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# United States Senate

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

WASHINGTON, DC 20510-6175

RYAN JACKSON, MAJORITY STAFF DIRECTOR  
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February 3, 2016

The Honorable Gina McCarthy  
Administrator  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, NW  
Washington, D.C. 20460

Dear Administrator McCarthy:

This letter follows up on your testimony before the U.S. Senate Committee on Environment and Public Works (EPW Committee) on September 16, 2015, regarding the blowout at the Gold King mine site in Colorado. As you know, the EPW Committee has been conducting oversight into the causes, response, and impacts from the release of more than 3 million gallons of contaminated mine water by the U.S. Environmental Protection Agency (EPA) and its contractors who were working at the site on August 5, 2015. EPA announced on August 18, 2015, that the U.S. Department of the Interior (DOI) “will lead an independent assertion of the factors that led to the Gold King Mine incident on August 5, 2015.”<sup>1</sup> DOI announced two days later that the Bureau of Reclamation (BOR) would lead the DOI review.<sup>2</sup>

EPA issued a preliminary report of its initial review of the causes of the Gold King mine blowout on August 26, 2015. At the EPW Committee hearing, you were asked several questions about the actions and events leading up to and immediately following the blowout, but you deferred answering many of them, claiming the answers would be provided instead by DOI’s purported independent review that was ongoing at the time of the hearing. You asserted that DOI did not have a conflict of interest, was the appropriate entity to conduct the review, and that the review itself was independent from EPA. You also stated that EPA did not review a draft of or provide direction into the scope of DOI’s work. Instead, you explained that EPA had reviewed only a draft press release announcing the start of the DOI review:

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<sup>1</sup> <http://www.epa.gov/goldkingmine/epa-announces-us-department-interior-lead-independent-review-gold-king-mine-release>.

<sup>2</sup> <https://www.doi.gov/pressreleases/pressreleases/bureau-reclamation-lead-interior-department%E2%80%99s-independent-review>.

*Ms. McCarthy. I do not believe they have a conflict of interest. They are independent. They should do a good job.*

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*Ms. McCarthy. Senator, we were as, I think, sensitive as you were to making sure that this review was truly independent. One of the decisions we made to ensure that was for EPA not to actually ourselves control the scope of the investigation. We thought it was important for the independence of DOI that they actually articulated that scope themselves so that EPA wouldn't be accused of narrowing that inappropriately.*

*So we are leaving that up to DOI. I am happy to follow up to see if I can be helpful in getting any information on how they have defined that. But as far as I know, EPA has not seen that documentation either.*

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*Ms. McCarthy. EPA did not dictate the scope of that investigation.*

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*Ms. McCarthy. The independent agency is going to dictate that themselves, and we are going to actually live with whatever scope DOI is appropriate as an independent investigator.*

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*Ms. McCarthy. Well, sir, I am continuing to try to make sure that EPA is not perceived as interfering in this investigation in any way that would question the independence of DOI's review. And that is what we are going to continue to do.*

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*Ms. McCarthy. In this case, I do not believe that we have seen that type of documentation.*

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*Ms. McCarthy. Yes, we have seen the press release, that is what we have seen. And I know that their review is going to be looking at the incident itself and the contributing factors. Beyond that I haven't seen a limitation on how they are going to conduct that.*

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*Ms. McCarthy. No, sir, the only communication we have had was to look at the press release that was issued. We are hands-off on this to address the very issue that you are concerned about, which is our independence.*

A series of follow-up questions about the EPA's work at the site were sent to you on October 20, 2015, for the hearing record. Three months have passed, and the EPW Committee has not yet received your responses. Since these questions for the record were submitted, several events have called into question the accuracy and completeness of your September 16, 2015, testimony before the EPW Committee.

First, DOI released its report on October 22, 2015, of its purported independent evaluation, which included input from the U.S. Army Corps of Engineers. The DOI report found the blowout could have been prevented had the site been properly evaluated and the engineering plan revised before excavation work began. However, the report noted that the events at the work site in the days prior to or immediately after the blowout were beyond the scope of the DOI review. The DOI report also describes coordination between the EPA officials at the Gold King site and BOR staff in the weeks leading up to the blowout, raising further questions about the apparent conflict of interest and lack of independence with the DOI review beyond those articulated in the questions for the record. Documents obtained by the EPW Committee in the course of its ongoing oversight also show extensive coordination over several years between EPA and DOI officials concerning legal responsibility and options for cleaning up contamination from abandoned mine sites in the Animas River watershed, including the Gold King mine and the nearby Red and Bonita and Sunnyside mines, the closure of which may have contributed to conditions that led to the Gold King blowout.

Second, notwithstanding your assertions that EPA was not involved in developing the scope of DOI's review, it now appears that EPA officials were involved in reviewing and providing input to DOI related to its investigation. On December 8, 2015, EPA issued an addendum to its August 26, 2015, preliminary report based on interviews EPA officials had with the on-scene coordinators,<sup>3</sup> who may be fact witnesses in an ongoing Office of Inspector General investigation.<sup>4</sup> According to a December 18, 2015, letter sent to the EPA Inspector General by the House Natural Resources Committee,<sup>5</sup> raising concerns about these interviews, it appears a senior EPA official received a copy of the draft scope for the DOI review on August 18, 2015, and told a BOR official, "It looks good to me, and I will share up my management chain." These events seem to contradict your repeated assertions at the September 16, 2015 hearing that EPA had reviewed only a DOI press release and had no role in DOI's independent review, including advising DOI about what should be within the scope of its work.

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<sup>3</sup> <http://www.epa.gov/sites/production/files/2015-12/documents/gkmaddendumfinal.pdf>.

<sup>4</sup> [http://www.epa.gov/sites/production/files/2015-11/documents/newstarts\\_11-04-15\\_gkm.pdf](http://www.epa.gov/sites/production/files/2015-11/documents/newstarts_11-04-15_gkm.pdf).

<sup>5</sup> Letter to Arthur A. Elkins, Jr., Inspector General, U.S. Environmental Protection Agency, from Rob Bishop, Chairman, and Louie Gohmert, Chairman, Subcommittee on Oversight and Investigation, Natural Resources Committee, House of Representatives, sent December 18, 2015, at footnote 17; available at: [http://naturalresources.house.gov/uploadedfiles/letter\\_to\\_epa\\_oig\\_12\\_18\\_15.pdf](http://naturalresources.house.gov/uploadedfiles/letter_to_epa_oig_12_18_15.pdf).

The Honorable Gina McCarthy

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Accordingly, given our concerns that your testimony appears at odds with facts showing extensive coordination between EPA and BOR and other DOI officials with the Gold King site and possibly about the DOI's review of the blowout itself, please clarify whether your testimony that DOI did not have a conflict of interest, that its review would be independent, and that EPA officials had no involvement in DOI's review remain accurate and complete. In your response, please also provide copies of all communications between EPA, DOI, and the Army Corps of Engineers concerning the DOI review of the Gold Mine blowout.

Please provide your response to this letter, as well as the responses to the EPW committee's questions for the record dated October 20, 2015, no later than February 17, 2016. Please have your staff contact Byron Brown on the EPW Committee majority staff or Mandy Tharpe on Senator Rounds' staff with any questions concerning this letter.

Sincerely,



JAMES M. INHOFE  
Chairman,  
Committee on Environment  
and Public Works



M. MICHAEL ROUNDS  
Chairman, Subcommittee on Superfund,  
Waste Management, and Regulatory  
Oversight