

First Regular Session
Seventy-first General Assembly
STATE OF COLORADO

ENGROSSED

LLS NO. R17-0790.01 Debbie Haskins x2045

SJR17-043

SENATE SPONSORSHIP

Coram,

HOUSE SPONSORSHIP

McLachlan,

Senate Committees

House Committees

SENATE JOINT RESOLUTION 17-043

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

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

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

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

SENATE
Amended Final Rdg.
May 8, 2017

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

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

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

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

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

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

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

32 WHEREAS, On August 11, 2015, then-EPA Administrator Gina
33 McCarthy agreed without caveat to take "full responsibility" for causing
34 the spill and for its impact on our state and local communities, and the
35 Obama-era EPA also stated it would "expedite" resolution of "Federal

1 Tort Claims Act" filings by Colorado citizens harmed by 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 damages pursuant to the "Federal
8 Tort Claims Act" unless Congress authorized a lawsuit; and

9 WHEREAS, The federal Environmental Protection Agency has
10 actually paid some state and local government claims arising out of the
11 Gold King mine spill but rejected "Federal Tort Claims Act" filings made
12 by Colorado citizens and businesses harmed by the spill; and

13 WHEREAS, On January 13, 2017, a little more than eighteen
14 months after the spill, then-Administrator McCarthy notified claimants
15 that the federal Environmental Protection Agency determined that it is
16 "not legally able" to pay compensation for administrative claims brought
17 under the "Federal Tort Claims Act", further stating that the so-called
18 "discretionary function exception" bars such claims and that the
19 "circumstances surrounding the Gold King Mine incident unfortunately
20 do not meet the conditions necessary to pay claims"; and

21 WHEREAS, The state of Colorado has been harmed by the actions
22 of the federal Environmental Protection Agency in its handling of the
23 Gold King mine spill, the federal Environmental Protection Agency
24 admits its "full responsibility" for the spill, and the federal Environmental
25 Protection Agency should be held accountable for its harmful actions; and

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

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

35 WHEREAS, To date, the state of Colorado has not filed a lawsuit

1 against the federal Environmental Protection Agency to recover damages
2 as a result of the Gold King mine spill; now, therefore,

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

5 (1) That the General Assembly urges the Governor of Colorado,
6 the Department of Public Health and Environment, and the Natural
7 Resources Trustees, in consultation with the Colorado Attorney General,
8 to sue the federal Environmental Protection Agency on behalf of the state
9 of Colorado to seek compensation for the harm caused to the state by the
10 Gold King mine spill; and

11 (2) That the General Assembly strongly urges and requests the
12 Governor of Colorado, the Colorado Department of Public Health and
13 Environment, and the Natural Resources Trustees, in consultation with
14 the Attorney General of the state, to file a lawsuit against the federal
15 Environmental Protection Agency to recover environmental and
16 economic damages caused to the state and its citizens by the federal
17 Environmental Protection Agency and its contractor as a result of the
18 Gold King mine spill.

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