

**TESTIMONY OF
MATHY STANISLAUS
ASSISTANT ADMINISTRATOR
OFFICE OF LAND AND EMERGENCY MANAGEMENT
U.S. ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE
INDIAN AFFAIRS COMMITTEE
UNITED STATES SENATE**

April 22, 2016

Good morning Chairman Barrasso and Members of the Committee. I am Mathy Stanislaus, Assistant Administrator for the U.S. Environmental Protection Agency's (EPA) Office of Land and Emergency Management (OLEM) that is responsible for EPA's cleanup and emergency response program. I am joined today by Jared Blumenfeld, Regional Administrator for EPA Region 9, which serves Arizona, California, Hawaii, Nevada, Pacific Islands, as well as 148 Tribal Nations. Thank you for the opportunity to appear today to discuss the EPA's work with and engagement with Indian tribes.

The U.S. Environmental Protection Agency has a long history of working closely with Indian tribes and was one of the first federal agencies with a formal policy specifying how it would interact with tribal governments and consider tribal interests in carrying out its programs to protect human health and the environment. The EPA Policy for the Administration of Environmental Programs on Indian Reservations, signed in 1984, remains the cornerstone for EPA's Indian program.

The EPA's work with tribes is facilitated through the National Tribal Caucus (NTC), a national body of high-level tribal advisors. Members are selected on a regional basis by each Regional Tribal Operations Committee (RTOC) or its equivalent, and represent all tribes within their

regions. Their primary focus is to identify and address tribal environmental issues that are national in scope, cross-agency or cross-media in nature, or that may be emerging or time-critical.

Through consultation, collaboration, and shared accountability, the EPA continues to strengthen its partnerships with tribes to help ensure the success of the national environmental program. The EPA focuses on increasing tribal capacity to establish and implement environmental programs while ensuring that our national programs are as effective in Indian country as they are throughout the rest of the Nation.

Under this policy, the EPA is also enhancing our effort to work with tribes based upon constitutional authorities, treaties, laws, executive orders and a long history of Supreme Court rulings. We are also strengthening our cross-cultural understanding with tribes, recognizing that tribes have cultural, jurisdictional and legal features that must be considered when coordinating and implementing environmental programs in Indian country.

After engagement with our tribal partners and reviewing feedback received at the 2014 White House Tribal Nations Conference, the EPA undertook an effort to further preserve the resources protected under treaties. The EPA issued a memo to agency offices stressing the importance of honoring tribal rights and the resources protected by treaties and directed the development of agency-wide guidance. Where the EPA has the discretion and opportunity to do so, EPA programs should be implemented to enhance protection of tribal treaty rights and treaty-covered resources to honor our trust relationship with tribes.

This effort produced EPA's first-ever Tribal Treaty Rights Guidance, issued in February of this year. The Guidance will further strengthen EPA's close partnership with the tribal community by initiating meaningful discussions with tribes about their treaty rights during Consultation. The Guidance will help support the agency's continued efforts to learn from and expand our collaborations with tribes as we work to achieve our shared mission of protecting human health and the environment.

OLEM Tribal Activities

EPA's Office of Land and Emergency Management and regional offices work in partnership with tribes as co-regulators to address solid and hazardous waste, emergency response actions, as well as land restoration and clean up issues in Indian country. The EPA seeks to build tribal capacity in assuming program management responsibilities for the cleanup and reuse of land, as well as to forge strong partnerships with tribes and engage tribes in meaningful dialogue and information sharing in a timely manner.

EPA headquarters offices are responsible for providing national policy direction and support for OLEM's tribal work. Working in collaboration with EPA's regional offices, the EPA works with tribes to enhance capacity and participation in the environmental decision-making process.

Through a wide array of program activities, OLEM works with interested tribal government to help ensure that land is cleaned up and restored.

To facilitate our continued work with tribes, OLEM, in cooperation with EPA's Office of Water, awarded a new five-year cooperative agreement in 2014 totaling \$2.9 million to the Institute for Tribal Environmental Professionals (ITEP) located at Northern Arizona University, to support

the Tribal Waste and Response Assistance Program (TWRAP). Building off the successful work that started through a 2008 award, ITEP continues to strengthen and expand its training, technical assistance, and resources to Native American tribes and Alaska Native Villages (NA/ANV) for subjects related to solid and hazardous waste, resource conservation, brownfields, Superfund, underground storage tanks, emergency response, and water infrastructure. The program supports a national Steering Committee of tribal professionals, the tribal Superfund Working Groups, as well as the Tribal Lands and Environment Forum, a key training event for tribal environmental professionals. This training, technical assistance and targeted outreach provides an opportunity to address the many barriers and challenges tribes experience when it comes to restoring and preserving our land.

We have been helping to ensure that tribal needs and priorities are addressed in EPA's budget and planning documents, by supporting the work of the Tribal Waste and Response Assistance Program Steering Committee that issued their first ever *Priorities Document* to OLEM and our senior management. This document provided key insights for the programs to consider in developing future areas to prioritize and fund.

To address contaminated properties, OLEM has supported the development of tribal response programs. The Brownfields State and Tribal Response Program provides cooperative agreement funds to states and federally recognized tribes under Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or Superfund) 128(a) authorities. More than 100 tribes have received 128(a) funding over the years. In Fiscal Year 2015, more than \$12.7 million dollars was allocated to 106 tribes for their tribal response programs. These programs have 1,034 tribal properties enrolled and have resulted in the cleanup of 388 properties, totaling 3,654 acres. In addition, in FY 2015, the EPA provided \$800,000 of CERCLA 104(k) funding that supported

assessment, job training, and revolving loan fund grants. Together, these two programs have supported the creation of 191 jobs, approximately \$20 million additional funds leveraged, and 9 property clean ups and 48 site assessments completed in Indian country.

OLEM also supported efforts to increase capacity and help ensure tribes are trained on how to inspect, develop, and implement hazardous waste and hazardous waste programs, which includes the collection and disposal of household hazardous waste. The EPA provided funding to tribes through the Hazardous Waste Management Grant Program. Further, to help ensure tribal communities have a better understanding of the technical issues related to a Superfund cleanup and key considerations for a site's future use, in FY 2015, the EPA provided technical assistance to tribes by funding 32 cooperative agreements with 12 different tribes, totaling approximately \$8.6 million.

In addition, in 2008, the EPA partnered with the Bureau of Indian Affairs, the Nuclear Regulatory Commission, the Department of Energy, the Indian Health Service, and the Agency for Toxic Substances and Disease Registry, and in consultation with the Navajo Nation, developed and implemented a Five-Year Plan to address human health and environmental risks posed by radiological contamination associated with abandoned uranium mining sites on the Navajo Nation. The EPA and its federal partners expended more than \$100 million to reduce the highest risks to the Navajo people by remediating 47 contaminated homes, providing drinking water to more than 3,000 homes, and conducting urgent cleanup actions at 9 mine sites. Much work remains and the same federal agencies collaborated to issue a second Five-Year Plan in 2014. The second Five-Year Plan builds upon the work of the first plan to address the most significant risks to human health and the environment. Over the next five years, the Navajo

Nation plans to assess and scan 100 homes per year, with the EPA planning to conduct remediation at up to ten homes per year depending on the number of homes found to pose a health risk.

EPA's Longstanding Relationship with the Navajo Nation

EPA's Pacific Southwest Office (Region 9) serves the Navajo Nation and 147 other federally recognized tribes within Arizona, California, and Nevada, on whose lands we retain responsibilities for directly implementing federal environmental statutes. Last year, more than \$15 million was awarded to invest in Arizona tribes, including the Navajo Nation, for environmental programs, water and wastewater infrastructure development, community education and capacity building. These grants will help support the significant accomplishments that have been achieved through the collaborative efforts of the tribes in Arizona, the Navajo Nation, and the federal government. Since 1984, the EPA has provided more than \$93 million to support the Navajo Nation's leadership in establishing their own environmental programs.

Addressing Impacts to the Animas River

Many decades of mine drainage has degraded water quality and contaminated sediment in the Upper Animas watershed and downstream water resources. Based upon 2009 – 2014 flow data, roughly 330 million gallons of contaminated mine water from four mines discharged annually into Cement Creek and the Animas River. Our most recent studies indicate more than 3,700 gallons per minute, or 5.4 million gallons per day, of mine wastewater is being discharged from 32 mines in the watershed.

In January of this year, I met with Navajo President Russell Begaye to discuss addressing these impacts through Superfund National Priorities Listing process. The EPA conducted extensive outreach with local communities, tribes, and states during the fall of last year and winter of this year to discuss the potential listing of abandoned mines in the Upper Animas Watershed to the Superfund National Priorities List (NPL). After months of engagement and receiving support from the Navajo Nation, the state of Colorado, and local governments, the EPA proposed adding the Bonita Peak Mining District site in San Juan County, Colorado to the NPL on April 7 of this year, to address the discharge of water from abandoned mines posing a risk to public health and the environment. The proposed Bonita Peak Mining District site consists of 48 mining related sites, including the Gold King Mine. A public comment period is underway to solicit comments regarding the NPL proposal.

Mutual respect and accountability, rooted in EPA's 1984 Indian Policy, and recognition of the sovereignty of the Navajo Nation, Southern Ute and Ute Mountain tribes has been the foundation of our long-standing partnership. The EPA recognizes that partnership has been challenged by the accidental August 5, 2015 Gold King Mine release. We all share the same goal, protecting human health and the environment today, and for future generations. We are hopeful that this partnership will allow us to achieve this goal.

After the August 5 accidental release, EPA and Colorado officials informed downstream jurisdictions within Colorado the day of the event and before the plume reached drinking water intakes and irrigation diversions. The following day, other downstream jurisdictions were notified, again, before the plume reached drinking water intakes and irrigation diversions. The EPA deployed federal On-Scene Coordinators and other technical staff within 24 hours to

Silverton and Durango Colorado, Farmington, New Mexico and the Navajo Nation to assist with preparations and first response activities in these jurisdictions.

In addition, the agency activated its Emergency Operations Center in Washington D.C. and established a Unified Command Center in Durango, Colorado and an Incident Command in Farmington, New Mexico to help ensure coordination among its regions, laboratories and national program offices. The EPA closely coordinated with our federal partners and with officials in Colorado, New Mexico, Utah, the Southern Ute and Ute Mountain Ute tribes and the Navajo Nation who all provided personnel for the Unified Command Center and/or Incident Command. I also met with the Inter-Tribal Council of Arizona to address the EPA's spill response.

One of the initial lessons learned in the aftermath of the accidental Gold King Mine release is that the EPA could improve its communications regarding releases and other environmental events that may affect multiple jurisdictions. To support response related notifications and communications between the EPA and our state, tribal and local partners, I issued guidance to Regional Response Teams (comprised of representatives from the EPA, other federal agencies and states) to strengthen their Regional Contingency Plans, particularly regarding the need to alert and coordinate with responders in downstream alerts.

As part of the response efforts, water quality samples were collected throughout the water system from multiple locations in Colorado and New Mexico to the Navajo Nation at daily intervals beginning on August 6, 2015¹. Sediment sampling began on August 11, 2015. The EPA has also

¹ See: <http://www2.epa.gov/goldkingmine/data-gold-king-mine-response>

sampled private domestic drinking water wells from along the rivers in both Colorado and New Mexico. Drinking water well data was provided directly to the well owner. Results consistent with this sampling data were utilized by jurisdictions along the Animas and San Juan Rivers to lift water use restrictions for irrigation, livestock watering, and recreational purposes.

The EPA has expended more than \$22 million on response efforts, including \$1.1 million to provide more than 1 million gallons of agricultural and livestock water and nearly 9,000 bales of hay for Navajo communities along the San Juan River. The EPA has also provided more than \$157,000 in reimbursement to Navajo agencies for their response costs. We are currently reviewing additional costs incurred by the Navajo government.

The first round of sampling conducted last fall under EPA's Post-Gold King Mine Conceptual Monitoring Plan for the San Juan River did not show exceedances of Navajo Nation agricultural water quality standards, or of EPA recreational screening levels. The EPA has shared, and will continue to share its data and analysis with the Navajo Nation, and is fully open to reviewing and discussing any data or analysis generated by their government or other investigators. The agency has allocated \$465,000 to the Navajo Nation to monitor water quality conditions in the river, this is in addition to the more than \$1 million of Clean Water Act based funding provided to the Navajo Nation in October 2015 to perform water quality monitoring, support water quality compliance efforts, and fund sediment reduction projects.

Public Information – Water Quality Monitoring Efforts

One of our foremost priorities during the response has been to collect and publicly release information to help ensure the health and safety of affected communities. Since the August

release, numerous status reports, water and sediment sampling results, and documents have been posted on the agency's Gold King Mine website.

On March 24 of this year, the EPA released its final monitoring plan for the Animas and San Juan rivers. The final Conceptual Monitoring Plan is posted on EPA's website. The agency also posted on its Gold King Mine website another round of results of surface water and sediment sampling collected as part of its effort to gather scientific data to evaluate ongoing river conditions.

The Conceptual Monitoring Plan will guide EPA's work to identify changes in surface water and sediment quality. It is designed to gather scientific data to consistently evaluate river conditions over time and compare post-release data against pre-release or historic trends. The EPA has also been working with tribal, state, and other partners to develop a consistent monitoring approach to gather scientific data to assess conditions in the Animas and San Juan rivers. The EPA has made \$2 million in initial funding available to launch these additional tribal and state monitoring efforts.

Under the Conceptual Monitoring Plan, the EPA is examining water quality, sediment quality, biological community and fish tissue at 30 locations under a variety of flow and seasonal river conditions. The sampling locations are located within Colorado, Southern Ute Indian Reservation, New Mexico, Ute Mountain Ute Reservation, the Navajo Nation and Utah, spanning Cement Creek, the Animas and San Juan rivers, and the upper section of the San Juan arm of Lake Powell.

When fully implemented, the monitoring plan will provide the EPA, state, local governments and tribes a robust set of scientific data about water quality in the rivers and will help to explain the fluctuations over time and location based on seasonal factors that influence river flow, such as precipitation and snow melt. Initial monitoring data collected during the fall are below risk-based recreational screening levels and consistent with pre-event data which are limited in many areas outside the upper Animas. The spring sampling event is currently taking place, and will be followed by additional sampling planned in June and in the fall of 2016. The EPA will also coordinate with local jurisdictions and tribes to sample the rivers during heavy rain events in the summer.

During our ongoing engagement with tribes, states, and local communities, the EPA has received requests for real-time water monitoring, particularly related to expected increased spring flow rates. The EPA has agreed to contribute additional funds, that in combination with prior funds, will enable states and tribes to fund real-time monitoring in the upper Animas area above Silverton to assess contributions from Cement Creek, Mineral Creek and the upper Animas, as well as above Durango and below the confluence of Mineral Creek and the Animas River. This real-time monitoring would also serve to ensure successful coordination and implementation of notification and preparedness activities for communities downstream.

Conclusion

The EPA's core mission is protecting human health and the environment. We will continue our longstanding commitment to working with tribes to accomplish our shared mission. We will continue to work with and support the tribes, states, and local communities throughout the Four Corners Region who rely on the Animas and San Juan Rivers for their drinking water, irrigation

water and recreation. We know how important the rivers are to them, and the EPA is committed to continue to take action to help prevent future releases to protect our vital water resources.