

Committee on Natural Resources

Rob Bishop, Chairman
Hearing Memorandum

December 7, 2015

To: All Natural Resources Committee Members

From: Majority Committee Staff
Subcommittee on Oversight & Investigations (x5-7107)

Hearing: Full Committee Oversight Hearing titled, “*The Department of the Interior’s Role in the EPA’s Animas Spill*”

The Committee on Natural Resources will hold an oversight hearing to hear testimony on the role of the Department of Interior (DOI) in the federal response to the Environmental Protection Agency (EPA) Animas River spill on **Wednesday, December 9, 2015 at 10:00 a.m., 1324 Longworth House Office Building**. The hearing will focus on actions of the Department of the Interior before, during and after the disaster and how its responsibilities were managed, as well as the shortcomings of Interior’s technical review of the disaster.

Policy Overview

- Despite public promises, DOI failed to thoroughly investigate the Gold King Mine disaster, and in its narrowly-scoped, 60-day report, downplayed EPA’s responsibility for the blowout.
- DOI’s prior involvement with the Gold King Mine and the breadth of the spill’s impact on DOI resources, made it impossible for DOI to conduct a truly independent investigation.
- DOI minimized the significance of the spill, including the role of several of its own sub-agencies, and failed to look at causal events in a critical or thorough manner.
- DOI’s lack of thorough investigation or appropriate corrective actions will have serious ramifications for EPA’s handling of thousands of other sites nationwide, in light of EPA Administrator McCarthy’s directive to halt all other ongoing field investigative work on such sites pending the outcome of DOI’s report.
- The DOI report enabled the EPA to further stonewall the search for the truth behind the disaster. There are concerns about whether DOI has properly followed its own Data Quality requirements with its report.
- DOI has failed to make publicly available the complete independent peer reviews of DOI’s investigation report, including one authored by the U.S. Army Corps of Engineers that raises serious issues about the scope and methodology of the DOI investigation.

- The State of Colorado refutes a pivotal assertion made by the report that shifts blame from the federal government.

Witnesses Invited

Panel I: The Honorable Sally Jewell, Secretary
U.S. Department of the Interior

Accompanied by:
Mr. David Palumbo
Deputy Commissioner for Operations
U.S. Bureau of Reclamation

Background

The Gold King Mine near Silverton, Colorado, opened in the late nineteenth century. Operations ceased and the mine was largely abandoned in the first half of the twentieth century. Water often accumulates in inactive mines and officials have known for years that contaminated mine water was accumulating behind its blocked entrance.

The mountains near Silverton are scattered with abandoned mines like the Gold King, and the acid drainage from these mines has contributed to poor water quality in the Animas River Basin. EPA has a long history of involving itself in mine remediation efforts throughout the region under the authority of CERCLA,¹ despite strong local opposition to the designation of Superfund sites. Coloradans have repeatedly opposed an EPA Superfund designation in the Silverton area, anticipating harm to the local economy. As the area enjoys robust tourism, residents fear a designation will discourage visitors.²

On August 5, 2015, EPA and its contractors operating at the Gold King Mine site breached a mine opening, called an “adit,” causing a blowout of over three million gallons of contaminated mine water into Cement Creek. The contaminated plume then flowed to and through the Animas and San Juan Rivers. Neither EPA nor its contractor had bothered to test the hydrostatic pressure³ of the water within the mine prior to beginning their activities – even though bulkheads had been placed at other mines in the area and it was well-known that

¹ “Colorado Cleanup Sites.” Region 8. *U.S. Environmental Protection Agency*. Accessed December 3, 2015. <http://www2.epa.gov/region8/colorado-cleanup-sites>

² “Colorado Contested Superfund Status for Leaking Mine.” *KOLO 8 News Now*. Written August 12, 2015. Accessed December 3, 2015. <http://www.kolotv.com/home/headlines/Colorado-Contested-Superfund-Status-for-Leaking-Mine-321494271.html>

³ “Technical Evaluation of the Gold King Mine Incident.” Bureau of Reclamation, Department of the Interior. Pages 2, 78. Written October, 2015. Accessed December 3, 2015. <http://www.usbr.gov/docs/goldkingminereport.pdf>.

contaminated mine water could be aggregating under pressure in the extensive network of mine tunnels.

Originally, EPA estimated 1 million gallons of contaminated liquid were released, but later corrected that estimate to 3 million after conferring with the U.S. Geological Survey.⁴ The contaminated mine water released potentially harmful levels of arsenic, lead, cadmium, mercury, copper, zinc, and iron into the regional river system. The blowout also washed an enormous yet still undetermined volume of contaminated mine waste located in front of the opening of the mine, into the river system.

While EPA led the response efforts, DOI has also been significantly involved in mine remediation efforts in southwest Colorado. The Bureau of Reclamation (BOR) and the Bureau of Land Management (BLM) have both contributed funds to EPA projects in the Silverton area. BOR itself acknowledges that it helped fund the EPA's Red and Bonita Mine project – a project that is closely intertwined with the Gold King Mine project and is conducted by the same team (i.e., EPA and its contractors)⁵.

DOI was involved in the project prior to the disaster and also was tasked with coordinating the cleanup and response efforts of the BLM, BOR, Bureau of Indian Affairs, U.S. Fish and Wildlife Service, and the National Park Service. The lands and waters of two Native American tribes – the Southern Ute and the Navajo Nation – were affected by the blowout and several threatened and endangered species were directly impacted by the release. The resulting settlement and disturbance of toxins in the sediment may not be known for years.⁶

Despite its interest in the blowout, DOI was chosen (and paid) by EPA to conduct the “independent” investigation of the disaster. In her testimony before the Committee at a September 17, 2015 joint hearing, EPA Administrator McCarthy stated multiple times that the “independent” DOI review would provide an authoritative answer as to how and why the Gold King mine blowout occurred.⁷ Secretary Jewell, in her capacity as head of the agency overseeing multiple subagencies with jurisdiction on aspects of the blowout, declined to appear at that hearing.

⁴ “3 million, not 1 million, gallons of contaminated water rushed from mine, EPA says.” *The Durango Herald*. Published August 10, 2015. Accessed December 3, 2015.

<http://www.durangoherald.com/article/20150809/NEWS01/150809594/3-million-not-1-million-gallons-of-contaminated-water-rushed-from-mine-EPA-says>

⁵ “Technical Evaluation of the Gold King Mine Incident.” Bureau of Reclamation, Department of the Interior. Page 44. Written October, 2015. Accessed December 3, 2015. <http://www.usbr.gov/docs/goldkingminereport.pdf>.

⁶ “EPA: Sediment a “long term” concern in Colorado mine spill's wake.” *The Denver Post*. Published August 27, 2015. Accessed December 3, 2015. http://www.denverpost.com/news/ci_28712397/epa-sediment-long-term-concern-colorado-mine-spills

⁷ “EPA’s Animas Spill Part 1.” Video of EPA Administrator McCarthy oral testimony and question and answers during September 17, 2015 Joint Hearing. <https://www.youtube.com/watch?v=mimyO9k1O6c>

Promises of Accountability

In the weeks following the disaster, EPA sought to reassure the public that calls for accountability would be met with justice. As mentioned, in her appearance before the House Natural Resources and Oversight and Government Reform Committees, EPA Administrator McCarthy repeatedly assured Congress that questions of negligence, liability, and criminal prosecution and recommended appropriate “corrective actions” would be addressed by the DOI report.

Specifically, the Administrator declared that the report being prepared by the DOI’s Bureau of Reclamation would provide the government with the facts to take action and to hold the responsible individuals accountable.⁸ However, the Administrator could not identify or explain the scope of the Interior report, nor did she mention whether EPA had requested that Interior focus its investigation on specific issues. Because Secretary Jewell declined to appear at this hearing, the DOI role in developing the scope and report, was unclear.

Though EPA Administrator McCarthy issued an August 12th directive to all EPA Regions halting field investigative work for all other sites that are not in an “imminent risk” pending the outcome of DOI’s report⁹, now that the report has been released, it is unclear how those sites and for communities will be affected and what actions DOI and/or EPA intends to take as a result of the report.

Unfortunately, when completed and publicly released, the DOI report failed to hold anyone accountable for the disaster and offered only a “cursory engineering analysis”¹⁰ of the circumstances leading to the blowout. The report states that “the evaluation team did not believe it was requested to perform an investigation into a “finding of fault.”¹¹

One of the peer reviewers, an expert employed by the Army Corp of Engineers, protested that the DOI report failed to explain the decisions that led to the disaster, pronouncing “the actual cause of failure is some combination of issues related to EPA internal communication.” He further stated the “report should have described what happened internal within EPA that resulted in the path forward and eventually caused the failure.” It was also noted that the investigation failed to explore “why a change in EPA field coordinators caused the urgency to start digging out the plug rather than wait for BOR technical input.”¹²

⁸ Ibid.

⁹ <http://www.epa.gov/goldkingmine/administrator-mccarthys-statement-about-ongoing-fieldwork-mines>;

<http://www.durangoherald.com/article/20150812/NEWS01/150819903/EPA-stops-field-work-at-all-mines->

¹⁰ “Technical Evaluation of the Gold King Mine Incident.” Bureau of Reclamation, Department of the Interior. Page 65. Written October, 2015. Accessed December 3, 2015. <http://www.usbr.gov/docs/goldkingminereport.pdf>.

¹¹ Ibid, Page 3.

¹² Ibid. Page 3.

Far from accountability, not only has there been no indication so far that the EPA intends to prosecute or punish those responsible for this disaster, but the subcontractors present at the time of the blowout have been tasked with the disaster response—increasing the monetary value of its relationship with the federal government.¹³ Also, information provided to the Committee indicates that EPA paid or is expected to pay in excess of \$100,000 *just for the BOR Report*.

Interior’s report inexplicably minimizes the negligence demonstrated by EPA and its subcontractors in the disaster. Page 1 of the report attempts to excuse the blowout by saying that the conditions leading to the incident are not “isolated or unique.” Although the BOR was ostensibly selected to conduct the evaluation based on its expertise, it nonetheless confesses that these conditions are “surprisingly prevalent.” It is unclear how the designated experts on mine incidents were surprised by something so prevalent.¹⁴

It is also unclear why mines do not blow out like this all the time. At the end of the report, BOR lists 32 uncontrolled mine releases that apparently are intended to support BOR’s “finding” that spills like this are very common. However, the events listed date back to the 1800s and many are significantly less than the scale of the 3 million gallons EPA spilled at Gold King Mine. Although BOR includes the caveat that the list is not comprehensive, it does say the list “includes most major release events.” Even 40 releases over the last 120 years would not be what many would consider “prevalent.”

The Conflict of Interest

While it is unclear why the scope of the report failed to include the decision making that led to the disaster, it is apparent that the lead author, Mike Gobla, had an existing fiduciary relationship with key EPA officials directly involved with the Gold King Mine project and had, in fact, consulted on matters related to the project prior to the blowout.¹⁵

The report takes a third person autobiographical turn when Mr. Gobla, recounts his conversations with the EPA On Scene Coordinator days prior to the spill. On pages 25, and 44-45 of the DOI report, Mr. Gobla explains the advice he has provided with respect to the placement of hydraulic bulkheads in a connected mine, and notes his plans to visit the Gold King Mine to provide further direction. In an attempt to place some distance between himself and the

¹³ “EPA Coming Clean, but Gold King a Gold Mine for Contractors” *Project on Government Oversight*. Published September 8, 2015. Accessed December 3, 2015. <http://www.pogo.org/blog/2015/09/gold-king-gold-mine-for-contractors.html>

¹⁴ “Technical Evaluation of the Gold King Mine Incident.” Bureau of Reclamation, Department of the Interior. Page 1. Written October, 2015. Accessed December 3, 2015. <http://www.usbr.gov/docs/goldkingminereport.pdf>.

¹⁵ *Ibid.* Page 45.

blowout, Dr. Gobla revealed that the EPA On Scene Coordinator was “*unsure*” about the plans for the Gold King Mine just days before the blowout.

Questions have been raised about the ability of one federal agency to hold another sister agency accountable in an unbiased manner. Well beyond that concern, the lead author of the “independent” investigation report was involved to such a depth that he couldn’t avoid describing his own actions in the report. With such a close relationship between the individuals behind the disaster and the investigation, it is clear that the report serves only as a “cursory engineering analysis”¹⁶ of the incident, and it has left a void where an investigation of responsibility, accountability, and motives should have been.

Emails obtained by the Committee also show that Gobla went to Gold King Mine as planned on August 14th and agreed – per the EPA On Scene Coordinator’s request – to extend his stay to help with response efforts. Around the same time, EPA and DOI were discussing the independent review and Gobla was later selected to lead the BOR team. Having someone investigate those he was working alongside days before further illustrates how the BOR report was far from independent or objective.

“Nothing to See Here”

By comparison, DOI officials were quick to respond to the Deepwater Horizon oil spill in 2010. In fact, Secretary Salazar personally visited the Gulf at least seven times in the five weeks following the incident.¹⁷ In contrast, it is not clear when, or even if, Secretary Jewell or the Deputy Secretary, a former BOR Director, has ever visited the areas impacted by the Gold King release despite the involvement of Interior in the incident and the scale of the impacted DOI lands and waters. Secretary Jewell publicly tweeted some sixty times¹⁸ in the month following the blowout, but never once mentioned the disaster, efforts to coordinate the cleanup, or the investigation to determine what had occurred.

During the September Natural Resources Committee hearing on the disaster, Secretary Flynn of the New Mexico Environment Department was asked about the Interior’s role in the disaster response. He responded that it was “nonexistent.” Incidentally, Secretary Jewell was also nonexistent at the same hearing despite the Committee’s invitation.

¹⁶ Ibid. Page 65.

¹⁷ <https://www.whitehouse.gov/blog/2010/05/05/ongoing-administration-wide-response-deepwater-bp-oil-spill>

¹⁸ <https://twitter.com/SecretaryJewell>

Passing on Accountability to Pass the Blame

In the report, DOI attempts to shift responsibility for the release to the Colorado Division of Reclamation, Mining and Safety (DRMS). Starting on page 1, DOI calls out DRMS for consulting on the incorrect assessment of water impounded behind the adit. Then DOI claims that in the hours leading up to the blowout, two DRMS officials visited the site to “view conditions” and were “in agreement” with the EPA plan to continue excavating.¹⁹

While two DRMS employees did in fact visit the site, Colorado officials have strenuously objected that no such agreement occurred.²⁰ On September 2nd the Colorado Department of Natural Resources wrote to the EPA to clarify that DRMS went to the site on August 5th to “consult with EPA about future underground mine work at the Gold King that had nothing to do with excavation taking place by EPA and/or its contractors that morning. No one at DRMS directed any work at Gold King, nor did any DRMS personnel approve or disapprove any of the work EPA was conducting there.”²¹

The letter continues that “DRMS did not make any determination of mine water pressure at the Gold King mine.”²² Far from blessing the EPA’s work, Colorado maintains that “DRMS staff did not support the removal investigation at the Gold King.”²³ Interior’s investigation and report does nothing to acknowledge or explain this dispute. The report furthers the EPA’s hazy accounting at the expense of actual facts and answers that would be useful to the ultimate disclosure of evidence behind the disaster.²⁴

¹⁹ “Technical Evaluation of the Gold King Mine Incident.” Bureau of Reclamation, Department of the Interior. Page 52. Written October, 2015. Accessed December 3, 2015. <http://www.usbr.gov/docs/goldkingminereport.pdf>.

²⁰ “Colorado disputes key part of EPA mine report” *Las Vegas Sun*. Published November 12, 2015. Accessed December 3, 2015. <http://lasvegassun.com/news/2015/nov/12/colorado-disputes-key-part-of-epa-mine-report>

²¹ Letter from Colorado Department of Natural Resources to U.S. Environmental Protection Agency. September 2, 2015. <https://www.documentcloud.org/documents/2513050-dnr-letter-to-the-epa.html>

²² Ibid.

²³ Ibid.

²⁴ “Colorado Officials Dispute EPA’s Claim They Played a Role in Toxic Mine Spill” *LA Times*. November 15, 2015. <http://www.latimes.com/nation/la-na-mine-waste-spill-20151115-story.html>