EPA To Pay Utah $360M Over Gold King Mine Spill

By [HYPERLINK "https://www.law360.com/nativeamerican/articles/1298790/epa-to-pay-utah-360m-over-gold-king-mine-spill?nl_pk=894dd615-1d89-41ce-b438-7f19a35e0818&utm_source=newsletter&utm_medium=email&utm_campaign=nativeamerican"]

Law360 (August 5, 2020, 7:57 PM EDT) -- The [HYPERLINK "https://www.law360.com/agencies/u-s-environmental-protection-agency"] has committed to spending more than $360 million to settle a dispute with Utah over an incident five years ago when millions of gallons of toxic waste was accidentally released into state rivers by a government contractor.

The deal was announced on Wednesday and caps off a lengthy legal dispute that began after an EPA contractor accidentally caused the mine waste spillage at the Bonita Peak Mining District's Gold King Mine in 2015. The toxic water from that spill flowed into the Animas and San Juan rivers, and also impacted Lake Powell, according to court documents.

The settlement also comes as a part of a sprawling multidistrict litigation caused by the breach. To date, the EPA has spent more than $75 million for remediation at the Bonita Peak Mining District site, and has agreed to spend more than $65 million more over the next several years, according to the settlement. The agency has also agreed to pay $220 million to clean up other abandoned mine sites as part of the settlement.

The state had brought tort and Comprehensive Environmental Response, Compensation and Liability Act claims — also known as the federal Superfund law — against the EPA for the breach. Those claims will now be dismissed.

In a press release, Utah Attorney General Sean D. Reyes said that the case shows the value of "cooperative federalism."

"After years of intense litigation and negotiations, we are very pleased that millions of dollars can now be spent towards mitigation, remediation and assuring water quality in Utah rather than years of more litigation, trial and appeals," Reyes said. "This is what cooperative

federalism looks like — a true federal and state partnership."

In a statement, the EPA Administrator Andrew Wheeler celebrated the settlement, which he noted stemmed from an incident during the Obama administration.

"This agreement is a win-win for EPA and Utah. It will bring environmental benefits to Utah, avoid protracted litigation, and hopefully serve as a lesson for the future to avoid repeating the mistakes of the past," Wheeler said.

The $360 million price tag comes in far below the original request from the state, which had originally sought $1.9 billion in damages over the breach.

Spencer E. Austin, the attorney who oversaw the day-to-day operations of the suit for the state, said in the press release that the much lower figure represented a win for Utah, though, because identifying specific damages and costs would have proved tricky during costly and protracted litigation.

"Here, the state is trading away the uncertainty of an increasingly difficult case that would cost millions of dollars over many more years in exchange for the certainty of immediate benefits that will directly protect and positively impact Utah now and into the future," he said.

In addition to Utah, the EPA has faced challenges over the toxic waste dump from New Mexico and the [HYPERLINK "https://www.law360.com/agencies/navajo-nation"] for costs of the environmental cleanup. The agency is also involved in litigation with Sunnyside Gold Corp., a mining company involved with the site where the EPA contractor breach occurred.

Utah is represented by Matthew L. Hofer and Peter Hsiao with [HYPERLINK "https://www.law360.com/firms/king-spalding"] as well as Spencer E. Austin with the [HYPERLINK "https://www.law360.com/agencies/utah-attorney-general-s-office"].

The federal government is represented by Adam Bain, David Hammack and Albert K. Lai of the [HYPERLINK "https://www.law360.com/agencies/u-s-department-of-justice"]'s Civil Division and Brian H. Lynk, Alan Greenberg and Meghan Greenfield of the DOJ's Environment and Natural Resources Division.

The case is In re: Gold King Mine Release in San Juan County, Colorado, on Aug. 5, 2015, case number 1:18-md-02824, in the [HYPERLINK "https://www.law360.com/agencies/u-s-district-court-for-the-district-of-new-mexico"].

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