ See Email from Thomas Luebke, Director, Technical Service Center, Bureau of Reclamation, U.S. Department of the Interior, to Dr. Richard Olson, Senior Geotechnical Engineer, U.S. Army Corps of Engineers (Oct. 16, 2015).

²⁵⁰ Email from Dr. Richard Olsen, *supra* note 87.

²⁵¹ Email from Hays Griswold, *supra* note 24.

²⁵² For example, Mr. Griswold asserted the EPA crew was trying to stay away from the plug despite reburying and then breaching it.



incompetent and dishonest behavior of the agencies involved.

Whatever may be driving the belated revelation about pressurization, it is clear that there is more to the Gold King Mine story than EPA and DOI have chosen to reveal. EPA's and DOI's vigorous efforts to resist accountability and transparency make this abundantly clear. Secretary Jewell's flat refusal to respond to a request to speak with the lead author of DOI's *Technical Evaluation*, as well as DOI's refusal to oblige bipartisan requests for the USACE peer review documents exemplify the Administration's strenuous efforts to thwart access to relevant documents and information.²⁵³ This of course begs the question, 'Why are EPA and DOI going to such great lengths to conceal EPA's activities at the Gold King Mine?'

Instead of answering that question, the self-described 'most transparent Administration in history' has decided, yet again, to not let a crisis go to waste. In the wake of the blowout, the Administration has pivoted toward the problems with abandoned mine lands in general, and away from taking responsibility for the catastrophe EPA directly caused at the Gold King Mine.

Despite the requisite hollow nods to openness and transparency and assurances that EPA and DOI would let the chips fall where they may, to date the most substantive message from the Gold King Mine disaster is that there is one standard for the governed and another for the governors. Who else would not be facing charges for violating any number of overreaching environmental laws and regulations that EPA foists on average Americans?

While all the answers are not yet known, this report will hopefully prevent the morass of errors, half-truths, and outright falsehoods from congealing into common knowledge. If nothing else, the incompetence and willful efforts to evade consequences documented in this report demonstrate that EPA and DOI cannot be trusted to spearhead remediation of sites like the Gold King Mine.

²⁵³ *Oversight Hearing, supra* note 54.

