

**First Regular Session
Seventy-first General Assembly
STATE OF COLORADO**

INTRODUCED

LLS NO. R17-0790.01 Debbie Haskins x2045

SJR17-043

SENATE SPONSORSHIP

Coram,

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McLachlan,

Senate Committees

House Committees

SENATE JOINT RESOLUTION 17-043

101 **CONCERNING URGING THE ATTORNEY GENERAL OF COLORADO TO**
102 **FILE A LAWSUIT AGAINST THE FEDERAL ENVIRONMENTAL**
103 **PROTECTION AGENCY FOR DAMAGES CAUSED BY THE SPILL AT**
104 **THE GOLD KING MINE.**

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

7 WHEREAS, The mustard-yellow-colored sludge, containing
8 nearly nine hundred thousand pounds of heavy metals such as arsenic,
9 lead, cadmium, copper, mercury, and zinc, poured into the rivers, causing

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

1 widespread environmental damage and substantial economic harm to the
2 citizens of Colorado, as well as to those of the nearby states of New
3 Mexico and Utah; and

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

8 WHEREAS, The agricultural and Native American communities
9 in the affected area depend on the Animas and San Juan rivers for
10 irrigation and drinking water contaminated by the spill; and

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

18 WHEREAS, After the incident, local authorities closed the
19 affected rivers to all uses, causing significant local economic damages;
20 and

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

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

34 WHEREAS, The state of New Mexico has already sued the federal
35 Environmental Protection Agency for damages caused to the state of New

1 Mexico as a result of the spill; and

2 WHEREAS, On January 13, 2017, the *Denver Post* reported that
3 an Environmental Protection Agency official, speaking on condition of
4 anonymity, said that the Environmental Protection Agency had conducted
5 a legal analysis and concluded that sovereign immunity protects the
6 Environmental Protection Agency and that the Environmental Protection
7 Agency had no legal authority to pay claims unless Congress authorized
8 a lawsuit; and

9 WHEREAS, The Environmental Protection Agency has actually
10 paid some claims arising out of the Gold King Mine spill and rejected
11 other claims; and

12 WHEREAS, The state of Colorado has been harmed by the actions
13 of the federal Environmental Protection Agency in its handling of the
14 Gold King mine spill, and the Environmental Protection Agency should
15 be held accountable for its harmful actions; and

16 WHEREAS, The state should pursue the recovery of monetary
17 damages caused to the state of Colorado for those injuries; and

18 WHEREAS, The General Assembly recognizes the separation of
19 powers inherent between the legislative branch and the executive branch
20 and acknowledges that the Attorney General has authority under section
21 24-31-101, Colorado Revised Statutes, to appear for the state and
22 prosecute and defend all actions and proceedings, civil and criminal, in
23 which the state is a party or is interested when required to do so by the
24 governor as legal counsel for the executive branch; and

25 WHEREAS, To date, the Attorney General has not exercised her
26 authority to file a lawsuit on Colorado's behalf against the federal
27 Environmental Protection Agency to recover damages as a result of the
28 Gold King mine spill; now, therefore,

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

31 (1) That the General Assembly finds that it is appropriate for the
32 Attorney General to sue the federal Environmental Protection Agency on
33 behalf of the state of Colorado to seek compensation for the harm caused
34 to the state by the Gold King mine spill; and

1 (2) That the General Assembly strongly urges and requests the
2 Attorney General of the state to file a lawsuit against the federal
3 Environmental Protection Agency to recover environmental and
4 economic damages caused to the state and its citizens by the federal
5 Environmental Protection Agency and its contractor as a result of the
6 Gold King mine spill.

7 *Be It Further Resolved*, That copies of this Joint Resolution be sent
8 to Attorney General Cynthia Coffman, Governor John Hickenlooper, and
9 each member of Colorado's delegation to the United States Congress.