

JOHN MCCAIN, ARIZONA  
LISA MURKOWSKI, ALASKA  
JOHN HOEVEN, NORTH DAKOTA  
JAMES LANKFORD, OKLAHOMA  
STEVE DAINES, MONTANA  
MIKE CRAPO, IDAHO  
JERRY MORAN, KANSAS

MARIA CANTWELL, WASHINGTON  
TOM UDALL, NEW MEXICO  
AL FRANKEN, MINNESOTA  
BRIAN SCHATZ, HAWAII  
HEIDI HEITKAMP, NORTH DAKOTA

# United States Senate

COMMITTEE ON INDIAN AFFAIRS

WASHINGTON, DC 20510-6450

MIKE ANDREWS, MAJORITY STAFF DIRECTOR  
ANTHONY WALTERS, MINORITY STAFF DIRECTOR

October 17, 2016

The Honorable Loretta Lynch  
Attorney General  
U. S. Department of Justice  
Robert F. Kennedy Building  
950 Pennsylvania Avenue, N.W.  
Washington, D.C. 20530

The Honorable Gina McCarthy  
Administrator  
Environmental Protection Agency  
1200 Pennsylvania Avenue, N.W.  
Washington, DC 20460

On May 3, 2016, we referred to you factual findings in connection with the recent, massive Gold King Mine spill, north of Silverton, Colorado, which we believe warrants a criminal investigation. This spill resulted in the discharge of a 3-million-gallon acidic plume of lead, arsenic, mercury and other metals into the Animas River in Colorado and the San Juan River near Farmington, New Mexico, and devastated at least 1,500 farms on the Navajo Nation. Even now, the total damage to crops, soil, livestock, wildlife, irrigation, and drinking water supplies that are critical to the Navajo people as sources of nourishment and economic and cultural centers, remains unknown.

The basis for our referral arose from information obtained in the course of hearings and oversight conducted by the Senate Committee on Indian Affairs and our colleagues in the House of Representatives regarding the responsibility of Environmental Protection Agency (EPA) personnel in causing the spill.

This week, we learned that after having found evidence of criminal wrongdoing, including violations of the *Clean Water Act* and the *False Claims Act*, the EPA Inspector General (IG) referred its criminal findings to the U.S. Attorney for the District of Colorado for prosecution. But on the very same day, the U.S. Attorney declined to prosecute these offenses. Instead, federal prosecutors will send the case to senior EPA managers for administrative action.

This is unacceptable.

This decision shows that the federal government is not interested in holding itself to the same level of accountability to which it holds private companies when their negligence causes serious

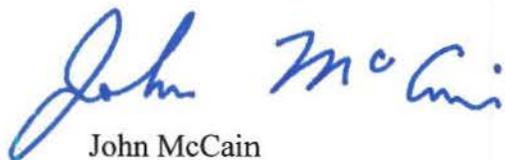
environmental damage and major economic harm. The federal government has extracted accountability, remediation and restitution from scores of oil, gas and mining companies on far less evidence than what we have seen in the Gold King Mine spill case. Given the devastation this catastrophe caused in the lives and livelihoods of Native American tribes, including the Navajo Nation, someone needs to be held accountable and legally liable for the largest disaster of its kind since the Deepwater Horizon spill in the Gulf of Mexico.

As a point of comparison, in 2014, Duke Energy Corporation was handed the largest fine ever levied for a violation of the *Clean Water Act*, when the company spilled at least 39,000 tons of coal ash and 27 million gallons of contaminated water into the Dan River near Eden, North Carolina. Duke Energy pleaded guilty and was sentenced to pay \$102 million for the violations.

With this in mind, we ask that by no later than Friday, October 28, 2016, you provide us a briefing that explains the Department of Justice's decision not to pursue any charges related to EPA's Gold King Mine disaster.

If you have any questions about this letter, please contact Senate Committee on Indian Affairs Staff Director Michael Andrews at (202) 224-2251, or Senator McCain's Chief of Staff Pablo E. Carrillo at (202) 224-7123.

Sincerely,



John McCain  
U.S. Senator



John Barrasso  
Chairman, Senate Indian Affairs Committee