

First Regular Session  
Seventy-first General Assembly  
STATE OF COLORADO

PREAMENDED

LLS NO. R17-0790.01 Debbie Haskins x2045

SJR17-043

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SENATE SPONSORSHIP

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McLachlan,

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Senate Committees

House Committees

Health, Insurance, & Environment

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SENATE JOINT RESOLUTION 17-043

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

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1  
2 WHEREAS, On August 5, 2015, a contractor hired by the federal  
3 Environmental Protection Agency to perform mine reclamation work  
4 breached a tunnel wall at the Gold King mine above Silverton, Colorado,  
5 causing a massive spill of three million gallons of toxic wastewater to  
6 pour into Cement Creek and flow into the headwaters that feed into the  
7 Animas River; and

8 WHEREAS, The mustard-yellow-colored sludge, containing  
9 nearly nine hundred thousand pounds of heavy metals such as arsenic,

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.  
*Capital letters indicate new material to be added to existing statute.*  
*Dashes through the words indicate deletions from existing statute.*

SENATE  
Amended Final Rdg.  
May 8, 2017

1 lead, cadmium, copper, mercury, and zinc, poured into the waterways,  
2 causing widespread environmental damage and substantial economic  
3 harm to the citizens of Colorado; and

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

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

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

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

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

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

32 

33 WHEREAS, The state of Colorado and the citizens, businesses,  
34 and environment of Southwestern Colorado have been harmed by the

1 Gold King mine spill; and  
2 WHEREAS, The General Assembly recognizes the separation of  
3 powers inherent between the legislative branch and the executive branch,  
4 and acknowledges that the Attorney General, under section 24-31-101,  
5 Colorado Revised Statutes, is legal counsel for the executive branch, a  
6 position that empowers the Attorney General to explore legal avenues for  
7 redress of grievances and to pursue all such channels to their fullest  
8 extent; and

9 WHEREAS, Lawsuits are a costly, time-consuming, and  
10 potentially ineffective and counterproductive remedy, and should be  
11 pursued as a last resort once all other legal remedies have been exhausted;  
12 and

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

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

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

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

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

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

40 (5) That the Governor of Colorado, the Natural Resources

1 Trustees, the Colorado Department of Health and Environment, and the  
2 Attorney General should vigorously pursue all other legal options  
3 available for making whole the people and businesses harmed by the spill,  
4 and should pursue a lawsuit as the last option.

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