



SENATE JOINT RESOLUTION 17-043

BY SENATOR(S) Coram, Aguilar, Baumgardner, Cooke, Crowder, Gardner, Hill, Holbert, Lambert, Lundberg, Marble, Martinez Humenik, Moreno, Neville T., Priola, Scott, Smallwood, Sonnenberg, Tate, Grantham;
also REPRESENTATIVE(S) McLachlan, Arndt, Becker J., Becker K., Beckman, Benavidez, Bridges, Buck, Buckner, Carver, Catlin, Coleman, Covarrubias, Danielson, Esgar, Everett, Exum, Foote, Garnett, Ginal, Gray, Hamner, Hansen, Herod, Hooton, Humphrey, Jackson, Kennedy, Kraft-Tharp, Landgraf, Lawrence, Lebsack, Lee, Leonard, Lewis, Liston, Lontine, Lundeen, McKean, Melton, Michaelson Jenet, Mitsch Bush, Navarro, Neville P., Nordberg, Pabon, Pettersen, Rankin, Ransom, Rosenthal, Saine, Salazar, Sias, Singer, Thurlow, Valdez, Van Winkle, Weissman, Willett, Williams D., Wilson, Winter, Wist, Young, Duran.

CONCERNING URGING COLORADO'S EXECUTIVE BRANCH
TO FILE A LAWSUIT AGAINST THE FEDERAL
ENVIRONMENTAL PROTECTION AGENCY FOR UNRECOVERED
DAMAGES CAUSED BY THE SPILL AT THE GOLD KING MINE.

WHEREAS, On August 5, 2015, a contractor hired by the federal Environmental Protection Agency to perform mine reclamation work breached a tunnel wall at the Gold King mine above Silverton, Colorado, causing a massive spill of three million gallons of toxic wastewater to pour into Cement Creek and flow into the headwaters that feed into the Animas River; and

WHEREAS, The mustard-yellow-colored sludge, containing nearly nine hundred thousand pounds of heavy metals such as arsenic, lead, cadmium, copper, mercury, and zinc, poured into the waterways, causing widespread environmental damage and substantial economic harm to the citizens of Colorado; and

WHEREAS, The spill heavily contaminated the river water that is the lifeblood of certain Colorado communities, harming the environment, agricultural industry, wildlife, and tourism in the affected area; and

WHEREAS, The Colorado agricultural and Native American communities in the affected area depend on the Animas River for irrigation and drinking water contaminated by the spill; and

WHEREAS, On August 10, 2015, the Governor of Colorado issued executive order D 2015-007, declaring a state of emergency due to the Gold King mine spill, and the Southern Ute Tribe, La Plata and San Juan counties, and Durango and Silverton also declared disaster emergencies, highlighting the gravity and severity of the impacts on Cement Creek and the Animas River; and

WHEREAS, After the incident, local authorities closed the affected waterways to all uses, causing significant local economic damages; and

WHEREAS, The Governor's executive order D 2015-007 noted that: "The extreme flow rate of the plume caused significant damage to the Cement Creek stream bed resulting in sedimentation uptake and downstream deposits in both Cement Creek and the Animas River. All of these impacts require emergency action by the Southern Ute Tribe, the State of Colorado, and local officials to avert loss of life, injury, danger or damage, including but not limited to unknown economic, financial and natural resources impacts"; and

WHEREAS, The United States Department of the Interior, Bureau of Reclamation, issued a report entitled "Technical Evaluation of the Gold King Mine Incident", dated October 2015, and concluded that the spill was "preventable" and was caused by mistakes made by the federal Environmental Protection Agency and its contractor; and

WHEREAS, The state of Colorado and the citizens, businesses, and environment of Southwestern Colorado have been harmed by the Gold King mine spill; and

WHEREAS, The General Assembly recognizes the separation of powers inherent between the legislative branch and the executive branch, and acknowledges that the Attorney General, under section 24-31-101, Colorado Revised Statutes, is legal counsel for the executive branch, a

position that empowers the Attorney General to explore legal avenues for redress of grievances and to pursue all such channels to their fullest extent; and

WHEREAS, The General Assembly recognizes that lawsuits should be pursued as a last resort once all other legal remedies have been exhausted; and

WHEREAS, The federal Environmental Protection Agency has declared the Gold King mine a Superfund site in accordance with the provisions of the federal "Comprehensive Environmental Response, Compensation, and Liability Act" (CERCLA), 42 U.S.C. sec. 9601, which allows states and Native American tribes to recover natural resources damages caused by hazardous substances; now, therefore,

Be It Resolved by the Senate of the Seventy-first General Assembly of the State of Colorado, the House of Representatives concurring herein:

(1) That the state of Colorado recognizes that the federal Environmental Protection Agency was involved in the Gold King mine spill and that various conditions may have contributed to the event, including actions or failures to act by the federal government and private mine owners involved at the Gold King mine site;

(2) That the federal Environmental Protection Agency and the federal government should, to the fullest extent possible, act to make whole the people and businesses harmed as a direct result of the Gold King mine spill;

(3) That the Governor of Colorado, the Natural Resources Trustees, and the Colorado Department of Public Health and Environment, in consultation with the Attorney General, should investigate the availability of natural resources damages under CERCLA as a mechanism to obtain payment for injuries related to the Gold King mine spill;

(4) That the state of Colorado and the communities affected should cooperate in and support the ongoing Superfund process to remedy the water pollution problems and secure funds going forward to help downstream communities; and

(5) That the Governor of Colorado, the Natural Resources Trustees, the Colorado Department of Health and Environment, and the Attorney General should vigorously pursue all other legal options available for making whole the people and businesses harmed by the spill, and should pursue a lawsuit as the last option.

Be It Further Resolved, That copies of this Joint Resolution be sent to Governor John Hickenlooper, the Executive Director of the Colorado Department of Natural Resources, the Executive Director of the Colorado Department of Public Health and Environment, Attorney General Cynthia Coffman, and each member of Colorado's delegation to the United States Congress.

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