

118TH CONGRESS
2D SESSION

S. 5192

To authorize compensation to individuals, organizations, and companies impacted by the Gold King Mine wastewater spill of 2015, and for other purposes.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 25, 2024

Mr. BENNET (for himself and Mr. HICKENLOOPER) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To authorize compensation to individuals, organizations, and companies impacted by the Gold King Mine wastewater spill of 2015, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Gold King Mine Spill
5 Compensation Act of 2024”.

6 **SEC. 2. DEFINITIONS.**

7 In this Act:

1 (1) ADMINISTRATOR.—The term “Adminis-
2 trator” means the Administrator of the Environ-
3 mental Protection Agency.

4 (2) BPMD CONTAMINATION.—The term
5 “BPMD contamination” means a release or threat-
6 ened release of hazardous substances that occurred
7 or is occurring on or before the date of enactment
8 of this Act at or from mining-related sources within
9 the Bonita Peak Mining District Superfund Site in
10 San Juan County, Colorado, Environmental Protec-
11 tion Agency Docket ID No. EPA HQ–OLEM2016–
12 0152, as published in the final rule of the Environ-
13 mental Protection Agency entitled “National Prior-
14 ities List” (81 Fed. Reg. 62397 (September 9,
15 2016)), including all areas of that site that the En-
16 vironmental Protection Agency has ever defined or
17 described for purposes of, or in relation to, the Na-
18 tional Priorities List developed by the President in
19 accordance with section 105(a)(8)(B) of the Com-
20 prehensive Environmental Response, Compensation,
21 and Liability Act of 1980 (42 U.S.C.
22 9605(a)(8)(B)).

23 (3) COVERED CLAIM.—The term “covered
24 claim” means a written request for monetary com-
25 pensation of a certain amount under chapter 171 of

1 title 28, United States Code (commonly known as
2 the “Federal Tort Claims Act”), submitted to the
3 Administrator on or before August 5, 2017, by an
4 injured person for compensation for covered dam-
5 ages.

6 (4) COVERED DAMAGES.—

7 (A) IN GENERAL.—The term “covered
8 damages” means any of the following types of
9 adequately documented, as determined by the
10 Administrator, damages suffered by an injured
11 person as a result of the Gold King Mine spill
12 that is otherwise uncompensated:

13 (i) Injury.

14 (ii) Lost business income incurred
15 during the period beginning on August 5,
16 2015, and ending on December 31, 2015,
17 excluding lost business income from vaca-
18 tion rentals.

19 (iii) Expenses arising from relocating
20 livestock and providing alternative water
21 supplies incurred during the period begin-
22 ning on August 5, 2015, and ending on
23 October 15, 2015.

24 (iv) Diminished yield or loss of agri-
25 cultural crops occurring during the period

beginning on August 5, 2015, and ending
on December 31, 2015.

(B) EXCLUSIONS.—The term “covered
damages” does not include—

(i) costs for response (as defined in
section 101 of the Comprehensive Environ-
mental Response, Compensation, and Li-
ability Act of 1980 (42 U.S.C. 9601)); or

(ii) emotional distress.

(5) GOLD KING MINE SPILL.—The term “Gold
King Mine spill” means the release, on August 5,
2015, of more than 3,000,000 gallons of acid mine
drainage containing heavy metals from the Gold
King Mine located in San Juan County, Colorado,
into downstream waters, including the Animas and
San Juan Rivers, that occurred during a removal
site evaluation by the Environmental Protection
Agency.

(6) INJURED PERSON.—

(A) IN GENERAL.—Subject to subpara-
graph (B), the term “injured person” means a
homeowner, a livestock grazer, a farmer, or a
recreation company or other business—

(i) that, as a result of the Gold King
Mine spill, suffered covered damages;

1 (ii) that has not, prior to the date of
2 enactment of this Act, entered into a set-
3 tlement agreement with the United States
4 for any amount exceeding \$2,500, or had
5 a judgment entered by any court in any
6 case related to BPMD contamination or
7 the Gold King Mine spill; and

8 (iii) to which the Administrator—

9 (I) denied a covered claim; or

10 (II) did not fully compensate the
11 individual or entity for covered dam-
12 ages described in a covered claim.

13 (B) LIMITATIONS.—The term “injured
14 person” only includes an individual or entity de-
15 scribed in subparagraph (A) that—

16 (i) has, on or before August 5, 2017,
17 submitted a covered claim to the Adminis-
18 trator;

19 (ii) if the entity is a business, is in op-
20 eration as of the date of a payment under
21 this Act; and

22 (iii) if the entity is a business, does
23 not own a mine or perform any mine-re-
24 lated business.

1 (7) INJURY.—The term “injury” has the same
 2 meaning as the term “injury or loss of property, or
 3 personal injury or death” as used in section
 4 1346(b)(1) of title 28, United States Code.

5 **SEC. 3. COMPENSATION FOR VICTIMS OF GOLD KING MINE**
 6 **SPILL.**

7 (a) IN GENERAL.—Each injured person shall be enti-
 8 tled to receive from the United States compensation for
 9 covered damages suffered by the injured person as a result
 10 of the Gold King Mine spill.

11 (b) INVESTIGATION OF CLAIMS.—

12 (1) IN GENERAL.—The Administrator shall, on
 13 behalf of the United States, investigate, consider, as-
 14 certain, adjust, determine, grant, deny, or settle any
 15 covered claim for covered damages asserted in the
 16 covered claim by an injured person for covered dam-
 17 ages suffered as a result of the Gold King Mine
 18 spill.

19 (2) APPLICABILITY OF STATE LAW.—Except as
 20 otherwise provided in this Act, the laws of the State
 21 of Colorado shall apply to the calculation of covered
 22 damages.

23 (3) EXTENT OF DAMAGES.—Any payment
 24 under this Act—

25 (A) shall be limited to—

1 (i) actual compensatory damages
 2 measured by injuries suffered; and

3 (ii) the amount originally claimed by
 4 the injured person in the covered claim;
 5 and

6 (B) shall not include—

7 (i) interest before or after settlement
 8 or payment of a covered claim; or

9 (ii) punitive damages.

10 (c) PAYMENT OF COVERED CLAIMS.—

11 (1) DETERMINATION REQUIRED.—Not later
 12 than 180 days after the date of enactment of this
 13 Act, the Administrator shall determine and fix the
 14 amount, if any, to be paid for the covered claim.

15 (2) PARAMETERS OF DETERMINATION.—In de-
 16 termining and settling a covered claim, the Adminis-
 17 trator shall determine only—

18 (A) whether the claimant is an injured per-
 19 son;

20 (B) whether the injury that is the subject
 21 of the covered claim resulted from the Gold
 22 King Mine spill;

23 (C) the amount, if any, to be allowed and
 24 paid under this Act; and

1 (D) the person or persons entitled to re-
2 ceive the amount.

3 (d) ACCEPTANCE OF AWARD.—The acceptance by a
4 claimant of any payment under this Act shall—

5 (1) be final and conclusive on the claimant with
6 respect to all covered claims arising out of or relat-
7 ing to the same subject matter;

8 (2) constitute a complete release of all covered
9 claims against the United States (including any
10 agency or employee of the United States) under
11 chapter 171 of title 28, United States Code (com-
12 monly known as the “Federal Tort Claims Act”), or
13 any other Federal or State law, arising out of or re-
14 lating to the same subject matter; and

15 (3) include a certification by the claimant,
16 made under penalty of perjury and subject to the
17 provisions of section 1001 of title 18, United States
18 Code, that the covered claim is true and correct.

19 (e) ELECTION OF REMEDY.—

20 (1) IN GENERAL.—An injured person may elect
21 to seek compensation from the United States for 1
22 or more injuries resulting from the Gold King Mine
23 spill by—

24 (A) pursuing compensation under a cov-
25 ered claim;

1 (B) filing a claim or bringing a civil action
2 under chapter 171 of title 28, United States
3 Code; or

4 (C) bringing an authorized civil action
5 under any other provision of law.

6 (2) EFFECT OF ELECTION.—An election by an
7 injured person to seek compensation in any manner
8 described in paragraph (1) shall be final and conclu-
9 sive on the claimant with respect to all injuries re-
10 sulting from the Gold King Mine spill that are suf-
11 fered by the claimant.

12 (3) NO EFFECT ON ENTITLEMENTS.—Nothing
13 in this Act affects any right of a claimant to file a
14 claim for benefits under any Federal entitlement
15 program.

16 (f) JUDICIAL REVIEW.—

17 (1) IN GENERAL.—Any claimant aggrieved by a
18 final decision of the Administrator under this Act
19 may, not later than 60 days after the date on which
20 the decision is issued, bring a civil action in the
21 United States District Court for the District of Col-
22 orado, to modify or set aside the decision, in whole
23 or in part.

1 (2) RECORD.—The court shall hear a civil ac-
2 tion under paragraph (1) on the record made before
3 the Administrator.

4 (3) STANDARD.—The decision of the Adminis-
5 trator incorporating the findings of the Adminis-
6 trator shall be upheld if the decision is supported by
7 substantial evidence on the record considered as a
8 whole.

9 (g) REPORT.—Not later than 90 days after the date
10 on which all covered claims have been processed under this
11 Act, the Administrator shall submit to Congress a report
12 that describes—

13 (1) the amounts claimed;

14 (2) a brief description of the nature of the cov-
15 ered claims; and

16 (3) the disposition of the covered claims, includ-
17 ing the amount of any payment under this Act.

18 **SEC. 4. APPROPRIATION OF FUNDS.**

19 (a) IN GENERAL.—There are appropriated to the Ad-
20 ministrator for fiscal year 2025, out of any amounts in
21 the Treasury not otherwise appropriated, such sums as are
22 necessary for the payment of claims in accordance with
23 this Act, to remain available until expended.

24 (b) EMERGENCY REQUIREMENT.—The entire amount
25 made available under subsection (a) is designated by Con-

1 gress as an emergency requirement under section
2 251(b)(2)(A) of the Balanced Budget and Emergency
3 Deficit Control Act of 1985 (2 U.S.C. 901(b)(2)(A)).

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