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THE DEPARTMENT OF THE INTERIOR'S ROLE IN THE EPA'S ANIMAS SPILL

OVERSIGHT HEARING

BEFORE THE

COMMITTEE ON NATURAL RESOURCES
U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED FOURTEENTH CONGRESS

FIRST SESSION

Wednesday, December 9, 2015

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OVERSIGHT HEARING ON THE DEPARTMENT OF THE INTERIOR'S ROLE IN THE EPA'S ANIMAS SPILL

Wednesday, December 9, 2015
U.S. House of Representatives
Committee on Natural Resources
Washington, DC

The committee met, pursuant to notice, at 10:05 a.m., in room 1324, Longworth House Office Building, Hon. Rob Bishop [Chairman of the Committee] presiding.

Present: Representatives Bishop, Young, Gohmert, Lamborn, Fleming, McClintock, Thompson, Lummis, Benishek, Duncan, Gosar, Labrador, LaMalfa, Cook, Westerman, Graves, Newhouse, Hice, Hardy, LaHood; Grijalva, Napolitano, Costa, Sablan, Tsongas, Ruiz, Beyer, Torres, Dingell, and Gallego.

Also present: Representative Luján.

The CHAIRMAN. All right, if I can have everyone please take their seats, I think we have a critical mass here to get started. I appreciate you being here; the committee is in order.

I want you to notice the nifty new microphones that we have in front of you, because our old ones broke, literally. We will see how long these last before they break. But these, I believe, are temporary; so at some point today, everyone is just going to have to shout very loudly.

Today, the committee is hearing testimony on the Department of the Interior's role in the EPA's Animas spill. Under Committee Rule 4(f), oral opening statements are limited to the Chair, the Ranking Member, the Vice Chair, and the Vice Ranking Minority Member of Mr. Grijalva's choice. Therefore, I ask unanimous consent that other Members' opening statements be made part of the hearing record, if they are submitted to the Committee Clerk by 5:00 p.m. today.

[No response.]

The CHAIRMAN. Hearing no objection, that will be so ordered.

I also ask unanimous consent that Mr. Luján from New Mexico be allowed to sit with this committee, when he arrives, and participate in the hearing.

[No response.]

The CHAIRMAN. Without objection, that will also be so ordered.

I also would politely ask everyone in the hearing room if they would please silence their cell phones. This is going to allow for minimum distractions for both our Members and our guest, to ensure that we get as much out of this opportunity as possible, especially since we have problems with the microphones. I am afraid that your cell phones may interfere with our sound system; if not, just while we are landing. And, those of you in the audience, your cushions can also be used for flotation devices if we ever get to that point, as well.

[Laughter.]

The CHAIRMAN. With that, I would like to recognize the Vice Chair, Mrs. Lummis from Wyoming, for 5 minutes for an opening statement.

STATEMENT OF THE HON. CYNTHIA M. LUMMIS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF WYOMING

Mrs. LUMMIS. Thank you, Mr. Chairman, and good morning. Thank you for holding this hearing to follow up on the EPA's Animas River spill. When we met last, EPA Administrator McCarthy was here with us. Secretary Jewell, you were invited, as well; but I know you did not attend because the Bureau of Reclamation at Interior was chosen by the EPA to conduct the independent investigation of the disaster, and the investigation part was not yet complete. At least that was our understanding of your decision not to attend at that time; and that is fair enough.

In your absence during that previous hearing, Administrator McCarthy repeatedly promised that the answers being sought would be contained in an independent report produced by the Department of the Interior. She also said the report would answer who was negligent, who was liable, who would be prosecuted, and how this type of spill could be prevented from happening again.

Unfortunately, when we finally did get the independent report from the Bureau of Reclamation, it did not hold anyone accountable or find anyone at fault. It also did not explain why the EPA team made the decision it did that resulted in the spill.

It gives us the appearance that the Department of the Interior apparently jointly decided with the EPA that these areas were beyond the scope of view, when, in fact, these were the precise questions that our previous hearing focused on. It also failed to resolve a dispute between EPA and the Colorado Division of Reclamation, Mining and Safety.

We really appreciate you being here today, Secretary Jewell, hopefully to help us find answers to these questions that we cannot find in the report. We would like to know why the decision was made to move ahead with digging at the Gold King Mine site, if negligence contributed to that decision, whether or not Colorado state officials approved the decision to dig, and other questions the committee members still have.

I note that your written testimony today also quickly shifts from discussing the incident to discussing the need for cleanup of abandoned mine land sites. This committee has already begun working on proposals toward that end, including a bill by Subcommittee Chairman Doug Lamborn, that would authorize BLM's Inactive and Abandoned Non-Coal Mine Lands Program and Representative Jody Hice's bill to create a Reclamation Foundation.

We do need to acknowledge that the increase in claim location and maintenance fees, according to the change in percentage interest, as required by law, resulted in the relinquishment of more than 48,000 claims and a reduction in revenue of $8.5 million from these sources. Any proposals to fund further cleanup through these sources will have to be carefully examined. Given the perilous state of the commodities market, per ton fees on fill material moved, regardless of economic value, for hardrock and uranium mining may

also not have the desired results, especially with concerns that hardrock mining companies would not be able to pass on the fee.

Furthermore, I have developed some concerns about the Administration's POWER+ Program, such as, "How do you propose to set up an AML program for hardrock mining in which money is actually applied for its intended purpose, instead of being diverted into community development in regions where coal mining is declining?"—especially because the decline is attributable to this Administration's war on coal.

So, Secretary Jewell, before we can fix a problem, we need to know how and why it occurred. Back to Animas—I look forward to you helping our committee get more information about Animas, and I look forward to having a discussion about how the POWER+ Program could be used to actually remediate and reclaim, as opposed to doing community development in communities that do not want to redevelop. They want to do what they are doing now with the people they have, the jobs they have, and the community and culture they enjoy.

Thank you very much, Mr. Chairman.

[The prepared statement of Mrs. Lummis follows:]

PREPARED STATEMENT OF THE HON. CYNTHIA M. LUMMIS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF WYOMING

Thank you Mr. Chairman, and thank you for holding this hearing to follow up on the EPA's Animas River spill. When we met last, EPA Administrator McCarthy was here with us. Mrs. Secretary, you were invited as well, but I know you didn't attend because the Bureau of Reclamation at Interior was chosen by the EPA to conduct the independent investigation of the disaster and the investigation part was not yet complete, at least that was our understanding of your decision not to attend at that time, and that's fair enough.

In your absence, Administrator McCarthy, during that previous hearing, repeatedly promised that answers being sought would be conveyed in an independent report produced by the Department of the Interior and she said the report would answer who was negligent, who was liable, who would be prosecuted, and how this type of spill could be prevented from happening again. Unfortunately, when we finally did get the independent report from Bureau of Reclamation, it didn't hold anyone accountable or find anyone at fault, it also did not explain why the EPA team made the decision it did that resulted in the spill. And it gives us the appearance that the Department of the Interior apparently jointly decided with the EPA that these areas were beyond the scope of view, when in fact these were the precise questions our previous hearing focused on, it also failed to resolve the dispute between EPA and the Colorado Division of Reclamation, Mining and Safety.

Now we really appreciate you being here today, Secretary Jewell, hopefully to help us find answers to these questions that we can't find in the report. We would like to know why the decision was made to move ahead with the digging at the Gold King Mine site, if negligence contributed to that decision, whether or not Colorado state officials approved the decision to dig, and other questions the committee members still have.

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desired results, especially with concerns that hardrock mining companies would not be able to pass on the fee.

Furthermore, I've developed some concerns about the Administration's POWER+ Program, such as "how do you propose to set up an AML program for hardrock mining in which money is actually applied for its intended purpose instead of being diverted into community development in regions where coal mining is declining?" and especially so because the decline is attributable to this Administration's war on coal.

So Secretary Jewell, before we can fix a problem, we need to know how and why it occurred. Back to Animas, I look forward to your helping our committee get more information about Animas; look forward to having a discussion about how the POWER+ Program could be used to actually remediate and reclaim, as opposed to doing community development in communities that don't want to redevelop. They want to do what they are doing now with the people they have, the jobs they have, and the community and culture they enjoy.

Thank you very much, Mr. Chairman.

The CHAIRMAN. Thank you.

I now recognize the Ranking Member, Mr. Grijalva, for his opening statement.

STATEMENT OF THE HON. RAÚL M. GRIJALVA, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ARIZONA

Mr. GRIJALVA. Thank you, Mr. Chairman; and thank you, Madam Secretary, for being with us here to discuss the Gold King Mine release.

Madam Secretary, it is interesting that the Majority insisted you come here yourself to discuss an incident your agency is not responsible for, as opposed to one of the experts who worked on the technical review. I am not going to complain about that, because I am ecstatic that the Majority is actually taking on environmental concerns. And, I am glad you are here to discuss the real problem: the hundreds of thousands of abandoned mines that are leaking billions of gallons of toxic wastewater into streams and rivers across the country.

These abandoned mines were created by the mining industry, not the Environmental Protection Agency; and we should not forget that. The dead fish, the ruined ecosystems, the orange, lifeless rivers—these are the mining industry's legacy, not the EPA's, and certainly not the Department of the Interior's. This is a serious problem that is going to require serious solutions.

Unfortunately, I do not believe the Majority's proposed solutions are serious. Instead of requiring the mining industry to take responsibility for their legacy, they simply ask for volunteers. Instead of forcing the mining industry to live up to the same polluter pays principle as other industries, they ask the public to adopt an abandoned mine site, much as we have asked the public to adopt a highway, adopt a school, or adopt a park. We are now asking the public to adopt an abandoned mine site that is potentially contaminated and dangerous.

And, faced with an abandoned mine problem that was recently estimated to cost anywhere from $10 to $20 billion to clean up on public lands alone, the Majority has proposed a grand total of $30 million. Yes, $30 million. That is not a serious way to address the problem.

There is no way to clean these sites without requiring the mining industry to contribute to the legacy they created. That is why the Hardrock Mining Reform and Reclamation Act places a royalty on hardrock minerals such as gold, silver, and copper; and it requires the industry to pay a small fee for each ton of material they displace. That would raise hundreds of millions of dollars each year, and that is what you need to start to address the problem.

Now, the Majority has taken an important first step, and fully admitted there is a problem with abandoned mines. Hopefully, Madam Secretary, we can now convince them that serious action is necessary to fix that problem.

Unfortunately, it appears from the Majority's memo for this hearing, that the focus today is not going to be on the very real problem of abandoned mines. Instead, it sounds like we are going to focus on the imagined problems with the Bureau of Reclamation's technical report. Sadly, it seems that the Majority is falling back on their standard playbook of attacking the messenger when a report does not agree with their storyline.

Madam Secretary, I do not want to attack the messenger. I want to attack the half-million abandoned mines throughout this Nation, many of which are ticking time bombs that we need to address sooner, rather than later. I hope that this will not be the last hearing we have on this committee about abandoned mines. I also hope we do not have to wait until we can blame a Federal agency before we hold the next one.

Thank you, Mr. Chairman, and I yield back.

[The prepared statement of Mr. Grijalva follows:]

PREPARED STATEMENT OF THE HON. RAÚL M. GRIJALVA, RANKING MEMBER, COMMITTEE ON NATURAL RESOURCES

Thank you, Mr. Chairman, and thank you, Madam Secretary for being here to discuss the Gold King Mine release.

Of course, it's interesting that the Majority insisted that you come here yourself to discuss an incident that your agency is not responsible for, as opposed to one of the experts who worked on the technical review.

But I am not going to complain about that, because I'm glad that the Majority is actually taking an environmental issue seriously.

And I'm glad that you're here to discuss the real problem here: the hundreds of thousands of abandoned mines that are leaking billions of gallons of toxic wastewater into streams and rivers across the country.

These abandoned mines were created by the mining industry, not the Environmental Protection Agency.

We should not forget that.

The dead fish, the ruined ecosystems, the orange lifeless rivers—this is the mining industry's legacy, not the EPA's, and not the Department of the Interior's.

This is a serious problem, and it will take serious solutions.

Unfortunately, I do not believe the Majority's proposed solutions are serious.

Instead of requiring the mining industry to take responsibility for their legacy, they simply ask for volunteers.

Instead of forcing the mining industry to live up to the same Polluter Pays principle as other industries, they ask the public to Adopt an Abandoned Mine.

And faced with an abandoned mine problem that was recently estimated to cost anywhere from $10 to $20 billion to clean up on public lands alone, the Majority has proposed a grand total of up to $30 million.

That's million with an M.

That's not a serious way to address this problem.

There is no way to clean these sites up without requiring the hardrock mining industry to contribute.

That's why my Hardrock Mining Reform and Reclamation Act places a royalty on hardrock minerals such as gold, silver, and copper, and requires the industry to pay a small fee for each ton of material they displace.

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I hope that this will not be the last hearing we have in this committee about abandoned mines.

And I also hope we don't have to wait until we can blame a Federal agency before we hold the next one.

Thank you, Mr. Chairman, and I yield back.

The CHAIRMAN. Thank you. Mr. Grijalva, I understand Mr. Beyer is giving the other statement. So, Mr. Beyer, you are recognized now for your opening statement.

Mr. BEYER. Yes, thank you, Mr. Chairman; and thank you very much, Madam Secretary, for being here.

STATEMENT OF THE HON. DONALD S. BEYER, JR., A REPRESENTATIVE IN CONGRESS FROM THE COMMONWEALTH OF VIRGINIA

Mr. BEYER. In the mid-1990s, when I was Lieutenant Governor of Virginia, we had three mine blowouts in the Commonwealth, three within 2 years. Yet, here we are today, discussing another, but somehow not talking about how to prevent future blowouts or improve efforts to clean abandoned mines.

The incident at the Gold King Mine is a clear reminder to us here, and to the American public, that abandoned land mines are an issue we can no longer ignore. We need to be looking at meaningful Federal solutions to address abandoned mine lands; we cannot ignore the cause of the problem and the lack of funding to clean them up. None of the proposals that we have heard in committee actually tackle the problem at hand. We are having another hearing that ignores the elephant in the room.

Instead, we are here looking for a scapegoat, despite the very clear paragraph in the Executive Summary of Interior's report. Let me quote, "The uncontrolled release at Gold King Mine was due to a series of events spanning several decades. Groundwater conditions in the upper reaches of Cement Creek have been significantly altered by the establishment of extensive underground mine workings, the extension of the American Tunnel to the Sunnyside Mine, and the subsequent plugging of the American Tunnel. The final events leading to the blowout and the uncontrolled release of water occurred due to a combination of an inadequately designed closure of the mine portal in 2009, combined with EPA's misinterpretation

of the groundwater conditions when reopening the mine portal in 2014 and 2015."

Previously, I had equated our discussion of EPA's role in the Gold King Mine as blaming the cardiologist for failing to save a heart attack patient who had been smoking and drinking for 40 years; but this is actually worse, because this is like blaming another physician not involved in the operation who was asked to consult.

If you read the Majority's memo, you would think that the Department of the Interior colluded with the EPA and hid evidence of guilt in a whitewashed report designed to throw the state of Colorado under the rug, and sweep the whole issue under the rug. Let me be clear. The mine was not on Interior land. The Interior Department was not working on this mine. The Department was required to respond to the release, and the Department certainly did not cause it.

Despite the claims in the Majority's memo, from the very beginning, the Department said it was running a technical review, not a criminal one. The statement of work from the EPA dated August 20 is even titled, "Technical Review of the Gold King Mine Assessment." Even in the technical report, I do not think the Bureau of Reclamation tried to sugarcoat anything. There are a lot of really hard recommendations here. They took a hard look at the issue; they were quite critical in their assessment. This caused both the EPA's Inspector General and the EPA's internal review team to expand the scope of the inquiries.

Yesterday, the EPA released an addendum to their internal report that more deeply investigates some of the very things that the Reclamation report raised. So today, rather than looking for a scapegoat, we should be looking in a mirror. We have the power to address the abandoned mine lands issue.

We should be talking about something of substance, like Ranking Member Grijalva's H.R. 963, the Hardrock Mining Reform and Reclamation Act, which actually tackles this issue. Between $9 billion and $21 billion is needed to clean up the abandoned mine lands, just on BLM and U.S. Forest land. So, just as the coal industry does for coal mines, we should be seriously considering a royalty system for hardrock mining.

Thank you for being here, and we all look forward to your testimony.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you. I now recognize myself for 5 minutes or more.

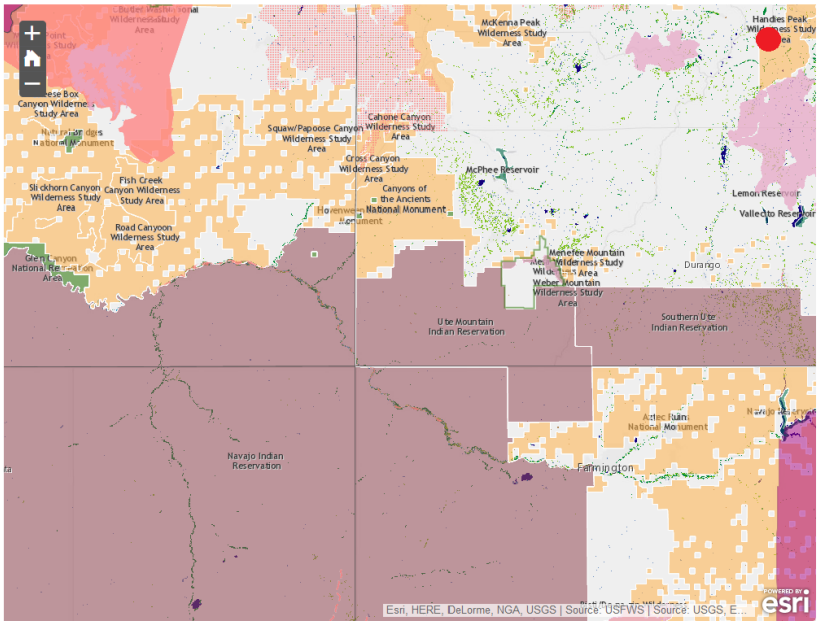
STATEMENT OF THE HON. ROB BISHOP, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF UTAH

The CHAIRMAN. I appreciate Congresswoman Lummis mentioning the bills that we are moving forward that deal with the abandoned mines. There are a trifecta of bills. You forgot Mr. Hardy's bill, that is part of that group. I want that to be recognized, as well.

Even though some people may want to do that, today's discussion is not about abandoned mines. The focus is simply on the Department's role in the Animas River spill.

At our September joint hearing, we had testimony from affected states and tribes. Today, we finally get to Secretary Jewell, and we are pleased to have you here. We hoped to have you earlier, but I understand you were in Paris. You really picked a bad time to go to Paris, that's for sure.

The Interior Department is responsible for a myriad of resources impacted by EPA's disastrous 3 million gallon spill. The map on the screen shows all of the Department's resources in the affected area. Incidentally, this particular map has been derived from the committee's new Federal Footprint Map, which I hope will illustrate the scope of the Federal Government's vast ownership and control of land across the United States. You may be interested in looking at that in the future.



This is the Four Corners region with Colorado in the northwest corner of the map. That red dot is the Gold King Mine. The spill flowed from there south into New Mexico, and then turned through Utah and Arizona, which are to the left. Each color on that map represents a different bureau ownership or land designation. This map illustrates that there are ESA-protected species in the San Juan River, that there are BLM and Park Service lands in this area, and that the plume flowed through multiple Indian reservations.

And, as it turns out, the Bureau of Reclamation, the bureau that conducted this so-called independent report, was consulting with the Gold King Mine before the spill. USGS worked with EPA to determine the volume of toxic water that was spilled. Aside from the work on the mine, the Bureau of Reclamation doubled its normal water release from the Navajo Dam to try to dilute the spill, which

caused greater impact on the reservation lands than there was there before.

This is in addition to the financial resources the Department of the Interior was providing to EPA for its project, the Gold King Mine, and other mines in that area. Given the breadth of Interior's involvement, the agency never should have agreed to do this review in the first place. DOI itself recognized that BLM, as a potentially responsible party under CERCLA, should not be involved; so it is baffling why the Bureau of Reclamation would be considered more objective.

I also must point out the Administration's double standard regarding enforcing regulations. At the last hearing, many of my colleagues pointed out that EPA would have aggressively pursued criminal charges if a private company had caused the spill instead of the Federal Government. Since then, we have learned that EPA did not consult with the Fish and Wildlife Service on its activities at the Gold King Mine prior to the spill, and has not consulted with the Service on its response or the cleanup, as well.

The Service's selective interpretation of the Endangered Species Act's consultation requirement is as hypocritical as the EPA's selective enforcement of its environmental regulations. Average Americans are threatened and prosecuted for failing to abide by the ESA, but when EPA spills millions of gallons of contaminated mine water into a river with critical habitat, or writes new rules for power plants to keep manatees and Americans warm in the winter—these same laws just simply don't apply.

Instead of holding the EPA accountable for its mistakes, the Department issued a report in October that totally glossed over the most critical questions about how and why the spill occurred. I am sorry, but the BOR report is factually inaccurate in parts, and sometimes downright misleading. While the Interior Department may not have caused the spill, it is responsible for—in the words of one New Mexico official, "Its invisible response following the spill,"—and for this so-called independent report.

EPA publicly promised, including before this committee, that their report would uncover whether there were wrongdoings; and they even announced they were halting work on thousands of mine sites nationwide pending the outcome of this report. Unfortunately, the report does not give those answers, and raises more questions than it answers.

That is why this committee has requested information from the Department of the Interior to better understand the agency's conduct before, during, and following the issuance of this report. States, tribes, and Americans impacted by this disaster expect a prompt, thorough, and transparent look at this serious issue.

Unfortunately, the Department delayed its response to information requests for weeks. Then they dumped thousands of documents, hundreds of them heavily redacted, including many a few days before this hearing. Rest assured, these tactics will not stop this particular committee—and I do consider them to be tactics.

Another thing that will not impede the committee's investigation is EPA's astounding unveiling last night at 6:28 p.m. of entirely new information about the Gold King Mine disaster. If you are not

aware—I am sure you are all aware of that, but it is an unusual thing to do.

One last thing I would like to note, as I look forward to exploring these topics today, is that I appreciate your willingness to be here with us, Ms. Jewell, as we go through this important issue.

[The prepared statement of the Chairman follows:]

PREPARED STATEMENT OF THE HON. ROB BISHOP, CHAIRMAN, COMMITTEE ON NATURAL RESOURCES

Today's hearing will focus on the Interior Department's role in EPA's Animas River spill. At our September joint hearing, we heard from affected states and tribes—today, we finally will hear from Secretary Jewell and we're pleased to have you here today.

The Interior Department is responsible for a myriad of resources impacted by EPA's disastrous 3 million gallon spill. The map on the screen shows all of DOI's resources in the affected area. Incidentally, this map was derived from the committee's new Federal Footprint Map, which I hope will help illustrate the scope of the Federal Government's vast ownership and control of land across the United States.

This is the Four Corners region, with Colorado in the northeast corner of the map. That red dot represents Gold King Mine, and the spill flowed from there south to Farmington, New Mexico in the southeast corner and then through Utah and Arizona on the left.

[See map on page 8]

Each color represents a different bureau ownership or land designation.

The map illustrates that there are ESA-protected species in the San Juan River. There are BLM and Park Service lands in the area. The toxic plume flowed through multiple Indian reservations. And it turns out that the Bureau of Reclamation—the bureau that conducted this so-called "independent" report—was consulting on the Gold King Mine and the Red and Bonita projects before the spill. USGS worked with EPA to determine the volume of toxic water that was spilled. And aside from its work on the mine, BOR doubled its normal water releases from the Navajo Dam to try to dilute the spill. This is in addition to the financial resources DOI was providing to EPA for its projects at Gold King and other mines in the area.

Given the breadth of Interior's involvement, your agency never should have agreed to do this review in the first place. DOI itself recognized that BLM, as a "Potentially Responsible Party" under CERCLA, shouldn't be involved. It is baffling why BOR would be considered more objective.

I also must point out the Administration's double-standard regarding enforcing regulations. At the last hearing, I and many of my colleagues, pointed out that EPA would have aggressively pursued criminal charges if a private company had caused the spill instead of the Federal Government.

Since then, we've learned that the EPA didn't consult with the Fish and Wildlife Service on its activities at Gold King Mine prior to the spill, and it hasn't consulted with the Service on its response or cleanup after.

The Service's selective interpretation of the Endangered Species Act's consultation requirement is as hypocritical as EPA's selective enforcement of its environmental regulations. Average Americans are threatened and prosecuted for failing to abide by the ESA, but when EPA spills millions of gallons of contaminated mine water into a river with critical habitat—or writes new rules for power plants that keep manatees *and* Americans warm in the winter—the same laws just don't apply.

And instead of holding EPA accountable for its mistakes, your Department issued a report in October that totally glossed over the most critical questions about how and why the spill occurred. Parts of the BOR report are factually inaccurate and downright misleading. While the Interior Department may not have caused the spill, it *is* responsible for its "invisible" response following the spill, as a New Mexico official called it, and for this so-called "independent" report.

EPA publicly promised—including before this very committee—that your report would uncover whether there was wrongdoing and even announced it was halting work at thousands of mine sites nationwide pending the outcome of your report. Unfortunately, the report raises many more questions than it answers.

That is why this committee has requested information from you and your Department to better understand the agency's conduct before, during, and following the

issuance of your report. States, tribes, and Americans impacted by the disaster expect a prompt, thorough, and transparent look at this serious issue.

Instead, your Department delayed its response to information requests for weeks, then dumped thousands of documents, hundreds of them heavily redacted, including many a few days before today's hearing. Rest assured that these tactics will not stop the committee from seeking complete answers.

Another thing that will not impede this committee's investigation is EPA's *astounding unveiling* last night at 6:28 p.m. of entirely new information about the Gold King Mine disaster. I'm sure you're already aware of this, but over the last week, EPA has apparently been working feverishly to create new ambiguous and redacted documents that supposedly answer questions your report didn't even mention but that this committee has been raising for months.

And on that note, I very much look forward to exploring these topics during the hearing, and I thank you for appearing today.

The CHAIRMAN. With that, I am going to start the questioning. Once again, I will remind everybody that every Member will have 5 minutes to ask questions. I would ask Members, as well as those who are responding, to—actually, we are not going to start that; I have not given you a chance to say something yet. I am so excited to have you here that I am getting off script.

I will remind everyone again ahead of time, you have the timer in front of you. The timer does work. I am asking two things. As we get past the opening statement and start asking questions, make sure that if you are going to ask a question, give our guest time to answer the question, or don't ask it at all. No questions should be asked within the last 30 seconds of the time that is on the clock there, just for the fairness within.

Now, with that, I want to thank the Honorable Sally Jewell, who is the Secretary of the Department of the Interior, for being here. You are accompanied today by—and I hope I get this right—Mr. David Palumbo. Is that correct? I actually said it right? I am proud. He is the Deputy Commissioner for Operations at the Bureau of Reclamation.

Your written statement is, obviously, part of the record. You know the drill. You have 5 minutes. The lights are there in front of you.

Let me recognize Ms. Jewell for your testimony, and I apologize for actually skipping that—you may be happier if I actually skip past it, but this is your chance to respond. You are on.

STATEMENT OF SALLY JEWELL, SECRETARY, U.S. DEPARTMENT OF THE INTERIOR, WASHINGTON, DC

Secretary JEWELL. Thank you, Chairman Bishop, Ranking Member Grijalva, and members of the committee. I am here to discuss the Department's actions following the Gold King Mine incident. I have submitted a written statement for the record, and I will highlight a few key points that relate to the Department's responses to the release, and to the larger problem of abandoned mine lands, in general.

Joining me today is David Palumbo, Deputy Commissioner of the Bureau of Reclamation, who oversees the Technical Service Center, among other duties.

Let me begin by saying that once the Department of the Interior was notified of the incident, its response was robust. Our regional environmental officers in Denver, Albuquerque, and San Francisco

began sharing information with regional bureau staff, and monitoring the situation. While the Gold King Mine is on private land, DOI has management responsibilities in the area, and our bureaus began carrying out coordinated response activities to support EPA's on-scene coordinator to protect resources and to meet management responsibilities.

Key actions by our bureaus included Reclamation increasing the release of water from the Navajo Reservoir to help dilute mine contaminants moving through the San Juan River, and alleviate concerns that the river fish and wildlife might be impacted.

On the ground, we were collecting and sampling water for impacts, and carrying out field surveillance of fish communities in the Animas and San Juan Rivers. These actions, and those by other bureaus, were instrumental in providing coordination and support to EPA during its continued response.

The Bureau of Indian Affairs also provided important assurances to communities along the San Juan River that their drinking water was safe. BIA conducted water sampling at five Bureau of Indian Education schools along the river, and activated an Incident Management Team in its Navajo region that provided emergency livestock drinking water to users impacted by closure of the San Juan River. Deputy Secretary Connor recently visited the Navajo Nation and met with President Begaye and members of the Nation who were affected by the release, and reaffirmed our commitment to our trust responsibility.

BIA has continued to monitor water used by tribes for drinking, irrigation, and agriculture; and the Fish and Wildlife Service is providing support on wildlife issues related to the incident.

In addition to these on-the-ground actions, shortly after the incident, EPA asked the Department to carry out a technical review of the release. Led by Reclamation, this independent review of the factors contributing to the incident also provided recommendations to prevent such incidents in the future.

It was carried out by career technical staff with expertise in abandoned mine remediation, and was peer-reviewed by the USGS and the U.S. Army Corps of Engineers. This technical review found the release was due to events spanning several decades, and that actions taken by the EPA, in consultation with the state of Colorado's Division of Reclamation, Mining and Safety, led directly to the incident.

The report noted that the conditions and actions of this incident are not isolated or unique, and are surprisingly prevalent, underscoring the need for more focus and funding for abandoned mine remediation across this country. The report identifies that there are few written requirements or consistent guidelines governing abandoned mine lands remediation, specifically when it comes to engineering standards.

Finally, this incident highlights a significant and costly problem of abandoned mine lands, which are a threat on private, state, and Federal lands. These sites are prevalent throughout the West, where legacy hardrock mining activities were concentrated. It is not a new problem. Many sites were mined prior to the enactment of Federal laws that require reclamation. For those sites where no responsible party is found, the Federal Government and, ulti-

mately, the taxpayer, often bears the cost of addressing public safety risks and threats to the environment.

Within the Department, the significant concentration of abandoned mine lands occurs primarily on BLM and National Park Service lands. BLM's program has identified approximately 50,000 sites with an average of 5,400 new sites discovered each year. The National Park Service recently completed its first comprehensive inventory and assessment of abandoned mine sites in the system, and identified over 37,000 abandoned mine land features. Over 10 percent of these, or 3,800, require remedial action to mitigate public safety threats and environmental impacts.

Reclamation work for dangerous sites requires cooperation with state, local, and other Federal partners, and is a resource-intensive operation. The Department continues to request funds to address this problem, and prioritizes and addresses these activities within available resources. Since 2012, the Administration has included in its budget request a legislative proposal authorizing a reclamation fee on uranium and metallic mines with receipts used for reclamation activities on non-Federal and Federal lands.

It is unfortunate that the catalyst to address a problem is often an incident like this. The Department stands ready to work with this committee and Congress to address the issue in a meaningful way.

Thank you, and I am happy to respond to any questions you may have.

[The prepared statement of Ms. Jewell follows:]

PREPARED STATEMENT OF SALLY JEWELL, SECRETARY OF THE INTERIOR, WASHINGTON, DC

INTRODUCTION

Chairman Bishop, Ranking Member Grijalva, and members of the committee, I am happy to appear before you today to discuss the Department of the Interior's response to the Gold King Mine incident and the Bureau of Reclamation's subsequent technical review and assessment of the incident, which was carried out at the request of the Environmental Protection Agency. The Department appreciated the opportunity to brief your staff on several recent occasions on its work related to the Gold King Mine incident.

Reclamation's "Technical Evaluation of the Gold King Mine Incident" ("technical review"), made available in October, contains a brief summary of the mine's history and the events that led to the incident on August 5, 2015. While the Gold King Mine portal is not on Federal land and is not under the Department's jurisdiction, several of the Department's bureaus do have management responsibilities downstream of the mine and took response actions, discussed in more detail below, as a result of the incident.

An important point, also discussed in more detail below, is the finding in Reclamation's technical review that the conditions and actions that led to the incident are not unique to this situation and are prevalent throughout the West where legacy hardrock mining activities have impacted the environment. As is so often the case, it is unfortunate that an incident like this has to happen to highlight an issue that land managers in both the state and Federal Governments have been grappling with for years—that addressing abandoned mine lands is a nationwide problem, and mitigating toxic substances released from many of them is a significant undertaking. Abandoned mine lands are located on private, state, Federal, and tribal lands. There are tens of thousands of abandoned hardrock sites on Federal lands alone. Many of these abandoned mine land sites were mined prior to the implementation of Federal surface management environmental laws that require reclamation and remediation to take place. For those mine sites where no viable potentially responsible party can be determined, the Federal Government, and ultimately the taxpayer, often bears the burden of addressing these threats to public safety, human

health, the environment, and wildlife, rather than the entities that developed and profited from the operations.

Addressing the reclamation and remediation of abandoned hardrock mine lands is a costly problem and one that requires a long-term funding source. To better address the hardrock abandoned mine land problem and to ensure that an equitable share of the costs of reclamation of these abandoned mine lands (AML) sites are not solely borne by the taxpayer, the Administration has proposed legislation that would hold the hardrock mining industry responsible for the remediation of abandoned hardrock mines, just as the coal industry is responsible for remediating abandoned coal sites. The proposal would levy an AML fee on uranium and metallic mines on both public and private lands, and the receipts would be split between Federal and non-Federal lands. The proposed hardrock AML fee and reclamation program will operate in parallel with the existing coal AML reclamation program as part of a larger effort to ensure the most dangerous abandoned coal and hardrock AML sites are addressed by the responsible industries. We welcome the opportunity to work with the committee and Congress to address this significant challenge.

This statement will briefly discuss the Department's response in the days immediately following the Gold King Mine incident, Reclamation's technical evaluation of the incident, and will conclude with a discussion of abandoned mine lands managed by the Department and the Department's priorities moving forward.

GOLD KING MINE DISCUSSION

The Department's, and its bureaus', involvement in the August 5, 2015, incident began when it was notified of the release. At that time, the Department's Regional Environmental Officers in Denver, Albuquerque, and San Francisco began monitoring the situation and sharing information with each other and with regional contacts in the bureaus.

Our bureaus with management responsibilities in the impacted region—the Bureau of Reclamation, the Bureau of Indian Affairs, the U.S. Fish and Wildlife Service, the National Park Service, and the Bureau of Land Management—as well as the U.S. Geological Survey, began carrying out coordinated response activities in support of EPA's On-Scene Coordinator. A survey of those activities is detailed below.

At the request of, and in collaboration with, staff from the San Juan River Basin Recovery Implementation Program in the FWS's New Mexico Ecological Services Field Office, Reclamation increased the release of water from Navajo Reservoir from 650 to 1,300 cubic feet per second in order to maintain a target base flow through the endangered fish habitat of the San Juan River. The increase helped dilute mine contaminants moving through the San Juan River and helped alleviate concerns that the river and endangered fish and wildlife might be impacted. This increase did not result in any lost hydropower at Navajo Dam.

The BIA conducted drinking water sampling as a precautionary measure at five Bureau of Indian Education schools along the San Juan River. BIE and the schools were advised that none of the potable water at the facilities was impacted by the incident, but the testing schedule was implemented to provide further assurance to the communities. BIA has continued to monitor water used by tribes for drinking, irrigation, and agriculture. BIA's Navajo Region also activated an Incident Management Team, which provided emergency livestock drinking water to impacted users along the San Juan River within the Navajo Nation following its closure for agricultural and livestock water uses. The Incident Management Team provided and managed water tanks in various community locations for this effort. Incident management assistance was also provided to EPA through the BIA's Southwest Regional Office.

The FWS worked with the Navajo Dam operators on the increased water releases into the San Juan River. With the New Mexico Fish and Wildlife Coordination Office, FWS also conducted on the ground surveillance of the fish community in the Animas and San Juan Rivers, as well as field sampling of fish communities and surface water, to monitor impacts from the incident. The San Juan River was determined to be at pre-incident levels, and the Animas River was re-opened to recreation on August 14. FWS is continuing to provide support on wildlife issues related to the incident.

The NPS staff at Glen Canyon National Recreation Area provided logistics and coordination support to EPA for water sample collections both on the San Juan River and in the San Juan Arm of Lake Powell, including a boat, a boat operator, housing, and equipment. NPS staff at Aztec Ruins National Monument, where an irrigation canal off the river extends into the park, independently collected and analyzed sediment samples.

The BLM sent a team to assess the situation on the BLM land downstream from the mine to determine if any mitigation efforts were necessary, and worked with the EPA to provide access across BLM lands to pipe water from the Gold King Mine to EPA's treatment plant. The BLM also coordinated with San Juan and La Plata counties in Colorado to verify safe access to BLM recreation areas and to notify the public about the spill. In Utah, the BLM kept river permit holders and other recreationists along the San Juan River abreast of the incident as it evolved.

Finally, the USGS, in cooperation with the EPA, gathered streamgage data in order to confirm the origin of the stream flow spike at Cement Creek and the volume of the spike estimated at 3 million gallons. USGS also took water and sediment samples and provided both current and historical water quality data to EPA. Just last week, USGS launched a new Web site that will make available to the public data, images, interactive maps, and reports related to the Gold King Mine incident.

BUREAU OF RECLAMATION'S TECHNICAL ASSESSMENT

Shortly after the incident, EPA asked the Department to conduct the independent technical review of the incident. That review, led by Reclamation, was designed to be an independent assessment of the factors that contributed to the incident, including the cause of the incident, and it was to provide recommendations to prevent such incidents from occurring in the future.

The review was carried out in accordance with the Department's scientific integrity policy by career staff at Reclamation's Technical Service Center in Lakewood, Colorado, with expertise in abandoned mine remediation. The U.S. Army Corps of Engineers and the USGS peer-reviewed Reclamation's research and findings and in October the final report was made available online.

In conducting the technical review, Reclamation examiners adhered to the areas of review that were delineated in the work authorization between the two agencies. Reclamation defined the scope of that authorization to include a review of the history of mining operations and remediation activities in and around the Gold King Mine; site conditions prior to and after the incident; the activities that led up to the incident; the remediation work plan; and industry standards and practices for abandoned mine remediation.

As discussed in the report of its technical review, Reclamation concluded that the uncontrolled release at Gold King Mine was due to a series of events spanning several decades. Groundwater conditions in the upper reaches of Cement Creek have been significantly altered by the establishment of extensive underground mine workings, the extension of the American Tunnel to the Sunnyside Mine, and the subsequent plugging of the American Tunnel. The final events leading to the blowout and uncontrolled release of water occurred due to a combination of an inadequately designed closure of the mine portal in 2009 combined with a misinterpretation of the groundwater conditions when reopening the mine portal in 2014 and 2015.

The report also made broader findings, including that the conditions and actions that led to the incident are not isolated or unique, but are quite prevalent. As specifically noted in the report:

> The standards of practice for reopening and remediating flooded inactive and abandoned mines are inconsistent from one agency to another. There are various guidelines for this type of work but there is little in actual written requirements that government agencies are required to follow when reopening an abandoned mine.

In effect, this incident highlights a significant and costly problem, nationwide. Abandoned mines pose a serious threat on private lands, on state lands, and on lands managed by the Department and there is little standardized guidance, standards, or resources to address it.

ABANDONED MINE LANDS

The issue of abandoned mine lands on Federal lands was last highlighted by the Department in its Statement for the Record submitted for the committee's September 17 joint hearing with the Oversight and Government Reform Committee on the incident. This is not a new problem, but instead one that governments at the state and Federal level have been grappling with for a long time.

On Public Lands

In total, the Department manages over 500 million acres of land, together with associated waterways and plant and animal species. Given the amount of land managed by the Department, addressing hazards created by abandoned mines on

Federal lands is an important objective. The significant concentration of known abandoned hardrock mines and related features on lands under the Department's jurisdiction occur primarily on BLM and NPS-managed lands and are associated with both public safety hazards and human health, environmental, and natural resource impacts resulting from exposure to heavy metals released from mines and present in mine and mill tailings.

Over the last 150 years, much of the public land managed by the BLM has experienced some form of hardrock mining activity, which has ranged from exploration to full development. In many cases, this activity has resulted in disturbed and sometimes contaminated land across parts of the West. Mining activities conducted prior to January 1, 1981, the effective date of the BLM's Surface Management regulations, were often not properly reclaimed, and in many cases no financially responsible party exists to help pay for the cleanup. The BLM's abandoned mine land program, which is aimed at enhancing public safety and improving water quality by reducing or eliminating the effects of past hardrock mining, has identified over 50,000 AML sites on BLM administered public lands.

Each year an average of 5,400 new AML sites are discovered on public lands, with many millions of acres of BLM lands remaining to be inventoried. The BLM continues to develop new processes to more effectively inventory priority AML sites on the nearly 250 million acres of surface estate and 700 million acres of mineral estate that it manages. This inventory work focuses on high-priority areas, as established by physical safety, human health, and environmental risk criteria. Over the last 6 years the BLM has mitigated physical safety issues at 6,321 AML sites, restored the water quality on 8,435 acres of BLM managed land, and conducted monitoring on 5,138 AML sites.

The BLM prioritizes abandoned mine reclamation work based on public safety, human health, and environmental risk. The highest priority is given to mines that present the greatest safety risk to the public, such as those located closest to population centers, schools, or recreation areas, and those with the greatest potential environmental concern. Criteria for the ranking of environmental sites includes human presence, threat to the environment, relative toxicity of contaminants, impacted media and location of the site relative to surface water and/or groundwater, aquifer characteristics, and soil or sediment characteristics.

In Colorado, the BLM has prioritized site reclamation in the Gold King Mine area and is coordinating with the local community and other agencies to develop a comprehensive solution for the large number of abandoned mine sites in the area, which are both on Federal and non-Federal lands.

AML sites are also present on NPS lands throughout the country. The NPS began to collect data on AML sites on park lands in 1983, and in September 2014 completed the first comprehensive inventory and assessment of AML sites in the park system. Extraction activities left behind 37,050 AML features in 133 units of the park system. The vast majority—81 percent—of features are located in the NPS Pacific West Region, especially in Death Valley National Park, Mojave National Preserve, and Lake Mead National Recreation Area. However, AML features are distributed throughout the park system and are a significant management issue in all regions.

The majority of AML features on NPS lands—31,437, or almost 85 percent—do not require remedial action either because they do not constitute a threat to human health and safety or generally do not pose a natural resource problem. Almost 1,800 features on NPS lands (about 5 percent) have already been remediated. However, over 3,800 of these features (over 10 percent) in 76 park units do require remedial action to mitigate public safety threats and natural resource impacts. The NPS's 2016 budget request includes $5 million in Line Item Construction funding to initiate AML remediation efforts; however, NPS is continuing efforts to fund a comprehensive program that will fully and efficiently mitigate safety hazards and resource impacts at AML sites through the national park system.

According to the NPS, the principal cause of death at AML sites nationwide is drowning in water-filled quarries and pits. Other risks include vertical drop-offs; unstable structures and rock falls; deep and unstable pit walls; deadly gases and radioactive air; abandoned explosives; hazardous chemicals; and high concentrations of contaminants inherent to the mineral deposit. Mine contaminant releases can affect natural resources such as air, soil, and water quality as well as plant and animal health.

The responsibility to reclaim dangerous AML sites is resource intensive and requires cooperation with local, state, and Federal partners. Even dangerous mines that have been properly sealed off are sometimes vandalized, entered, and left open. AML sites are also prone to erosion and de-stabilization of natural topography due to the interruption of natural drainages by mining-related excavation and tailing

and waste rock placement. Impacts to scenic qualities of natural areas also occur at AML sites. There are also other factors that merit management attention in AML site assessment and treatment, including the historic value of mines, some of which are listed in the National Register of Historic Places, and the wildlife habitat value of AML sites for species such as bats.

With this in mind, the goal of programs addressing AML issues in the Department is to work to remediate the physical safety hazards, such as shafts, adits, and entrances, and environmental threats associated with hardrock abandoned mine sites.

U.S. Geological Survey's Work

At a recent hearing before the Energy and Mineral Resources Subcommittee, the USGS testified about its role, since the early 1990s, in providing impartial earth and biological science input to the EPA and other agencies on Superfund sites and smaller sites appropriate for Good Samaritan cleanup and other work associated with abandoned mine lands. Related to this issue, it has worked with stakeholders to develop detailed watershed-based AML assessment methodologies in Colorado's Animas River and Montana's Boulder Creek.

The USGS has indicated that a continuing challenge to this process is accurately estimating the scope of the AML problem across the United States and the likelihood for individual mining sites to cause potential environmental contamination. The USGS is developing an enhanced geospatial database of the mines and mineral deposits of the United States known as USMIN, which will capture the locations and areal extent of mine features from current and historical USGS topographic maps and satellite imagery. When enhanced by the integration of information from other national databases on geology, mineral resources, hydrology, water quality, soil quality, remote sensing, ecology, and climate, the result should help us better understand the national scope of AML issues and impacts.

The USGS has also developed methods to help reconstruct pre-mining environmental conditions in these watersheds, because it is neither cost effective nor technically feasible to remediate to environmental conditions cleaner than were present naturally prior to mining. Other work includes——

- Interdisciplinary methods to help prioritize which of many AML contamination sources in a watershed could be cleaned up to have the biggest positive impacts;
- Linked water quality sampling and flow measurements that have helped pinpoint locations and amounts of specific contaminant influxes into watershed streams;
- Field- and lab-based ecotoxicological measurements to help assess the impacts of AML contamination on food webs and aquatic insect populations. Potential human health concerns can be inferred based on the toxic metals and minerals geologically likely to be present in mine wastes, soils, and dusts;
- Computer-based models that help predict impacts that remediation of specific sites would have on downstream water quality and aquatic ecosystems, allowing more effective cleanup decisions. The economic and societal value of ecosystem services can be evaluated in AML watersheds, and extraction of valuable or useful metals in mine waste materials may help offset cleanup costs at some sites.

Addressing Priorities

Due to the abandoned nature of these sites, the public is often left with the bill for remediation of legacy abandoned mines, rather than the companies and individuals who originally developed the resources. The Administration has continued to request funds to address this significant problem; the Department prioritizes these activities and addresses those priorities within available resources.

AML sites that are identified by the bureaus as posing significant potential human health and environmental risks from exposure to toxic metals are addressed using the response authorities established by the Comprehensive Environmental Response, Compensation, and Liability Act, which have been delegated to the Department by Executive Order. Funding for the investigation and cleanup of the Department's highest priority CERCLA AML sites is often provided from the Department's "Central Hazardous Materials Fund," a Department-wide account that provides funding to land-managing bureaus for CERCLA response actions, which receives an annual congressional appropriation of approximately $10 million. The Department uses these funds only for AML sites where the bureau has completed a CERCLA Preliminary Assessment and Site Inspection and where the responsible

bureau is undertaking additional response actions using the Department's CERCLA authorities.

While there are a number of challenges to addressing AML sites on public lands, there is both a necessity and a desire to address those identified priority sites.

Since 2012, the Administration has included in its budget requests a legislative proposal intended to address the legacy of abandoned hardrock mines. The Administration's proposal would hold the hardrock mining industry responsible for the remediation of abandoned hardrock mines.

The proposal would levy an AML reclamation fee on uranium and metallic mines on both public and private lands, which would be assessed on the volume of material displaced after January 1, 2016. The receipts would be split between Federal and non-Federal lands, and the Secretary would disperse the share of non-Federal funds to each state and tribe based on need. States and tribes would select their own priority projects using established national criteria.

The proposed hardrock AML reclamation fee and reclamation program would operate in parallel with the existing coal AML reclamation program as part of a larger effort to ensure that the most dangerous abandoned coal and hardrock AML sites are addressed by the responsible industries. With the number of identified sites increasing as inventories are improved, we recognize that there is a very large unmet need to address this problem.

CONCLUSION

It is unfortunate that the catalyst to address a problem is often an incident like this. The Department stands ready to work with the committee and Congress to address the issue in a meaningful way. Thank you and I am happy to response to any questions that you might have.

QUESTIONS SUBMITTED FOR THE RECORD TO THE HONORABLE SALLY JEWELL, SECRETARY OF THE INTERIOR

The Honorable Sally Jewell did not submit responses to the Committee by the appropriate deadline for inclusion in the printed record.

Questions Submitted by Chairman Rob Bishop

Question 1. What is the factual or documentary basis for the Bureau of Reclamation's (BOR) assertion that portions of the pipes that the Colorado Division of Reclamation, Mining and Safety (DRMS) installed in 2009 were excavated and removed in 2014?

Question 2. What is the basis for BOR's assertion that the Environmental Protection Agency's (EPA) plan was to insert a stinger and use a pump to drain water impounded in the mine (i.e., was this information communicated verbally by an EPA employee/contractor, or was it contained in a specific document that BOR reviewed)? If this information came from a specific document, which document?

Question 3. Did BOR interview all of the individuals on site on August 5, 2015? If not, please explain why BOR did not conduct interviews with each individual who witnessed the blowout?

Question 4. Were the authors of the BOR report aware that the image shown in Figure 39 was drawn on August 11, 2015 (after the spill)? If so, why did they not include this important information in the report?

Question 5. Why did BOR omit the affiliation of the BOR peer reviewer on the cover and only list the affiliations of the other two peer reviewers on page 3 (PDF) of the report?

Question 6. Was DOI aware that there was no pump and stinger at the Gold King Mine site before it produced its report? If so, why was this not mentioned in the report?

Question 7. Did BOR receive maps or photographs from DRMS or EPA showing or depicting the DRMS work done at the Gold King Mine in 2009, other than what is cited in the Technical Review?

Question Submitted by Representative Dan Newhouse

Question 1. Do you think having a Bureau of Reclamation (BOR) employee—who is a subordinate of the BOR evaluation team members—peer review his bosses' report makes for a very robust peer review process?

The CHAIRMAN. Thank you. I appreciate that. Now we will get to the question phase of this, with the Committee Rules—there is a 5-minute rule that goes along with it.

I am going to break tradition, and I actually am going to do the first set of questions myself. I apologize, but I think other Members in this committee are going to have some specific-ish questions that deal with portions of this report. My job is going to be very technical here, so we are going to go through some of the minutiae, the technicality, if I could. So, I am ready to start.

Ms. Jewell, you received a letter on September 3 from me, but it took over a month to respond to that letter. Your initial response did not include any of the documents the committee asked for. You waited to deliver about 3,600 pages literally 1 day before this hearing. Of those, over 300 of them were that—that is one of the pages you gave us, everything was redacted in the entire page. Those documents produced still do not include some of the specific documents that the committee requested.

[Slide.]

The CHAIRMAN. So, I am going to give you a compound question. Number one, why did the Department delay the delivery of these documents for so many months, especially when EPA and EPA's contractors provided us with more information than DOI has, and they did it in less time? Why are so many of these documents redacted like this? Why are you even giving us that kind of stuff?

In addition to that, I want to compound that with the other question that both EPA and DOI determined that BLM would be excluded as an author or reviewer from this project, because it was a potentially responsible party under CERCLA. How exactly is the Department of the Interior, that is ultimately responsible for BLM and its liabilities, independent enough to conduct this review?

So, why did it take so long? Why are so many redacted? How can you actually be considered as independent? Ms. Jewell?

Secretary JEWELL. Congressman, we will continue to produce all appropriate material. We have limited resources. There are a lot of things to review. We do that in a thoughtful way, and we get them to the committee as fast as we can with the resources that we have.

The CHAIRMAN. Ms. Jewell, let me——

Secretary JEWELL. Why is it redacted?

The CHAIRMAN [continuing]. Push back on that. We have talked about this before. They are not coming in a timely review. EPA was faster than you, their contractors were faster than you. Why are they faster than you?

Secretary JEWELL. I have no idea what resources EPA has to allocate to this process. I do know what we have; and our people work very hard, and they respond as quickly as they can——

The CHAIRMAN. Ain't good enough.

Secretary JEWELL [continuing]. With the amount of requests that they have.

The CHAIRMAN. Thank you.

Secretary JEWELL. In terms of why redacted, what you were given is everything related to the Gold King Mine spill. I receive weekly reports from the Department that are lengthy. I receive daily reports on emergency operations. These reports may or may not have anything related to the Gold King Mine spill. So, you may get 50 pages of documents of which only one or two paragraphs relate to the Gold King Mine spill.

As a subset of a document, that is why you would get a lot of pages that did not have any information showing, because none of it related to the Gold King Mine spill.

The CHAIRMAN. We would actually like to be part of the decision-making process of whether that has—look, you can save a couple of forests by not giving us black pages.

The Bureau of Reclamation was not only involved in the report it produced, but it was also directly involved in the project before the blowout took place. The Bureau of Reclamation, including the report's lead author, was consulting at the Gold King Mine project, and helped fund it. Why was the potential liability enough to create a conflict for BLM when they could not be part of it, but actual involvement was not enough to create a conflict of interest for the Bureau of Reclamation?

Secretary JEWELL. I am not aware of any discussions with regard to BLM. I am aware that the EPA wanted to get to the bottom of what happened, technically, at the mine; and they looked for people with that expertise.

The work of the Technical Service Center is very broad. A tiny fraction of that, about a half percent or so, is done for the EPA. The individual that was contacted by the EPA as an expert in these areas has worked in the private sector in the mining industry; and he has worked in the public sector, including for the now no longer functioning U.S. Bureau of Mines. The EPA contacted him because he has technical expertise in this area.

The CHAIRMAN. OK. Well, then——

Secretary JEWELL. He consulted on the Red and Bonita Mine——

The CHAIRMAN. Then let me go to the source of it. BOR signed a contract with the EPA to provide technical assistance for the cleanup just days after BOR signed another contract to lead the so-called independent investigation. So, BOR went from being a technical consultant to an investigator, then back to a technical consultant in a matter of days.

How can you claim that this report is even remotely independent, when the lead author was working with EPA, and has been doing so for some time before he started his investigation?

Secretary JEWELL. Congressman, there are 30 seconds left, so I am going to turn to my colleague, David Palumbo, who oversees the Technical Service Center, to provide as quick an answer as we can within the time remaining.

Mr. PALUMBO. Thank you, Secretary. Thank you, Chairman. I would just like to clarify. The work that the Technical Service Center was doing was on the Red and Bonita Mine, as the

Secretary indicated. There was no work, there was no contract for activities related to Gold King Mine until after the incident.

The CHAIRMAN. All right. First, technically, I had 33 seconds, so I did not break the rule. Also, I am going to challenge that statement later on.

With that, let me go on. Since I am now out of time, let me go on to Mr. Grijalva.

Mr. GRIJALVA. Thank you, Mr. Chairman.

Madam Secretary, part of the issue today is responsibility in the first place. It was the mining industry that mined under the mountains initially, it was the mining industry—that tunnel—so we had that backup that occurred in parts of the mountain. So, we can't let this hearing get away from the responsibility in the first place.

Let me just ask you a couple of questions. How much acid mine drainage was being released by this mine system into the Animas River watershed before EPA started doing any work on the Gold King Mine this year?

Secretary JEWELL. The numbers that I have heard are 330 million gallons of toxic mine drainage every year out of this region and into the Animas River watershed.

Mr. GRIJALVA. And on the August 5 release at Gold King Mine, how much was released by EPA's activities at that point?

Secretary JEWELL. The USGS has measured the flow at approximately 3 million gallons on the day of August 5, and that was when the surge came through. Since then, it has returned to a more stable level. So, 3 million gallons.

Mr. GRIJALVA. Have there been other large releases of water from these mines into the watershed in the past?

Secretary JEWELL. Yes, there have. As I read the technical report, it identifies several of them—the largest of which was actually the inadvertent draining of a lake, which was something like several hundred million gallons.

Mr. GRIJALVA. And, were there any Federal agencies responsible for either that incident or other incidents that have occurred in the past?

Secretary JEWELL. Not to my knowledge. The incidents occurred as a result of the mining industry's activities.

Mr. GRIJALVA. Do we have any estimates on the total amount of acid mine drainage that is seeping into America's streams and rivers from the estimated number of abandoned mines?

Secretary JEWELL. We have not estimated the amount of spillage. In this small area alone, there are about 400 mines in the Animas River watershed, 330 million gallons. We estimate on BLM lands alone there are 100,000 abandoned mines. The state of Colorado has 23,000. I think that it is fair to say that it is a significant multiple of that amount, but I do not have an estimate.

Mr. GRIJALVA. And not even knowing the total number kind of makes that numerical conclusion difficult.

Secretary JEWELL. Correct.

Mr. GRIJALVA. I just want to say that I asked the committee staff to do an analysis of some of the proposals the Majority will be bringing forth. The bills are being proposed. In one, it would freeze the Bureau of Land Management's abandoned mine program at $17 million a year, and provide up to $15 million in matching

funds from donors. I am not sure we will get $15 million in donations; but, for the sake of argument, let's assume that we do. So, that bill would come up to $30 million.

At that rate, it would take over 560 years to clean up just the abandoned mines that we know about on BLM and Forest Service lands. Again, that is just what we know about. As you pointed out, there are a lot we do not know about; so, the timeline could actually be a lot longer.

If we implement the proposals in the legislation that our side of the aisle have proposed, and the President's budget, as well as make the polluters pay for that legacy, we shorten the time by 500 years. I still think 53 years is an awful long time, but a lot better than 560.

I think if we continue to focus on not dealing with the overarching issue, which is abandoned mines, their consequence to not only the environment but to public health, the danger they pose, and not look at the funding mechanism that will begin to pragmatically and programmatically deal with the reclamation and remediation of those mines, we continue to completely miss the point.

With that, Mr. Chairman, I have no further questions. I yield back.

The CHAIRMAN. Mr. Young.

Mr. YOUNG. Thank you, Mr. Chairman, and thanks for holding this hearing.

Secretary, what did you have, as far as assets and technical assistance, in the Department to make available to the Navajo Nation and the Southern Ute Indian Tribe immediately after the blowout and in the intervening months? What did you have, and how did you handle it?

Secretary JEWELL. To just provide a quick summary, we were in contact with the Navajo Nation on August 6, which was the day after the spill. We mobilized to understand what the issues were. The Fish and Wildlife Service started working on what were the impacts to the wildlife, the U.S. Geological Survey began immediate work on stream gauges and measuring the water flow, the Bureau of Reclamation released additional water from the Navajo Reservoir to dilute the flow; and we worked every step of the way with the Navajo Nation.

We are concerned about water quality. We did water quality testing in the area, including at schools that were about to open. We set up an Incident Management Team and an Incident Management Center; and throughout the spill response, we basically made sure that they had sufficient resources for their livestock and other animals.

Mr. YOUNG. What I am leading up to, you know, the Navajo Nation and the Southern Ute Tribes are really sophisticated. Their tribes have gone a long ways. I am going to be introducing legislation—I am sure with other people—that, because of their expertise in environmental protection themselves, I would like to have a bill that would allow them to contract that work—not the EPA and not yourself. You would be the auditors of what is going to be proposed.

If that were the case, what would be the position of your Department?

Secretary JEWELL. I would say, overall, we are very much in support of contracting services to tribes when they are capable of providing those services; and we certainly have some sophistication in the tribes you referenced. So, yes——

Mr. YOUNG. I will guarantee you that we will give you the specifics of what will happen, because I have noticed the agencies themselves have reluctance to let those people directly affected, when they have the expertise, do the work. I am terribly disappointed in your Department in a lot of areas in my state and, of course, with the EPA overall.

This is going to come down the pike, so I want you to consider it. If they cannot do the job, they do not get the job. If they get the job, then you ought to be able to say, "This is the law, they are going to have the job to do the cleanup." And it goes back for all your mines. There is no reason why you cannot have the areas that are directly affected.

What was your immediate contact with EPA? Did they contact you, or did you contact them?

Secretary JEWELL. Let's see. My understanding is that our first notification came from the Colorado Department of Public Health and Environment, through their spills tracking data system. The same day, our Office of Environmental Compliance and Policy in Denver was notified of the spill by EPA's National Response Center, all on the day of the spill.

Mr. YOUNG. Is there any of this, "It is my job, it is not my job, it is your job, it is your fault, it is not my fault," between the two agencies?

Secretary JEWELL. I have not seen that at all. I have seen nothing but cooperation in trying to deal with the issues on the ground and be responsive to the circumstances on the ground.

Mr. YOUNG. Who do you have on the ground now from the Department or EPA auditing this program?

Secretary JEWELL. Well, we did not have anybody at the Gold King Mine site, but we have——

Mr. YOUNG. Now.

Secretary JEWELL. Well, we did not at the time. We have since visited the site, but we do not have anybody on the ground at the site that I am aware of.

Mr. YOUNG. Is there anybody on the ground from either one of the agencies?

Secretary JEWELL. EPA is responsible for the site, and they are on the——

Mr. YOUNG. Are they there?

Secretary JEWELL. I don't know. I assume so.

Mr. YOUNG. Well, my point is that you are in charge, as Secretary of the BIA. The BIA is in charge of the reservation. Is that correct?

Secretary JEWELL. I am sorry, I thought you were talking about the Gold King Mine site. Are you speaking about the reservation itself?

Mr. YOUNG. What is the effect upon the reservation land and the water that those people are consuming? Are you bird-dogging or is it just EPA?

Secretary JEWELL. No, we are working with the tribe, and the tribe's environmental protection organization on monitoring of water quality. They have said, "This has opened our eyes to the risk; we would like assistance in monitoring the amount of heavy metals in the soil."

So we are, through BIA, continuing to work with the tribe, and will continue to do that for as long as they like.

Mr. YOUNG. We will check that with the tribe, to see what results we are having from it.

Secretary JEWELL. Great.

Mr. YOUNG. It is your responsibility. My basic complaint about the Department all this time—you have Bureau of Mines, da da da da da, and right at the very bottom is BIA, the last one to be heard from. They should be the lead agency of this, because of the standard of the Navajo and the Utes; and you ought to be aggressive about this, not them.

Secretary JEWELL. Congressman Young——

Mr. YOUNG. Yes?

Secretary JEWELL [continuing]. With all due respect, I think our actions have shown that we take our responsibilities to tribes very seriously. My personal meetings with the Navajo leadership, and our deputy, Mike Connor's, personal meetings, have shown that they have been very appreciative of our response. We will continue those very high levels.

Mr. YOUNG. All due respects, I can tell you this is not a new unit, not a new agency. And I think you have done a lousy job, because they are at the bottom of the list.

The CHAIRMAN. OK, thank you.

Mr. Sablan, you are recognized. Oh. OK, let's yield to Ms. Tsongas, then. Thank you.

Ms. TSONGAS. Thank you, Mr. Chairman, and thank you, Mr. Sablan. Welcome, Secretary Jewell. It is so good to have you here.

After the spill of the Gold King Mine, the entire Nation—I think all of us—saw appalling images of the river running yellow, as nearby counties and Native American tribes declared states of emergency for local residents, and rightfully so.

As I mentioned at our previous hearing on this accident with EPA Administrator McCarthy, I happen to come from a district that is rooted in the Industrial Revolution, where rivers used to run different colors, depending on the dye that was cast into them at the end of the manufacturing day.

As a Nation, we have come a long way in deciding that this is no longer acceptable, and have made bipartisan commitments to protecting the health of our rivers, for they are directly tied to the overall health of our communities. It was great to have you come to my district to celebrate our Rivers Day and the new role that they play, the very important role they play, in our district.

The Gold King Mine spill into the Animas River, and the possible negligence by EPA contractors, certainly merits—and did merit—an investigation and attention from this committee. But one of the most stunning aspects of this accident, and the subsequent investigations by both the EPA and the Bureau of Reclamation, is that it has exposed just how far behind we are when it comes to

environmental cleanups of old, hardrock mines, abandoned by their private owners when they were no longer profitable.

The Gold King Mine in Colorado has been closed for 90 years, yet this mine and others in the area have been polluting the Animas River at the rate of approximately—as you reaffirmed in your testimony—330 million gallons of polluted wastewater a year. That is 100 times more pollution going into the river than the August 5 spill, and the reason that the EPA was working at the site in the first place.

BLM estimates that there are 93,000 abandoned mines in California, Nevada, and Utah, and another 23,000 abandoned mines in Colorado, where the most recent spill took place. There are approximately 161,000 across the entire western United States and Alaska, and some estimate a number as high as 500,000. Yet despite these numbers, there is no dedicated funding source for environmental cleanups of hardrock mines.

I am a co-sponsor of Representative Grijalva's legislation. It would bring the 1872 mining law into the modern age, requiring companies to pay royalties to the American taxpayers for metals extracted from our public lands and creating a much-needed funding source for cleanups of old and abandoned hardrock mines. This is an important reform, and it creates an opportunity to address this long-neglected issue; but until then, we have to deal with the world as it is.

As I have just mentioned, we have hundreds of thousands of abandoned mines across our Nation. Many of them are on public lands, which are depended on by Americans for recreation, tourism, clean drinking water and, for many people, a source of their economic livelihoods.

You referenced it in your testimony, but can you describe the environmental threat that abandoned hardrock mines pose to our public lands, and give us a little more detail on how they affect our national parks?

Secretary JEWELL. Thank you for the question, and for recognizing the extent of this problem.

National Parks, in particular, did a very thorough study that was published in 2014. They estimated that they had something like 37,000 abandoned mine features, with about 3,800 that required remediation. Because of their smaller footprint, we were able to do the assessment. They estimated that the cleanup of those 3,800 sites alone would cost about $141 million over 12 years.

The BLM has not had the financial capacity to do a full assessment or inventory. They estimate, just in the states of California, Nevada, and Utah alone, it would cost about $212 million to inventory those sites. They have identified 50,000 sites. As I mentioned, they have another 5,400 that they are identifying each year. There have been estimates of roughly 100,000 sites, but those are just estimates. We really don't know, because we have not had the capacity or the funding to do an inventory.

Ms. TSONGAS. Can you talk about the number of park units that have been impacted? And give some examples of particular parks.

Secretary JEWELL. Yes, there are, I think, in those 3,800 that need remediation, about 76 units.

An example—there is a large mine site—I cannot remember the name of it—up in Alaska, in Wrangell-St. Elias. There are lots of sites where our biggest issue is drownings.

Sorry, OK.

The CHAIRMAN. Thank you.

Ms. TSONGAS. Thank you.

The CHAIRMAN. Mr. Gohmert.

Mr. GOHMERT. Thank you, Mr. Chairman. And thank you, Secretary Jewell, for being here today.

Before I give my questions, I would like to play a quick clip from our last hearing on the Animas spill.

[Video shown and submitted to be part of the hearing record.]

Mr. GOHMERT. Thank you. Secretary Jewell, we have gotten some emails and some information, and we have an EPA/BOR Superfund program work authorization dated August 20, 2015. And there is nowhere that the things EPA Administrator McCarthy testified on here were going to be investigated.

So, I am curious. Before that last hearing we had on September 17, did you or anyone in your Department advise EPA Administrator McCarthy that the scope of the investigation would not look into criminality, intentional gross negligence, or anything of those matters?

Secretary JEWELL. Congressman, what I do know is the facts that are in the record, that we signed a work authorization form. I will turn it over to David to explain what was in that. It was specifically a technical review; that is what we agreed to do.

I think it is fair to say that it is informing the ongoing investigative work that EPA is conducting. Our reviewers, our engineers are doing technical——

Mr. GOHMERT. That is non-responsive to my question.

Secretary JEWELL. They are not——

Mr. GOHMERT. I asked you if you, or anyone in your Department, advised her that the investigation did not include looking for whether there was criminality, gross negligence, or intentional violations. I do not need anyone here to tell me what is in the authorization that I have a copy of. That is not my question.

You had the power to gather this information that EPA Administrator McCarthy testified was being gathered. It was not being requested, it was not being gathered. You knew before the September 17 hearing that we wanted you to testify. You knew you had the power to get the information that Administrator McCarthy said was going to be gathered.

So, did you instruct anyone at all in your Department to investigate whether or not there was any criminal misconduct, intentional or negligent disregard, or wanton negligence out there at the Animas Mine?

Secretary JEWELL. Congressman, my Department does not have the authority to conduct those investigations. I did not have a conversation with Administrator McCarthy about——

Mr. GOHMERT. You are testifying——

Secretary JEWELL. Let me finish——

Mr. GOHMERT [continuing]. Before this committee that you do not have the power to see if one of your employees acted negligently? You do not have that power? That is your testimony?

Secretary JEWELL. Mr. Gohmert, I do not have the power within Interior to investigate employees within EPA. The Inspector General within EPA would have that authority; but the Department of the Interior does not have the authority to look at criminal or individual investigations. Our investigation was strictly technical in nature, and consistent with the work authorization that we did with EPA.

Mr. GOHMERT. The bottom line, Secretary, is that, once again, though your Department is good at holding individual Americans accountable, no one is being held accountable for this disaster.

Mr. Chairman, as a former judge, I know the doctrine of spoliation is basically an exception to the hearsay rule. We are very careful we do not let anything that is non-reliable evidence before a fact-finder. That doctrine is sound. I would advise the fact-finder in this matter that the Department of the Interior has the information within their grasp, and they have repeatedly refused to provide it. Therefore, you may take that as evidence that this Department was either negligent, grossly negligent, or intentionally violated the law.

I yield back.

The CHAIRMAN. Thank you.

Mr. Beyer.

Mr. BEYER. Thank you, Mr. Chairman, very much.

Madam Secretary, the Chairman, in his opening statement, said that the BOR should never have been assigned this task because Mike Gobla, who worked for BOR, was going to be on a consulting team scheduled for the week or two after, and that compromised BOR. How do you respond to that?

Secretary JEWELL. I think I will turn that over to David Palumbo, because he is a technical expert and works with Mr. Gobla.

Go ahead, David.

Mr. PALUMBO. Thank you, Secretary.

Thank you, Congressman. I do not believe, in this case, there was a conflict of interest. Mr. Gobla was contacted on July 23 regarding a site visit scheduled for August 14. The incident occurred on August 5. Mr. Gobla did make the trip on August 14, and also subsequent to August 14, to conduct activities related to: one, helping stabilize the mine portal, and two, as part of the independent technical investigation.

Mike Gobla and other members of the Technical Service Center, as well as the peer reviewers, have a high standard of ethics. They have professional conduct requirements that they adhere to. They are licensed professional engineers, professional geologists, and PhDs. I believe they acted independently, with integrity, and without compromise.

Mr. BEYER. And, really, there is no way that Mr. Gobla was involved in the actual spill at all.

Mr. PALUMBO. No, he was not involved with the spill.

Mr. BEYER. OK, great. Madam Secretary, the Chair also characterized this as a disaster, which I very much respect. One of the things I have seen—by August 9, 4 days later, the levels of metal and sediment from the Silverton area had returned to levels prior to the August 5 spill; the water quality in the San Juan River and

the Navajo Nation had returned to pre-event levels by August 15; and the Animas and San Juan Rivers had lifted restrictions on irrigation, livestock, and recreation. EPA expects no adverse health effects and the risk to livestock is low.

Were there any deaths to people or livestock? Were there any illnesses that we know about?

Secretary JEWELL. Not that I am aware of, no. None.

Mr. BEYER. Any sense of the economic loss, agriculture——

Secretary JEWELL. I do know, from speaking with the Navajo Nation, that they chose to not use the water for irrigating crops, and they believe they have losses there that they are pursuing a claims process with the EPA. But no livestock was lost. The livestock water that we provided through the BIA, and the subsequent use of their water, resulted in no losses that I am aware of to livestock.

Mr. BEYER. Yes. I mean the pictures are horrible, and I do not want to minimize the disaster effect. We also want to put it in perspective.

Secretary JEWELL. Thank you.

Mr. BEYER. We just looked at the EPA's internal report, which we just got this morning. They talked about the two on-site coordinators on pages 3 and 4, and how the one guy who was responsible had gone on vacation, and had directed, "The other person"—name redacted—"the EPA contractors, DRMS staff, not to proceed with any work on actually opening the adit until his return after a planned vacation."

On page 4, it then goes on to talk about how they were scraping away all the loose soil near the face of the adit, with the initial goal of locating the primary blockage. With the consultation of DRMS, they were doing additional excavation to identify the location of the bedrock. They were able to locate the bedrock. Then they started to go home, and were doing the final cleanup work, when the team noticed a water spout a couple of feet high in the air.

So, they were not attempting to open the adit when the thing happened at all. It looks like, from the internal review, that they were respecting the advice of the leader, who was on vacation.

Is there anything in there that suggests criminal activity?

Secretary JEWELL. I do not believe there is anything in there that suggests criminal activity. The spill was clearly unintentional, from everything we have looked at, and from all the information that has subsequently come out.

Mr. BEYER. Is there anything that suggests gross negligence?

Secretary JEWELL. I think that that is for others to determine. The facts are on the table; I think they are very clear. These are unknown circumstances. It certainly did not look like there was any intent, other than to clean up an abandoned mine land site, which had risks that were identified; and the judgments taken resulted in a spill. Certainly, there was no indication in anything that I have seen that would suggest anything was intentional.

Mr. BEYER. One of the most interesting engineering subtleties in here was that the assumptions were made that a lot of this was clay, which has a much higher ceiling impact. Actually, it was a lot of fallen metals and stone. Those are much more porous, which

resulted in water levels double what they had anticipated. But, it is difficult to take that to negligence.

So thank you very much. Mr. Chair, I yield back.

The CHAIRMAN. Thank you, Mr. Beyer. I also appreciate the first question you asked.

Mr. Palumbo, I am coming back for another round. That is the crux of the question. You gave me a different answer than you gave him, so you can be thinking of your third response to it eventually.

Mr. Lamborn.

Mr. LAMBORN. Thank you, Mr. Chairman.

Secretary Jewell, thanks for being here. There are two things that the American people want from Federal agencies. They want accountability and they want transparency. So let's look at those two things.

On accountability, has anyone at any agency been fired for this environmental disaster?

Secretary JEWELL. Not that I am aware of.

Mr. LAMBORN. OK. Has any Federal agency been fined for this environmental disaster?

Secretary JEWELL. Not that I am aware of.

Mr. LAMBORN. So much for accountability, let's talk about transparency.

The water pressure at the nearby Red and Bonita Mine was tested prior to work being conducted, but not at the Gold King Mine. Why did your report fail to address EPA's decision to proceed on work at the Gold King Mine without testing the pressure like they did at the Red and Bonita Mine?

Secretary JEWELL. David, I think I will go ahead and let you answer that, because it is technical.

Mr. PALUMBO. Sure. Thank you, Congressman. I believe our report is clear that if EPA, DRMS, or its contractor would have done vertical drilling as they did in the Red and Bonita Mine, that direct verification of pressure or no pressure, this incident would not have occurred.

Mr. LAMBORN. Exactly. Why wasn't it done? That is my point, why didn't the report go into that?

Mr. PALUMBO. I think the report clearly identifies that it should have been done. And if it were done, we would not have had the situation that occurred on August 5.

Mr. LAMBORN. OK. You say in the abstract it should have been done. Why didn't it get to the bottom of why the EPA did not do that.

Secretary JEWELL. Congressman, if I can jump in here, the——

Mr. LAMBORN. Who made the mistake? Who didn't call for it?

Secretary JEWELL. EPA had requested a consultation by Mr. Gobla, who provided the expertise and the suggestions in the Red and Bonita Mine. That was scheduled for August 14. They were doing preparation work on the site, clearly without an intent to do a spill. That is when the spill occurred. Had he done the consultation, he may have provided advice that would have prevented the spill; but the prep work on the site resulted in the release.

Mr. LAMBORN. OK, OK. Let me talk about a related issue. One of your peer reviewers, an expert employed by the Army Corps of

Engineers, protested that the DOI report, your report, failed to explain the decisions that led to the disaster.

He further stated that, "The report should describe what happened internal within EPA that resulted in the path forward and eventually caused the failure." Why didn't the report state what went wrong with the EPA?

Secretary JEWELL. David?

Mr. PALUMBO. Sure. Again, as Secretary Jewell indicated earlier, our scope of work was related to looking at a technical root cause analysis based on our geotechnical engineering expertise. We did not have the authority to compel another agency to provide documents. We do not have the investigative tools to perform that analysis. So we strictly focused on the technical merits of the review.

With respect to the peer reviewers, I——

Mr. LAMBORN. OK, let's go right there. So, you are letting the EPA get off scot-free, it sounds like. They are not being held accountable, and there is definitely not even a lot of transparency. But, when you want to hold someone accountable, you throw a state agency under the bus.

DOI claims that in the hours leading up to the blowout, two DRMS—that is the Colorado agency—employees visited the site to view conditions and were in agreement with the EPA on continuing excavating. Two DRMS employees did go there, but they said there was no such agreement; and they wrote the EPA, saying that was the case. There was no such agreement. They were only there to consult with the EPA about future underground mine work at the Gold King Mine. It had nothing to do with excavation taking place by EPA and/or its contractor that morning. No one at DRMS directed any work at Gold King Mine, nor did any DRMS personnel approve or disapprove any of the work that EPA was conducting there.

So, you say that you are not finding blame, but you certainly seem to be able to find a way to blame a state agency, which was just kind of an innocent bystander. Isn't that correct?

Mr. PALUMBO. Our report captures the discussions that occurred after the event, when we went out to speak with those parties that were involved: DRMS, the contractor, EPA. We stand by the report that we published, that there was consultation amongst those three parties, there was discussion amongst those three parties, there was agreement amongst those three parties; that is why we captured the language we did in our report.

Mr. LAMBORN. Well, I don't see conspiracy, I see shifting blame to other people. I yield back, Mr. Chairman.

The CHAIRMAN. Mrs. Dingell.

Mrs. DINGELL. Thank you, Mr. Chairman; and I thank you for holding this hearing. It is important, and I guess I am in a mood to say, "OK, it is the holiday time, so let's work together so we make sure that this never happens again." I thank my friend, Secretary Jewell, for coming today, knowing that this was probably not going to be her most pleasant morning of the holiday season.

But having said that, the Gold King Mine spill is extremely concerning, and it is a real tragedy. Our thoughts and prayers continue to go out to those who were impacted by the spill. But I believe that, as a committee, we need to focus on what the root

causes of the problem are, and how we fix it moving forward, and prevent it from happening again.

We need to make sure that the government agencies, whether it is the EPA or an agency at the Interior Department, have the resources that they need and the authority that they require to make sure that we are properly cleaning up abandoned mines, so that tragedies like this do not happen again. It is the right thing to do for our economy and for the environment. So, I hope that we are all going to work together on both sides of the aisle to move forward on that.

Secretary Jewell, your testimony mentions that the conditions and actions that led to this spill are not unique. I would agree with that assessment, that even Michigan, which is not traditionally thought of as a state with mines, has some. So, let me ask you about something we have been working on in our subcommittee, and I think is a real problem that we do have.

One of the reasons that there are so many more abandoned hardrock mines than there are coal mines is because there are requirements for coal companies to post bonds to cover cleanup costs in the event that they go bankrupt. But the biggest coal companies are allowed to avoid posting bonds if they show that they are effectively too big to fail. So how often do we keep hearing that, "too big to fail"?

As with most things that are labeled too big to fail, many of these companies are now failing, and they are descending into bankruptcy. That leaves the taxpayers on the hook for billions of dollars. We raised this issue in May at our subcommittee level as a textbook case of the taxpayer exposure to polluter cleanup costs that the Majority was focused on in that hearing. The coal self-bonding case could result in leaving taxpayers on the hook for orders of magnitude of more money than clean energy bonding that they were focused on. They were invited to join in the investigation. Silence was their answer, and I think that that answer is telling.

Secretary Jewell, a *Reuters* article yesterday said that there was some concern in the Administration about the exposure to taxpayers from coal self-bonding. Can you tell us about those concerns and the Administration's plans?

Secretary JEWELL. Sure. Just to be clear, the self-bonding that you are referring to is in the coal mining industry. There are concerns. There has been a large bankruptcy recently. In many states, the states have primacy for the regulation on the coal mining activities, particularly true in Congresswoman Lummis' state of Wyoming. We work closely with the states, and must continue to work closely with the states on the self-bonding issues.

There is no question that, with the increased financial fragility of many coal mining companies, if they are self-bonded, that does potentially leave the states and the taxpayers at risk; and it is something that we would welcome an opportunity to work with this committee on, as my colleague, Janna Schneider, has been doing with our Office of Surface Mining Reclamation and Enforcement. It is a big issue.

Mrs. DINGELL. I do not have a lot of time left, so let me ask you. You agree that this is a problem not just impacting the western

states, but, rather, the entire Nation. Given that the circumstances that led to the Animas River spill are not unique, how many other sites are you worried about that a similar incident could occur?

Secretary JEWELL. The honest answer is we know we have likely more than 100,000 sites on public lands alone, and we don't know because we have not yet had an opportunity to inventory the amount of risk that may be present. We do know, just in this Animas River alone, there are 400 sites; and we do know that there is consistent water buildup, and a consistent leakage of that water into the watershed—330 million gallons a year.

There are other watersheds the USGS has done work on that have indicated similar problems. And actually, unlike the coal industry, there is no similar mechanism to pay for cleanup in the hardrock mining industry; so, it is even worse than what you described with coal.

Mrs. DINGELL. I have more questions, but I will yield back those 4 seconds I have, Mr. Chairman.

The CHAIRMAN. If you want two more, I will give them to you.

Mrs. DINGELL. That is OK. There are a lot of issues here.

The CHAIRMAN. OK. Mr. Fleming, before you go to the dark side.

[Laughter.]

Dr. FLEMING. Thank you, Mr. Chairman. Yes, Madam Secretary, the Administration has been widely criticized for failing to respond to the incident in a prompt and responsible manner. This includes having Administration officials visit the impacted areas—and effectively work to rectify the situation whenever possible.

Of course, we are well aware that the Department of the Interior is very aggressive about going after the private sector whenever the least little thing goes wrong. In fact, in contrast to the Deepwater Horizon oil spill in 2010, then-Interior Secretary Salazar offered the full extent of DOI assistance and personally visited the Gulf at least seven times in the 5 weeks following the spill.

So, my question to you, Madam Secretary—how many times did you visit the western states in the weeks following the release?

Secretary JEWELL. Well, let me begin, Congressman, by saying that the Deepwater Horizon spill killed 11 people, it was in the waters of the Gulf of Mexico.

Dr. FLEMING. You are answering a question I didn't ask.

Secretary JEWELL. So we——

Dr. FLEMING. Just please answer my question, Madam Secretary.

Secretary JEWELL. We had primary responsibility, as a regulator in the Gulf of Mexico. EPA had responsibility here.

Dr. FLEMING. I only have 3 minutes and 50 seconds. Please answer the question. How many times did you visit the western states?

Secretary JEWELL. I do not have a list of how many times I visited the western states, but I certainly would——

Dr. FLEMING. In response to this spill.

Secretary JEWELL. May I answer any of this?

Dr. FLEMING. Well, you are not giving me an answer.

Secretary JEWELL. Mike Connor has been to the actual site of the Gold King Mine——

Dr. FLEMING. I did not ask about Mike, I asked about you, Madam Secretary.

Secretary JEWELL. My visit relevant to the Gold King Mine spill was——

Dr. FLEMING. You did not visit. All right, let me move on.

Secretary JEWELL. I visited with the Vice President of the Navajo Nation on November 18.

Dr. FLEMING. You are not being responsive to the question, Madam Secretary.

Secretary JEWELL. Mr. Chairman, I am not being given a chance to answer.

Dr. FLEMING. Mr. Chairman, I will appeal to you. Will you direct Madam Secretary to answer my question?

The CHAIRMAN. Look, it is your time. Answer as directly as you can. Go for it.

Dr. FLEMING. OK. How many times did you visit the impacted areas of Colorado, New Mexico, and Utah in the weeks following the blowout?

Secretary JEWELL. My closest visit was in November to the Navajo Nation in Arizona.

Dr. FLEMING. In Arizona. That is not one of the states, as I can determine.

Secretary JEWELL. The Navajo Nation——

Dr. FLEMING. Colorado, New Mexico, and Utah——

Secretary JEWELL [continuing]. In Arizona was impacted.

Dr. FLEMING [continuing]. You did not visit at all.

Secretary JEWELL. Not in context of the Gold King Mine spill——

Dr. FLEMING. In the month following the spill you tweeted 60 times, but did not acknowledge the blowout or the impacted communities in any of your social media posts. Why did you refuse to publicly acknowledge it since then?

Secretary JEWELL. This is an EPA issue. We were brought in as a consultant. This was not our primary issue——

Dr. FLEMING. So you are shifting the blame to EPA.

Secretary JEWELL. EPA is the primary agency responsible, as this committee is well aware.

Dr. FLEMING. Your Deputy Secretary, Mike Connor, was at the Grand Canyon on September 15. Why did he fail to visit the impacted areas during the time of his visit?

Secretary JEWELL. I am not aware of all the purposes of Mike Connor's visit, but he has been to the Gold King Mine site, and that was in November, to look at the treatment——

Dr. FLEMING. Not September 15. OK. On September 17, this committee held a joint hearing on the Gold King Mine disaster and invited you and EPA Administrator McCarthy to attend. Administrator McCarthy did attend, but you refused. Witnesses from the Navajo Nation, the Southern Ute Tribe, and the states of Colorado and New Mexico traveled all the way across the country to discuss how this spill had impacted their communities. Why couldn't you be bothered to cross the National Mall to attend?

Secretary JEWELL. It had nothing to do with being bothered. As Congresswoman Lummis explained, we were conducting an independent review of the Gold King Mine. I did not feel it was appropriate to appear before the committee while that investigation was ongoing. I did agree to appear before the committee today, as the

report is out. And, of course, a lot of this conversation deals with that independent report.

Dr. FLEMING. Well, I cannot accept that excuse. Your report was purely technical, and it was basically restating the conclusions that the EPA had already reached in its own internal review.

So, what exactly in your report could possibly have jeopardized the independence of your investigation?

Secretary JEWELL. It would have been inappropriate for me to come and visit with this committee while that independent investigation was going on; and I needed the context of that report to be able to provide information to this committee that would be relevant.

Dr. FLEMING. Again, I would just have to say it seems to me that the response in this case—and I think we all acknowledge this, certainly the media did—was lackluster. It just seems that there is a double standard. When something is caused by an agency within the Department of the Interior, in your Department, there seems to be very little activity, very little acknowledgment.

Then, on the other hand, we can cite many examples where something goes wrong in the private sector, people are fined, people are fired, and criminal claims are made against them. So, I think that the chef should certainly eat her own cooking. Thank you.

The CHAIRMAN. Thank you.

Mrs. Torres.

Mrs. TORRES. Thank you, Mr. Chairman. Thank you, both of you, for being here. I appreciate having some time to talk about this very tragic event that happened. While we can argue about how this came about, I think it is also important to note the persistent problems that we have of abandoned hardrock mine lands, and the negative impact that they have, and will continue to have, on our water resources.

The problem of abandoned hardrock mines is not going to go away. As we consider ways to reform our outdated mining laws, can you expand on existing programs that address other types of abandoned mines, such as coal, and recent budget cuts?

Can you also speak to the impact that that has had on further ongoing investigations?

Secretary JEWELL. I do not have the specific numbers on our budget, but I will say that we have significant problems in coal and hardrock mining with regard particularly to water quality. I have visited mines, particularly in Appalachia, with a number of abandoned sites with acid mine drainage that is impacting water quality.

We have a very thin team. I think the budget for the Office of Surface Mining Reclamation and Enforcement is down something like 25 percent over where it was a few years ago. So, the ability of our team to assist the states in understanding and working with mine operators to remediate these issues is severely constrained.

In the case of hardrock mining, as was mentioned earlier, the BLM has a relatively small budget; it is about $16 million a year. I think that was mentioned by Mr. Grijalva in his testimony. It is insufficient to even begin to measure the scope of the problems, let alone address the real remediation that needs to be done, both for personal safety of people visiting these lands, as well as the envi-

ronmental impacts from these lands. We would welcome an opportunity to work with the committee on a stable source of funding and a work plan to address these things that are really impacting the public health and safety of communities across the country, particularly the West.

Mrs. TORRES. Yes. As you continue to develop a work plan and work with members of this committee to do that, I would really like to piggyback on a comment that was made by Mr. Young—and that is to help tribes be a part of the solution on mines that are within their jurisdiction. I think having their input and having their expertise, or helping them gain that expertise, is equally important.

Is there something else that you want to add? I know that several Members asked you questions that you have not been able to answer, and I would like to give you 2 minutes to answer that for the record.

Secretary JEWELL. Thank you. I would say that I have not had a chance to talk about the accountability and the transparency that Congressman Fleming was suggesting earlier.

We have been very open. And I think, if you review the technical report, it clearly identifies issues where there turned out to be an error in judgment on the part of EPA. That is hardly not holding them accountable. It is, in fact, holding them accountable; and we have been very transparent in that. We will continue to be transparent and hold ourselves accountable for those things that are required of us.

We are fully supportive of working with tribes on opportunities to clean up abandoned mines. In many cases, tribes do have the sophistication and the interest. We would welcome working together on having sufficient resources to address this issue, and continuing to provide economic support to tribes to be able to build that expertise to address these issues.

I appreciate the opportunity to say a few things that I did not get a chance to say before. I stand behind our efforts. I stand behind our commitment to accountability and to continue to bring the resources we have to bear to assist EPA; I believe they do want to get to the bottom of what happened here. We will hold people accountable to the extent that it is appropriate, and we are conducting that investigation.

Mrs. TORRES. With limited budget resources—these are not folks that you can just get off the street and train, right? I mean they require a great deal of education and expertise. I would also say that it is somewhat criminal that we would continue to diminish a budget of the EPA or other organizations that we task with our water quality safety.

I ran out of time, so I will yield back the last 2 seconds.

The CHAIRMAN. Actually, you owe me four now.

Mr. McClintock.

Mr. MCCLINTOCK. Thank you, Mr. Chairman. Madam Secretary, to a lot of us, I think the most galling element of this scandal is the government's double standard in addressing spills of this nature. The EPA and its contractors deliberately breached a mine opening that caused a blowout of over 3 million gallons of contaminated water. The EPA had not tested for hydrostatic pressure

within the mine, even though experience with other similar mines suggested that they should.

At the last hearing, we heard about a company that accidentally spilled 7,500 gallons. That is ¼ of 1 percent of what the EPA spilled. You went after that company with a vengeance. You got six criminal indictments; you sent people to jail. Another poor guy in Alaska operating a backhoe accidentally caused a 1,500-gallon spill. That is 5/100 of 1 percent of what the EPA caused. You sent him to Federal prison. Yet, as you just testified to Mr. Lamborn, you have sought no criminal indictments against EPA officials for causing this 3 million gallon spill. You have not fired anybody over this scandal.

Let me ask you this. Have you at least demoted anybody?

Secretary JEWELL. Mr. McClintock, I think those would be appropriate questions to ask EPA. In none of the situations——

Mr. MCCLINTOCK. I did, and their answer was——

Secretary JEWELL [continuing]. That you referenced is——

Mr. MCCLINTOCK. I did ask that question of the EPA. The answer was zero. I then asked, "How many people at least have you docked the pay of?" Do you know what the answer was? Zero. I then asked, "Well, have you at least yelled at anybody?" Let me ask you that same question. Have you yelled at anybody over this?

Secretary JEWELL. No, I have not yelled at anybody over this. Our job is to try and be responsive——

Mr. MCCLINTOCK. Well, the EPA Administrator said that she had, at least thought she may have, yelled at a few people.

Here is the double standard. If you are a private citizen and you have an accident with a backhoe, you go to jail for spilling 1,500 gallons. If you are an EPA official responsible for negligently spilling 3 million gallons of contaminant, you might get yelled at by the EPA Administrator; but don't worry, the Secretary of the Interior won't say anything.

Secretary JEWELL. May I just suggest that you——

Mr. MCCLINTOCK. Do you understand how galling that is to the American public?

Secretary JEWELL. I do not agree with the facts that you have suggested. There is nothing in our technical review that suggested that there was any deliberate act to breach the mine.

Mr. MCCLINTOCK. I will get to that in a second. It has been 6 months since this disaster. You testified that the EPA should have tested for hydrostatic pressure before breaching the adit. I would like to know the name of the EPA official who approved the breaching of that mine adit without hydrostatic testing.

Secretary JEWELL. I do not know the names of the EPA officials, but my understanding is that there was no——

Mr. MCCLINTOCK. Well, you have had 6 months; and the Department that you head was directly responsible for what we were assured in September would be a thorough, independent, and complete investigation of this incident, including the assignment of responsibility. Now you are telling me you were just kidding?

Secretary JEWELL. No. We did exactly what the agreement with the EPA was, in terms of providing a technical review. We did not see any deliberate intent to breach a mine. It was an accident.

Mr. MCCLINTOCK. The fact is this report failed to hold anyone accountable for the disaster. It offered only a cursory engineering analysis of the circumstances. The report states that the evaluation team did not believe it was requested to perform an investigation into a finding of fault.

One of the peer reviewers, the expert with the Army Corps of Engineers, protested that the Department of the Interior report failed to explain the decisions that led to the disaster. He pointed out that the actual cause of failure was some combination of issues related to EPA internal communications. You are directly responsible for this report. Your EPA Administrator had promised this committee a thorough investigation. We have not gotten one. What we have gotten is a complete, deliberate whitewash.

Secretary JEWELL. We were doing a technical report. We delivered that report. My understanding is the EPA is doing a thorough investigation with people that are trained to do that. The people that did our report are trained engineers, and they delivered exactly what we agreed to do with the EPA, sir.

Mr. MCCLINTOCK. Again, you have said that you do not have the authority to prosecute for negligence; yet your EPA vigorously prosecutes private citizens for negligence, causing a fraction of the damage. May I ask if you at least asked for her resignation?

The CHAIRMAN. You don't have to answer that one.

Mrs. Napolitano.

Mrs. NAPOLITANO. Thank you, Mr. Chairman; and I am glad to see you today, Ms. Jewell and Mr. Palumbo.

I think I want to associate myself with the remarks from Representatives Grijalva and Torres and some of my other colleagues in regards to some of the questions that have been posed and some of the statements that have been made.

I have had somebody in that area through Thanksgiving, and was able to visit and talk to some of the folks in that general area, because he is from that general area. They tell me there is still a lot of evidence on the orange sediments. It could be possibly before the spill, because you have had the spill for a long time in that area.

But the concern is, you talk about the Native Americans at Navajo, but you do not mention the other tribe. At least one of them, the Utes, they say all is well; but the toxins from that spill are still finding their way downstream. And, they go all the way down to Lake Powell, which is where California gets some of its water.

The understanding is that the general public has a hard time differentiating between EPA and Bureau of Reclamation, who is down there, or what their role is. I do not think it is clear to some of the folks in that area. The contention is that they really just want somebody to have publicly-oriented results, a scientifically credible and, of course, independent review of those events made public to them. I am not just talking about the tribes and the environmental folks, but the folks that live in the area.

Of course, I am sure the other tribes, they do want a whole picture, the big picture, and not just the newest words of how the Bureau has decisionmaking process and only in engineering.

So, the impacts downstream have still not been divulged or presented to the general public in a complete manner. That is the report I am getting back, and this is as of last month.

Secretary JEWELL. OK.

Mrs. NAPOLITANO. Of course, there are still reports of people being sick. Now, they cannot prove that it is as a result of this spill. I am wondering whether there will be long-term effects, and whether there are going to be any studies on those long-term effects of the general population, the tribes, the issues in that area—is CDC going to be involved in this, the BIA, and being able to ensure that these are being addressed? Because these are long-term effects, not only for the current spill, but of what happened before that.

We are looking at what is right for the public. I mean that is our bottom line. I am sure it is yours.

Secretary JEWELL. Sure.

Mrs. NAPOLITANO. The report that they would like to see—the process, those reports made with due diligence and scientific integrity; and, of course, the public needs to trust us in being able to provide that for them.

Those are things that I wanted to bring up. The subcontractors, is there any kind of insurance that they might have? I know that it is a Federal contract, but is there any coverage for any malfeasance or anything that might have happened—the subcontractors might be able to be there?

I guess maybe my concern also, on the other side, is who is footing this bill for the cleanup?

Secretary JEWELL. OK. Let me tackle a few of those. First, my understanding is that EPA is proposing some long-term studies, and those are out for comment right now. So, it would be their responsibility for long-term studies on water quality. I will say that we have been providing assistance to the Fish and Wildlife Service, the USGS, and the Bureau of Indian Affairs.

The spill, while it itself was not that large relative to how much is leaching out of that region, they are concerned, because of all of the toxic mine drainage, about the long-term impacts on their reservation land and on their agricultural crops; so they have been talking to BIA about how to address that.

I don't know about EPA's relationship with the subcontractors, and what kind of coverage they might be required to have for malfeasance, because we did not engage in that contract.

Mrs. NAPOLITANO. But we need to find out. We need to ensure that maybe somebody addresses it somewhere along the line.

It really is a concern for me, because these millions of dollars that have been spent and will continue to be spent, the taxpayers are going to end up paying for. That is a reality that we have not really faced; you do not have the budget to be able to continue doing the remediation in other areas that are going to be of even greater concern in the future.

So thank you, Madam Secretary.

The CHAIRMAN. Mrs. Lummis.

Mrs. LUMMIS. Thank you, Mr. Chairman. Some of the proposals with regard to the future of abandoned mine land programs have been brought up this morning. So, since we are discussing the

cleanup of abandoned mine lands, I want to raise a little bit about the history of AML payments to my home state of Wyoming.

Of course, in the original SMCRA that passed in about 1977, states got half and the Federal Government got half of the AML money. The vast majority of Wyoming's mining of coal occurred since 1977. Wyoming has been number one in coal production in this Nation consistently since 1986, and received half of its AML payments.

But over time, administrations and Congress were raiding our money and found different uses for it, whether it was to pay the retirement benefits or health benefits of miners whose mines had gone broke, or now this new proposal to do economic or community development in communities where coal mining is declining. It has been an effort to get their mitts on money from AML and to use it for something other than cleaning up abandoned mine lands.

Last week, the President signed into law a fix to prevent the raiding of AML money, which requires some of these payments to be restored to Wyoming. Now, that check needs to be cut and delivered to Wyoming tomorrow—tomorrow—pursuant to the bill the President signed last week.

Are you aware of this, and have you issued a warrant for the Treasury to make these payments to Wyoming?

Secretary JEWELL. No.

Mrs. LUMMIS. OK. I want to let you know that the transportation bill that the President signed into law has a December 10 deadline on making Wyoming whole for past raids on its AML money.

Secretary JEWELL. I have just been passed a note that says Treasury has certified the warrant.

Mrs. LUMMIS. Perfect. Thank you very much. It illustrates the problem—we create AML programs around here, such as is proposed in this POWER+ Program, that would take $1 billion to give to communities for community development that have lost coal mining jobs; but it is not being used for mine cleanup, it is being raided for other purposes. In fact, it could be used to build recreation centers so people have somewhere to go who lost a job mining coal, or mining some other product such as uranium, that is also depressed, partly because the Administration is dumping product on the market that it holds.

And, the fact that the mining programs in this country were so heavily regulated during World War II—their hours of operation were regulated, the government controlled which mines operated, which strategic minerals were produced, the production levels, the pricing levels—all during the war effort. Thousands of mines went out of business as a result of that; they were abandoned.

This was all before we had an abandoned mines program. The government, literally, forced the abandonment of these mines. So, the Federal Government does have some liability. That has been acknowledged. That is part of the reason that EPA is helping to clean up some of these mines, because they were abandoned during World War II because of the mining effort.

Now, here we are, where the government is forcing the switching of fuels from coal to natural gas in the name of climate change. Then these jobs are being lost. What they want to do is create a new AML program, take $1 billion out for community development

to pay miners who have lost their jobs. It brings to mind an old saying, and this is attributed to Ronald Reagan, "If it moves, tax it. If it keeps moving, regulate it. If it stops moving, subsidize it." And what is happening here is coal mining has stopped moving, so we are going to subsidize it through this billion dollars from AML. My gosh, will we never learn?

I yield back.

The CHAIRMAN. Thank you. Mr. Gallego.

Mr. GALLEGO. Thank you, Mr. Chair.

Secretary Jewell, thank you for being here and working to address the real issue of abandoned mines that are threatening our environment and our communities. I want to focus on the impact of these releases on our Native American communities, and how the EPA is improving its communications to tribal jurisdictions.

EPA Assistant Administrator Mathy Stanislaus previously testified at the House Science Committee that one of the initial lessons that we learned in the aftermath of the Gold King Mine release is that the EPA can improve its communications regarding releases and other environmental events that may affect multiple jurisdictions.

Can you elaborate and, where possible, provide an update on how the EPA is working to improve those communications, specifically to our tribal communities?

Secretary JEWELL. I don't know what EPA is working on presently. I am aware that they said that there were opportunities to improve, and we would certainly like to work with them on that.

As I have gone through piecing together a timeline of events, I think that the tribe could have been notified directly by EPA, but we actually did pursue work the day of and the day after the spill. So I think, in terms of the actual impact, notifications were out there, but they maybe came through a less direct method than would have been ideal. So, we would support any effort that EPA would undertake to learn from this and to put more robust and direct forms of communications in place.

One thing I would point out in our technical report—it said that there are very few guidelines or standards. There are a lot of people involved in cleaning up these sites, some of my own agencies—in this case, EPA and the states. I think this may be a wake-up call to do a better job of our communications and our response efforts.

Mr. GALLEGO. Certainly, in talking to some of my friends in the Navajo Nation, I think that would have—the problem existed, obviously. The spill is a problem, but also how it was handled afterwards, and what seemed to be not a very coherent messaging program added insult to injury. I really encourage EPA and everyone else involved to work on that, especially concerning how many mines we have in Arizona. As a Member from Arizona, I am afraid this may be happening again. Thank you.

Secretary JEWELL. Thank you.

The CHAIRMAN. Mr. Thompson.

Mr. THOMPSON. Thank you, Mr. Chairman.

Secretary, thank you so much for being here. Let me get right to my questions.

Something happened just recently—last evening, actually, at the eleventh hour. EPA released an addendum to the internal report it released in August. Secretary Jewell, do you know that EPA was working on an addendum to the August internal report?

Secretary JEWELL. I knew that EPA was conducting ongoing investigations, and that our report was helping advise that; but I was not aware of specific actions that they were taking at this time.

Mr. THOMPSON. OK. So you were not familiar with that report being released, were not informed about it at that point?

Secretary JEWELL. Right.

Mr. THOMPSON. Well, actually, I think the EPA may be throwing you under the bus, at least in parts here. The addendum indicates that EPA recently re-interviewed two on-scene coordinators, presumably the two who were responsible for the Gold King Mine spill; but their names, obviously, were conveniently blacked out, so who knows who EPA spoke to.

In any case, they ask about DOI's report. So, now we have the EPA investigating the Department of the Interior investigating the EPA. Sounds a bit ludicrous, but certainly it affirms the report did not answer the questions it should have answered.

Now, Secretary Jewell, is the EPA wrong, or do you stand behind your report?

Secretary JEWELL. We stand fully behind our report, and believe it met the terms that were identified when we signed the scope of work with the EPA in August.

Mr. THOMPSON. Well, one thing it seems that you did get wrong—and I am not sure how EPA and the Department of the Interior both screwed up on this one—but, it basically is more of a technical issue. It really just comes down to the height of the mine opening.

On August 12, EPA's contractor said the mine had been measured after the blowout, and the opening was 10 feet wide by 15 feet high. Your report, released on October 22, said that the mine opening was thought to be 10 feet tall. But after a blowout, the supporting timbers were measured and found to be 8 feet tall. Plus the crown of the mine opening at the portal area was slightly higher than 8 feet. And now, on December 8, the EPA says the entrance to the mine was actually 19 feet tall in their addendum report.

Secretary Jewell, does the Department of the Interior even know the measurements of the mine entrance? That seems like a pretty fundamental fact, especially when EPA was digging into a mine that they knew might be full of contaminated water.

Secretary JEWELL. I am going to turn that over to David.

Mr. PALUMBO. Thank you, Congressman. I believe we do have a good understanding of the measurements of the mine opening, which is called the portal, as well as the adit itself, the tunnel, if you will, that is beyond the opening.

I am not sure how EPA made its measurements that were in the addendum that was released last evening. We believe that the mine opening and the tunnel itself was approximately 8 feet high prior to the incident. And, due to erosion caused by the mine water release, was eroded to about 10 feet. So that opening, we have a good understanding—we went out on August 14, September 3, and

one other time; we have a good physical understanding of the characteristics of the mine opening.

Mr. THOMPSON. Certainly, you understand my concerns. I mean what a variant—somewhere around 8 feet to 19 feet and varying opinions at different times. If we cannot get those basic critical facts straight, how can we make the argument that the Federal Government is the appropriate party to clean up these mines? It is abundantly clear that the EPA and Department of the Interior should not be anywhere near abandoned mines.

And, Secretary Jewell, you should be ashamed of the Department of the Interior for becoming complicit in what appears to be the EPA's negligence in utterly failing to write a report that told us anything of substance about what actually happened at the Gold King Mine. If I were you, I would be concerned that your colleagues in the EPA appear that they are looking for a scapegoat at this point.

Secretary JEWELL. Well, Congressman, I am proud of the work that Reclamation did, and of the technical review. I think that they did a thorough analysis of the facts in the time frame that they had to generate a report—within a little over 60 days.

I do think that as more work is done on the mine, more is understood, like the collapse of the roof, which they would not have known before it occurred. These are all facts that are beginning to come to light, as more work is done on the mine.

I do not think there is any intent to negligence, nor do I think that there is necessary disagreement. I think more information is continuing to come out over time, and that is typically how these investigations unfold.

Mr. THOMPSON. Thank you, Mr. Chairman. I yield back.

The CHAIRMAN. Mr. Gosar.

Dr. GOSAR. Thank you very much. Thank you, Secretary Jewell, for showing up today.

You were in private practice, right? The private sector, right?

Secretary JEWELL. Correct.

Dr. GOSAR. You were a CEO at REI, I believe.

Secretary JEWELL. Correct.

Dr. GOSAR. So, would you make the analogy with me that you are the CEO of Interior?

Secretary JEWELL. Yes.

Dr. GOSAR. OK. I am going to ask you a series of questions.

Is it true that the Animas and San Juan Rivers run through parcels of land owned by the Department of the Interior's Bureau of Land Management?

Secretary JEWELL. Yes.

Dr. GOSAR. Is it true that the Animas and San Juan Rivers run through the reservation of the Navajo Nation and the Southern Ute Tribe?

Secretary JEWELL. Yes, and one other tribe that——

Dr. GOSAR. OK.

Secretary JEWELL. The Ute Mountain Ute, I believe.

Dr. GOSAR. Is it correct that the Animas flows into the San Juan River, which contains critical habitat for two species of fish, the Colorado pikeminnow and the razorback sucker, that are both listed as endangered under the Endangered Species Act?

Secretary JEWELL. Yes, that is true.

Dr. GOSAR. Is it true that the Bureau of Reclamation increased its releases from the Navajo Dam to try to dilute the spill?

Secretary JEWELL. Correct.

Dr. GOSAR. Is it correct that all areas I just listed fall under the jurisdiction of the Department of the Interior?

Secretary JEWELL. Yes. Well, the tribes, we had a relationship. Obviously, that is tribal land. We provide support.

Dr. GOSAR. The answer is yes. OK. So, as a CEO, you have a responsibility here. I have heard it over and over again. The gentleman from Virginia alluded to, "Well, these weren't intentional." Does it matter if it is intentional or unintentional?

Secretary JEWELL. Yes, it matters if it is intentional or unintentional.

Dr. GOSAR. Oh, liability-wise? No. Oh, no. You ought to know that as CEO of REI; and you ought to know that as CEO of Interior. It does not matter because, as the gentleman before us cited about a backhoe and someone going to prison, the matter of that issue is, yes, it is unintentional, but there is still a consequence here. I hope you understand the frustration we have here, because we are talking about water quality over here, and I am talking about my veterans having it worse off because of bureaucratic nightmares for their health care.

The bureaucracy does not take care of itself, because it holds nobody accountable. So, as the CEO of Interior, you had a claim here, because of these affected areas. Let me ask you the question then—do you feel that you are an independent source for review of what transpired in this case?

Secretary JEWELL. I believe we were, in the work that we did through the Bureau of Reclamation, yes.

Dr. GOSAR. As an independent source that you looked at this, why weren't you in immediate responses to these affected areas? You, personally.

Secretary JEWELL. My team was very responsive. I would say that we provided the level of response appropriate to the degree of this spill and the impact of the spill. The decisions were made not in Washington, DC; they were made in the regional offices that were closest to the action by the people most able to address the cleanup.

Dr. GOSAR. I am glad you said that, because we had Navajo President Russell Begaye here, who contradicts you on that application. In fact, he has testified before this committee about the lack of meaningful response from the Federal agencies following that disaster. I mean he noted it, specifically. So, I disagree again, and once again go back to the CEO of Interior.

You also make mention that you did not arrive at the site until November, right? You came out personally to look at some of the areas in November.

Secretary JEWELL. Mike Connor, Deputy Secretary, went out. I have not been to the Gold King Mine site, personally.

Dr. GOSAR. You haven't been?

Secretary JEWELL. I have not.

Dr. GOSAR. OK. And what about the affected sites?

Secretary JEWELL. I had a visit that was related to Bureau of Indian Education close to the Navajo site. I met with the Navajo Vice President. We spoke about this, but I have not been specifically to look at the Gold King Mine incident.

Dr. GOSAR. Got you. The other side has also talked about abandoned mines. I know you, through your past CEO application, have resources and you try to magnify those resources. In your written testimony, you gave a very small blurb about the Good Samaritan cleanup. I want to highlight that, because I do not think we paid enough attention here. I think the gentlelady from Wyoming highlighted some of the abuses of the funds, and stuff like that.

But my question is—when a mining company actually uses the Good Samaritan law, are they not under the jurisdiction of the Department of the Interior and EPA to do it as—fundamentally reclaim property?

Secretary JEWELL. You know, I am not familiar with the details of the Good Samaritan law.

Dr. GOSAR. And you know what? I am ashamed of that, because this is a resource that the mining companies have wanted to utilize; but bureaucrats have feigned that, because we are going to go in and do everything according to the book when you have stuff on site that they would actually do it.

I would look at Resolution Copper, in which they have mitigated a claim. They have invested almost a billion dollars to do that. I think you owe it, as a CEO of Interior, to look at the Good Samaritan law and use that application to find and magnify it.

I yield back, sir.

The CHAIRMAN. Thank you. Mr. Labrador.

Mr. LABRADOR. Thank you, Mr. Chairman. Secretary Jewell, it is good to see you again.

On page 48 of your report, there is an updated Figure 39, which describes as showing EPA's assumptions about the entrance to the mine adit. Although someone reading your report would not know it, that figure was prepared after the blowout, and the report author knew this when they authored the report. Isn't that correct?

Secretary JEWELL. I am going to turn to David to respond to the technical report. Do you have a figure number? Is it 39, you said?

Mr. LABRADOR. Yes, Figure 39 on page 48.

Secretary JEWELL. And, I am sorry, the question again?

Mr. LABRADOR. Someone reading this report would not know it, but that figure was prepared after the blowout. Isn't that correct?

Mr. PALUMBO. I am not absolutely certain, but I believe Figure 39 was from EPA's files, and was prepared before the blowout.

Mr. LABRADOR. That is not correct.

Mr. PALUMBO. It is not?

Mr. LABRADOR. No. It was prepared after the blowout.

Mr. PALUMBO. OK.

Mr. LABRADOR. Your report uses that figure throughout to describe, through narrative illustrations, the EPA plan being carried out last August. The steps included digging up the tunnel opening from above; inserting a metal pipe, called a stinger, through the collapsed material in the opening, or through the plug; and then using a pump to drain the water impounded in the tunnel or the adit.

Although your report makes no mention of it, on August 5, 2015, there was no stinger and no pump at the Gold King Mine site. Isn't that correct?

Mr. PALUMBO. I don't know if there was a stinger or pump at the mine site. I will say that these figures in the report—Figures 40 and on—were meant to depict what EPA's plan was, an illustration of how they were going to proceed. That work activity never made it that far because, when the backhoe in Figure 41 breached the top of that rubble, the release began to exacerbate and——

Mr. LABRADOR. Yes, but did——

Mr. PALUMBO [continuing]. The whole thing fell.

Mr. LABRADOR. You are saying that this was the plan. But when you were working on that date, you did not have what you were supposed to have in there, correct?

Secretary JEWELL. To be clear, we were not working on that date.

Mr. LABRADOR. Oh, correct.

Secretary JEWELL. The Bureau of Reclamation was not there.

Mr. LABRADOR. So by 10:51 a.m. on August 5, the time the water began spurting from the Gold King Mine, a channel had been prepared on the right side of the excavation so that water from the mine could be directed to an existing drainage system. Isn't that correct?

Mr. PALUMBO. Correct.

Mr. LABRADOR. Dr. Olsen, the Army Corps of Engineers reviewer of your report, stated that there was no explanation in this report of the urgency to start digging out the plug, rather than wait for BOR technical input, as prescribed by the EPA project leader. Your report does not contradict or refute this statement in any way, does it?

Mr. PALUMBO. It does not contradict that statement. I will note that our peer review process, which included a signature by Dr. Olsen, attests to the technical merits of our report. That was a nontechnical matter beyond our scope of work. We understood that work was being done by the OIG, which we believe, in fact, it is being done by the OIG.

Mr. LABRADOR. Last night, on the eve of today's hearing, your report that EPA paid you to do, EPA remarkably revealed an addendum to its own investigative report unveiling new revelations from EPA that are reportedly based, in part, on more interviews with EPA's on-scene coordinators. Your report makes no assertion whatsoever that the steps of inserting the stinger through the plug, or any other steps involving actually breaching the mine entrance, were going to be paused until August 14 or later. Now you are claiming that they were going to be paused, when other experts would be on the site. Isn't that correct?

Mr. PALUMBO. I am sorry, can you repeat that?

Mr. LABRADOR. Your report makes no assertion whatsoever that the steps of inserting the stinger through the plug, or any other steps involving actually breaching the mine entrance, were going to be paused until August 14.

Mr. PALUMBO. We do not identify that in our report, no. That was, again, beyond the scope of that type of investigation internal to EPA's decisionmaking process.

Mr. LABRADOR. OK. Secretary Jewell, in your response to Mr. McClintock, you said there was no evidence that anybody did anything intentional. In response to Mr. Gosar, you said again that intentionality is an issue. But for private citizens, all these environmental crimes are strict liability crimes. Why is there a different standard for private citizens than for workers of your administration?

The CHAIRMAN. We will pick that question up at some other time.

Mr. Westerman.

Mr. WESTERMAN. Thank you, Mr. Chairman; and thank you, Madam Secretary, for being here today. The Minority has illustrated that there are many Gold King Mine disasters out there waiting to happen. Because of the hundreds of thousands of abandoned mines, there is potential for this type of environmental disaster caused by the EPA to be repeated.

For all practical purposes, the technical report is akin to an autopsy report. We have a corpse—or, in this instance, a toxic mine spill disaster; and, technically, the report accurately outlines what happened. The EPA was incompetent. They followed a bad plan, or a lack of a plan. Actually, I have still not had my questions answered as to whether there was a professional engineer in charge, as outlined by Colorado law on this particular project.

But, they started work without understanding what they were doing, they dug a hole where they should not have, and they released 3 million gallons of toxic water into the environment. What happened is straightforward, not surprising, and certainly not rocket science. The sad part is that the disaster was very much preventable.

There are two major problems I see with this report. Number one: the lead examiner has a conflict of interest with the perpetrators. He may be as honest as the day is long and 100 percent accurate in his findings, but it is like the coroner being the suspect's cousin. The report fails miserably to outline the root cause of the disaster, who specifically was at fault, or how to prevent this in the future.

Madam Secretary, like me, you have worked in the private sector, and you have dealt with Federal regulations and regulators. The private sector is scared to death of Federal regulators, because they know the heavy hand of the Federal Government can shut them down. The private sector wears both suspenders and belts when they deal with regulators. They spend way more time and money to make sure they dot all the I's and cross all the T's, and oftentimes that is still not enough.

My first question to you is—should Federal agencies be held to the same measure that they measure by?

Secretary JEWELL. I believe the work that is being done in something like this—EPA is trying to do a job of cleaning up a problem it did not create. I think it is a little bit different to compare that to a private company that is, in fact, mining or doing other work, in terms of what its responsibilities are.

I think that is very clear in our report. I disagree with the premise that it was not independent; I believe it was independent. I don't know the credentials of the EPA people on site, and our

report did not get into that, because it was not the scope of the report. But I think that it clearly indicated what happened, and while you can look, as we have, after the fact, and say——

Mr. WESTERMAN. Do you not think the qualifications of the people on site are germane to——

Secretary JEWELL. I think they are germane, but that was not part of the scope of our investigation.

Mr. WESTERMAN. Why was it not part of the scope?

Secretary JEWELL. We did a technical review of what happened. The investigation on those kinds of questions is being conducted by the EPA through their Office of the Inspector General.

Mr. WESTERMAN. So, they are investigating themselves on their technical competence to have done the work?

Secretary JEWELL. Their IG is doing a thorough investigation, and should additional investigations come from that—that could happen.

Mr. WESTERMAN. Do you not agree that the technical expertise of the people planning the project was germane to the whole project, or are you saying—I mean it is easy to say, "Well, they dug a hole where they shouldn't, and we released all this toxic water." Anybody could have probably walked out and done that report.

Secretary JEWELL. If I were in the same situation as Administrator McCarthy, absolutely I would want to know about those things. I believe those questions are being answered through an appropriate body, which is the Office of the Inspector General. It was not part of the scope of the work that we were asked to do.

Mr. WESTERMAN. So, at the very least, should Federal agencies correct their policies so they do not repeat mistakes?

Secretary JEWELL. One of the things that this pointed out is that there are very few guidelines or standards, particularly engineering standards regarding abandoned mine lands. I think that that is a call to action for all of us, to look at putting some of those standards in place, so that there is a reduced risk of this happening again.

Mr. WESTERMAN. To me, it seems like there is an obvious major systemic flaw in the process of how these projects are done, and the report seemed to turn a blind eye to that. It analyzed what happened, but it did not really look at the root cause of why it happened, why there was poor planning, why there was not appropriate expertise on site, and what could be done to fix that.

I know that professional engineers nationwide have called for improved standardized best practices that must be adhered to for all Federal engineering projects. Why doesn't the Department of the Interior support this recommendation?

Secretary JEWELL. I think we would support that recommendation. I have not seen it, personally, but I think the report clearly indicated we could have stronger standards across the Federal family on the cleanup of abandoned mines.

Mr. WESTERMAN. Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Costa.

Mr. COSTA. Thank you very much, Mr. Chairman, members of the committee, and Secretary. I apologize for not having been here this morning. I had a conflict with another hearing.

The Department's role with the Environmental Protection Agency on this particular spill, the Animas River—I think, clearly, the facts indicate that this was the responsibility of the Environmental Protection Agency. I am trying to understand why the Secretary of the Interior here is giving her good time in the committee with that clarification in mind.

Certainly, we are all concerned about abandoned mines and the serious threats that they create as it relates to hazards. I think that is something we all share, as well as its impacts to how they are handled. Clearly, no one believes that the 3 million gallons of toxic waste that flowed from the Gold King Mine wasn't a terrible accident. It is regrettable and, clearly, mistakes were made. I think we are learning from the mistakes, but it just seems to me that, in observing how we try to work together as a committee, we should try to focus on areas where we can do the most good.

I am trying to understand, Madam Secretary, after all the questions that you have been asked today with regards to your role and the Bureau of Land Management's role, where you have some responsibility, what are your takeaways from this hearing this morning? Because, frankly, if we are going to be constructive and determine where we go forward, is this something, in terms of the merits, which we can actually have an ability to make corrective action; because of jurisdictional issues, we were not able to have the Environmental Protection Agency head here. We had you, instead.

Clearly, I do not think it makes good sense, whatever differences you may have with the EPA on this effort, to figure out that this is some sort of a fight or a difference that you have between the agency and the Department. You care to comment?

Secretary JEWELL. I would say that between the EPA and ourselves, we share a common disappointment that the spill happened, a common desire to try to get to the bottom of exactly what happened, and how do we prevent that from happening in the future. I think if there is one thing that this hearing does, it shines a spotlight on the challenge that we have across this Nation of abandoned hardrock mines, and the fact that there are very limited resources to clean them up.

I think the other thing that this hearing points out is, in a situation like the Gold King Mine, which was closed in 1922, that there is continuing buildup of toxic material that is leaching out of mine tailings, the mines themselves, and some natural deposits that are a problem that need to be addressed that are impacting many of our states.

My sense is the EPA is doing what it can with limited resources to address the cleanup. They wanted to know what they did wrong here, so they could learn lessons from that. We are learning lessons about the lack of clear standards and guidance with regard, particularly, to the engineering aspects of these mines; and I think those are all lessons that we take away from this that will make us more effective land managers and more involved in cleaning up these things that we did not cause, but we now have responsibility for.

Mr. COSTA. Yes. Let me just make one comment in closing. When I chaired this subcommittee a few years back, we looked into the

whole hardrock mining law. While there have been some minor changes over the years—and maybe this calls into question the purpose of this hearing—there has been no significant change to the law since it was enacted during the Grant administration. That has been a few years ago.

So, it seems to me, if the takeaway from this meeting is to be productive, that maybe the subcommittee or the full committee ought to take a look at the legislation that was created during the Grant administration and see how we might improve it.

The CHAIRMAN. He was a good guy. Mr. Newhouse.

Mr. NEWHOUSE. Thank you, Mr. Chairman. Madam Secretary, a pleasure to have you here this morning. Mr. Palumbo, thank you for being with us. And thank you, Mr. Chairman, for holding this hearing on this important issue.

You said yourself, Madam Secretary, that these conditions are not unique; they are quite prevalent, especially in the western United States, with thousands of potential issues surrounding abandoned mines. I think it is proper that we, as a committee, look into the 'whys' and 'wherefores' of not ignoring the elephant in the room, as some people have referred to, but wanting to shed light on what happened, what did not happen, how we can best avoid this happening in the future. I think that is prudent, and thank you for contributing to that conversation.

I also wonder the value of minimizing this. It was substantial, the number of gallons. Certainly there is an issue with water contamination from all these mines, but this was an extraordinary environmental incident, and something that we should certainly see as something that we need to address.

I just put my questions somewhere where I cannot find them. What did I do with those, Mr. Chairman? Someone stole my questions. What I wanted to ask you—here we are—I will let you expound on a couple of questions that you had been asked previously. So—that is not it.

One of the peer reviewers in the independent study that you released on this Gold King Mine incident protested that the DOI report failed to explain the decisions that led to the disaster. This comes after Administrator McCarthy frustrated the committee's previous efforts to get to the bottom of this issue.

So, Madam Secretary, could you tell me—why didn't the EPA test the hydrostatic pressure within the mine before working, even though it was well known that contaminated mine water was gathering in the mine's tunnels? And if these conditions were not possible to be ascertained, why would they proceed?

Secretary JEWELL. Congressman, I am going to turn that over to my technical expert, if you are OK with that. David?

Mr. PALUMBO. Yes, thank you, Mr. Congressman. Thank you, Secretary.

We don't know why EPA did not decide to test the hydrostatic pressure. We do know that they tested the hydrostatic pressure on the Red and Bonita Mine. We do know that they contacted the Bureau of Reclamation and arranged for a site visit on August 14—of course, after the incident, it was no longer needed to go out for that particular reason.

We would have discussed with them the need to test that hydrostatic pressure. We understand that EPA's Office of the Inspector General is doing that investigation internal to EPA, interviewing employees to get to the bottom of that question of why the hydrostatic pressure was not tested. We just know that it wasn't. We would have recommended that it was, just as it was for the Red and Bonita Mine.

Mr. NEWHOUSE. A key point, and lessons learned, as Mr. Costa referred to.

The same peer reviewer from the Army Corps further states that the report should have described what happened internally within EPA that resulted in the path forward and eventually caused the failure. So why wasn't this information provided, and how will the responsible individuals be held accountable for their actions if your Department will not reveal such pertinent information?

Secretary JEWELL. So, just to be clear, the scope of work that was agreed upon by ourselves and EPA was a technical review. The people that did that technical review were experts in engineering, mine remediation, geology, and so on. We do not have, in the Bureau of Reclamation, the authorities necessary to conduct an investigation of individuals. Those kinds of authorities would rest with the Inspector General and other oversight bodies.

I am confident the EPA wants to get to the bottom of those issues, that was just not what the Department of the Interior signed up to do in the work plan that we agreed to with EPA, nor would we have the authorities to do that work.

Mr. NEWHOUSE. So, that was not information that you felt necessary to bring forward?

Secretary JEWELL. It was not part of the scope of work of what we agreed to do with EPA.

Mr. NEWHOUSE. OK. Again, I appreciate your adding to the discussion on this issue, and for both of you being here this morning. I yield back, Mr. Chairman.

Secretary JEWELL. Thank you.

The CHAIRMAN. Mr. Hice.

Dr. HICE. Thank you, Mr. Chairman and Secretary Jewell, who was not able to join us previously in September. I am pleased that you are finally here with us today. I appreciate that.

I want to go with the same line of thought here of why—if we have determined that the testing of the water was important, but it was not done; there was a change of personnel, and that change of personnel created urgency that this needs to be done; but we don't know who that change of personnel was—aren't those important questions? How can we hold someone accountable if we are not even going to look into these types of questions?

Secretary JEWELL. Well, as I have said over and over again, our work was a technical review. I do not want to make assumptions on whether there was urgency or not urgency to do the work. We have done the scope of the review, based on the information that we were provided at the time.

The investigation of intent and so on is an ongoing work that is being conducted by the EPA.

Dr. HICE. It does not seem like it is that much of an investigation to find out there was an urgent decision made, otherwise the

BOR would have been waiting—a delay before proceeding, and the water took off.

Let me go back to the September hearing. One of the individuals we had giving testimony from the state of New Mexico stated clearly that the involvement from the Department of the Interior following the disaster was non-existent. That is an extremely strong word, "non-existent." He did clarify that your Department had put out a press release stating that you were preparing an investigation, but with no details on what the scope of that investigation would be.

The scope is kind of important in this whole thing. It is something, again, that we had planned to ask you, but you were not here. What was your personal involvement in managing the disaster, following the blowout?

Secretary JEWELL. Let me just say that the facts demonstrate that we were very active, from day one——

Dr. HICE. I am asking about you. Did you visit the site?

Secretary JEWELL. I have not visited the site. Others with much more technical knowledge have visited the site, including my Deputy Secretary. I have not personally visited the site, nor did I feel that it was important to do so, because of the level of resources and expertise that we had engaged at multiple levels.

Dr. HICE. Your predecessor visited the site in the Gulf of Mexico of the Deepwater Horizon spill that was caused there by a private-sector business. Again, I will follow up on the questions from my colleague, Mr. Labrador. Why is there a double standard? Why was there a visit in the Deepwater Horizon case immediately from someone in your position? Now we have something—a disaster from the EPA, and to this day you still have not visited the site. Why is there a double standard?

Secretary JEWELL. Well, I do not believe there is a double standard. The Department of the Interior was a primary regulator in the offshore oil incident in the Deepwater Horizon. EPA was the primary regulator involved here. Deepwater Horizon was a very different incident with very different implications, including killing 11 people. This spill, while significant and something we are all learning lessons from, does not compare in magnitude at all to the Deepwater——

Dr. HICE. So if this was a private-sector business involved, you would not have visited the site?

Secretary JEWELL. Beg your pardon?

Dr. HICE. You would not have visited the site?

Secretary JEWELL. I am not sure I understand your question.

Dr. HICE. If the EPA was not involved here, but a private business was involved in this disaster, you are saying you still would not have been interested in visiting the site?

Secretary JEWELL. It is not a question of interest, sir. I do not believe it would be appropriate for me to necessarily visit the site. It would be the regulator that was most closely involved. This is a private land site. The state was involved——

Dr. HICE. But it comes under your jurisdiction, and it was a disaster; and for disasters much less disastrous, people have gone to jail in the private sector. But you still have not visited the site.

Let me go on, I have tons of questions here. The fee—the Administration has proposed an AML fee on hardrock mines. This is potentially going to create a very great hardship—I see my time is running out. Mr. Chairman, this is precisely why I have introduced H.R. 3844, the Energy and Minerals Reclamation Foundation Establishment Act, to help get the private sector involved into building a foundation to address the issues that we are discussing here today. And with that, sir, I yield my time back. Thank you.

The CHAIRMAN. Thank you. Great bill. Mr. Hardy.

Mr. HARDY. Thank you, Mr. Chairman. Thank you, Secretary Jewell, for being here today.

You stated earlier, that the Bureau of Reclamation doubled its water volume down from the Navajo Dam to dilute the toxic plume, is that correct?

Secretary JEWELL. That is correct.

Mr. HARDY. Adversely modifying the critical habitat of an endangered species is a violation of the ESA. Can you confirm no contaminated sediments were deposited on the river bed, or that the water quality in the area of the critical habitat for the Navajo's San Juan River was adversely modified, or all the plumes from that spill or that critical habitat of these endangered species will not be adversely affected by the toxic sediments deposited upstream?

Secretary JEWELL. The judgment was that the release of water from the dam would dilute an otherwise more toxic situation, so a decision had to be made very quickly. The Fish and Wildlife Service was doing testing upstream of that to determine whether there had been an adverse impact on threatened and endangered species, and had seen no impact, and had done multiple testing.

Mr. HARDY. OK. I guess the question is—do you know what the future is? Are there other contaminated materials left up there? Have we done that study?

Secretary JEWELL. We are continuing to do studies. Largely, the EPA is doing ongoing work on sedimentation. We will continue to look at impacts from this spill, but also toxic contaminants in the area. That is something that we are doing also with——

Mr. HARDY. OK, lots of questions, short amount of time.

Secretary Jewell, Administrator McCarthy testified at the previous hearing that the EPA did not consult on the actions that led to the Gold King Mine blowout. The FWS, after being asked multiple times by the committee, confirmed that EPA had never requested consultation on the actions that they planned to take on the Gold King Mine. Clearly, those actions reached the bar at its lowest level, I think, which triggers a requirement of consultation with the ESA. In fact, these effects of the EPA's actions were so significant that your Department attempted to offset them by releasing hundreds of millions of gallons from the Navajo Dam.

Are you going to go in and hold the EPA responsible for not following the actions they are supposed to follow through with engagement with others?

Secretary JEWELL. It is the EPA's choice whether or not to do a Section 7 consultation with the Fish and Wildlife Service. I think it is abundantly clear that they had no intention of the spill, that that was not part of the original plan; and, therefore, they did not

feel a Section 7 consultation with the Fish and Wildlife Service was necessary.

Mr. HARDY. So how do you feel? Do you feel this is acceptable, the way they handled that?

Secretary JEWELL. I believe that the spill was an accident, and that they should not have been required to conduct a Section 7 consultation in advance.

Mr. HARDY. Really? With that question, then, it leads me to ask—we asked the Director, how many mining engineers they have on staff. With her answer, we found we have more on this committee than we do with the EPA.

How many mining engineers, or geological engineers, soils engineers, hydrological engineers, all the other types of engineers, do you have on your staff?

Secretary JEWELL. Well, I am an engineer, and David is an engineer.

Mr. HARDY. OK, let's ask the question. A mining engineer—we are dealing with mines.

Secretary JEWELL. David, do you have—do you know?

Mr. PALUMBO. Sure. So a mining engineer—and you also mentioned geotechnical engineering, hydrologic engineering—we have a whole suite of engineers in the number of hundreds of engineers that have that broad expertise—Mike Gobla, in particular, is a mining engineer, a very unique skill——

Mr. HARDY. OK. We are going to take another step here. So, with the Bureau of Reclamation being involved in this, why was there no consultation from the EPA with you folks, where you have the expertise? Shouldn't it come down that avenue of discussing?

Because, as a contractor myself in the past, this is one thing you keep talking about—you hired somebody with specialized knowledge of what to do. Where was their bond, and where was their insurance that is required by all Federal agencies? Why are we, the taxpayers, dealing with this, and why isn't the person we hired to be an expert paying the price?

Secretary JEWELL. We can speak quickly to the fact that there was a request for support from our experts on the Red and Bonita Mine, and they had initiated an inquiry for consultation on the Gold King Mine for August 14. That ended up being 9 days after the spill, but they do use us on occasion.

We are not in a position to answer the questions about what kinds of bonding and requirements that the EPA has with their contractors. I don't know the answer to that.

Mr. HARDY. Federal contracts, I think most of them are dealt the same way. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you. Mr. Luján, we appreciate you being with us here today. Before we go into another round of questions, do you have a statement you would like to make?

Mr. LUJÁN. Mr. Chairman, I do, and a few questions, if that would be OK.

Madam Secretary, thank you for being with us today. Chairman Bishop and Ranking Member Grijalva, thank you for indulging me the opportunity to be here today.

Madam Secretary, as you know, a big part of the contaminated area and where the spill took place was in New Mexico. I had the

honor of attending some of the meetings that took place in Durango in New Mexico with EPA Administrator McCarthy, as well as community meetings that took place in those areas.

Just real quick; as we look at this report, Madam Secretary, your report made clear that responsibility for the mine blowout rests with the Environmental Protection Agency. Correct?

Secretary JEWELL. Correct.

Mr. LUJÁN. The report points out that the EPA mine remediation crew attempting to reopen the mine failed to take into consideration the engineering complexity, and miscalculated the water level inside the mine, which led directly to the failure. Correct?

Secretary JEWELL. Correct.

Mr. LUJÁN. The report also stated that there are actual—I quote—"little and actual written requirements that government agencies are required to follow when reopening an abandoned mine." Correct?

Secretary JEWELL. Right.

Mr. LUJÁN. So, as we look at this, how are we going to correct that? And, considering the likelihood of another incident like this occurring, what is the Department of the Interior doing to ensure that an accident like this one never happens again?

Secretary JEWELL. I would like to be able to guarantee it would never happen. I think the reality is that these circumstances are really unknown. What we need to do is have more work up front on the engineering and the hydrology to better understand.

As we digest not only the report that we have produced, but also subsequent reports, we will welcome an opportunity to work with EPA, other land management agencies, states, as well as other stakeholders, on coming up with standards; and we would also like to work with this committee to come up with some solutions on the funding side and the process side, so that we can address these issues, because, as Mr. Grijalva said, there are a lot of ticking time bombs out there. But, there are lessons learned here that we need to address, and I think getting experts together to work on that is appropriate.

Mr. LUJÁN. I appreciate that. Mr. Chairman, one of the other failures that took place was, after the spill, there was no notification to impacted communities downstream. We have to work to make sure that whatever rules are preventing us from notifying individuals on their mobile phones or their home phones, businesses—we need to be able to communicate to them and make them aware.

This also needs to be rectified for every Federal agency across the government in the United States; so that if there is ever an incident like this, that everyone that needs to be notified is notified, as opposed to depending on neighbors.

There have been a lot of conversations about the independent investigations. Madam Secretary, I think it is critically important that there truly be an independent look at this with participation and leads from the states of New Mexico, Arizona, Colorado, Utah, and the tribal leaders from Southern Ute, Ute Mountain, and Navajo. It has to be done where EPA is a part of that, but not necessarily the lead, where everyone is collaborating to looking into what needs to be done, and how we get that done, as well.

There is also a concern that some of the peer reviews of DOI's investigative report have not been made public, including those by the U.S. Army Corps of Engineers. Is that something that can be made public, so that way we get to the bottom of all of these pieces?

Secretary JEWELL. David, do you know the protocols on peer reviews?

Mr. PALUMBO. All of the peer review documents are currently being reviewed to see if it is appropriate for them to be turned over. We have produced those internally in the Department of the Interior. Our solicitors are looking at those, and are making the determination on the protocols for what could be turned over and what should not be turned over.

Mr. LUJÁN. I certainly hope, as we get to the bottom of what happened—all these families were impacted, and it seems now that everyone is worried about covering their own behinds, as opposed to making people whole and getting to the bottom of this.

Secretary JEWELL. We will release all appropriate documents, and I know EPA is deepening the investigation with regard to the individuals involved and their intent. Our report really was just technical in nature, and that is all it addressed.

Mr. LUJÁN. I appreciate that clarification, Madam Secretary.

Then last, Mr. Chairman, I just want to thank Chairman Grijalva for introducing H.R. 963, which includes the Good Samaritan legislation that Mr. Gosar was mentioning. I have also authored a piece of legislation, H.R. 3602, Gold King Mine Spill Recovery Act; and I would encourage our colleagues to look at that.

Thank you for looking into this. I look forward to working with everyone on making everyone whole as soon as we possibly can. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you for being here. You asked a couple of questions I want to follow up on, too, that were significant. You also called him "Chairman Grijalva." Are you getting ahead of yourself here a bit?

Mr. LUJÁN. Chairman Bishop, I apologize.

The CHAIRMAN. That is OK, just watch it.

Mr. GRIJALVA. He is mired in the good old days.

The CHAIRMAN. They weren't all that good.

[Laughter.]

The CHAIRMAN. Ms. Jewell, we promised you to be done at 12:30. Mr. LaMalfa has snuck in here without me seeing him. Can we impose on you to stay 10 extra minutes?

Secretary JEWELL. That is fine.

The CHAIRMAN. Thank you for that.

Mr. LaMalfa, you are recognized. I apologize for—we will put a bell around your neck from here on in.

Secretary JEWELL. He was here, earlier.

Mr. LAMALFA. I am hard to miss. I will try and do it in 3 minutes. Thank you, Secretary Jewell.

One of the concerns I have over the spill, and that is a precedent, pertains to the possibility of a similar situation which we could see in my district, near Redding, California, about 150 miles north of Sacramento. There is an inactive mine called the Iron Mountain Mine, which contains extremely acidic drainage. The acid would be,

as I am told, 6,300 times as acidic as a battery, which is why Iron Mountain is considered one of the most toxic sites in the country.

What we are concerned about is that it would have an opportunity to drain to a small reservoir which then feeds into California's—one of the largest water systems—the Sacramento River system. Obviously, the concern that would go with that was something possibly happening there, if we did not follow the right protocols. That is a system that feeds into the drinking water and Ag. water, and affects the water for millions of people in the state.

There are several Interior agencies involved in Iron Mountain Mine, including BLM, Bureau of Reclamation, Fish and Wildlife, and the U.S. Geological Survey. Uncontrolled spills in the past have resulted in acidic release from Iron Mountain and have not been of big consequence yet—but California's water supply in drought or not drought is a huge concern.

We are concerned that Federal agencies, by trying to block a previous leak, the mine entrance failed because the waste is so acidic that it ate through the steel and concrete plug involved. We are going to have to think seriously about what is going to be a better permanent solution, and monitoring of that.

Can you describe any Federal efforts to address Iron Mountain continuously, and whether there is any perceived danger that you can see of that being a major problem in the near term, or a need to step up the levels of monitoring in the future.

Secretary JEWELL. Thank you for bringing that to my attention. I am not prepared here to discuss the Iron Mountain Mine, but I am very happy to look into that for the record, and will be happy to get back to you with——

Mr. LAMALFA. Please.

Secretary JEWELL [continuing]. What the plans are on the ground. So, we will look into it. Sounds like another one of these risky situations that is out there that——

Mr. LAMALFA. And it has had problems in the past. Thankfully, it has been contained, and has not been a really, really bad problem, as with the example we have seen with Animas and all that here. We certainly do not want that to happen again; so, we would wish to work with you on that, and see what the protocols are.

Secretary JEWELL. Happy to do that.

Mr. LAMALFA. We want to ensure that the mine and that water system stay safe. Thank you.

Secretary JEWELL. Thank you.

Mr. LAMALFA. Three minutes, sir.

The CHAIRMAN. Thank you for doing that. She is grateful for you.

Mrs. Lummis, do you have a UC request?

Mrs. LUMMIS. Mr. Chairman, I do have a request to submit a couple things to the record. One is a U.S. Forest Service publication, "Abandoned Mine Lands: A Decade of Progress Reclaiming Hardrock Mines."

I also have an email that I would like to enter. We heard Mr. Palumbo earlier assume that the figure that was drawn in the report was—it is Figure 39 in the Bureau of Reclamation report. It includes EPA's working assumptions. The EPA contractor who drew the figure confirmed to this committee in writing that he drew the figure on August 11, 2015, at EPA's request, and not be-

fore the spill, as Mr. Palumbo had just assumed. So, I would like to enter the contractor's email to the committee staff into the record.

The CHAIRMAN. Without objection, the report and email will be part of the record.

I just have four quick questions to end here.

The first one is actually a request. When Mr. Luján asked for the Army Corps of Engineers peer review, I would hope you would actually honor that, and just send that to us. If you need a letter or a subpoena, we will go that route; but I would prefer if you just honor his request.

Here is where the questions start. You told Mr. Hardy that EPA, even though they knew a year in advance that there could be a problem, did not need to go by the letter of the Endangered Species Act, because they did not anticipate this actually happening.

Does that mean that if some bulldozer actually runs over an endangered tortoise or an oil rig actually spills oil on a sage-grouse lek, that those are going to be acceptable excuses?

Secretary JEWELL. The question was related to a Section 7 consultation.

The CHAIRMAN. I know, but——

Secretary JEWELL. When you have something that happens accidentally, and the examples you bring up would be accidental, then I would not have expected an agency to have done a Section 7 consultation in advance, unless they felt there was a very high probability that that would happen. Then they would believe that a consultation may be appropriate.

The CHAIRMAN. I think that is actually a fair answer. But we need to change the Endangered Species Act so it could reflect that. The Endangered Species Act does not give that kind of flexibility, and ought to; you are right.

When you talked to Mr. Beyer, you said you did not think there was any negligence in this effect. Since you have already said that was outside of the scope of your report, and the report did not actually go into that, is that your personal opinion, that there was no negligence, or is that an official opinion that is not actually in the report?

Secretary JEWELL. That is my personal opinion, based on what I have read.

The CHAIRMAN. All right. That is fair enough, as well.

Let me go to Mr. Palumbo, and give you a chance—hopefully you mis-spoke a couple of hours ago. Mr. Gobla—if I pronounced that correctly—when he was there on August 14, at that point his role was that of a technical consultant for EPA at the Gold King Mine. So, for 6 days before EPA signed the contract for Reclamation to do this independent investigation, he was working alongside the EPA, offering technical expertise, helping them out with their responses.

When exactly did he stop doing that, and start investigating the people with whom he was working?

Mr. PALUMBO. Let me just go backwards, briefly. In 2011, the Bureau of Reclamation was hired by EPA to do consultation on the Red and Bonita Mine. From 2011 through July 23, 2015 we did provide that service. Mike Gobla received the phone call on July

23, asking if he can come out on August 14 to help review the plans to remove the plug.

On August 5, because of the spill, that work dissipated. Mike did honor the request to travel, and so he did go out there on August 14 to help stabilize the mine opening under that earlier Red and Bonita contract. It was 6 days later when the work plan was executed with EPA, pursuant to the scope that we spoke about here today, to conduct the technical investigation.

The CHAIRMAN. All right, let me go through this, and this is the point that we are trying to make. He was working with them before and after he did the report on them, which violates standards of ethics and conflicts of interest by both the American Society of Civil Engineers, as well as the Reclamation Department. In your manual, independent peer reviews, it states that, "persons who are not associated directly or indirectly with the information under review should be involved."

It presents a question of the independence of the investigation because of that relationship. The contract was on the board as you were mis-stating it earlier.

So, if BOR actually acknowledges that they were financially supporting the Gold King Mine project, is that not a conflict of interest, to investigate a project you are funding?

Mr. PALUMBO. We do not believe that there was a conflict of interest. We were not funding that project, we were being——

The CHAIRMAN. You were funding that project. By the standards you have already had, that should be considered a conflict of interest. There are questions and problems with the manner and the scope in which this report was given. I am sorry, that is the only way you can get around it.

Ms. Jewell, I have one last request to clear up a lot of what the committee staff needs. If we could speak directly with Mr. Gobla, the person who was in charge of the report, would you agree to arrange for Mr. Gobla to come here and help us better understand this issue?

Secretary JEWELL. I believe we have provided all of the relevant information to this committee that is appropriate. I think, if you want to make that request, we would take it under advisement; but I do not have an answer for you at this time.

The CHAIRMAN. Then we will send it to you in writing. I was hoping to have to avoid that. I know you do not like getting letters from me.

Secretary JEWELL. I will take a Christmas card.

[Laughter.]

The CHAIRMAN. No, no, no. You will take a happy holiday card.

Mr. Grijalva, do you have anything to add?

Mr. GRIJALVA. No, just to thank the Secretary; and Mr. Palumbo, thank you very much. And, what I think Mr. Luján alluded to or directly talked about, that there are lessons to be learned.

There are two areas that I—the whole conflict of interest issue I think is not part of this hearing, in the long term. There is no smoking gun there. The other issue I think is in comparing Deepwater Horizon with the Gold King Mine. There is no correlation. The cause is a mistake, an error, the lack of preparation. But to make a negligence in one case, in both cases—whoever did that mine left it that way.

So, I think lessons to be learned, how to coordinate better between agencies, how to communicate better with our constituents and the public, and how to have a uniform protocol that goes across agencies, that is what is to be learned. I look forward to any help and information that you can provide this committee on that.

With that, thank you very much for being here.

The CHAIRMAN. Thank you. I thank you for being here, as well. Since you just one-upped me with that comment, damn it, now I have to give you a Christmas card.

[Laughter.]

Secretary JEWELL. I will give you one, too.

The CHAIRMAN. It will be in the mail. And, there will not be any fruitcake involved in this, OK? Just the card.

There may be some additional questions for the Secretary. We would like you to respond in writing. Committee Rule 4(g) says the hearing record will be open for 10 business days. If you get those questions, I would appreciate a timely response to them, as well.

If there is no further business, then once again, with gratitude for your being here and taking the time out of your busy schedule to join us, we are adjourned. Thank you.

[Whereupon, at 12:40 p.m., the committee was adjourned.]

[ADDITIONAL MATERIALS SUBMITTED FOR THE RECORD]

Slide used by Chairman Bishop showing a copy of the EPA/BOR Superfund Work Authorization Form signed between two departments

EPA/BOR SUPERFUND PROGRAM
WORK AUTHORIZATION FORM (WAF)

[x] Original [ ] Increase [ ] Decrease [ ] Time Extension Date: 8/24/2015

Authorization is hereby given to provide support as described in the Superfund Generic Interagency Agreement (IA) identified below. The following information is provided for cost documentation purposes:

IA Number: DW-14-953883	
Site Name: Gold King Mine Site	
Work Assignment Title (type of activity): Technical Assistance at Gold King Mine	
EPA Work Assignment Number: WAF 16	EPA Revision Number: 0
EPA CERCLIS Site ID Number:	Expiration Date: 12/31/15
EPA RPM/OSC: Steve Way	Phone: 303-312-6723
Preferred BOR (Optional):	
BOR Program/Project Officer: Mike Gobla	Phone: 303-312-3032
Scope of Work Description: *(See attachment for additional information)*	

Provide technical assistance to EPA at the Gold King Mine adit waste release.
Provide construction safety support and engineering review of plans.

Previous Funding	Current Funding	Total Funding
$ 0	$ 47,000	$ 47,000

	DCN	FY	APPR	BUDGET ORG	PRC	BOC	SITE/ PROJECT	COST ORG	AMOUNT
Deobligate From:	158ALRV002	15	T	8AL0E	303DC6	2506	08WQRV00	C020	$ 47,000
Obligate To:	158ALRV002	15	T	8AL0E	303DC6	2506	A8K9RV00	C022	$ 47,000

EPA IA Project Officer

8/24/15
Date

Slides used by Representative Newhouse with pages from the Technical Evaluation of the Gold King Mine Incident from the U.S. Geological Survey, U.S Army Corp of Engineers, and the Bureau of Reclamation showing discrepancy in reviewers listed

Technical Evaluation of the Gold King Mine Incident

San Juan County, Colorado

Peer reviewed by:

U.S. Geological Survey
U.S. Army Corps of Engineers

U.S. Department of the Interior
Bureau of Reclamation
Technical Service Center
Denver, Colorado

October 2015

Page 6, BOR Technical Review

The peer review team includes the following individuals:

- Richard S. Olsen, Ph.D., P.E., Senior Geotechnical Engineer, U.S. Army Corps of Engineers
- Randall W. Jibson, Ph.D., Research Geologist, U.S. Geological Survey
- David Rees Gillette, Ph.D., P.E., Engineering Technical Specialist, Geotechnical Group 4, Technical Service Center, Bureau of Reclamation

E-mail from Elliot Petri to Subcommittee Staff regarding the Gold King Mine Incident [sensitive info redacted]. Submitted by Representative Lummis

From: Petri, Elliott[redacted]
Sent: Thursday, December 03, 2015 12:18 PM
To: Gordon, Rob
Cc: McGraw, Sean; Conrad, Jessica; Beck, Robert; Butterfield, W. Scott
Subject: RE: Follow up to our November, Friday 13th Conversation

Hi Rob,
I am glad my input was useful. Please see my responses below in red.

Thank You,
Elliott

Elliott Petri, PE
[redacted]

From: Gordon, Rob[redacted]
Sent: Wednesday, December 02, 2015 3:09 PM
To: Petri, Elliott[redacted]
Cc: McGraw, Sean[redacted]>; Conrad, Jessica[redacted]
Subject: Follow up to our November, Friday 13th Conversation

Elliott:

Thank you again for taking the time to speak with us on November 13th. We felt that it was a productive and enlightening conversation. In reviewing our notes, there were several points we wanted to reconfirm with you. We appreciate you looking over the list below to make sure that we have accurately understood you. Please advise us if, according to your knowledge, the below are correct:

1) START was onsite in 2014, but you personally did not begin work at Gold King Mine until June 2015. Correct. I began planning for upcoming field work at the end of April 2015 and my first site visit was in June 2015.

2) Your scope of work at Gold King Mine included documenting progress at the site (taking photos and videos and making notes) and treatment of mine water pumped from the mine in a controlled fashion. Correct.

3) You were performing work at the Red and Bonita Mine on August 4, 2015, from approximately 12:30-4:00pm. During that time, the work progress at Gold King Mine was not documented by photograph. On August 4th, I was at the Gold King Mine from approximately 1000 until 1200. Then I was at the Red and Bonita Mine until 1400. I then returned to the Gold King Mine at approximately 1400, however I took no photos until approximately 1600.

4) Work stopped on August 4, 2015, so the team could consider the significance of the timbers uncovered at the furthest point of excavation and a hole in the same location. Correct.

5) The photo taken on August 4, 2015, at 16:08 shows the drainage pipe which continued toward the adit but did not extend much further than shown in the picture. The pipe shown in the left of the photo was a single section of pipe that had been partially removed at the time of the photo.

6) Some equipment, including a "stinger" and a pump to dewater the mine, were not on site as of August 5, 2015. Correct.

7) Prior to the photo taken at 10:51 August 5, 2015 which shows the spurt of water, there was no more need to remove backfill so that a stinger could be inserted. Prior to that photo material that had fallen from the rock face was being cleaned away. I cannot speak as to how much material needed to be removed for the stinger portion to proceed.

8) Everyone at the site noticed the initial spurt at the same time on August 5, 2015. The water was noticed by all present at relatively the same time.

9) Videos 7 and 8 (posted to EPA's website) recorded portions of your conversation with Matt Francis of Environmental Restoration. Of the videos posted under the September 2nd Update, Videos 7 and 8 include a conversation between myself and Matt Francis and also included Hays Griswold of the EPA.

10) At the time of our conversation on November 13, 2015, you had no knowledge or awareness that Colorado DRMS had inserted a stinger through the drainage pipe at Gold King Mine in 2009, and that EPA removed that stinger in 2014. Correct.

11) You drafted the image that appears on p. 48 of the BOR report on August 11, 2015, at the request of Steve Way, EPA OSC. Mr. Way provided the measurements and assumptions portrayed in the drawing. The drawing is not to scale. Correct.

Again, thank you again for your willingness to assist the Committee with our oversight responsibilities. If you have any questions feel free to contact me or Jessica Conrad, Counsel, at [redacted]

Sincerely,

Rob Gordon

[LIST OF DOCUMENTS SUBMITTED FOR THE RECORD RETAINED IN THE COMMITTEE'S OFFICIAL FILES]

— Bureau of Reclamation report, "Technical Evaluation of the Gold King Mine Incident," October 2015. Submitted by Chairman Bishop

— U.S. Forest Service publication, "Abandoned Mine Lands: A Decade of Progress Reclaiming Hardrock Mines." Submitted by Representative Lummis

— A video clip used by Representative Gohmert involving EPA Administrator Gina McCarthy's response to a question on the scope of DOI's review of the Gold King Mine Incident

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