

**Prepared Statement of
James M. “Mike” Olguin
Southern Ute Indian Tribal Council Member
Southern Ute Indian Tribe
Before the Committee on Indian Affairs
United States Senate**

**Oversight Hearing
EPA’s Gold King Mine Disaster: Examining the Harmful Impacts to Indian Country
September 16, 2015**

Good afternoon Chairman Barrasso, Vice Chairman Tester, and Committee members. Thank you for the opportunity to appear before you today on behalf of the Southern Ute Indian Tribe to discuss the Gold King Mine Spill and its impacts on the Tribe and our community.

My name is Mike Olguin. I am an elected member of the Southern Ute Indian Tribal Council, which is the governing body of the Southern Ute Indian Tribe. The Southern Ute Indian Reservation encompasses approximately 710,000 acres in southwestern Colorado. The Tribe is blessed by eight rivers traversing its Reservation in five main drainage basins. One of those rivers is the Animas River, which bisects the western half of the Tribe’s Reservation, downstream of Durango, Colorado, and upstream of New Mexico.

Since the Gold King Mine blowout on August 5, the Tribe has been actively and extensively engaged in responding to the spill. Because of this experience, the Tribe has learned some lessons and is prepared to share our observations with the Committee.

Tribal and Local Governments were Particularly Responsive and EPA was Cooperative in Responding to the Spill.

The Tribe first learned of the Gold King Mine release when the Deputy Director of the Colorado Department of Natural Resources notified the Tribe’s Wildlife Resources Division on Wednesday afternoon, August 5, 2015. Our Tribe immediately responded by implementing its emergency management plan, contacting the La Plata County Office of Emergency Management, estimating when the contaminant plume would reach the Reservation, contacting EPA to determine the appropriate analyte list for water quality sampling, and commencing baseline water quality monitoring activities before the spill reached the Reservation. On Thursday and Friday, August 6th and 7th, tribal staff coordinated with EPA and La Plata County personnel, attended meetings, gathered information, and continued daily sampling on the Animas River. In the first days of the spill, however, it was largely the local jurisdictions who were responding to the incident. As of Friday, August 7th, EPA still did not have a coordinated effort in Durango. In the absence of a federal presence, local jurisdictions, including the Tribe, worked together as members of the Southwest Incident Management Team in coordinating a response.

In accordance with the Tribe’s Incident Management Plan, Tribal Chairman Clement Frost issued a disaster declaration on Saturday, August 8th. Other jurisdictions followed suit. In the days that

followed the release, the Tribe attended to the needs of the tribal membership. The Tribe posted signs closing access to the Animas River on the Reservation, commenced bottled water delivery to affected tribal members, provided water tanks for affected livestock owners, commenced delivery of water for livestock (the Tribe commenced delivering water to the tribal membership when the EPA contractor delivered water that was not suitable for livestock consumption), held informational meetings with tribal members, and offered temporary housing for affected tribal member families. The Tribe also coordinated and supported EPA testing of tribal member domestic water wells and irrigation ditches in the impacted area within the Reservation. Subsequently, the Tribe purchased and installed 14 reverse osmosis systems on the kitchen taps of tribal member homes.

For the duration of the response, tribal staff communicated, coordinated, and actively participated with personnel from other affected governments in the Unified Incident Command. The Tribe's Incident Management Team was fully engaged in the Incident Command effort, which was headquartered in Durango, and worked closely with local, state and federal agencies throughout the response effort. Tribal Incident Management Team members staffed the center virtually around the clock to ensure that the Tribe was contributing its expertise to the response effort, as well as to ensure that the Tribe was treated as an affected jurisdiction. The Tribe has since received acknowledgement and thanks for its participation, expertise, efficacy, and professionalism in responding to the incident, and remains engaged in the Incident Command to this day.

The spill response highlighted the importance of relationships between state, tribal, and local governments. The State of New Mexico first learned of the spill on August 6th when the Southern Ute Indian Tribe's Water Quality Program called New Mexico's Spill Reporting Hotline. New Mexico had not received notification from either EPA or Colorado at that point. The County and City attorneys reached out to tribal attorneys to share information and meeting notifications that they knew had not been shared with tribal attorneys. The Southern Ute Indian Tribe coordinated with its sister tribe, the Ute Mountain Ute Tribe, which draws water from the San Juan River. Other downstream tribes in the lower Colorado River Basin, including Chemehuevi, Fort Mohave, Quechan, and Cocopah reached out to the Southern Ute Indian Tribe for information about the spill and the Tribe's water quality sampling, which the Southern Ute Indian Tribe shared.

Today, water quality monitoring results show the water of the Animas River on the Reservation has returned to pre-spill conditions and the River has been re-opened for all activities. Our primary concern remains the potential long-term impact on human health and the environment caused by the deposition of heavy metals on the Animas Riverbed.

The Tribe Incurred Significant Costs from Responding to the Spill but Expects Full Reimbursement from EPA.

For the period from August 5th through September 8th, the Tribe incurred approximately \$170,000 in costs responding to the spill, mostly in staff time. We understand neighboring community businesspersons suffered losses and our neighboring local governments, La Plata County and the City of Durango, with whom the Tribe shares many interests, likewise incurred costs. Long-term, we expect to incur costs for continued water quality and sediment monitoring. The Tribe is working with EPA to enter into a Cooperative Agreement whereby the EPA will reimburse the Tribe for

costs already expended, as well as future costs that will be incurred, including the costs of continued water quality monitoring.

The Tribe's Water Quality Data Provided Important Information for Assessing the Spill's Short-term Impacts and Continued Monitoring Should Provide Important Information on Long-term Impacts.

The Tribe has long had an active water sampling and monitoring program, and for over fifteen years has been monitoring water quality in the rivers that cross the Reservation, including the Animas. Before the Gold King Spill, the Tribe's Water Quality Program had been maintaining three stations in the River with equipment that continuously collects pH, oxygen, temperature, and conductivity data. EPA funds this monitoring through a Clean Water Act tribal assistance grant. In response to the spill, the Tribe's Water Quality Program established additional monitoring stations and expanded the list of substances for which the Tribe tests. The Tribe tested before the plume hit the Reservation, and for two weeks after the spill, the Tribe was testing daily for over 25 substances, including aluminum, iron, silver, magnesium, arsenic, cadmium, selenium, zinc, lead, mercury, barium, and molybdenum. The Tribe has since resumed its routine monthly sampling of water quality, quarterly sampling of macroinvertebrates, and taking pH, oxygen, temperature, and conductivity readings every 30 minutes.

On Thursday, August 13, 2015, the Tribe shared the water quality data it had collected on the Animas River since the spill. The data from the lab was encouraging. The Tribe assessed the results against tribal and state water quality standards, as well as historical data. Initial pH data showed no dip below pH 7.4 on the Reservation. Aquatic life prefers waters in the 6.5 – 8.0 range. The Tribe shared data with EPA, the State of Colorado, La Plata County, local officials, and community stakeholder groups. The Tribe also prepared and shared historical water quality data to provide information on pre-release—or normal—river conditions.

The Tribe also has historical data regarding aquatic life in the River. Coincidentally, just two weeks before the Gold King spill, the Tribe had collected tissue samples from fish in the Animas River to conduct metals analysis on those samples. While the purpose of the testing was initially to assess potential human consumption concerns, the Tribe will continue to conduct these fish tissue studies to determine any toxicity impacts from the spill. This will allow the Tribe to assess the extent of bioaccumulation of toxins in the aquatic life in the River.

The Tribe has been able to develop a highly successful water quality program, which has provided valuable support to the community in this response, due principally to EPA Tribal Assistance Program grant funding. We hope Congress and the EPA will see the benefits that the Tribal Assistance Program grants have provided to Indian Country and its surrounding communities and continue to appropriately fund these tribal grant programs.

The Problem of Abandoned Mine Drainage Predates the Gold King Incident, and Addressing the Problem is Complex and Expensive.

Like others, the Tribe favors a full evaluation of events leading to the spill and the EPA's performance responding to the spill. We can all learn from mistakes made and, based on a thorough evaluation of the incident and response, hopefully, EPA, the Tribe, and other responders can improve emergency response preparedness.

It is important to keep this incident in perspective and understand it points to a much larger problem, one that has been 100 years in the making. In the late 19th century, the discovery of valuable minerals in the San Juan Mountains led to widespread trespass on lands set apart for the Utes under an 1868 treaty. As a result, the United States negotiated another agreement with the Utes in 1873 that carved 3.7 million acres out of the middle of the Ute Reservation. That agreement, along with the 1872 mining law, paved the way for hard rock mining in the San Juan Mountains, one legacy of which is mining-related pollution of the Animas River.

The Gold King is not the only abandoned mine polluting the Animas River basin. There are many others, and reportedly many thousands of abandoned mines that similarly degrade water quality in rivers across the West. There are an estimated 23,000 abandoned mines in Colorado alone. We hope that the new light being shined on the long-standing problem of acid mine drainage in the Animas River basin will cause interested parties to develop a permanent solution.

Federal Leadership and Assistance, and Communication, Collaboration, and Cooperation among Downstream Community Stakeholders and Federal, State, and Tribal Governments, is Key to Avoiding another Blowout and Addressing the Problem of Abandoned Mine Drainage Polluting the Upper Animas River Watershed.

Without Congressional support and federal leadership, the problem of acid mine drainage polluting the Animas River and other rivers will not be solved. The Tribe, State of Colorado, local governments, and stakeholders need federal assistance in exploring options for cleaning up the acid mine drainage problem, including possible Superfund designation for the San Juan Mountain area surrounding the Gold King Mine. The Tribe urges the Committee to support continued dialogue and collaboration and to provide direction in how the Tribe and other interested parties can help EPA respond to contamination threats, in order that EPA may fulfill its mission to protect, preserve and, where necessary, proactively remediate contamination sites that continue to threaten the Animas and other rivers.

Conclusion

The Tribe, through its Incident Management Team and Water Quality Program has made a significant contribution to the response effort on the Gold King incident. Based on ongoing discussions, we anticipate EPA will reimburse the Tribe for its direct costs incurred responding to the spill. The Tribe hopes Congress will fund, and EPA will assist in providing support for, long-term monitoring for impacts caused by the Gold King Mine spill. We also hope Congress will support EPA continuing to work cooperatively with Colorado and affected tribes, local

governments, and community stakeholders to develop a permanent solution to the acid mine drainage problem in southwestern Colorado.

Thank you for the opportunity to appear before you today. I am glad to answer questions the Committee may have.