

# **New Mexico is first to sue EPA, mine owners over toxic spill**

May 23 2016, by Susan Montoya Bryan

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In this Aug. 6, 2015 file photo, people kayak in the Animas River near Durango, Colo., in water colored from a mine waste spill. The federal government and Colorado have made little progress in remedying damages from the 2015 release of millions of gallons of wastewater from a southern Colorado mine, New Mexico's top prosecutor charged in a pair of scathing letters sent to officials on Friday, May 20, 2016.(Jerry McBride/The Durango Herald via AP, File)

New Mexico on Monday became the first state to sue the federal government and the owners of two mines over the release of 3 million gallons of toxic wastewater from a closed Colorado gold mine, seeking tens of millions of dollars for environmental and economic damage caused by the spill.

The federal lawsuit says the environmental effects of the 2015 spill in which a bright-yellow plume of arsenic, lead and other heavy metals fouled rivers in three Western states were far worse than claimed by the U.S. Environmental Protection Agency.

New Mexico wants to be paid back for its immediate response to the disaster and receive funding for long-term monitoring, lost revenue and a marketing campaign to undo the stigma left behind by the Gold King Mine spill.

"The liability is crystal clear. The facts speak for themselves, and EPA for whatever reason is unwilling to resolve this outside of court," New Mexico Environment Secretary Ryan Flynn told The Associated Press.

The lawsuit came days after New Mexico Attorney General Hector Balderas fired off warning letters to the EPA and the state of Colorado over the response to the spill.

Balderas said it has had a devastating effect on communities, and the federal agency should be held to the same standards it would impose on private interests accused of polluting.

"Remediation and compensation dollars have been far too minimal for these very special agricultural and cultural communities who depend on this precious water source for irrigation and drinking water," Balderas said. "They must be properly compensated and there must be appropriate independent monitoring to prevent future dangers to public health and the economy."

The EPA has a practice of not commenting on pending litigation but reiterated Monday that it takes responsibility for the cleanup and has been working to reimburse states and tribes for costs related to monitoring plans.

The agency also is doing its own monitoring of the Animas and San Juan rivers.

An EPA contractor triggered the spill. The wastewater made its way into the two rivers, setting off a major response by government agencies and private groups.

During the spill, water utilities shut down intake valves and farmers stopped drawing from the rivers as the yellow plume moved downstream.

The EPA said water quality quickly returned to pre-spill levels, but New Mexico officials and others warn about heavy metals collecting in the sediment and getting stirred up each time rain or snowmelt results in runoff.

The state Environment Department received numerous calls just last week about the discoloration of the Animas River following a round of storms, Flynn said.

A notice sent this month to the EPA outlined the damage and argued that heavy metals in the Animas and San Juan rivers remain at levels that present unacceptable risks to health and the environment.

Attorneys for New Mexico argue that the spill was preventable and that the EPA had been warned about a potential blowout nearly a year before the incident.

The state also contends its offers to lead a regional long-term monitoring project to better understand the damage and the prospects of future contamination have been repeatedly rebuffed by the EPA.

The agency offered \$2 million to states and tribes affected by the spill

for monitoring, but New Mexico officials say that's only a fraction of the more than \$6 million that would be needed for adequate monitoring in the state.

New Mexico also estimates the spill is costing the state \$130 million in lost income taxes, fees and revenue. Officials have pointed to reduced tourism, fishing and land use throughout the region.

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