

**Testimony of Russell Begaye
President
Navajo Nation**

**Before the
United States Senate Committee
on Indian Affairs
Washington, DC**

**Oversight Hearing on "EPA's Gold King Mine Disaster:
Examining the Harmful Impacts to Indian Country"**

Wednesday, September 16, 2015

I. INTRODUCTION

Yá'át'ééh (hello) Chairman Barrasso, Vice-Chairman Tester, and Members of the Committee, my name is Russell Begaye. I am the President of the Navajo Nation. I was raised on a farm along the San Juan River in Shiprock, New Mexico, one of the communities directly impacted by the subject of this hearing. Thank you for this opportunity to testify before your Committee on a matter that is of utmost importance to the Navajo Nation.

As you know, on Wednesday August 5, 2015, the United States Environmental Protection Agency (USEPA), and other parties, caused a massive release of toxic contaminants from the Gold King Mine into Cement Creek. The toxic sludge—which included harmful contaminants such as lead and arsenic—flowed south from the Cement Creek into the Animas River, then into the San Juan River (River), a major water source for the Navajo Nation. The San Juan River flows through 215 miles of some of the richest farmland in the Nation's territory, and provides much of the Nation's northern border. The impact to the Navajo Nation from this drastic release is compounded by the fact that much of this portion of the River is slower moving than upstream.

Today, in the brief time I have, I would like to cover only a few critical areas of concern for the Navajo people. The critical areas of concern are as follows:

- The USEPA's, among others', mishandling of the spill and the emergency response; USEPA's lack of timely notice, transparency, and consistency; and the resulting culture of distrust;
- History of contamination of the San Juan River and the need for cleanup;
- Our preliminary findings on the short-term and long-term impacts of the spill on the Navajo people and environment, including economic, health, cultural, and spiritual impacts.

To address the serious impacts of this spill and the continued threat to the Navajo people from future contamination, we request the following:

- **Resources from USEPA, FEMA and BIA to address the immediate emergency;**
- **Assurances that USEPA will fairly and timely compensate the affected farmers and livestock owners for their damages, both in the near term and long term.**
- **Resources to conduct our own water, sediment, and soil monitoring, and recognized authority for the Navajo Nation EPA to do the necessary work.**
- **That the USEPA address all the contamination that is flowing into the River.**
- **Resources to address near- and intermediate-term environmental and health impacts;**
- **Resources to study and address the long-term environmental and health impacts of the spill, and to restore the River to a safe and healthy state; and**
- **A fair and independent assessment of the role USEPA, and others, played in the events leading up to the Gold King Mine spill, and the establishment of a different lead agency.**

It is important to realize that in addition to the many known and yet unknown physical, chemical, biological, and economic effects of this spill, this spill has taken a cultural and spiritual toll on our society, disrupting our *hozho*. *Hozho* encompasses beauty, order, and harmony, and expresses the idea of striving to maintain balance in the Navajo universe. The trauma from this spill will be felt for years to come, and we need immediate and sustained help to restore the balance for our people.

II. THE USEPA'S MISHANDLING OF THE SPILL AND CREATION OF A CULTURE OF DISTRUST

The NNEPA works in close partnership with USEPA to facilitate the Nation's twelve environmental programs, which are largely, if not completely, funded by the USEPA. A good and close working relationship with USEPA has always been critical to the success of the NNEPA. However, recent events relating to this spill have led to a complete shift in that relationship as USEPA has sought to quiet our legitimate concerns, and has made repeated missteps in its response efforts. We have serious concerns about the strong conflict of interest USEPA has with respect to this investigation and the emergency response necessary. No other environmental bad actor would be given leeway to investigate itself and determine to what extent it will be held accountable. We are encouraged that USEPA's Office of Inspector General will be reviewing this incident, but we believe another agency should take the lead on the on-ground response, and an independent body should conduct the investigation.

To begin with, the USEPA inexplicably delayed notification of the spill to the Navajo Nation. The spill occurred the morning of August 5, 2015, but the Nation was not informed of the release until August 6, a full day later, and not even by the USEPA but by the State of New Mexico. It took the USEPA almost two full days to notify us. We view this as a violation of the government-to-government relationship between the federal government and the Navajo Nation.

The USEPA also demonstrated a complete lack of transparency. Our initial warning from USEPA was of an “acid mine drainage spill in the Animas River north of Durango” of “[a]pproximately 1 [million] gallons.” USEPA’s initial focus appeared to be on pH levels. This served to downplay the magnitude of risk to human and animal health, and later reports by USEPA of released contaminants were incomplete. The media was receiving faster and fuller information from USEPA than the Navajo Nation. For example, the New York Times reported the spill hours before USEPA provided the Nation with notice of the spill. And media sources reported that USEPA confirmed the presence of arsenic on Friday, August 7, whereas USEPA still had not reported the presence of arsenic to the Nation even by Sunday, August 9.

USEPA on Friday, August 7 informed the Nation that “the water in Cement Creek and the Animas River near Silverton is clearing,” but the Vice-President and I nonetheless made plans to travel to the Gold King Mine Sunday to assess the situation for ourselves.¹ We requested a tour from USEPA, but faced immediate resistance. USEPA staff indicated they would only take us to the confluence of Cement Creek with the Animas River in Silverton, Colorado, but the water at the confluence remained bright orange. It did not appear to be “clearing.” We thus urged USEPA to take us to the point of release. They again refused, this time compromising by offering to take us to the treatment pools below the mine adit. We finally convinced them to take us within a half-mile of the point of release. We walked the rest of the way to the point of release. There we saw a completely unblocked mine adit with an estimated 550 gallon per minute flow of bright, opaque orange liquid pouring forth. We have since learned that prior to the blocking of the nearby Sunnyside Mine and the Red and Bonita Mine, Gold King Mine was releasing water at only 7 gallons per minute.² We took video footage and photos at the point of release and shared these with the public. This appeared to be the first time USEPA Region 9 staff visited the point of release.

While USEPA was slow in notifying the Nation of the initial spill and its associated risks, it was quick in dispatching staff to Navajo communities to hand out Standard Form 95 and encouraging members of the Navajo Nation to fill out forms to expedite settlement of their claims under the Federal Tort Claims Act and apparently to obtain releases from members of the Navajo Nation. But this was only *after* I announced that the Navajo Nation would be suing the USEPA and other liable parties for the spill. The Navajo Nation Attorney General reviewed the form and identified plain and clear language on the form asserting that individuals submitting the forms would be filing the forms in pursuit of “FULL SATISFACTION AND FINAL SETTLEMENT” of their claims for damages and injuries that yet remain unknown.

¹ E-mail from Harry Allen, Chief, Emergency Response Section, USEPA Region 9, to Russell Begaye, President, Navajo et al (Aug. 7, 2015, 11:58 PT) (on file with NNDOJ).

² <http://fox6now.com/2015/08/13/gold-king-mine-owner-i-foresaw-disaster-before-epa-spill-into-animas-river-in-colorado/>

This presented our people with a difficult choice. The economics of farming makes the cashing out of harvests time-critical. Our farming families were expecting to sell their harvests along a predictable timeline that was disrupted by the closing of the San Juan River to irrigation use. They relied on the predictability of this timeline to defer bills and expenses until harvest time. Now that time is passing, and many of them need their anticipated harvest returns immediately to catch up on bills and to buy school clothes, among other things. Yet if they fill out Standard Form 95 and receive a settlement check, they may not be able to defer cashing that check while they wait for additional damages or injuries to accrue. I, along with the Vice-President and Attorney General, have thus asked USEPA for an interim claims process that will allow for ongoing claims filings, and our Attorney General has asked for a U.S. Attorney General opinion confirming that the filing of Standard Form 95 and the settling of a claim filed under that form or process does not in fact fully satisfy and settle the claim. None of this has happened while the Navajo people continue to suffer. Despite our requests, the USEPA has yet to confirm to us that it will fully and fairly address all damages and injuries to members of the Navajo Nation who have been impacted by the spill.

These instances—but a few among many—have led to distrust by the Navajo Nation towards USEPA, both among our farmers and our leadership. The NNEPA, in contrast, continues to have the trust of our farmers and our leadership. Despite the NNEPA's limited resources, we turn to the NNEPA for honest data assessments and technical answers.

III. HISTORY OF CONTAMINATION OF THE SAN JUAN RIVER AND THE NEED FOR CLEANUP

This incident is one of many where responsible parties have contaminated Navajo land and water. I was born and raised in Shiprock, and as a child one summer, I once saw hundreds of dead fish floating down the San Juan River. We knew something was not right with all these dead fish in the River. But the next day we were back in the water, playing in it. There was no one to tell us to stay out of the water—that it was dangerous. We always wondered why all the fish died in the River, and it was not until USEPA Administrator Gina McCarthy visited Shiprock on August 13, that I learned the story of why this occurred. There is a 1.5 million ton uranium tailings pile above a floodplain feeding into the San Juan River in the middle of Shiprock. That summer, a dam holding a pool of tailing-contaminant filled water burst into the River. But no one told us what had happened. We cannot tolerate this contamination of our sacred lands.

Yet the recent spill threatens to recur, either from unsettling of contaminated sediment in our River waters, or from ongoing contaminated releases from upstream mines. USEPA stated early on that we will be dealing with the effects of USEPA's Gold King Mine chemical spill "for decades." Gold King Mine is just one of over 300 abandoned hardrock mines in the heavily contaminated 140-mile-area known as the Upper Animas Mining District (District).³ The District includes private, federal, and state lands, and the town of Silverton.⁴ Gold King Mine was twice

³ <http://www2.epa.gov/region8/upper-animas-mining-district>

⁴ <http://www2.epa.gov/region8/upper-animas-mining-district>.

considered for inclusion on the National Priorities List (NPL), both as part of the District, and as a narrower carve-out from the District, and the recent spill was preceded by two spills in the 1970s. We sent a letter to Administrator McCarthy on Monday, September 7, requesting that this District be made a Superfund site so that USEPA will make the cleanup and containment of the site a priority, and thereby protect us downstream communities.

The Mine's first Superfund site assessment was conducted in the 1990s, and the assessment concluded, "that water quality standards were not achieved" in the District.⁵ The assessment also identified "severe impacts [of the District] to aquatic life in the Upper Animas and its tributaries."⁶ Despite the serious harm being caused by the District, USEPA postponed listing the District on the NPL in order to allow a "community-based collaborative effort" to clean up and mitigate harm from the District "as long as progress was being made to improve the water quality of the Animas River."⁷

Yet in 2005, the "water quality ha[d] declined significantly" in the area, and so in 2008, USEPA performed another NPL assessment, this time on the Upper Cement Creek alone.⁸ The study again confirmed, "that the area would qualify for inclusion" on the NPL.⁹ Despite the additional confirmation that the Mine area should be listed on the NPL, "EPA postponed efforts to include the area on the National Priorities List," again "after receiving additional community input."¹⁰ USEPA's repeated denial of the facts with respect to the level of harm posed by the Gold King Mine and its surrounding mines has placed downstream jurisdictions such as the Nation at undue risk. This further contributes to a lack of trust in USEPA's ability to protect the health and well-being of Navajo people.

The threat of a spill from the District remains under the existing management scheme. The chemicals found in the District pose significant human health risk as they contain known carcinogens and elements, like lead and arsenic, that can affect major organ systems such as cardiovascular, respiratory, gastrointestinal and reproductive systems. The risks to the Navajo people are very real. Neither my people nor the other communities living near the rivers can tolerate a recurrence of the unprecedented damage caused by the Gold King Mine Spill.

Based on our extrapolation of known data, over 20 million gallons of aggregate contaminated flow has spilled from the Mine since August 5. If the USEPA does not address these sites through designation as a Superfund site, contaminants will continue to flow freely into the Nation's waters, and the concentration of contaminants in our waters will increase, extending the duration of exposure for our people, which is already significant now, even further into the future. Metals poison people slowly, and sediments eventually make their way downstream. We

⁵<http://www2.epa.gov/sites/production/files/2015-08/documents/goldkingminewatershedfactsheetbackground.pdf> at 2.

⁶<http://www2.epa.gov/sites/production/files/2015-08/documents/goldkingminewatershedfactsheetbackground.pdf> at 2.

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

are thus gravely concerned that the metals coming from Gold King Mine and the District are making their way down to us, and will settle in our slow waters. We are also concerned that efforts to flush contaminants out of the Farmington area flushed contaminated sediments into our territory, and that those contaminants will remain here for a long time. We do not want our people to be poisoned, so we urge you to do what you can to help us secure NPL listing for the District.

IV. SHORT AND LONG-TERM IMPACTS

The impacts of this spill, as well as the ongoing contamination from mines in the area, are devastating and myriad. The reliance of our people on the San Juan River and the significance of the River to our people cannot be overstated. The Navajo Nation as a whole is a largely agricultural society, and our people have traditionally farmed and ranched since pre-contact. The San Juan River Basin is a bastion for ancient Navajo seed strains that our people have carefully refined over centuries to thrive in our arid region. Farming and ranching are the backbone of our culture and economy, and are both heavily dependent on the San Juan River. Indeed, in our arid region with little water distribution infrastructure in place, our farmers rely heavily on the San Juan River and ditch irrigation practices to keep their fields hydrated and their crops growing. I want to lay out for the Committee some of the impacts of the contamination on the Navajo Nation. But I want to stress that, because of the historic and long-term nature of the contamination caused by the spill and the lack of full transparency, all of the economic, health, cultural, and other impacts to the Navajo people are not yet known.

First, our farmers and ranchers and our traditional people felt the most immediate impact from the spill. You can imagine the significant economic and emotional toll on our farming families, who mostly live on their farmlands and consume their crops as a matter of subsistence. These families have lost a significant portion of a full growing season's worth of work. Now these families have to look at their dead crops each day, and are constantly reminded of the loss.

As I visited farmers and ranchers, I saw a lot of farms where corn had not fully matured due to lack of water. As a result, the corn crops had only the stalk but no corn. The corn pollen that is so critical to everyday Navajo spiritual life did not develop properly for many of these crops. A lot of Navajo melons only grew to a fifth of their size. One family was forced to abandon all but a single acre of their 32-acre field, opting to save plants with cultural significance.

Second, the spill has already severely impacted our economy and may continue to do so for years to come. The Navajo Nation already faces a daunting unemployment rate of 42 percent. Yet along the San Juan River, many of our people are able to make a life for themselves and support their families through farming and ranching. Many of our farmers create additional economic value for themselves by carefully growing profitable organic crops, or raising grass-fed and organic beef or mutton product. Now their livelihoods have been significantly disrupted by the spill. Growing cycles and field rotations have been disrupted, and farmers who are used to producing their own farm goods will now need to buy fruits and vegetables for themselves, and hay and alfalfa for their livestock, to replace what was lost. Our farmers will also lose income from the expected sales that did not or will not occur. Even farmers who have been able to

salvage their farm goods now face a stigma developing with respect to fruits and vegetables grown along the San Juan River. This triggers a cycle of economic losses for the community.

Third, the long-term health effects of the spill are ominous and not fully understood. Heavy metals like lead, arsenic and others that were discharged during the spill are known to be dangerous to humans, animals, and plants. These metals persist in the environment and are particularly harmful to fetuses and children. To provide a sense of the magnitude of exposure to these harmful metals just from the spill, one report of EPA data indicated that lead was found near the Cement Creek/Animas River confluence “at more than 200 times higher than the acute exposure limit for aquatic life, and 3,580 times higher than federal standards for human drinking water.” And arsenic was found “more than 24 times the exposure limit for fish and 823 times the level for human ingestion.”¹¹ Human consumption of farm products and livestock raised on contaminated water is therefore of grave concern. We are especially concerned about sheep because sheep liver and kidney are cultural delicacies, and are organs that are most likely to concentrate contaminants. In addition, long-term effects on wildlife that live in or rely on the River for water must be understood because we hunt and fish these animals to put food on our tables, and as part of our traditional cultural practices. Although USEPA has stated that surface water returned to its previous condition, many of the contaminants have merely settled to the bed of the River, and will be remobilized later during storm events, for example.

Fourth are the cultural and spiritual losses that we have sustained. Indeed, the Navajo Nation’s impacts are felt most pointedly in the disruption of our cultural principle of *hozho*, which encompasses beauty, order, and harmony, and expresses the idea of striving to maintain balance in the Navajo universe. We connect to our land, our water, and each other through ceremonies and gatherings. We grow four types of corn, each used for a specific purpose in our ceremonies, and those seeds are protected by the strong culture of farming that has persisted in the San Juan River Basin. Navajo cornhusks are mixed with tobacco to create ceremonial smoke, and our corn pollen is used as an essential element in all Navajo ceremonies. One of our corn seed strains is utilized in our critical kinaalda ceremonies (the coming of age ceremonies for our women). We also grow an array of heirloom fruits and vegetables that our people eagerly anticipate selling and purchasing during our popular fair season each fall. Those fruits and vegetables are shared over family tables, and are a part of the cultural glue that keeps our families and way of life intact. Families travel for hours across the Nation to the San Juan River Basin to access these ingredients for our ceremonies and celebrations. But the spill destroyed many of these crops so critical to our prayers, ceremonies, and our way of life.

Fifth, the impairment of the River and the adverse impacts to our farmers and ranchers, and our community as a whole, will mark a moment of community trauma that will be endured for years to come. This new trauma will compound our already significant historical trauma, and raises new and troubling public health concerns. Already three suicides have occurred in the course of the last two weeks in affected communities along the River. Our Department of Health is researching the connection of the suicides to the spill, and we are concerned that these might be the first of a larger cluster. This tragedy affects all of our Nation because so many of us have relatives in Northern Navajo. Compounding this trauma, are the repeated response failures and

¹¹ <http://m.startribune.com/nation/321518301.html>

withdrawals of aid (and blockage of aid) by USEPA, which have sent a strong message to our people that Navajo lives don't matter, that our health and well-being don't matter, and that our way of life doesn't matter. We will be dealing with the effects of this spill for decades and rebuilding the shattered sense of self so many of our people are experiencing as a result of this disaster.

V. SIGNIFICANT RESOURCE NEEDS

In light of the devastating impacts from this spill, both known and yet unknown, we need to act quickly and thoughtfully to protect our Navajo citizens, our natural resources, the Navajo way of life, and most importantly our future generations. We need assistance from the responsible parties to address the short- and long-term impacts, to make us whole, and to return the beauty and *hozho* to our River and our people. In addition to oversight and national attention, Congress can provide forward-thinking legislative solutions to some of these issues. We therefore ask for the following:

1. **We continue to need resources from USEPA, FEMA and BIA to address the ongoing need.** We still need continued delivery of water for both livestock and farming, as well as the delivery of hay to impacted ranchers. Farmers and livestock owners are essentially fed water from two point sources along the San Juan River. Although we have allowed the waterways to be opened for irrigation only, the farmers who are fed water from one point source have unanimously voted not to use the San Juan River water because they lost all faith in the USEPA's data. These farmers still need water for both their crops and livestock and hay for their penned livestock. The USEPA's actions in this matter have spread fear, and our farmers and ranchers should not be penalized for their lack of trust in the USEPA.

On the other point source, the water was reopened for irrigation purposes only. Based on the data samples our Navajo Nation Environmental Protection Agency has seen, the contaminant levels were still above Navajo standards and therefore the water is not safe for consumption by livestock. As such, livestock owners in the area need to pen up their animals in order to prevent them from drinking the River water. They will still need water delivery and hay for their penned livestock.

Even in light of the above, the USEPA has essentially withdrawn assistance. The Bureau of Indian Affairs has been helpful, but they had to pull out because they ran out of funds. FEMA has denied assistance to Navajo, deferring to USEPA as the lead response agency. As it currently stands, there are no federal services being provided to farmers and ranchers in the area. We as a Navajo Nation government, and our farmers and livestock owners, are left to deal with not only the contamination, but the financial and emotional mess left behind by the USEPA's actions. I ask, why should we bear that burden?

2. **If USEPA will not continue its services to mitigate the harm to farmers and ranchers, we need assurances that they will fairly and fully compensate the affected farmers and livestock owners for their damages.** Many farmers and ranchers have lost crops. Many have expended their own funds to try and mitigate their damages. Some

have lost economic value of their goods, among a whole host of other possible damages. We are unsure as to whether the FTCA claim process will provide fair, full, and ongoing compensation to our people. As previously stated, we have asked USEPA for an interim claims process or a relief fund that will allow for ongoing claims and quick remuneration. And we have asked the U.S. Attorney General for an opinion confirming that the filing of Standard Form 95 and the settling of a claim filed under that form or process does not in fact fully satisfy and settle the claim as the plain language of the form and the FTCA itself indicates. Despite the urgency with which our people need to be compensated for their already experienced losses, to date we have received no response or confirmation from the USEPA or USDOJ.

3. We need resources to conduct our own water, sediment, and soil monitoring, and authority for the NNEPA to do the necessary work. Due to our lack of trust in the USEPA and the conflict of interest that exists with the USEPA, we want to be able to monitor their work and confirm their results. We will require an on-site lab, and additional staffing to manage the sampling and lab performance. We are already expanding our scope of work into the realm of sediment testing, but testing and lab work is expensive, so we need additional funding to facilitate that work. This will enable us to provide our farmers and our leaders with the answers they deserve, and with answers they can trust.

4. The U.S. Environmental Protection Agency needs to clean up all the contamination that is flowing into the River. As we have discovered, along with the Gold King Mine, there are many hundreds of hardrock mines along the River that continually release contaminants into the River. We suspect that the volume of contaminants they release over time is much greater in magnitude than this latest burst from the Gold King Mine. USEPA needs to develop a plan to clean up these sources of contaminants, share their plan, and implement and complete that plan. We request, as part of the plan, that USEPA designate these mines as superfund sites.

5. We need resources to address near- and intermediate-term impacts. We need assistance to create redundant and auxiliary water supplies, at least two treatment plants, additional drilling for wells, repair of windmills and new reservoirs to guard against the negative impacts of future contamination. Until there is a plan in place from the USEPA that would prevent future contamination of the San Juan River, and that plan is implemented, we need these water supplies and reservoirs in case we need to shut off water from the River again. For the sake of our people and our Nation, we hope we do not ever have to do that again, but for now, that risk remains. We also need treatment plants to filter out contaminants to make the water safe for human, animal and agricultural consumption, including a water treatment plant at the head of our waters in the communities of Upper Fruitland and Shiprock.

6. We need resources to study and address the long-term health, economic and environmental impacts of the spill and to return the River to a safe and healthy state. While long-term health and economic impacts have not yet been quantified, we

believe they will be substantial. We will need assistance monitoring health impacts, including mental health impacts, as well as the resources necessary to fund this monitoring effort and to fund treatment, if necessary. Extensive planning and study will be needed to return the San Juan River to a safe and healthy state.

7. We demand a fair and independent assessment of the USEPA's and others' role in the spill, and the establishment of a different lead agency. Since they were the cause of this contamination, we have serious concerns about the strong conflict of interest USEPA has with respect to this investigation and the emergency response. An independent body should conduct the investigation, and FEMA should take over as lead responding agency.

8. We ask that Congress revisit this important issue and the federal response in six months. This complex issue will not disappear overnight for the Navajo people; we request Congress hold another hearing in six months ensure the federal government, starting with the responsible party, the USEPA, has made sufficient progress.

Ahéhee. Thank you for your time and attention to this important issue.