

Committee on Natural Resources

Rob Bishop, Chairman
Hearing Memorandum

September 15, 2015

To: All Natural Resources Committee Members

From: Majority Committee Staff, Subcommittee on Oversight and Investigations
x5-7107

Hearing: Joint Full Committee hearing with the Committee on Oversight & Government Reform titled "*EPA's Animas Spill*"

The Committee on Natural Resources and the Committee on Oversight and Government Reform will hold a joint full committee oversight hearing to hear testimony on the Environmental Protection Agency's (EPA) spill of mine waste into the Animas River on **Thursday, September 17, 2015, at 10:00 a.m., in room 2167 Rayburn House Office Building**. The hearing will focus on the circumstances surrounding the spill, as well as the resulting effects and subsequent response efforts by multiple federal agencies.

Policy Overview

- On August 5, 2015, contractors retained by the EPA caused approximately 3 million gallons of contaminated mine water to spill into Cement Creek near Silverton, Colorado.
- The contaminated yellow plume eventually stretched for miles, flowing from Cement Creek into the Animas and San Juan Rivers – a course that stretches from Colorado into New Mexico and eventually into Utah and Arizona. The rivers also flow along the lands of the Southern Ute Tribe and through the Navajo Nation.
- The spill released heavy metals – including arsenic, copper, lead, mercury, and selenium – into the water, affecting water quality and contaminating river sediments. Additional effects on wildlife, in particular aquatic and protected species, have yet to be fully determined.
- Water diversions for drinking water in municipalities in Colorado and New Mexico were shut off to avoid potential health threats. Likewise, to avoid contaminating crops and fields or harming livestock, water diversions for agricultural use were curtailed during the peak demand time of summer. Downstream, the U.S. Bureau of Reclamation (BOR)

released over 1.3 billion gallons of water from the Navajo Dam to dilute the contaminated plume.

- EPA knew as early as June 2014 that a severe blowout was possible, yet apparently took no precautions to prevent such an accident when work at the mine began.
- Multiple federal agencies with relevant jurisdictions have failed to properly notify or identify the potential scope of likely negative economic and environmental consequences on agriculture, tourism, public health, endangered species, as well as the costs imposed upon states, counties, tribes, and municipalities.

Witnesses Invited:

PANEL I

Ms. Gina McCarthy, Administrator
U.S. Environmental Protection Agency
Washington, D.C.

PANEL II

Ms. Sally Jewell, Secretary¹
U.S. Department of the Interior
Washington, D.C.

Mr. Russell Begaye, President
Navajo Nation
Window Rock, Arizona

Mr. Mike Olguin, Member
Southern Ute Tribal Council
Ignacio, Colorado

Mr. Ryan Flynn, Secretary
New Mexico Environment Department
Santa Fe, New Mexico

Dr. Larry Wolk, Executive Director and Chief Medical Officer
Colorado Department of Public Health and Environment
Denver, CO

¹ The Department of the Interior declined to make a witness available for the hearing.

Background

The Gold King Mine near Silverton, Colorado, opened in the late nineteenth century and was mined for over twenty years. The mine was largely abandoned after operations ceased in the first half of the twentieth century, 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 Gold King, and EPA has a history of involving itself in mine remediation efforts through CERCLA even though there has been strong local opposition to designating Superfund sites. Coloradans have repeatedly fought an EPA Superfund designation in Silverton, anticipating harm to the local economy. Post-mining, the area remains dependent on tourism, and residents fear a designation will discourage visitors.

Even without a formal Superfund designation, EPA has been active at mines in the area.² Meanwhile, third-party Good Samaritans are barred from performing cleanup activities themselves, either because the potential liability (i.e., EPA fines and litigation) is too great or because, absent the ability to make use of the abandoned mines, cleanup is not economically feasible. Thus, EPA and its chosen contractors perform the work – in this case with disastrous results.



EPA Activity at Gold King Mine on 8/5/2015

On August 5, 2015, EPA contractors working at the Gold King Mine site breached the backfilled adit that held back contaminated mine water contained within the mine. Neither EPA nor its contractor had bothered to test the hydrostatic pressure 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 contaminated mine water was likely aggregating in the interconnected tunnels.

EPA’s failure to take the necessary precautions is indefensible in light of the agency’s knowledge that such a disaster was possible for over a year. The Task Order Statement of Work for Gold King Mine produced by EPA’s contractor in June 2014 specifically notes that “[c]onditions may exist that could result in a blow-out of the blockages and cause a release of

² EPA has aggressively inserted itself into mine remediation efforts despite the fact that the agency does not employ a single mining engineer. *See* FedScope, U.S. Office of Personnel Management, <http://www.fedscope.opm.gov/>.

large volumes of contaminated mine waters and sediment from inside the mine, which contain concentrated heavy metals.”³

EPA’s activities at the mine entrance destabilized the plug and caused the release of approximately 3 million gallons of contaminated mine water to enter Cement Creek and then flow into the Animas and San Juan Rivers. Originally, EPA estimated that only 1 million gallons were spilled, but later had to correct that estimate after conferring with the U.S. Geological Survey.⁴ The spill released arsenic, lead, cadmium, mercury, copper, zinc, and iron into the regional river system.



Entrance to Gold King Mine after EPA Caused the Blowout

³ Task Order Statement of Work for Gold King Mine, available at <http://www2.epa.gov/sites/production/files/2015-08/documents/08-1570601.pdf>.

⁴ The USGS stream gage in Cement Creek in Silverton recorded a wave of contaminated mine waste water at 12:45pm MST when the stream flow changed from 27 cubic feet per minute to 125 cubic feet per minute. Data from http://waterdata.usgs.gov/co/nwis/uv/?site_no=09358550&PARAMeter_cd=00065.00060

Eventually, the mustard-hued plume stretched for more than 100 miles along the Animas River and San Juan River, which flows through New Mexico to Lake Powell in Utah and Arizona.⁵ According to EPA, the plume was visible for about 40 to 50 miles beyond Farmington, New Mexico.

The effects of EPA's spill, particularly the long-term effects, are not yet clear. EPA, as well as state, local, and tribal authorities, have extensively tested ambient water quality in the affected rivers, contamination of river sediment samples, wildlife impacts, and contamination of well water in the area. Some authorities are continuing sampling and testing activities.

The blowout has additionally impacted two federally recognized tribes, the Southern Ute Indian Tribe and the Navajo Nation. Both have historically relied on the waters of the Animas and San Juan Rivers for agricultural, commercial, and spiritual uses. As trustees for Indian tribes, both the Department of the Interior (through the Bureau of Indian Affairs) and the EPA have a unique trust responsibility to tribes and their communities. The San Juan River stretches over 218 miles through and bordering the Navajo Nation.

In the last several weeks, a number of questions have arisen regarding how EPA caused the spill and how it, together with other federal agencies within the Department of the Interior, has handled the response. Not only did EPA trigger the disaster, it then failed to notify downstream authorities and users in a timely fashion. For example, Colorado Parks and Wildlife – not EPA – notified the Southern Ute Tribe. Then the Southern Ute Tribe – again, not EPA – notified New Mexico.



⁵ Marc Stewart, *EPA: Spill 3 times larger than estimated; Gov. can't set definite timetable for clean-up*, ASSOCIATED PRESS, Aug. 9, 2015, available at <http://www.thedenverchannel.com/news/local-news/epa-no-health-risk-to-wildlife-after-gold-king-mine-spill>.

EPA's lack of timely and effective notification to other responsible authorities was unfortunately not the end of its communication problems. Since the spill, state, local, and tribal authorities have continually struggled to obtain information from EPA. Finding little reliable data or assistance from the federal government, many are undertaking their own testing and response efforts.

Additionally, while EPA failed to give timely warning to warn state, local, and tribal authorities about the impending plume of contaminated mine water headed toward their jurisdictions, the agency did find the time to hand out settlement forms within the Navajo Nation less than one week after the spill. Some members of the Navajo Nation felt EPA was trying to protect itself from liability before the full effects of the disaster were even known at the expense of those who were affected by a disaster the agency itself had caused.

EPA's mismanagement of the incident response in the weeks following the spill draws attention to the mysteriously low profile of other federal agencies. The Department of the Interior's extremely low public profile is particularly odd since almost every branch of DOI has a role to play or is entrusted with resources that may be affected:

- The Bureau of Indian Affairs has trust responsibilities on behalf of the affected Navajo Nation and Southern Ute Tribe;
- The Bureau of Reclamation spilled over 1.3 billion gallons from the Navajo Dam to dilute the contaminated plume and is currently conducting a review of the event for EPA;
- The Fish and Wildlife Service has responsibility for endangered and threatened species in the river systems;
- USGS was involved in measuring the volume of spilled contaminated mine water and has conducted sampling for contaminants; and
- The Bureau of Land Management and the National Park Service are responsible for federal lands in the area affected by EPA's spill.

Despite DOI's department-wide interest in the Gold King Mine catastrophe, EPA selected the Bureau of Reclamation to conduct a review of the matter. There are serious concerns about the lack of transparent coordination, the scope of the review, and the ability of the Department of the Interior to conduct an impartial investigation. According to Bureau of

Reclamation staff, the review is to be “narrow” in scope and will cover generic information about mining and remediation, as well as some site-specific information. Most troubling is the fact that DOI has already played a role in the response and has many trust obligations and natural resource management responsibilities affected by the spill, which casts doubt on the Department’s ability to conduct a thorough, impartial review.

Administrator McCarthy has said EPA takes full responsibility for the disaster and that the spill “pains [her] to no end.” However, it is unclear how those feelings of remorse have translated into concrete efforts to help the communities affected by the blowout EPA caused – particularly in light of the concerns described in this memo. Additionally, the Department of the Interior, which also has significant responsibilities at stake, has been notably absent from the public eye since the spill. The behavior of these two agencies raises serious questions about EPA’s and Interior’s willingness to abide by the laws and rules that they enforce and highlights the importance of community involvement and local expertise.