

114TH CONGRESS
1ST SESSION

H. R. 3602

To provide compensation to injured persons relating to the Gold King Mine spill, to amend the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 to address mining-related issues, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 24, 2015

Mr. BEN RAY LUJÁN of New Mexico (for himself, Ms. MICHELLE LUJAN GRISHAM of New Mexico, Mr. POLIS, Mr. PERLMUTTER, and Ms. DEGETTE) introduced the following bill; which was referred to the Committee on Transportation and Infrastructure, and in addition to the Committees on the Judiciary and Energy and Commerce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To provide compensation to injured persons relating to the Gold King Mine spill, to amend the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 to address mining-related issues, 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,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Gold King Mine Spill
3 Recovery Act of 2015”.

4 **SEC. 2. FINDINGS.**

5 Congress finds that—

6 (1) on August 5, 2015, approximately
7 3,000,000 gallons of contaminated water was dis-
8 charged from the Gold King Mine north of Silverton,
9 Colorado, into Cement Creek, a tributary of the
10 Animas River, while contractors of the Environ-
11 mental Protection Agency were conducting an inves-
12 tigation of the mine—

13 (A) to assess the ongoing water releases
14 from the mine;

15 (B) to treat mine water; and

16 (C) to assess the feasibility of further mine
17 remediation;

18 (2) the plume of contaminated water resulting
19 from the discharge described in paragraph (1)—

20 (A) was found to contain high levels of
21 heavy metals, including aluminum, arsenic, cad-
22 mium, cobalt, copper, iron, lead, manganese,
23 mercury, molybdenum, nickel, and zinc; and

24 (B) flowed through the Animas River, the
25 San Juan River, and Lake Powell;

(3) as of the date of enactment of this Act, with respect to the discharge described in paragraph (1)—

(A) state of emergency declarations have been made by—

(i) the States of Colorado, New Mexico, and Utah; and

(ii) the Navajo Nation; and

(B) a declaration of disaster has been issued by the Southern Ute Indian Tribe; and

(4) on August 11, 2015, Administrator of the Environmental Protection Agency Gina McCarthy stated that the Environmental Protection Agency will take full responsibility for the discharge described in paragraph (1).

SEC. 3. DEFINITIONS.

In this Act:

(1) ADMINISTRATOR.—The term “Administrator” means the Administrator of the Environmental Protection Agency.

(2) GOLD KING MINE SPILL.—The term “Gold King Mine spill” means the discharge on August 5, 2015, of approximately 3,000,000 gallons of contaminated water from the Gold King Mine north of Silverton, Colorado, into Cement Creek that oc-

1 curred while contractors of the Environmental Pro-
2 tection Agency were conducting an investigation of
3 the Gold King Mine.

4 (3) INJURED PERSON.—The term “injured per-
5 son” means a person that—

6 (A) suffered injury resulting from the Gold
7 King Mine spill; and

8 (B) is—

9 (i) an individual, regardless of the
10 citizenship or alien status of the individual;

11 (ii) an Indian tribe, tribal corporation,
12 or other tribal organization;

13 (iii) a corporation, business, partner-
14 ship, company, association, insurer, county,
15 township, city, State or political subdivi-
16 sion of a State, school district, ditch com-
17 pany, special district, water district, water
18 company, the Animas-La Plata Operation,
19 Maintenance and Replacement Association,
20 or other non-Federal entity; or

21 (iv) a legal representative of an indi-
22 vidual or entity described in any of clauses
23 (i) through (iii).

24 (4) INJURY.—The term “injury” means any
25 damage to, or loss of, property, or a personal injury

1 or death, caused by a negligent or wrongful act or
 2 omission of a Federal officer, employee, contractor,
 3 or subcontractor while acting within the scope of of-
 4 fice, employment, or contract, under circumstances
 5 in which the Federal officer, employee, contractor, or
 6 subcontractor, if a private person, would be liable to
 7 the claimant in accordance with the law of the juris-
 8 diction in which the act or omission occurred.

9 (5) OFFICE.—The term “Office” means the Of-
 10 fice of Gold King Mine Spill Claims established by
 11 section 4(b)(1).

12 **SEC. 4. COMPENSATION FOR VICTIMS OF GOLD KING MINE**
 13 **SPILL.**

14 (a) FEDERAL TORT CLAIMS.—

15 (1) IN GENERAL.—Subject to paragraph (4),
 16 each injured person shall be entitled to receive from
 17 the United States compensation for a claim filed, or
 18 civil action brought, under chapter 171 of title 28,
 19 United States Code (commonly known as the “Fed-
 20 eral Tort Claims Act”), arising out of or relating to
 21 an injury resulting from the Gold King Mine spill.

22 (2) EFFECT OF ACCEPTANCE.—The acceptance
 23 by an injured person of compensation under para-
 24 graph (1) shall have the same effect as acceptance
 25 of compensation under chapter 171 of title 28,

1 United States Code (commonly known as the “Fed-
2 eral Tort Claims Act”), or any other Federal or
3 State law, arising out of or relating to the Gold
4 King Mine spill.

5 (3) REQUIREMENT.—The Administrator and
6 the Attorney General shall process a claim filed, or
7 civil action brought, pursuant to paragraph (1) as
8 expeditiously as practicable.

9 (4) NONAPPLICABILITY OF LIMITATION.—With
10 respect to any claim under this Act arising out of,
11 or relating to, an injury resulting from the Gold
12 King Mine spill—

13 (A) the maximum amount limitation on
14 claims described in the proviso of the first sen-
15 tence of section 2672 of title 28, United States
16 Code, shall be waived; and

17 (B) the Administrator may provide com-
18 pensation for the claim in an amount greater
19 than \$25,000 without prior written approval of
20 the Attorney General (or a designee), as the
21 Administrator determines to be appropriate.

22 (b) OFFICE OF GOLD KING MINE SPILL CLAIMS.—

23 (1) ESTABLISHMENT.—There is established
24 within the Environmental Protection Agency an Of-
25 fice of Gold King Mine Spill Claims.

1 (2) PURPOSE.—The Office shall receive, proc-
2 ess, and pay claims in accordance with this section.

3 (3) TREATMENT.—The establishment of the Of-
4 fice by this subsection shall not diminish the ability
5 of the Administrator to carry out the responsibilities
6 of the Environmental Protection Agency under any
7 other provision of law.

8 (4) DETAILEES.—On request of the Adminis-
9 trator, the head of any Federal department or agen-
10 cy may detail, on a reimbursable basis, any per-
11 sonnel of that department or agency to the Office to
12 assist in carrying out the duties under this Act.

13 (c) ALLOWABLE DAMAGES.—

14 (1) PROPERTY LOSS.—A claim that is paid for
15 loss of property under this section may include oth-
16 erwise-uncompensated damages resulting from the
17 Gold King Mine spill for—

18 (A) a cost resulting from lost tribal sub-
19 sistence from hunting, fishing, firewood gath-
20 ering, timbering, grazing, or agricultural activi-
21 ties, or from lost use for traditional or ceremo-
22 nial uses, conducted on land or water damaged
23 by the Gold King Mine spill;

24 (B) a cost of reforestation or revegetation
25 on tribal or non-Federal land, to the extent that

the cost of reforestation or revegetation is not covered by any other Federal program;

(C) any costs borne by any injured person to determine the extent of—

(i) the damages to agricultural land;

or

(ii) any other damages covered by this Act;

(D) any costs borne by an injured person who had to pay for water supplies or equipment to treat water during the period for which a water supply of the injured person was compromised by the Gold King Mine spill; and

(E) any other loss that the Administrator determines to be appropriate for inclusion as loss of property.

(2) BUSINESS LOSS.—A claim that is paid for an injury under this section may include damages resulting from the Gold King Mine spill for the following types of otherwise uncompensated business loss:

(A) Damage to tangible assets or inventory.

(B) Business interruption losses.

(C) Overhead costs.

1 (D) Employee wages for work not per-
2 formed.

3 (E) Any other loss that the Administrator
4 determines to be appropriate for inclusion as a
5 business loss.

6 (3) FINANCIAL LOSS.—A claim that is paid for
7 an injury under this section may include damages
8 resulting from the Gold King Mine spill for the fol-
9 lowing types of otherwise uncompensated financial
10 loss:

11 (A) An insurance deductible.

12 (B) Lost wages or personal income.

13 (C) Emergency staffing expenses.

14 (D) Debris removal and other cleanup
15 costs.

16 (E) Any other loss that the Administrator
17 determines to be appropriate for inclusion as a
18 financial loss.

19 **SEC. 5. LONG-TERM WATER QUALITY MONITORING PRO-**
20 **GRAM; DESIGNATION AS SUPERFUND SITE.**

21 (a) GOLD KING MINE SPILL RESPONSE PROGRAM.—

22 (1) IN GENERAL.—The Administrator shall
23 work with affected States and Indian tribes to de-
24 velop, fund, and implement a long-term monitoring

1 program for water quality of the Animas and San
2 Juan Rivers in response to the Gold King Mine spill.

3 (2) REQUIREMENT.—The program under para-
4 graph (1) shall provide—

5 (A) full disclosure to the public of applica-
6 ble water quality and sediment data; and

7 (B) a clear and meaningful comparison be-
8 tween those data and all relevant water quality
9 standards.

10 (b) SENSE OF CONGRESS.—It is the sense of Con-
11 gress that the Administrator should—

12 (1) consult with all local communities along the
13 Animas and San Juan Rivers affected by the Gold
14 King Mine spill, the Navajo Nation, the Southern
15 Ute Indian Tribe, and the States of Colorado and
16 New Mexico to determine whether it is appropriate
17 to seek a designation for the Upper Animas River
18 watershed on the National Priorities List under the
19 Comprehensive Environmental Response, Compensa-
20 tion, and Liability Act of 1980 (42 U.S.C. 9601 et
21 seq.); and

22 (2) prioritize the construction of a water treat-
23 ment plant in the Upper Animas River basin to sig-
24 nificantly reduce the ongoing heavy metal discharge
25 into the Animas River from Cement Creek.

1 **SEC. 6. AMENDMENT TO CERCLA.**

2 Title I of the Comprehensive Environmental Re-
3 sponse, Compensation, and Liability Act of 1980 (42
4 U.S.C. 9601 et seq.) is amended by adding at the end
5 the following:

6 **“SEC. 129. MINING-RELATED PROVISIONS.**

7 “(a) ASSESSMENTS.—The Administrator, the Sec-
8 retary of Agriculture, and the Secretary of the Interior,
9 in coordination with the Governors of affected States, the
10 heads of appropriate research universities, and the heads
11 of other relevant Federal departments and agencies,
12 shall—

13 “(1) not later than 180 days after the date of
14 enactment of this section, review known, existing
15 abandoned and inactive mines—

16 “(A) to identify the most dangerous aban-
17 doned and inactive mines on public land and
18 private land with respect to the existence of pol-
19 lution and the potential to release any haz-
20 ardous substance or other pollutant, particu-
21 larly with respect to contamination of water;
22 and

23 “(B) to establish a priority plan for activi-
24 ties for removal and remediation of the haz-
25 ardous substances and other pollutants;

1 “(2) periodically thereafter, as appropriate, up-
2 date the priority plan established under paragraph
3 (1)(B) as new information becomes available; and

4 “(3) develop a long-term research initiative to
5 evaluate the physical, chemical, and geological at-
6 tributes of closed, abandoned, and inactive mines
7 and pursue technological developments to aid in the
8 cleanup of such mines.

9 “(b) ACTIONS PRIOR TO CERTAIN ACTIVITIES.—Be-
10 fore conducting any activity at a mine that presents the
11 significant potential for accidental discharge of a haz-
12 ardous substance or other pollutant, the Administrator or
13 the head of any other Federal department or agency car-
14 rying out an activity for mine remediation shall—

15 “(1) provide to each tribal, State, and local unit
16 of government the resources or residents of which
17 may be affected by such a discharge notice regard-
18 ing the activity; and

19 “(2) develop a spill prevention, control, and
20 countermeasures plan to avoid and mitigate the im-
21 pacts of such a discharge.”.

22 **SEC. 7. EFFECT OF ACT.**

23 Nothing in this Act (or an amendment made by this
24 Act) provides for compensation of any injured person pur-
25 suant to this Act (or an amendment made by this Act)

- 1 from the Hazardous Substances Superfund established by
- 2 section 9507(a) of the Internal Revenue Code of 1986.

