

STATE OF COLORADO

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D 2015-007

EXECUTIVE ORDER

Declaring a Disaster Emergency Due to the Gold King Mine Incident and Resulting Impacts to Downstream Waters

Pursuant to the authority vested in the Governor of the State of Colorado and, in particular, pursuant to relevant portions of C.R.S. § 28-3-104 and relevant portions of the Colorado Disaster Emergency Act, C.R.S. § 24-33.5-701, *et seq.*, I, John W. Hickenlooper, Governor of the State of Colorado, hereby issue this Executive Order declaring a state disaster emergency due to the release of water containing potentially dangerous contaminants from the Gold King Mine, enabling state agencies to coordinate response efforts and making resources available for response activities.

I. Background and Purpose

The Governor is responsible for meeting the dangers to the state and people presented by disasters. The Colorado Disaster Emergency Act defines a disaster as “the occurrence or imminent threat of widespread or severe damages, injury or loss of life or property resulting from any natural cause or cause of human origin, including but not limited to . . . hazardous substance incident, . . . or other water contamination requiring emergency action to avert danger or damage . . .” C.R.S. § 24-33.5-703(3).

On August 5, 2015, workers employed by the United States Environmental Protection Agency (EPA) triggered a breach at the Gold King Mine outside Silverton in San Juan County. The mine was under the control of the EPA and its contractor. The breach released a plume of over three million gallons of water containing potentially harmful contaminants into Cement Creek, which flowed into the Animas River and continued downstream. This plume contains many heavy metals and other by-products that may pose a risk to the affected downstream waters and local water sources including private wells, public wells, and river intakes.

Elements contained in the plume turned the water a striking mustard-yellow, and graphic images of the discolored water have contributed to community concern about river impacts and water quality. The Southern Ute Tribe, the counties of La Plata and San Juan, the City of Durango, and the Town of Silverton all declared disaster emergencies, highlighting the gravity and severity of impacts to Cement Creek, the Animas River, the San Juan River, and downstream waters. Local authorities have closed the affected rivers to all uses, causing significant local economic impacts. The extreme flow rate of the plume caused significant damage to the Cement Creek stream bed resulting in sedimentation uptake and downstream deposits in both Cement Creek and the Animas River. All of these impacts require emergency action by the Southern Ute Tribe, the State of Colorado, and local officials to avert loss of life, injury, danger or damage, including but not limited to unknown economic, financial and natural resources impacts.

Further, the costs associated with responding to and recovering from the Gold King Mine Incident, including impacts to downstream waters, which may be incurred in 2015 could exceed the financial capabilities of the Southern Ute Indian Tribe, local jurisdictions, and the State of Colorado, especially in light of the magnitude and cost of other disasters in the State of Colorado since 2012.

Tribal, State, and local officials are on scene working on a coordinated response with EPA officials.

II. Declaration and Directives

- A. The breach at the Gold King Mine, the downstream contamination and associated impacts constitute a disaster emergency under C.R.S. § 24-33.5-701, *et. seq.* My verbal order of August 9, 2015, declaring a disaster emergency is hereby memorialized by this Executive Order and shall have the full force and effect of law as if it were contained within this Executive Order.
- B. The State Emergency Operations Plan is hereby activated. The Colorado Department of Public Safety, Division of Homeland Security and Emergency Management shall implement a Multi-Agency Coordination Group and unified Incident Management System with the Colorado Department of Public Health and Environment, the Colorado Department of Natural Resources, and local and federal incident managers. All State departments and agencies shall take whatever actions may be required and requested by the Director or Acting Director of the Office of Emergency Management, including provision of appropriate staff and equipment as necessary.

- C. Pursuant to C.R.S. § 24-33.5-706(4), it is ordered that \$500,000 be made available from the Disaster Emergency Fund for response activities related to this incident since its inception. These funds exist in the Disaster Emergency Fund from unexpended funds encumbered for other disaster events in the last three years. The Director of the Office of Emergency Management is hereby authorized and directed to allocate the funding to the appropriate government agencies and non-profit organizations and execute awards, purchase orders or other mechanisms to effect the allocation of the funds. These funds shall remain available for this purpose for thirty-six months from August 9, 2015, and any unexpended funds shall remain in the Disaster Emergency Fund.
- D. The Division of Homeland Security and Emergency Management is authorized and directed to coordinate application to the federal government for funds available for reimbursement and to coordinate application for any other funds available related to this disaster emergency. In addition, the Director of the Colorado Office of Emergency Management is hereby authorized and directed to coordinate application for any federal assistance or low-interest loans that may be available to assist the affected communities and residents with responding to and recovering from the disaster including but not limited to Stafford Act grants, Small Business Administration loans, Community Development Block Grants, and Community Service Block Grants.
- E. My verbal order of August 9, 2015, pre-authorizing state assets for response efforts including utilization of National Guard assets is hereby memorialized by this Executive Order and shall have the full force and effect of law as if they were contained within this Executive Order.
- F. As provided in C.R.S. § 24-33.5-704(7)(a), the Governor has the authority to suspend any law regulation or rule that interferes with response to this incident. I have already authorized the State Engineer to allow the City of Durango to raise the level of Durango Terminal Reservoir by three feet. In addition, I delegate to the Director of the Office of Emergency Management my authority under this statute for this incident.

III. Duration

This Executive Order shall expire thirty days from August 9, 2015, unless extended further by Executive Order, except that the funds described in paragraph II(C) above shall remain available for the described purposes for thirty-six months from August 9, 2015.

GIVEN under my hand and the
Executive Seal of the State of
Colorado this tenth day of
August, 2015

A handwritten signature in black ink, appearing to read "John W. Hickenlooper". The signature is fluid and cursive, with a large initial "J" and a long, sweeping underline.

John W. Hickenlooper
Governor