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NCLA Files Suit Against U.S. for Taking of Private Property After EPA’s Gold King Mine Catastrophe

Todd Hennis v. The United States of America



Video: Blowout of the Gold King Mine near Silverton, CO

Washington, DC (August 3, 2021) – On the morning of August 5, 2015, the U.S. Environmental Protection Agency (EPA) dug away tons of rock and debris that blocked the portal of the Gold King Mine near Silverton, Colorado. By breaching the closed portal of the mine, without taking proper precautions or obtaining the owner’s permission, EPA triggered a massive blowout that released over 3,000,000 gallons of acid mine drainage and 880,000 pounds of heavy metals onto the private property below and into the waterways downstream (including the Animas River). It took the form of a bright, yellow-orange toxic sludge, and the pollution lingers to this day.

Easily one of the largest environmental catastrophes EPA ever created, the incident became known as “the yellow river seen round the world.” Today, the New Civil Liberties Alliance, a nonpartisan, nonprofit civil rights group, filed a [lawsuit](#), *Todd Hennis v. The United States of America*, in the U.S. Court of Federal Claims, challenging the government’s physical invasion, occupancy, use, taking, and contamination of Mr. Hennis’s property.

In conducting its catastrophic failure at the Gold King Mine, EPA, the very agency entrusted to protect the environment, violated its own directives, protocols, and procedures, while also ignoring well-understood risks of a flooded mine under pressure. For essentially every decision they made that day, the EPA employees erred. Shortly after EPA caused the Gold King Mine blowout, NCLA’s client, Todd Hennis, verbally authorized the government to temporarily use a portion of his property for an emergency staging area for equipment and supplies, recognizing that time was of the essence to mitigate the environmental disaster of EPA’s own making.

Rather than thank Mr. Hennis for his quick cooperation and compensate him for the use of his land, EPA took advantage of him. Without so much as a phone call or email to Mr. Hennis, EPA constructed a \$2.3 million dollar water treatment facility on a concrete slab on Hennis’s property. Worse yet, EPA has repeatedly refused—across three presidential administrations—to pay him anything for the privilege. Mr. Hennis never granted EPA permission to construct a water treatment facility on his property, nor did he authorize EPA to occupy, use, and pollute his property indefinitely. Yet that is exactly what the agency has done.

Since November 2015, EPA has continuously treated the discharge of acid mine drainage from the Gold King Mine at its water treatment plant, thereby taking Mr. Hennis's property without just compensation. EPA's water treatment operations also involve the storage of mine waste, solids, and other contaminants on Mr. Hennis's property, again without paying to do so. The government has thus seized his real property in violation of his most basic Fifth Amendment constitutional rights.

Adding insult to injury, the government has threatened Mr. Hennis with soul-crushing civil penalties should he attempt to exercise his constitutional rights to exclude EPA from his property. When Mr. Hennis refused to sign an eight-year "Consent for Access to Property" that would have paid him nothing, EPA issued a civil enforcement action against him. The agency has threatened that he will be subject to penalties of up to \$59,017 per day for any period of time during which EPA believes he is not complying with its demands.

In short, the federal government invaded Mr. Hennis's property nearly six years ago in August 2015 and it has been squatting there ever since. EPA has made a bargain-basement offer for future rental payments, ignoring the actual value of the property, and refusing to pay for the property's use for the last six years altogether.

The Fifth Amendment to the U.S. Constitution provides that "nor shall any person ... be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation." Where the government requires an owner to suffer a permanent physical invasion of his property—however minor—a takings under the Fifth Amendment has occurred, and the government must provide just compensation. Mr. Hennis is entitled to be fully and completely compensated for the government's invasion, occupancy, use, taking, and contamination of his property by an inept federal agency.

NCLA released the following statement:

"It is simply unfathomable to believe that EPA could breach Mr. Hennis's mine, unleash an environmental hell on him and everyone downstream, ensure that no public employee is held accountable, construct a water treatment facility on his property without notice or permission, and refuse to compensate him as required by the Fifth Amendment. This case is about EPA's horrific environmental negligence and the civil liberties abuse that it has inflicted upon Mr. Hennis and his property while trying to clean up their mess. Americans deserve better."

—**Harriet Hageman, Senior Litigation Counsel, NCLA**

For more information visit the case page [here](#).

ABOUT NCLA

[NCLA](#) is a nonpartisan, nonprofit civil rights group founded by prominent legal scholar [Philip Hamburger](#) to protect constitutional freedoms from violations by the Administrative State. NCLA's public-interest litigation and other pro bono advocacy strive to tame the unlawful power of state and federal agencies and to foster a new civil liberties movement that will help restore Americans' fundamental rights.

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