



**NEW MEXICO
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RYAN FLYNN
Cabinet Secretary

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Deputy Secretary

April 21, 2016

via email

Mr. Ron Curry
Administrator
USEPA Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202

Re: EPA Responses to NMED Requests for Gold King Mine Assistance

Dear Mr. Curry:

The New Mexico Environment Department (NMED) is acting to protect human health and the environment of New Mexico from risks posed by the releases of lead, arsenic and other heavy metals from the Gold King Mine into the Animas and San Juan Rivers in New Mexico. I am writing to ask for EPA's immediate assistance with these efforts. NMED is facing millions of dollars in response, investigation, and remediation costs associated with the release of millions of gallons of acidic wastewater and heavy metals from the Gold King Mine. Without qualification, EPA has accepted responsibility for the August 5, 2015 blowout of the Gold King Mine. Thus, I am writing on behalf of NMED to again request that EPA fund the work necessary to address this contamination and otherwise assist NMED as we work to address the impacts of these contaminants on New Mexico and its residents.

On March 18, 2016, NMED formally applied to EPA, requesting funding for a comprehensive work plan to evaluate the long-term impacts of the Gold King Mine (GKM) release. EPA's response to this work plan – nearly three weeks later and in the form of an April 6, 2016 email from Mr. William Honker to Ms. Trais Kliphuis and Dr. James Hogan – states that less than eight-percent of the funds requested may be available now and, for those funds, directed NMED into a grant process bureaucracy that will consume more time and resources that NMED simply does not have. Many of the projects in our work plan are time sensitive in nature. We are dismayed that EPA's provision of funds and grant process appears to be stalled.

NMED needs EPA funding to investigate and address critical environmental questions in a timely manner. Because the spring thaw is starting now, and because it appears that approximately 880,000 pounds of metals released by EPA are poised to flush into New Mexico in these high-flow periods, time is of the essence. If EPA refuses to fund New Mexico's Long

Term Monitoring Plan and Preparedness Plan, it will seriously hinder NMED's delineation of the scope and extent of this contamination. These Plans were developed with the input and cooperation of the several states, tribes, and educational and research institutions working together to respond to the GKM release. While we understand that further federal funds may be forthcoming, such a piecemeal allocation will not provide the affected residents the necessary confidence that we are ensuring the safety of their water right now. Spring runoff is just beginning and the irrigation ditches will be running soon. People are concerned about the safety of their water supply. We again request that EPA provide access to the funds necessary to address these time sensitive matters now.

NMED has the following specific concerns with EPA's denial of our grant application as initially submitted. First, Mr. Honker's response indicates that EPA only intends to fund \$465,000 of the total work plan. This constitutes less than 8% of the funds that are necessary to address New Mexico's response to the GKM release. It is not possible to prioritize projects that will fit within the \$465,000 that EPA says is available, as each task in our work plan is vital to protect human health and the environment. Therefore, NMED still requests the entire \$6,054,552. This amount is well within the funding limits of Section 106.

Second, Mr. Honker's email indicates that EPA plans to only fund Phase II projects after January 1, 2016. This is inadequate because New Mexico has already incurred \$36,000 of Phase II long-term monitoring costs during 2015. Mr. Honker also indicated these 2015 expenses would not be eligible under the Phase I response funding. It was unclear from the April 6 email how exactly EPA expects New Mexico to recover these funds. If EPA intends to restrict Section 106 grant money to work performed only after January 1, 2016, then please point us to a source that could be used to reimburse NMED for those long-term monitoring costs incurred in 2015.

Third, after reviewing our 62-page work plan, EPA found that it did not contain the necessary information for approval. Mr. Honker's response stated that NMED did not include objectives for the program elements, costs of each task, expected benefits, schedules and deliverables. We agree that we could include more information to address Quality Assurance requirements, and we request EPA make the Section 106 award conditional to the submittal of the Quality Assurance plans within six months of the award date. However, the information that Mr. Honker suggests is missing can be found in each work element. Specifically, each work plan element starts with a summary which includes a statement of the goal/objective; results and expected benefits are contained within the work plan portion of the proposal which includes the anticipated results as well as an evaluation of the impacts to human health and the environment; and specified costs are provided for each task. If there is something specific that you require, please provide us with that information as soon as possible so that we can update our grant application.

Fourth, Mr. Honker's email concludes by noting that there are specific items that could not be funded under the Section 106 program. This included, for example, monitoring activities not within the state of New Mexico. However, since New Mexico is downstream of the Gold King Mine and the Upper Animas Mining Basin releases, such elements are necessary to fully understand and evaluate the continuing pollutant source and protect our water resources. Additionally, Mr. Honker mentions that there may be other tasks that are not eligible for Section

106 funds. We ask that you please provide a list of the tasks that you find to be ineligible for Section 106 funds, as well as information about alternative funding to address these needs.

Finally, Mr. Honker's email is emblematic of the slow responses and lack of communication that NMED has received from EPA with respect to the GKM release. NMED disputes EPA's claim that the river has returned to pre-event conditions, and has been asking EPA for a technical discussion of this issue since early March. EPA has repeatedly dismissed this request.

Similarly, we are still waiting on responses to two other important requests. First, NMED sent an email to EPA-Region 8 on March 15, 2016 concerning our joint inspection of the Gladstone treatment units on March 7, 2016. We requested details on the construction and operation of these facilities, as they are important to our understanding of EPA's ongoing and future actions in dealing with the GKM release. For reasons that have not been explained, EPA has failed to respond to this inquiry. Moreover, New Mexico partnered with two other states and two tribes on a March 23, 2016 letter to petition EPA for reconsideration of Superfund funds availability for ongoing Preparedness Plan and immediate response efforts related to the spring thaw. No signatories to the letter have received any feedback whatsoever. These issues are indicative of a larger communication problem that EPA has known about for some time. This must change if we are to work together to address legitimate environmental concerns that affect the personal and financial daily lives of New Mexico citizens.

In summary, we feel that Mr. Honker's response, as both a potentially responsible party in this incident and the overseer of Section 106 funds, is unhelpful. Instead of assisting us in devising an acceptable form to the plan (we note that Mr. Honker did not object to the work elements we propose to fund), the April 6 email only causes delays to the important work that needs to be completed in New Mexico right away. We understand EPA's need to provide oversight to the use of Section 106 funds, but in this instance we maintain that our proposal provides a sufficient basis to award funding. We ask that EPA reconsider the April 6 response, assist us in formulating our request for funding as appropriate, and make available the \$6,054,552 that is necessary to monitor the damage caused by the GKM release. We further request that you respond to all outstanding requests and correspondence from NMED as soon as possible.

Sincerely,



Trais Kliphuis
Director, Water Protection Division

cc: William Honker, Water Division Director, EPA-Region 6
via email: honker.william@epa.gov

David Ostrander, CERCLA Program Director, EPA-Region 8
via email: ostrander.david@epa.gov

Sen. Tom Udall

Sen. Martin Heinrich
Rep. Ben Ray Lujan
Rep. Michelle Lujan-Grisham
Rep. Steve Pearce
Gina McCarthy, Administrator, USEPA