

115TH CONGRESS
1ST SESSION

H. R. 4735

To provide compensation to persons injured by the Gold King Mine spill and fund certain long-term water quality monitoring programs, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 3, 2018

Mr. PEARCE introduced the following bill; which was referred to the Committee on Transportation and Infrastructure, and in addition to the Committees on the Judiciary, Energy and Commerce, and Agriculture, 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 persons injured by the Gold King Mine spill and fund certain long-term water quality monitoring programs, 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 Accountability Act of 2018”.

6 **SEC. 2. FINDINGS.**

7 Congress finds the following:

1 (1) On August 5, 2015, the Environmental Pro-
2 tection Agency caused a blowout at the Gold King
3 Mine in Colorado that released approximately 3 mil-
4 lion gallons of heavy-metal-laced mine wastewater
5 into the Animas and San Juan Rivers.

6 (2) In October of 2015, the Bureau of Rec-
7 lamation issued a report that detailed how the Envi-
8 ronmental Protection Agency “incorrectly con-
9 cluded” that the water level inside the Gold King
10 mine was only partially full of wastewater and used
11 this conclusion to develop a “plan to open the mine
12 in a manner that appeared to guard against blowout,
13 but instead led directly to that failure”.

14 (3) On January 13, 2017, the Environmental
15 Protection Agency concluded that the agency was
16 not legally able to pay compensation for the claims
17 relating to the Gold King Mine spill brought under
18 the Federal Tort Claims Act.

19 (4) On August 4, 2017, Environmental Protec-
20 tion Agency Administrator Scott Pruitt announced
21 that the agency will reconsider claims relating to the
22 Gold King Mine spill.

23 **SEC. 3. COMPENSATION FOR VICTIMS OF GOLD KING MINE**
24 **SPILL.**

25 (a) FEDERAL TORT CLAIMS.—

1 (1) IN GENERAL.—Subject to paragraph (2),
2 each injured person shall be entitled to receive from
3 the United States compensation for a claim filed, or
4 civil action brought, under chapter 171 of title 28,
5 United States Code (commonly known as the “Fed-
6 eral Tort Claims Act”), arising out of or relating to
7 an injury resulting from the Gold King Mine spill.

8 (2) NONAPPLICABILITY OF LIMITATION.—Not-
9 withstanding section 2672 of title 28, United States
10 Code, the Administrator may provide compensation
11 for a claim under this section in an amount greater
12 than \$25,000 without prior written approval of the
13 Attorney General (or a designee), as the Adminis-
14 trator determines to be appropriate.

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

16 (1) ESTABLISHMENT.—There is established
17 within the Environmental Protection Agency an Of-
18 fice of Gold King Mine Spill Claims, in this sub-
19 section referred to as the “Office”.

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

22 (3) TREATMENT.—The establishment of the Of-
23 fice by this subsection shall not diminish the ability
24 of the Administrator to carry out the responsibilities

1 of the Environmental Protection Agency under any
2 other provision of law.

3 (4) DETAILEES.—Upon the request of the Ad-
4 ministrator, the head of any Federal department or
5 agency may detail, on a reimbursable basis, any per-
6 sonnel of that department or agency to the Office to
7 assist in carrying out this section.

8 (c) ALLOWABLE DAMAGES.—

9 (1) PROPERTY LOSS.—A claim that is paid for
10 loss of property under this section may include dam-
11 ages resulting from the Gold King Mine spill for—

12 (A) any cost resulting from lost tribal sub-
13 sistence from hunting, fishing, firewood gath-
14 ering, timbering, grazing, or agricultural activi-
15 ties, or from lost use for traditional or ceremo-
16 nial uses, conducted on land or using water
17 damaged by the Gold King Mine spill;

18 (B) any cost of reforestation or revegeta-
19 tion on tribal or non-Federal land, to the extent
20 that the cost of reforestation or revegetation is
21 not covered by any other Federal program;

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

24 (i) the damages to agricultural land;

25 or

1 (ii) any other damages covered by this
2 section;

3 (D) any costs borne by an injured person
4 to pay for water supplies or equipment to treat
5 water during the period for which a water sup-
6 ply of the injured person was compromised by
7 the Gold King Mine spill; and

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

11 (2) BUSINESS LOSS.—A claim that is paid for
12 a business loss under this section may include dam-
13 ages resulting from the Gold King Mine spill for—

14 (A) damage to tangible assets or inventory;

15 (B) business interruption losses;

16 (C) overhead costs;

17 (D) employee wages for work not per-
18 formed; and

19 (E) any other loss that the Administrator
20 determines to be appropriate for inclusion as a
21 business loss.

22 (3) FINANCIAL LOSS.—A claim that is paid for
23 a financial loss under this section may include dam-
24 ages resulting from the Gold King Mine spill for—

25 (A) an insurance deductible;

- 1 (B) lost wages or personal income;
- 2 (C) emergency staffing expenses;
- 3 (D) debris removal and other cleanup
- 4 costs; and
- 5 (E) any other loss that the Administrator
- 6 determines to be appropriate for inclusion as a
- 7 financial loss.

8 (4) NON-LIMITATION.—The losses described in
9 paragraphs (1) through (3) do not limit any com-
10 pensation that is otherwise available under chapter
11 171 of title 28, United States Code.

12 (d) COMPENSATION.—

13 (1) IN GENERAL.—Any claim for damages com-
14 pensated under this section during a fiscal year shall
15 be paid from unobligated funds appropriated to the
16 Environmental Protection Agency for that fiscal
17 year.

18 (2) ROLLOVER.—To the extent that a claim ex-
19 ceeds the amount of unobligated funds available in
20 that fiscal year, the remainder of the claim shall be
21 paid from unobligated funds in the first subsequent
22 fiscal year in which sufficient unobligated funds are
23 available to satisfy such remainder.

24 (e) DEFINITIONS.—In this section:

1 (1) INJURED PERSON.—The term “injured per-
2 son” means a person who suffered injury resulting
3 from the Gold King Mine spill.

4 (2) INJURY.—The term “injury” includes any
5 injury for which compensation may be provided
6 under chapter 171 of title 28, United States Code,
7 that is caused by a negligent or wrongful act or
8 omission of a Federal officer, employee, contractor,
9 or subcontractor while acting within the scope of of-
10 fice, employment, or contract, under circumstances
11 in which the Federal officer, employee, contractor, or
12 subcontractor, if a private person, would be liable to
13 the claimant in accordance with the law of the juris-
14 diction in which the act or omission occurred.

15 (3) PERSON.—The term “person” means a per-
16 son who is eligible to bring a claim under chapter
17 171 of title 28, United States Code, and may in-
18 clude—

19 (A) an individual;

20 (B) an Indian tribe, tribal corporation, or
21 other tribal organization;

22 (C) a non-Federal entity, including a cor-
23 poration, business, partnership, company, asso-
24 ciation, insurer, ditch company, water district,
25 and water company;

1 (D) a State or political subdivision of a
 2 State, including a county, township, city, school
 3 district, and special district;

4 (E) the Animas-La Plata Operation, Main-
 5 tenance, and Replacement Association; or

6 (F) a legal representative of an individual
 7 or entity described in any of subparagraphs (A)
 8 through (E).

9 **SEC. 4. GOLD KING MINE SPILL RESPONSE PROGRAM.**

10 (a) IN GENERAL.—Subject to the requirements of
 11 subsection (b), the Administrator shall fund the implemen-
 12 tation of the long-term monitoring program developed by
 13 the Long-Term Impact Review Team of the State of New
 14 Mexico for the water quality of the Animas and San Juan
 15 Rivers.

16 (b) REQUIREMENTS.—In order to be funded by the
 17 Administrator under subsection (a), the long-term moni-
 18 toring program shall—

19 (1) provide full disclosure to the public of appli-
 20 cable water quality and sediment data;

21 (2) enable clear and meaningful comparison be-
 22 tween those data and all relevant water quality
 23 standards; and

24 (3) meet such other conditions as the Adminis-
 25 trator may require to administer the program.

1 **SEC. 5. PROHIBITION OF RULE MAKING.**

2 (a) IN GENERAL.—Except as provided under sub-
3 section (b), the Administrator may not finalize a rule or
4 engage in a rule making (as such terms are defined in
5 section 551 of title 5, United States Code) until all claims
6 processed under section 3 have been paid in full, as appli-
7 cable.

8 (b) EXCEPTIONS.—The prohibition under subsection
9 (a) shall not apply with respect to—

10 (1) such rules as may be required in order to
11 implement this Act; and

12 (2) any rule that the Administrator determines
13 necessary to address an imminent threat to public
14 health or safety, or other emergency.

15 **SEC. 6. DEFINITIONS.**

16 In this Act:

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

20 (2) GOLD KING MINE SPILL.—The term “Gold
21 King Mine spill” means the discharge on August 5,
22 2015, of approximately 3,000,000 gallons of con-
23 taminated water from the Gold King Mine north of
24 Silverton, Colorado, into Cement Creek that oc-
25 curred while contractors of the Environmental Pro-

1 tecton Agency were conducting an investigation of
2 the Gold King Mine.

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