

**Ryan Flynn**  
**Secretary of Environment and Natural Resource Trustee for the State of New Mexico**  
**Committee on Natural Resources and Committee on Government Oversight and Reform's**  
**Joint Hearing on "EPA's Animas Spill"**  
**September 17, 2015**

**Statement**

Chairman Bishop, Chairman Chaffetz, Ranking Member Cummings, Ranking Member Grijalva and other members of the Committees, I appreciate the opportunity to testify about Environmental Protection Agency's Animas Spill ("Spill"). I was on the ground within 18 hours of receiving notice of the Spill and did not leave the area until the Animas River was fully re-opened in New Mexico on August 15, 2015. I served as the leader of Governor Martinez's Emergency Response Team and my testimony is based on my personal experience and observation.

The Spill occurred at approximately 10:40 a.m. on August 5, 2015, when contractors working under the direction of the Environmental Protection Agency ("EPA") breached a barrier serving to contain wastewater within the abandoned mine. The breach caused millions of gallons of wastewater containing dangerous levels of sediment and metals, such as lead, arsenic and cadmium, to surge into Cement Creek before ultimately being deposited in the Animas River, which flows more slowly in the piedmont of Northern New Mexico.

The State of New Mexico (hereafter, "State" or "New Mexico") was first notified about the Spill at approximately 9:30 a.m. on August 6, 2015, when officials with the Southern Ute Indian Tribe contacted my staff. EPA did not contact any officials from New Mexico until 11:30.a.m. on August 6, 2015, more than 24 hours after the Spill occurred.

Like other downstream communities, New Mexico was severely impacted by the Spill. San Juan County, the area in the New Mexico most directly impacted by the Spill, is home to approximately 124,000 people. Within it is the City of Farmington, with approximately 45,000 people, and the City of Aztec, with approximately 6,500 people. Drinking water systems pulling from the Animas River serve both Farmington and Aztec. Additionally, there are 5 other small communities in the area who rely on the Animas River to meet their drinking water needs. The rest of the rural residents rely on domestic wells.

Immediately following notification of the Spill, New Mexico took a series of aggressive actions to protect human health, notify local residents and downstream communities about the situation, preserve agricultural resources, and collect contamination data.

Within 12 hours of our notification of the Spill, New Mexico accomplished the following actions:

- Established a multi-agency Emergency Response Team named by Governor Susana Martinez, led by the Environment Department and comprised of officials from the Environment Department, Health Department, Office of the State Engineer, Department of Agriculture, Department of Game and Fish, and Department of Homeland Security;
- Contacted all 7 of the public water systems diverting water from the Animas River and advised them to shut off their intakes until additional information was gathered;
- Contacted officials from San Juan County, the Navajo Nation, the State of Arizona and the State of Utah to inform them of the situation and begin coordination of public communications;
- Contacted local farmers and ranchers, and advised them to close irrigation ditches and to stop irrigating crops and watering livestock with water from the Animas River; and,
- Deployed a team of scientists to San Juan County who immediately began taking background samples of water at 3 different locations on the Animas River.

Within 36 hours of receiving notice of the Spill, New Mexico accomplished the following additional actions:

- Provided informational briefings for the public in Farmington, N.M., and Aztec, N.M., regarding the situation;
- In conjunction with officials from San Juan County, closed the Animas River for recreational use;
- In conjunction with officials from San Juan County, the City of Farmington and the City of Aztec, set up locations at fire stations and community centers throughout the area where residents could obtain free drinking water and take showers;
- Issued health, hygiene, recreational, and livestock precautions for the communities;
- Issued an emergency order authorizing up to \$500,000 in emergency funds to conduct activities to respond to the spill;
- Deployed two additional teams of scientists from the Environment Department to continue sampling surface water in the Animas River and started sampling private, domestic wells within the floodplain of the Animas River;
- Deployed teams from the Office of State Engineer and the Department of Agriculture to work with farmers and ranchers to identify alternatives for watering livestock; and,
- Deployed a team from the Department of Game and Fish to monitor potential impacts on wildlife caused by the spill.

By Saturday, August 8, 2015, when the spill had fully arrived in our communities, turning the Animas River from its usual dark brown to a bright mustard color, New Mexico had secured all of the public water systems and private domestic wells, worked with local farmers and ranchers to secure all of the local agricultural resources, established direct lines of communication with downstream communities, established teams to work with local farmers and ranchers to provide water for livestock, set up stations across the area where residents could

receive free drinking water and take showers, deployed various teams of scientists to monitor water quality and wildlife in the Animas River, and authorized emergency funding to pay for our response activities. We also had a website up and running with real time information for the public regarding the spill, and we had organized a series of public meetings to educate and defuse fear by allowing residents to obtain information and ask questions of the on-the-ground experts present.

The Spill had a devastating impact on our local communities. Thousands of residents were without water. The bright, mustard color of the Animas River inspired fear and anger in the local communities. Without water at home and with the mustard colored Animas River flowing directly through the center of Farmington and Aztec, people were literally forced to confront the situation every place they went.

Over the next few days, New Mexico's Emergency Response Team continued to deploy resources into the area in order to mitigate the impacts of the Spill. On Saturday, August 8, 2015, when EPA informed me they were having trouble getting the contracts in place to be able to deploy their mobile lab to the area, we went ahead set up our own makeshift mobile lab at the San Juan County Fairgrounds. In a little over 24 hours, the State mobilized all of the necessary platform and technical equipment as well as a dozen environmental scientists to the area and began setting up our own mobile lab so we could begin providing free tests for local residents the next day. The mobile lab was supposed to begin testing at noon on Monday, August 10, 2015. When I arrived at the mobile lab at 7 a.m. to help staff finish setting up, a large line had already formed as frightened residents waited to have their well water tested. We ended up opening the mobile lab by 8:00 a.m. that morning and essentially ignored the hours we originally posted for the rest of the week, remaining open and taking samples late into the night for the first few days. By the end of the week, we had tested 724 domestic well samples at the mobile lab and personally contacted every single person to discuss their test results.

In addition, our scientists in the field took over 240 surface water samples over the course of the week. The men and women staffing the mobile lab and working in the field literally worked around the clock in cramped, hot conditions and never complained. Instead, they kept asking to do more or to stay longer. This sort of dedication and kindness was not uncommon during this emergency situation as New Mexicans from all over of the state rallied to help San Juan County.

New Mexico re-opened the Animas River on August 14, 2015, about 9 days after the Spill occurred. While my testimony focused on the immediate actions taken by our emergency response team in the hours after being notified of the Spill, the closely coordinated effort described above continued throughout the 9-day ordeal. In particular, I must commend the efforts of San Juan County, the City of Farmington and the City of Aztec, who all played a huge role in the State's emergency response effort and seamlessly integrated their staff members into our team. Local assistance, leadership and expertise were essential to this effort. And at no point during the 9-day emergency response effort did I ever witness any territorialism or in-fighting

among the various state and local officials working on this effort. To the contrary, everyone understood the gravity of the situation and simply focused on performing their tasks at a high level.

While New Mexico's response was swift and well-coordinated, EPA's response was slow and disorganized. For example, EPA waited until Sunday, August 9, 2015, 4 days after the breach at the Gold King Mine and a day after the Spill had already arrived in New Mexico, to escalate the event to a Regional Emergency Operation. EPA also struggled to mobilize staff and resources to the area. For example, on August 18, 2015, almost two weeks after the Spill, EPA requested my agency to supply 10 staff members to assist them with field work they wanted to begin performing at 8 a.m. the next day. At 4 a.m. the next morning, 12 staff members from my agency departed from Santa Fe to meet EPA in Farmington. When they arrived in Farmington 4 hours later, EPA was totally unprepared and stated "it was difficult for them to be ready in such short notice."<sup>1</sup>

EPA's communication with New Mexico was also poor and at times counterproductive. Some of EPA's communication problems have been well-publicized, such as the fact that they did not contact anyone from the New Mexico for more than 24 hours after the Spill. EPA's efforts to initially downplay the Spill have also been well-documented and EPA was ultimately forced to admit that their initial comments were "not appropriate," "not fully accurate" and "cavalier."<sup>2</sup> However, a number of internal communication battles occurred behind the scenes. These internal struggles made it more difficult for my team to make important decisions and move forward with our emergency response efforts.

For example, EPA repeatedly refused to share data with New Mexico for weeks after the Spill. Some of the data EPA refused to provide included results from surface water samples taken upstream of New Mexico. And when they did share such information, it was summary level data, cherry-picked and presented to create the appearance that Safe Drinking Water Act Maximum Contaminant Levels were not crossed, post event, specifically for lead. EPA also refused to share its sediment sampling plan with New Mexico for over two weeks.

For the first two weeks after the Spill occurred, EPA blamed these communication breakdowns on poor coordination among the various EPA Regions involved in the response effort.<sup>3</sup> EPA's Region 6 staff members repeatedly blamed EPA's Region 8 staff members for failing to provide information. Later, the finger-pointing gave way to new excuses, such as the difficulties posed by the size of the documents or the time constraints associated with EPA's data validation policy. The most remarkable excuse for refusing to share information came on August

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<sup>1</sup> King, Jack. "Re: Farmington EPA water sampling." Message to Ryan Flynn. 19 Aug. 2015. E-mail.

<sup>2</sup> Finley, Bruce. "Animas River spill 'huge tragedy,' EPA officials tell Durango gathering." *The Denver Post* 7 Aug. 2015.

<sup>3</sup> There were 3 EPA Regional Offices involved in the Spill response effort: EPA Region 8 covers Colorado, EPA Region 6 covers New Mexico and EPA Region 9 covers the Navajo Nation.

21, 2015, 16 days after the Spill, when an EPA staffer informed my staff that she was not authorized to provide sediment sampling plans, which we had been requesting for over two weeks, because the plans contained “business confidential information.”<sup>4</sup> These communication breakdowns hindered New Mexico’s efforts to understand the nature and extent of the contamination associated with the Spill and made it difficult to assess the adequacy of certain critical response actions undertaken by EPA, such as sediment sampling.

While the immediate public health risks posed by the Spill have passed, it is too early to understand or even begin to quantify the long term impacts of the Spill. Dangerously high concentrations of arsenic, cadmium, lead and other heavy metals were released in the Spill and settled out as the wastewater traveled downstream, layering the bottom of the Animas River with contaminants. Every time there is a high flow, such as after a storm event or snow melt, the contamination will be mobilized and move downstream.

Under the direction of Governor Martinez, New Mexico has formed a Long Term Impact Team to monitor the Spill’s impacts on human health and the environment. The work of this Long Term Impact Team will be critical to understanding the full extent of the damage caused by the Spill. We expect EPA to fund the work of the Long Term Impact Team.

Thank you for the opportunity to serve as a witness at this important joint hearing.

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<sup>4</sup> Smith, Monica. “Re: sediment sampling – need your thoughts.” Message to Trais Kliphuis. 21 Aug. 2015. E-mail.