

Gold King Mine Possible Superfund Listing Process

Background, Local Committee Achievements and Continuing Objectives

Background

On Aug. 5, 2015, more than 3 million gallons of tainted water flooded from the Gold King Mine and brought international attention to our community and the issue of leaking mines in the West. In the aftermath of that spill, town and county elected officials directed staff to investigate all possible options for dealing with the issue of leaking mines in our area.

After exploring all options, the Town of Silverton Board of Trustees and the San Juan County Commissioners directed their representatives to engage in discussions with the Environmental Protection Agency and the State of Colorado to secure cleanup of leaking mines in our area through a possible listing on the National Priorities List, known as Superfund.

The local team consisted of Willy Tookey, Bill Gardner, Scott Fetchenhier, Pete Maisel, Jeff Robbins, Paul Sunderland and Mark Eddy. As part of the process the team prepared this document for the public.

The team has had dozens of meetings and phone calls with EPA officials at the state and national levels, and with Colorado state officials to reach agreement on a proposed listing that provides reasonable assurances that our community and downstream neighbors will be protected, mines that are significant contributors are cleaned up and the environment is protected.

The team has made significant gains, as outlined below. And while there is still work to be done, many of the issues cannot be addressed until after a Superfund listing. If it is decided to pursue a Superfund listing, Silverton and San Juan County have been guaranteed a seat at the decision-making table to help ensure that local expertise is utilized and potential negative impacts are addressed. Gov. Hickenlooper, his staff and members of our Congressional Delegation have also assured us that they will help us throughout the entire process.

Ultimate Objectives of the Local Committee:

- improve water quality in the Animas River and its tributaries,
- eliminate risk of future disasters like the Gold King spill,
- avoid damaging our local community and its economy.

Achievements

1. Site definition. As originally proposed by the EPA, the Superfund site would have included the entire upper Animas River drainage and all of its tributaries. Such a site would have included

at least half of San Juan County including the Town of Silverton and thousands of acres that have no impact whatsoever on water quality in the Animas. The local committee persuaded the EPA to agree to a site definition that included only mining claims reasonably believed to be contributing to the contamination of the Animas and its tributaries, thereby protecting the Town of Silverton and hundreds of owners of mining claims that pose no environmental hazards. The EPA has advised that this is the first time such a specific site definition has ever been proposed to address acid mine drainage.

2. Site naming. As originally proposed by the EPA, the Superfund site would have been given a name that would unnecessarily draw adverse attention to the Town of Silverton and San Juan County. The local committee persuaded the EPA to name the site in a way that has no such negative connotations for either the town or the county. The name is the Bonita Peak Mining District Site.
3. The EPA has agreed to local involvement in all phases of the process following Superfund listing.
4. The EPA has committed to assist the local community with Technical Assistance (TAG) grants, a Technical Assistance Source for Communities (TASC) grant and in establishing and funding a Community Advisory Group (CAG). EPA advises that no such grant or funding requests have ever been denied in this region.
5. The EPA has agreed to consider the use of new technologies and alternative approaches to remediation.
6. The EPA has agreed to a process by which any property initially listed in the site can be removed from the site if further study demonstrates that it does not materially contribute to contamination of the Animas and its tributaries.

Continued Areas for Work

The local committee continues to strive to achieve a number of objectives that we deem critical to successful cleanup of the Animas:

1. Continue operation of the EPA plant, which currently treats discharge from the Gold King, including expansion of the discharges it treats to include other area mines whose discharge is not currently being treated. While the EPA has committed funding to operate the treatment plant only through October, 2016, it advises that it is still evaluating whether it will continue operation of the plant after the current funding authorization runs out and that the decision will be made in compliance with the EPA's regulations, particularly 40 CFR 300.415. The local committee has requested written confirmation that no decision has been made by the EPA to shut down the treatment plant in October.

2. Obtain confirmation of verbal assurances received from EPA officials that the EPA will not pursue owners of mines who had no involvement in the creation of the discharges that require treatment (innocent landowners). EPA advises that it cannot legally make any such binding commitment, but that the statute, the EPA's regulations and policies regarding enforcement discretion give substantial protection to innocent landowners and governmental entities. They will be supplying us citations to these materials.
3. Funding of Scientific Research Grants (STAR grants) or other state or federal grants to study existing conditions before taking any actions and evaluate alternative means of remedying discharges. It is critical that the geohydrology of the area is fully studied and understood. The local committee has offered the EPA the benefit of a team of nationally known academic and government scientists in the relevant areas who have offered to assist in this effort.
4. Delaying closure of the bulkhead valve on the Red and Bonita Mine (presently scheduled to take place in June 2016) until the consequences of any such action are fully studied and understood. We also have requested that EPA provide us its contingency plans for the anticipated closure and that it obtain independent review of its closure plans to avoid a repeat of the Gold King spill.
5. Provide letters to lenders if requested by owners of property outside of the Superfund site boundaries confirming that contamination located within the Bonita Peak Mining District Superfund site does not have any meaningful effect on their properties in order to satisfy funding conditions, limitations or requirements of any state or federal agency or program such as HUD, FHA, Fannie Mae or Freddie Mac. EPA advises that it will work with HUD, lenders and the public to address issues that arise regarding funding near any Superfund site.
6. Obtain assurances of adequate funding by the EPA to assure that any Superfund listing is not an empty and meaningless act that does nothing to improve water quality. EPA advises that funding exists, that further investigation of the site will have the highest priority and that "there is not a single Superfund site in Colorado that is not fully funded."
7. Obtain full reimbursement of all expenses incurred by the local community as a result of the Gold King spill. EPA advises that it can fund at least some of these costs with further documentation and that it will continue to work to get authorization to fund more.
8. Obtain continued, robust monitoring of water quality – not only in the Animas and its tributaries – but in all downstream rivers for a sufficient duration to ensure that the contamination spread by the Gold King spill does not have adverse effects on the environment or on human health. EPA officials advise that they are working with downstream users to assure them of continued water quality testing.