

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

In re: Gold King Mine Release in San Juan
County, Colorado on August 5, 2015

No. 1:18-md-02824-WJ

This Document Relates to:

No. 16-cv-931-WJ/LF

No. 18-cv-319-WJ

No. 1:17-cv-00710

**DEFENDANT GOLD KING MINES CORPORATION, INC. REPLY BRIEF IN
SUPPORT OF MOTION TO DISMISS**

I. INTRODUCTION:

Neither GKMC representatives or agents were involved in the activities which caused the August 5, 2015 Gold King Blowout. The Sovereign Plaintiffs have stated, “Defendant United States Environmental Protection Agency (the ‘EPA’) and its contractors triggered the catastrophic Gold King Mine spill on August 5, 2015.” Document 61 at 1. According to the Plaintiffs, “There is no reasonable dispute that the Contractor Defendants, along with the Environmental Protection Agency (‘EPA’), caused the blowout.” Doc 58 at 1. The Sovereign Plaintiffs concede that none of the Mining Defendants were on site on August 5, 2015 and none had anything to do with EPA or its contractors’ investigation, planning, or activities. Finally, GKMC activities on site ended a decade before August 15, 2015, which is so far removed from what transpired that one cannot help but wonder if we are all responsible for the actions of others on previously owned property until or beyond death.

II. ARGUMENT

GKMC adopts the responses set forth in the reply brief submitted by the Mining Defendants. Doc 74.

III. CONCLUSION:

GKMC respectfully requests the claims against them be dismissed with prejudice for the following reasons:

- A. This Court lacks personal jurisdiction over GKMC.
- B. All claims are preempted by the CWA.
- C. The State of Colorado is a required party to this suit and Colorado cannot be joined as a party.
- D. CERCLA Section 113(h) bars any interference with a CERCLA response action.
- E. The Sovereign Plaintiffs Fail to State a Claim against GKMC for liability as CERCLA Owners, Operators or Arrangers.
- F. The allegations in the Amended Complaints, even if taken as true, do not allow for an award of punitive damages.

Finally, GKMC requests the Court consider the Notice filed pursuant to Rule 25(a) in this matter on April 25, 2018. Stephen C. Fearn was the sole shareholder of GKMC. Doc. 4. F.R.C.P. 25(a)(1) reads “a motion for substitution may be made by any party or by the decedent’s successor or representative. If the motion is not made within 90 days after service of a statement noting the death, the action by or against the decedent must be dismissed.” To date, no Plaintiff has filed a motion for substitution. In regards to a corporation, F.R.C.P 25(c) Transfer of Interest states “If an interest is transferred, the action may be continued by or against the original party unless the court, on motion, orders the transferee to be substituted in the action or joined with the

original party.” Finally, should the Court allow any claim against GKMC continue, a transferee needs to be identified in the matter.

DATED this 21st day of September, 2018.

Respectfully submitted

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CERTIFICATE OF SERVICE

I hereby certify that on the 21st day of September, 2018, the foregoing was filed via the U.S. District Court of New Mexico's CM/ECF electronic filing system and a copy thereof was served via the CM/ECF upon all counsel of record.

/s/ Anthony D. Edwards
Anthony D. Edwards