

**Testimony of Russell Begaye
President
Navajo Nation**

Before the United States Senate Committee on Indian Affairs

**Oversight Hearing:
“Examining EPA’s Unacceptable Response to Indian Tribes”**

Friday, April 22, 2016
Phoenix, Arizona

I. INTRODUCTION

Yá’át’ééh (hello) Chairman Barrasso, Ranking Member Tester, and Members of the Committee. My name is Russell Begaye, and I am the President of the Navajo Nation. Thank you for this opportunity to testify before your Committee on an important matter that continues to affect the Navajo Nation every day.

As you know, on Wednesday, August 5, 2015, the United States Environmental Protection Agency (USEPA), and other involved parties, caused a massive release of approximately three million gallons of acidic mine water laden with toxic contaminants, including heavy metals and other chemicals, into the Animas and San Juan Rivers. We now know that it was more than 800,000 pounds of metals that entered the Animas River as a direct result of the discharge from the Gold King Mine on that day. We also know that approximately 80 percent of the toxic materials released during the Spill have now settled into the sediments and shorelines of the Animas River and the San Juan River upstream of the Navajo Nation, waiting to be carried downstream during the heavy Spring runoff expected this season.

The San Juan River courses through 215 miles of the Navajo Nation’s territory and serves as a major water source for the Navajo people, their livestock, and their crops. The River also holds a profound spiritual significance to the Navajo Nation. The Gold King Mine Spill caused severe damage and devastation to our people. We have lost too much. Crops that served as many Navajo families’ primary source of income and stability for generations have been destroyed. The Navajo people have redirected their scarce financial resources to alternate water supplies in desperate attempts to save their crops, their livestock, and their families.

Unfortunately, the damage is not yet done. Because the toxic contaminants have been embedded in the sediment of the River, the Navajo Nation now faces the continuous threat of re-contamination with every storm and increase in River flow. The heaviest flow is typically felt in the Spring as a result of snowmelt, and we are currently experiencing a higher than normal volume of flow due to increased snowpack from winter storms. Although we will be aggressively monitoring and sampling the water

throughout this season, there is nothing we can do to prevent the damage from occurring.

Last Fall, you and I both heard from representatives of the USEPA, including Administrator McCarthy herself. The USEPA assured all of us that the EPA has and will continue to take responsibility to help ensure that the Gold King Mine release is cleaned up. They repeatedly vowed to take care of those affected by the Spill. And they promised to work closely and cooperatively with the States and Tribes to right the wrongs. But the USEPA has not fulfilled its commitments to us. I have spoken and written to Administrator McCarthy to lay out the Navajo people's reasonable requests to be made whole as a result of the Spill and to help us avoid future effects from this and other contaminations. But our needs continue to be unmet. I am here today to share with you our experiences over the past eight months and to request that the Congress intervene to protect the Navajo Nation and our Navajo people.

II. THE USEPA HAS REPEATEDLY RESISTED AND QUESTIONED THE NAVAJO NATION'S DEMANDS

It has been over eight months since the Gold King Mine Spill, an environmental catastrophe that caused and continues to cause extreme hardship to the Navajo Nation. Over this time, the USEPA has avoided any real sense of accountability for its actions, even though it repeatedly and publicly claimed responsibility last Fall. Eight months later:

- 1) The USEPA has yet to fully compensate the Navajo Nation or individual Navajo people for the harms suffered as a result of the Gold King Mine Spill.
- 2) The USEPA has yet to designate the Upper Animas Mining District as a Superfund site.
- 3) The USEPA has yet to implement, with Navajo input, a comprehensive plan to ensure no future contamination of Navajo land or waters.
- 4) And the USEPA has yet to provide the Navajo Nation with the tools it desperately needs to address the harms already caused and to mitigate against future harms.

It is time for the USEPA to stop making false promises and act.

Over the past eight months, representatives of the Navajo Nation have engaged in numerous conversations with the USEPA in an effort to obtain justice for the Navajo people. Each one of our requests and suggestions has been unreasonably and disrespectfully denied and minimized.

First, while the USEPA has technically agreed to engage in discussions regarding a "cooperative funding agreement" designed to cover the Nation's response costs, even that process has been met with resistance and counter-demands. The Navajo Nation

submitted detailed paperwork delineating the resources the Nation expended as a direct result of the Gold King Mine Spill. These costs included things like hauling clean water to the Navajo people, assessing the extent of the Spill's impact to the Navajo farms, paying expenses related to irrigation canal closures, and more. The Nation's submission was practical and conservative. But the USEPA questioned the accuracy and reasonableness of our expenses. We requested a little over two million dollars in actual expenses incurred as a direct result of the Gold King Mine Spill. The USEPA's initial "offer" was insulting. After months of cooperating with the USEPA, the USEPA offered the Navajo Nation a mere \$157,000—less than eight percent of what we spent. They claimed this was an initial award but we do not know when or in what amount will be the future awards. We cannot afford that. After the USEPA caused us to incur these expenses, they should not be able to slow play our recovery.

To add insult to injury, the USEPA couched this insignificant amount as a "grant" to the Nation, thereby giving itself substantial control and oversight with respect to how the money is spent. The money was not even recognized as a reimbursement for costs spent as a direct result of the USEPA's actions in causing the Spill.

Second, the Nation repeatedly requested from the USEPA an interim claims process that would provide prompt payment to the Navajo people on an ongoing basis, rather than forcing the Navajo people to either (a) wait for months or years to determine the total amount of the damage and money spent as a result of the Spill, or (b)—the more likely scenario—force the Navajo people to accept less than they are rightfully due simply because they need *something* to support their families now. The USEPA summarily brushed off this idea, claiming they did not have the authority to set up this sort of process. But this unprecedented Spill calls for new procedures.

We then asked the USEPA for assurances that if a Navajo person does accept an award for current losses now, that they would still be permitted to seek further damages for unknown, future harms as a result of the spill (for example, if their children develop chronic diseases). The USEPA denied authority to do that, as well. Apparently the USEPA does not have the authority to address the problems caused by its own wrongdoing.

These are just two examples of our requests that have been brushed aside and denied by the USEPA. Recently, I sent Administrator McCarthy a letter addressing our legitimate and narrow requests once again. In addition to the interim claims process mentioned above, we renewed our request for the following:

- 1) A fair and independent assessment of the role the USEPA, and others, played in the events leading up to and causing the Gold King Mine Spill.**

The House Committee on Natural Resources issued a report in February criticizing the USEPA's and Department of Interior's failed attempts to provide this assessment. Their investigations are riddled with conflicts of interest and information gaps, and do nothing to answer the ultimate outstanding questions: Who is at fault for the Spill? And who will be held accountable?

2) Resources to conduct our own water, sediment, and soil monitoring; to conduct our own testing and assessment of farms, crops, and livestock; and recognized authority for the Navajo Nation EPA and the Navajo Nation Department of Agriculture to do the necessary work.

We have repeatedly asked the USEPA for funding to conduct necessary sampling to determine the extent of the harm caused by the Gold King Mine Spill, but the USEPA has resisted and tried to bind us to the results of its own sampling. As we have stated before, the Navajo Nation should not be required to trust sampling conducted by the same agency that caused the harm at issue. The conflict of interest in that scenario is obvious.

The Nation would like an on-site laboratory on Navajo land, funding for additional staff and sampling, and funding for the Navajo Nation to execute its own long-term plan to address the harms caused by the contamination (including studying and addressing the contamination's long-term environmental and health impacts).

We recently requested funding specifically dedicated to Spring runoff sampling and monitoring. As I mentioned earlier, approximately 80 percent of the toxic contaminants released from the Gold King Mine on August 5, 2015, are now embedded in the sediments and shorelines of the Animas and San Juan Rivers. The Rivers' strongest water flows occur during the Spring season. We are now enduring the first Spring since the Spill—and a particularly heavy runoff period—and it is crucial that we pay close attention to possible re-contamination of the River during these months. We need funding to do that. We don't want to incur further costs to conduct sampling due to the USEPA's misconduct, only to have the USEPA resist our requests for reimbursement as they have done in the past.

3) Coordinated and meaningful data and information access, with full transparency and immediate turnaround.

The USEPA has taken too long to turn data around. The objectives in the current version of the USEPA's conceptual monitoring plan do not provide for ongoing, timely reporting of water quality. Data collected during the first sampling event in late October 2015 was only made available to partner agencies on March 7, 2016—*five months later*—and still has not been released to the public. The USEPA needs to provide quick turnaround of its own data, so that we may do our job of protecting our people.

4) Identification and recognition of the full scope of upstream threats and contamination flowing into the San Juan River, and the resources to address the long-term environmental and human health impacts of the Spill.

This would include placement of a water treatment facility at the headwaters of the Navajo Nation and resources to explore alternative water supply systems in the event of an emergency. We cannot again be put in the position of having to pick

between turning off the water and losing economic sustenance or turning on the water and risking our health and crops.

5) Recognition of the San Juan River's spiritual and cultural significance to the Navajo Nation.

The San Juan River holds a deeply embedded spiritual and cultural significance to the Navajo community. Contamination of the River takes a profound economic, cultural, and spiritual toll on our people. Indeed, the Nation has suffered a dramatic increase in suicides since the Spill. The psychological trauma resulting from contamination to one of our most important deities should not be ignored or minimized. We deserve recognition, from the agency that caused this contamination, that the damage goes far beyond economic and environmental damage, and the resources to address the emotional and psychological impacts of the Spill.

6) Funds dedicated to emergency preparedness for future environmental disasters like the Gold King Mine Spill, given the continued threat posed by the Upper Animas Mining District.

Despite the warning signs indicating the chance of a blowout, the USEPA was unprepared for the Gold King Mine Spill. As we have discussed in the past, their immediate response to the spill was handled very poorly, and it took far too long for the Navajo Nation to receive notice. Once we received our delayed notice, we did not have much time to mobilize efforts and resources to respond quickly and effectively. Everyone knows that the Navajo Nation and other downstream communities face an ongoing threat of contamination from the mines in the Upper Animas Mining District. We need the resources to assure that we are adequately prepared to take care of our people in the event of another similar environmental disaster.

7) The USEPA's full support of listing the Upper Animas Mining District on the National Priorities List.

For a long time, we have requested that the Upper Animas Mining District be listed on the National Priorities List and that the contamination caused by that district receive the attention and resources that come with such a listing. As you are aware, town and county leaders in Silverton have, after the Spill, *unanimously* voted to begin negotiating with state and federal environmental officials on accepting a Superfund designation. This was significant. I further understand that the USEPA has now released its proposal that nearly 50 mines in the district be designated a Superfund site. As of today, however, the Upper Animas Mining District is still not listed on the National Priorities List. We need the USEPA to act quickly to have the entire Upper Animas Mining District listed on the National Priorities List and for dedicated and focused federal resources to address the threat posed to the Navajo Nation and other downstream communities.

8) Resources to restabilize farming along the San Juan River.

As I mentioned earlier, the Spill caused extensive damage to Navajo farms. Strains of crops that have been around for generations have been harmed, and in some cases, destroyed. Our people need resources to help rebuild the foundation that previously provided stability, support, and income to their families.

In a March letter we sent to Administrator McCarthy, we asked the Administrator to propose a date within the next thirty days to meet to discuss these goals. We received her response letter this week and we will discuss the details of how we move forward with the USEPA, but I have to say, the Navajo Nation has lost further trust in the USEPA through this frustrating process.

III. CONCLUSION

After over eight months, we are still waiting for the USEPA and other parties responsible for the Spill to make us whole by providing us with the resources needed to address the Spill and its continuing impacts to our community. We still do not have a clear understanding of how or why this happened, or who is to be held responsible. We need answers.

The Navajo people are not wealthy. Before the Spill, we were already facing a daunting unemployment rate of 42 percent. Farming and ranching are critical means of survival and supporting a family. But ever since the Spill, the farmers and ranchers have had to spend money they don't have in a desperate attempt to salvage their crops and livestock. Our subsistence farmers and ranchers watched their crops die and relocated their livestock away from the River at great expense. Many have lost crucial sources of income and are still suffering. The Navajo people cannot afford to endure the complexities and uncertainties of the legal process for years before they see a dime. They need to be made whole now. We have asked for and deserve full, fair and fast recovery.

The Navajo Nation continues to be eager to work cooperatively and equally with the USEPA to gear all parties toward a productive resolution. As is true for the people suffering in Flint, Michigan -- to whom our hearts go out -- we want justice for our people. As long as the USEPA continues to disrespect our needs, we cannot achieve that justice.

It means a great deal to the Navajo Nation that your Committee is still focused on this matter after eight months. We are hopeful that the pressure from your Committee, the local States, and the local Indian nations will eventually force the USEPA and other responsible parties to cooperate and provide those harmed with the resources needed to move forward after this unfortunate catastrophe. We hope that the Congress will pass legislation to ensure full, fair, and prompt recovery for our people.

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