

114TH CONGRESS  
1ST SESSION

# S. 2063

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.

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## IN THE SENATE OF THE UNITED STATES

SEPTEMBER 22, 2015

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

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## 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,*

3 **SECTION 1. SHORT TITLE.**

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

6 **SEC. 2. FINDINGS.**

7 Congress finds that—

1           (1) on August 5, 2015, approximately  
2           3,000,000 gallons of contaminated water was dis-  
3           charged from the Gold King Mine north of Silverton,  
4           Colorado, into Cement Creek, a tributary of the  
5           Animas River, while contractors of the Environ-  
6           mental Protection Agency were conducting an inves-  
7           tigation of the mine—

8                   (A) to assess the ongoing water releases  
9                   from the mine;

10                   (B) to treat mine water; and

11                   (C) to assess the feasibility of further mine  
12                   remediation;

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

15                   (A) was found to contain high levels of  
16                   heavy metals, including aluminum, arsenic, cad-  
17                   mium, cobalt, copper, iron, lead, manganese,  
18                   mercury, molybdenum, nickel, and zinc; and

19                   (B) flowed through the Animas River, the  
20                   San Juan River, and Lake Powell;

21           (3) as of the date of enactment of this Act, with  
22           respect to the discharge described in paragraph  
23           (1)—

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

1 (i) the States of Colorado, New Mex-  
2 ico, and Utah; and

3 (ii) the Navajo Nation; and

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

6 (4) on August 11, 2015, Administrator of the  
7 Environmental Protection Agency Gina McCarthy  
8 stated that the Environmental Protection Agency  
9 will take full responsibility for the discharge de-  
10 scribed in paragraph (1).

11 **SEC. 3. DEFINITIONS.**

12 In this Act:

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

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

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

1 (A) suffered injury resulting from the Gold  
2 King Mine spill; and

3 (B) is—

4 (i) an individual, regardless of the  
5 citizenship or alien status of the individual;

6 (ii) an Indian tribe, tribal corporation,  
7 or other tribal organization;

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

16 (iv) a legal representative of an indi-  
17 vidual or entity described in any of clauses  
18 (i) through (iii).

19 (4) INJURY.—The term “injury” means any  
20 damage to, or loss of, property, or a personal injury  
21 or death, caused by a negligent or wrongful act or  
22 omission of a Federal officer, employee, contractor,  
23 or subcontractor while acting within the scope of of-  
24 fice, employment, or contract, under circumstances  
25 in which the Federal officer, employee, contractor, or

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

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

7 **SEC. 4. COMPENSATION FOR VICTIMS OF GOLD KING MINE**  
8 **SPILL.**

9 (a) FEDERAL TORT CLAIMS.—

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

17 (2) EFFECT OF ACCEPTANCE.—The acceptance  
18 by an injured person of compensation under para-  
19 graph (1) shall have the same effect as acceptance  
20 of compensation under chapter 171 of title 28,  
21 United States Code (commonly known as the “Fed-  
22 eral Tort Claims Act”), or any other Federal or  
23 State law, arising out of or relating to the Gold  
24 King Mine spill.

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

5           (4) NONAPPLICABILITY OF LIMITATION.—With  
6 respect to any claim under this Act arising out of,  
7 or relating to, an injury resulting from the Gold  
8 King Mine spill—

9                   (A) the maximum amount limitation on  
10 claims described in the proviso of the first sen-  
11 tence of section 2672 of title 28, United States  
12 Code, shall be waived; and

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

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

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

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

24                   (3) TREATMENT.—The establishment of the Of-  
25 fice by this subsection shall not diminish the ability

1 of the Administrator to carry out the responsibilities  
2 of the Environmental Protection Agency under any  
3 other provision of law.

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

9 (c) ALLOWABLE DAMAGES.—

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

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

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

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

1 (i) the damages to agricultural land;

2 or

3 (ii) any other damages covered by this

4 Act;

5 (D) any costs borne by an injured person

6 to pay for water supplies or equipment to treat

7 water during the period for which a water sup-

8 ply of the injured person was compromised by

9 the Gold King Mine spill; and

10 (E) any other loss that the Administrator

11 determines to be appropriate for inclusion as

12 loss of property.

13 (2) BUSINESS LOSS.—A claim that is paid for

14 an injury under this section may include damages

15 resulting from the Gold King Mine spill for the fol-

16 lowing types of otherwise-uncompensated business

17 loss:

18 (A) Damage to tangible assets or inven-

19 tory.

20 (B) Business interruption losses.

21 (C) Overhead costs.

22 (D) Employee wages for work not per-

23 formed.

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

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

9 (A) An insurance deductible.

10 (B) Lost wages or personal income.

11 (C) Emergency staffing expenses.

12 (D) Debris removal and other cleanup  
13 costs.

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

17 **SEC. 5. LONG-TERM WATER QUALITY MONITORING PRO-**  
18 **GRAM; SENSE OF CONGRESS.**

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

20 (1) IN GENERAL.—The Administrator shall  
21 work with affected States and Indian tribes to de-  
22 velop, fund, and implement a long-term monitoring  
23 program for water quality of the Animas and San  
24 Juan Rivers in response to the Gold King Mine spill.

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

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

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

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

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

20                   (2) prioritize the construction of a water treat-  
21 ment plant in the Upper Animas River basin to sig-  
22 nificantly reduce the ongoing heavy metal discharge  
23 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 those 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.

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