

114TH CONGRESS
2D SESSION

H. R. 4483

To appoint a special investigator to determine the role of the Environmental Protection Agency in the Gold King Mine spill and its downstream environmental effects, provide compensation to injured persons, fund certain long-term water quality monitoring programs, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 4, 2016

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, Rules, 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 appoint a special investigator to determine the role of the Environmental Protection Agency in the Gold King Mine spill and its downstream environmental effects, provide compensation to injured persons, 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,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Gold King Mine Spill
3 Accountability Act of 2016”.

4 **SEC. 2. SPECIAL INVESTIGATION OF ENVIRONMENTAL PRO-**
5 **TECTION AGENCY ROLE IN GOLD KING MINE**
6 **SPILL.**

7 (a) APPOINTMENT.—Not later than 30 days after the
8 date of enactment of this Act, the Attorney General shall
9 appoint a special investigator, dedicated full time, to con-
10 duct an investigation in order to determine—

11 (1) who was at fault for the Gold King Mine
12 spill;

13 (2) which individuals were responsible for the
14 decisions that led to the spill; and

15 (3) what downstream environmental effects
16 were caused by the actions of the Environmental
17 Protection Agency, or the Environmental Protection
18 Agency’s failure to take action, after the Gold King
19 Mine spill.

20 (b) COMPENSATION FROM ENVIRONMENTAL PRO-
21 TECTION AGENCY.—The special investigator shall be com-
22 pensated for expenses incurred in the course of conducting
23 the investigation under subsection (a) by amounts pro-
24 vided in advance in appropriation Acts to the Adminis-
25 trator. The special investigator shall be paid at a rate not
26 to exceed the rate of basic pay for GS–14 of the General

1 Schedule. If the special investigator is a full-time officer
2 or employee of the United States, the special investigator
3 may not receive additional pay, allowances, or benefits by
4 reason of his or her service as a special investigator under
5 this section.

6 (c) AUTHORITIES OF SPECIAL INVESTIGATOR.—

7 (1) STAFF.—The special investigator may ap-
8 point and fix the pay of additional personnel as the
9 special investigator considers appropriate. Staff
10 members appointed by the special investigator under
11 this paragraph who are full-time officers or employ-
12 ees of the United States may not receive additional
13 pay, allowances, or benefits by reason of their serv-
14 ice to the special investigator.

15 (2) STAFF OF FEDERAL AGENCIES.—Upon the
16 request of the special investigator, the head of any
17 Federal department or agency may detail any of the
18 personnel of that department or agency to assist the
19 special investigator in carrying out his or her duties
20 under this section.

21 (3) OBTAINING OFFICIAL DATA.—The special
22 investigator may secure directly from any depart-
23 ment or agency of the United States information
24 necessary to enable the special investigator to carry
25 out this section. Upon the request of the special in-

1 investigator, the head of that department or agency
2 shall furnish that information to the special investi-
3 gator.

4 (4) SUBPOENA POWER.—

5 (A) IN GENERAL.—The special investigator
6 may issue subpoenas requiring the attendance
7 and testimony of witnesses and the production
8 of any evidence relating to any matter that the
9 special investigator is empowered to investigate
10 under this section. The attendance of witnesses
11 and the production of evidence may be required
12 from any place within the United States at any
13 designated place of hearing within the United
14 States.

15 (B) FAILURE TO OBEY A SUBPOENA.—If a
16 person refuses to obey a subpoena issued under
17 subparagraph (A), the special investigator may
18 apply to a United States district court for an
19 order requiring that person to appear before the
20 special investigator to give testimony, produce
21 evidence, or both, relating to the matter under
22 investigation. The application may be made
23 within the judicial district where the hearing is
24 conducted or where that person is found, re-
25 sides, or transacts business. Any failure to obey

1 the order of the court may be punished by the
2 court as civil contempt.

3 (C) SERVICE OF SUBPOENAS.—The sub-
4 poenas of the special investigator shall be
5 served in the manner provided for subpoenas
6 issued by a United States district court under
7 the Federal Rules of Civil Procedure for the
8 United States district courts.

9 (D) SERVICE OF PROCESS.—All process of
10 any court to which application is made under
11 subparagraph (B) may be served in the judicial
12 district in which the person required to be
13 served resides or may be found.

14 (d) REPORT OF FINDINGS AND CONCLUSIONS TO
15 CONGRESS.—

16 (1) REPORT OF FINDINGS.—Not later than 180
17 days after the date on which the special investigator
18 is appointed, the special investigator shall submit to
19 Congress a report containing the results of the in-
20 vestigation under subsection (a).

21 (2) REPORT OF GAO AUDIT.—Not later than
22 180 days after the date on which a report is sub-
23 mitted under paragraph (1), the Comptroller Gen-
24 eral shall submit to Congress a report containing the

1 results of an audit of the investigation, to determine
2 whether—

3 (A) the investigator appointed had any
4 conflict of interest relating to the subject mat-
5 ter of the investigation or with the Environ-
6 mental Protection Agency; and

7 (B) the findings are based on substan-
8 tiated scientific evidence, as applicable.

9 (3) RECIPIENTS.—

10 (A) The Speaker of the House of Rep-
11 resentatives shall refer the reports submitted
12 under paragraphs (1) and (2) to the following:

13 (i) The Committees on Science, Space,
14 and Technology, Natural Resources, and
15 Oversight and Government Reform of the
16 House of Representatives.

17 (ii) Each Member of the House of
18 Representatives representing a district that
19 includes the Animas and San Juan River
20 watersheds or any affected area down-
21 stream of the Gold King Mine.

22 (B) The President pro tempore of the Sen-
23 ate shall refer the reports submitted under
24 paragraphs (1) and (2) to the following:

1 (i) The Committees on Energy and
2 Natural Resources and Environment and
3 Public Works of the Senate.

4 (ii) Each Member of the Senate rep-
5 resenting a State that includes the Animas
6 and San Juan River watersheds or any af-
7 fected area downstream of the Gold King
8 Mine.

9 (e) TERMINATION.—The authority of the special in-
10 vestigator shall terminate upon submission of the report
11 under subsection (d)(1).

12 **SEC. 3. COMPENSATION FOR VICTIMS OF GOLD KING MINE**

13 **SPILL.**

14 (a) FEDERAL TORT CLAIMS.—

15 (1) IN GENERAL.—Subject to paragraph (2),
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) NONAPPLICABILITY OF LIMITATION.—Not-
23 withstanding section 2672 of title 28, United States
24 Code, the Administrator may provide compensation
25 for a claim under this section in an amount greater

1 than \$25,000 without prior written approval of the
2 Attorney General (or a designee), as the Adminis-
3 trator determines to be appropriate.

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

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

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

11 (3) TREATMENT.—The establishment of the Of-
12 fice by this subsection shall not diminish the ability
13 of the Administrator to carry out the responsibilities
14 of the Environmental Protection Agency under any
15 other provision of law.

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

21 (c) ALLOWABLE DAMAGES.—

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

1 (A) any cost resulting from lost tribal sub-
2 sistence from hunting, fishing, firewood gath-
3 ering, timbering, grazing, or agricultural activi-
4 ties, or from lost use for traditional or ceremo-
5 nial uses, conducted on land or using water
6 damaged by the Gold King Mine spill;

7 (B) any cost of reforestation or revegeta-
8 tion on tribal or non-Federal land, to the extent
9 that the cost of reforestation or revegetation is
10 not covered by any other Federal program;

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

13 (i) the damages to agricultural land;

14 or

15 (ii) any other damages covered by this
16 section;

17 (D) any costs borne by an injured person
18 to pay for water supplies or equipment to treat
19 water during the period for which a water sup-
20 ply of the injured person was compromised by
21 the Gold King Mine spill; and

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

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

4 (A) damage to tangible assets or inventory;

5 (B) business interruption losses;

6 (C) overhead costs;

7 (D) employee wages for work not per-
8 formed; and

9 (E) any other loss that the Administrator
10 determines to be appropriate for inclusion as a
11 business loss.

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

15 (A) an insurance deductible;

16 (B) lost wages or personal income;

17 (C) emergency staffing expenses;

18 (D) debris removal and other cleanup
19 costs; and

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

23 (4) NON-LIMITATION.—The losses described in
24 paragraphs (1) through (3) do not limit any com-

1 pensation that is otherwise available under chapter
2 171 of title 28, United States Code.

3 (d) COMPENSATION.—

4 (1) IN GENERAL.—Any claim for damages com-
5 pensated under this section during a fiscal year shall
6 be paid from unobligated funds appropriated to the
7 Environmental Protection Agency for that fiscal
8 year.

9 (2) ROLLOVER.—To the extent that a claim ex-
10 ceeds the amount of unobligated funds available in
11 that fiscal year, the remainder of the claim shall be
12 paid from unobligated funds in the first subsequent
13 fiscal year in which sufficient unobligated funds are
14 available to satisfy such remainder.

15 (e) DEFINITIONS.—In this section:

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

19 (2) INJURY.—The term “injury” includes any
20 injury for which compensation may be provided
21 under chapter 171 of title 28, United States Code,
22 that is caused by a negligent or wrongful act or
23 omission of a Federal officer, employee, contractor,
24 or subcontractor while acting within the scope of of-
25 fice, employment, or contract, under circumstances

1 in which the Federal officer, employee, contractor, or
2 subcontractor, if a private person, would be liable to
3 the claimant in accordance with the law of the juris-
4 diction in which the act or omission occurred.

5 (3) PERSON.—The term “person” means a per-
6 son who is eligible to bring a claim under chapter
7 171 of title 28, United States Code, and may in-
8 clude—

9 (A) an individual;

10 (B) an Indian tribe, tribal corporation, or
11 other tribal organization;

12 (C) a non-Federal entity, including a cor-
13 poration, business, partnership, company, asso-
14 ciation, insurer, ditch company, water district,
15 and water company;

16 (D) a State or political subdivision of a
17 State, including a county, township, city, school
18 district, and special district;

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

21 (F) a legal representative of an individual
22 or entity described in any of subparagraphs (A)
23 through (E).

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

2 (a) IN GENERAL.—Subject to the requirements of
3 subsection (b), the Administrator shall fund the implemen-
4 tation of the long-term monitoring program developed by
5 the Long-Term Impact Review Team of the State of New
6 Mexico for the water quality of the Animas and San Juan
7 Rivers.

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

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

13 (2) enable clear and meaningful comparison be-
14 tween those data and all relevant water quality
15 standards; and

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

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

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

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

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

3 (2) any rule that the Administrator determines
4 necessary to address an imminent threat to public
5 health or safety, or other emergency.

6 **SEC. 6. DEFINITIONS.**

7 In this Act:

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

11 (2) GOLD KING MINE SPILL.—The term “Gold
12 King Mine spill” means the discharge on August 5,
13 2015, of approximately 3,000,000 gallons of con-
14 taminated water from the Gold King Mine north of
15 Silverton, Colorado, into Cement Creek that oc-
16 curred while contractors of the Environmental Pro-
17 tection Agency were conducting an investigation of
18 the Gold King Mine.

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