

To: Millan Hupp; Ex. 6 - Personal Privacy
From: Jackson, Ryan
Sent: Wed 5/10/2017 11:30:09 PM
Subject: FW: Gold King Mine update for the Administrator's travel
Briefing Paper-Gold King Mine-051017.docx

Please place the attached in Pruitt's reading file

From: Brown, Byron
Sent: Wednesday, May 10, 2017 7:02 PM
To: Jackson, Ryan <jackson.ryan@epa.gov>
Subject: RE: Gold King Mine update for the Administrator's travel

I reorganized the briefing paper a little bit and added some information about our internal staff level review of the facts and legal authorities, as well as more details about the appropriations report language and the recent letter from the New Mexico congressional delegation.

For your information -- Since the meeting with the AG, I have been having OGC do a top-to-bottom examination of the record and all relevant legal authorities. Because the previous administration denied the claims based solely on grounds that the CERCLA response action was a discretionary function, EPA did not look at the full factual record or other parts of CERCLA, or other laws, regulations, or internal procedures to see if there were other mandatory duties that we did not follow that could support a tort claim. Most of the new analysis have been dead ends, but OGC is still looking into whether EPA followed notification requirements under CERCLA and EPCRA and if the failure to provide proper notice could be the cause of any damage claims. These may also lead nowhere, but no one had looked into this line of argument previously.

Also, I assume you know about the letter from the New Mexico Congressional delegation requesting a meeting with the Administrator, asking what our plan is to review the tort claim denials, and suggesting they would be open to legislation to set up a special compensation fund. OGC already has drafted legislation we could use and had provided tech assistance to the NM delegation on legislation as recently as January. I spoke to DOJ Civil Division management today, and they are considering whether they would support legislation from the Administration. May be an easier lift to get legislation done than to get DOJ buy in on alternative legal theory to support tort claims.