



NAVAJO NATION DEPARTMENT OF JUSTICE
OFFICE OF THE ATTORNEY GENERAL

Ethel B. Branch
ATTORNEY GENERAL

FOR IMMEDIATE RELEASE

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**ATTORNEY GENERAL BRANCH ASKS EPA TO ASSURE FAIR SATISFACTION OF
MINE SPILL CLAIMS**

Window Rock – On Friday, Navajo Attorney General Ethel Branch formally requested that the United States Environmental Protection Agency (USEPA) assure full and fair satisfaction of all claims, known and unknown, against the agency following the Gold King Mine spill.

“The USEPA has repeatedly expressed that it accepts responsibility for the spill, and that it will compensate people for the harms caused by the spill. Yet the process that the USEPA has set up to resolve claims appears to jeopardize the rights of the Navajo People,” said Attorney General Branch. “This puts our people in a precarious position because they need immediate recovery from known damages.”

Days after President Russell Begaye announced that the Navajo Nation intended to sue the USEPA, the organization sent staff to encourage the Navajo people to sign forms to expedite the settlement of their claims. The forms contained a significant limiting clause that, despite assurances from the USEPA, could limit or waive the future rights of claimants.

In a letter sent to USEPA General Counsel Avi Garbow on Friday, Attorney General Branch made the following requests of the embattled agency:

An interim claims process be implemented that will allow members of the Navajo Nation to seek ongoing compensation for approximated and realized damages during the two-year limitation period under the Federal Tort Claims Act (FTCA).

Claims asserted by the Navajo people are promptly processed and paid on a rolling basis.

The office of the USEPA General Counsel of the US Department of Justice issue guidance that makes clear that accepting monetary recovery under the FTCA does not constitute a release of claims for damages not yet known to the claimant.

“We need to assure our people, who are concerned for their futures, that their injuries will not go ignored. To that end, the Navajo Nation asks the US Department of Justice to issue guidance confirming that acceptance of a settlement for asserted damages during the two-year period after the spill does not constitute a release of claims under the FTCA for any injuries and damages not yet known,” wrote Attorney General Branch.

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VIA EMAIL: Garbo.Avi@epa.gov

October 02, 2015

Mr. Avi Garbow
General Counsel
United States Environmental Protection Agency
Office of the General Counsel
Mail Code: 2310A
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Dear Mr. Garbow:

I write on behalf of the Navajo Nation and its people to assure full and fair satisfaction of all claims against the USEPA related to the Gold King Mine spill—both known and yet unknown. In order to address the magnitude of the harms experienced by the Navajo from the unprecedented Gold King Mine spill, I am writing to request that:

- 1.) an interim claims process be implemented that will allow members of the Navajo Nation to seek ongoing compensation for approximated and realized damages during the two-year limitations period under the Federal Tort Claims Act (“FTCA”);
- 2.) claims asserted by the Navajo people are promptly processed and paid on a rolling basis; and
- 3.) you or the U.S. Department of Justice issue guidance that makes clear that accepting monetary recovery under the FTCA does not constitute a release of claims for damages not yet known to the claimant.

On August 5, 2015, the USEPA and other responsible parties caused a massive spill of contaminated water from the Gold King Mine into the Animas and San Juan rivers. This disaster has already had a devastating impact on the Navajo Nation because the San Juan River is so fundamental to our way of life. Many of our farmers and ranchers lost their sole source of income. Crops were destroyed and livestock put at risk. But the extent of the damage is largely unknown at this point, and it is expected that the impacts from this incident—economic, health, cultural, and spiritual impacts—will be felt on the Nation for years to come.

The USEPA has repeatedly expressed that it accepts responsibility for the spill, and that it will compensate people for the harms caused by the spill. Yet the process that the USEPA has set up to resolve claims appears to jeopardize the rights of the Nation’s people. Notably, just days after President Begaye announced that the Nation intended to sue the USEPA, the USEPA

mobilized staff at the Navajo Nation to hand out Standard Form 95 and encourage people to fill out the forms to expedite settlement of their claims pursuant to the FTCA. These forms contain a significant limiting clause, which immediately precedes the signature block, as follows:

I CERTIFY THAT THE AMOUNT OF CLAIM COVERS ONLY
DAMAGES AND INJURIES CAUSED BY THE INCIDENT
ABOVE AND ACCEPT SAID AMOUNT IN FULL
SATISFACTION AND FINAL SETTLEMENT OF THIS
CLAIM.

The USEPA claims on its website that this language does not limit or waive future rights of the claimants.

This puts our people in a precarious position because they need immediate recovery for known damages. Individuals have lost their sources of income and are struggling to provide for their families. Thus, many are eager to make their claims to secure immediate funds to address pressing financial stress. However, they do not want to assert claims if they risk forgoing future, more comprehensive recovery.

To address this problem, we believe that an interim claims process must be set up that will allow for ongoing claims and quick remuneration as approximate damages are realized, but which will not prevent future claims as further damages become known and quantified. I understand from Sylvia Quast, Regional Counsel for the Pacific Southwest at the USEPA, that this sort of ongoing recovery process has been implemented before.

The Navajo Nation also needs assurance that the USEPA, having accepted responsibility for the spill, will compensate the Nation and its people for long-term, future damages. Indeed, the long-term health and economic impacts of the spill, among other impacts, are not yet known and not yet quantifiable. We believe under the law that the two-year limitations period on these unknown claims would not be triggered until the actual injury is discovered. But we need to assure our people, who are concerned for their futures, that their injuries will not go ignored. To that end, the Navajo Nation asks the USDOJ to issue guidance confirming that acceptance of a settlement for asserted damages during the two-year period after the spill does not constitute a release of claims under the FTCA for any injuries and damages not yet known.

To help facilitate the interim claims process, I enclose a proposed claim form based on Standard Form 95 that has been approved by the Navajo Nation Department of Justice to clarify and ensure that the Nation's people will not waive their rights to make future claims. We look forward to working together to assure complete and fair recovery to the Navajo Nation and its people.

Very truly yours,



Ethel Branch, Attorney General

Enclosure