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## **Colorado Landowner's Takings Claim Against EPA Advances After Judge Denies Motion to Dismiss**

*Todd Hennis v. The United States of America*

**Washington, DC (August 30, 2022)** – Today, Judge Armando Bonilla of the U.S. Court of Federal Claims issued a [decision](#) from the bench in favor of NCLA's client and denying a motion to dismiss in *Todd Hennis v. The United States of America*. Mr. Hennis filed a lawsuit against the United States for the physical taking of his property without just compensation in violation of the Fifth Amendment to the United States Constitution. The Environmental Protection Agency (EPA) caused an environmental catastrophe that preceded and culminated in the invasion, occupation, taking, and confiscation of Mr. Hennis's downstream property, an action for which he has been seeking redress ever since. This ruling means the U.S. Court of Federal Claims is allowing Mr. Hennis's lawsuit to go forward to discovery, and ultimately to trial.

On August 5, 2015, EPA destroyed the portal to the Gold King Mine, located in Silverton, Colorado. Upon doing so, the agency released a toxic sludge of over 3,000,000 gallons of acid mine drainage and 880,000 pounds of heavy metals into the Animas River watershed. EPA was entirely unprepared to prevent or control the contaminated flows that gushed out once it breached the Gold King Mine portal. EPA eventually mobilized supplies and equipment onto Mr. Hennis's downstream property to address the immediate after-effects of its actions. Ignoring Mr. Hennis's explicit instructions and the scope of the access that was granted, EPA constructed a multimillion-dollar water treatment facility on his land. The U.S. Government has never paid Mr. Hennis any compensation for either flooding or appropriating his property for public use. It has instead squatted on his lands for seven years and counting.

Mr. Hennis did not voluntarily give EPA permission to construct and operate a water treatment facility on his property. EPA built the facility without his knowledge or consent, and it later coerced him into allowing access to his lands by threatening him with extortionate fines (over \$59,000 *per day*) should he exercise his property rights. Mr. Hennis eventually refused to sign an access document, so EPA is currently occupying his property by operation of the agency's own administrative order—and threatening him with fines if he challenges it.

The United States has incurred well over \$44,500,000 in past response costs related to the environmental disaster that it created when it destroyed the Gold King Mine portal. It has estimated that it will incur an additional \$20.7 million in future response costs at this site. None of those costs include compensating Mr. Hennis for the physical taking of his property. So long as EPA operates the water treatment facility, stores the waste from such operations, conducts other investigative and remedial activities, and otherwise accesses and occupies Mr. Hennis's property, he cannot use or take any substantial steps toward development of it. By denying the U.S. Government's motion to dismiss, the U.S. Court of Federal Claims has finally given Mr. Hennis his day in court to challenge the EPA's violation of his constitutional rights.

**NCLA released the following statements:**

“Today, the Court of Federal Claims recognized what we have long known. EPA must answer for the bad decisions it has made and the unlawful actions it has taken since 2015. We are pleased that Mr. Hennis’s case is moving ahead, and we look forward to presenting the facts about what the EPA did to him—and took from him.”

— **Kara Rollins, Litigation Counsel, NCLA**

“Mr. Hennis has been waiting over seven years for EPA to be held accountable for not only the environmental disaster it created, but its decision to take his property without paying for it. With today’s decision, Mr. Hennis will finally have an opportunity to pursue his claims against the U.S. and vindicate his constitutional rights.”

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

“While Mr. Hennis is eager and willing to help rectify EPA's tragic mistake, he must be compensated for the cost of doing so.”

— **Greg Dolin, Senior Litigation Counsel, NCLA**

**For more information visit the case page [here](#) and watch the case video [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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