

117TH CONGRESS  
2D SESSION

**S.** \_\_\_\_\_

To provide compensation for victims of the fire initiated as a prescribed burn by the Forest Service in the Santa Fe National Forest in San Miguel County, New Mexico.

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IN THE SENATE OF THE UNITED STATES

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Mr. LUJÁN introduced the following bill; which was read twice and referred to the Committee on \_\_\_\_\_

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**A BILL**

To provide compensation for victims of the fire initiated as a prescribed burn by the Forest Service in the Santa Fe National Forest in San Miguel County, New Mexico.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Hermit’s Peak/Calf  
5       Canyon Fire Assistance Act”.

6       **SEC. 2. FINDINGS AND PURPOSES.**

7       (a) FINDINGS.—Congress finds that—

8               (1) on April 6, 2022, the Forest Service initi-  
9       ated the Las Dispensas-Gallinas prescribed burn on

1 Federal land in the Santa Fe National Forest in  
2 San Miguel County, New Mexico, when erratic winds  
3 were prevalent in the area that was also suffering  
4 from severe drought after many years of insufficient  
5 precipitation;

6 (2) on April 6, 2022, the prescribed burn,  
7 which became known as the “Hermit’s Peak Fire”,  
8 exceeded the containment capabilities of the Forest  
9 Service, was declared a wildfire, and spread to other  
10 Federal and non-Federal land;

11 (3) on April 19, 2022, the Calf Canyon Fire,  
12 also in San Miguel County, New Mexico, began  
13 burning on Federal land and was later identified as  
14 the result of a pile burn in January 2022 that re-  
15 mained dormant under the surface before re-  
16 emerging;

17 (4) on April 27, 2022, the Hermit’s Peak Fire  
18 and the Calf Canyon Fire merged, and both fires  
19 were reported as the Hermit’s Peak Fire or the Her-  
20 mit’s Peak/Calf Canyon Fire, which shall be referred  
21 to hereafter as the Hermit’s Peak/Calf Canyon Fire;

22 (5) by May 2, 2022, the fire had grown in size  
23 and caused evacuations in multiple villages and com-  
24 munities in San Miguel County and Mora County,  
25 including in the San Miguel county jail, the State’s

1 psychiatric hospital, the United World College, and  
2 New Mexico Highlands University;

3 (6) on May 4, 2022, the President issued a  
4 major disaster declaration for the counties of Colfax,  
5 Mora, and San Miguel, New Mexico;

6 (7) on May 20, 2022, U.S. Forest Service Chief  
7 Randy Moore ordered a 90-day review of prescribed  
8 burn policies to reduce the risk of wildfires and en-  
9 sure the safety of the communities involved;

10 (8) the U.S. Forest Service has assumed re-  
11 sponsibility for the Hermit’s Peak/Calf Canyon Fire;

12 (9) the fire resulted in the loss of Federal,  
13 State, local, Tribal, and private property; and

14 (10) the United States should compensate the  
15 victims of the Hermit’s Peak/Calf Canyon Fire.

16 (b) PURPOSES.—The purposes of this Act are—

17 (1) to compensate victims of the Hermit’s Peak/  
18 Calf Canyon Fire, for injuries resulting from the  
19 fire; and

20 (2) to provide for the expeditious consideration  
21 and settlement of claims for those injuries.

22 **SEC. 3. DEFINITIONS.**

23 In this Act:

24 (1) ADMINISTRATOR.—The term “Adminis-  
25 trator” means—

1 (A) the Administrator of the Federal  
2 Emergency Management Agency; or

3 (B) if a Manager is appointed under sec-  
4 tion 4(a)(3), the Manager.

5 (2) HERMIT'S PEAK/CALF CANYON FIRE.—The  
6 term “Hermit’s Peak/Calf Canyon Fire” means—

7 (A) the fire resulting from the initiation by  
8 the Forest Service of a prescribed burn in the  
9 Santa Fe National Forest in San Miguel Coun-  
10 ty, New Mexico, on April 6, 2022;

11 (B) the pile burn holdover resulting from  
12 the prescribed burn by the Forest Service,  
13 which reemerged on April 19, 2022; and

14 (C) the merger of the two fires described  
15 in subparagraphs (A) and (B), reported as the  
16 Hermit’s Peak Fire or the Hermit’s Peak Fire/  
17 Calf Canyon Fire.

18 (3) INDIAN TRIBE.—The term “Indian Tribe”  
19 means the recognized governing body of any Indian  
20 or Alaska Native Tribe, band, nation, pueblo, village,  
21 community, component band, or component reserva-  
22 tion individually identified (including parenthetically)  
23 in the list published most recently as of the date of  
24 enactment of this Act pursuant to section 104 of the

1        Federally Recognized Indian Tribe List Act of 1994  
2        (25 U.S.C. 5131).

3            (4) INJURED PERSON.—The term “injured per-  
4        son” means—

5            (A) an individual, regardless of the citizen-  
6        ship or alien status of the individual; or

7            (B) an Indian Tribe, corporation, Tribal  
8        corporation, partnership, company, association,  
9        county, township, city, State, school district, or  
10       other non-Federal entity (including a legal rep-  
11       resentative) that suffered injury resulting from  
12       the Hermit’s Peak/Calf Canyon Fire.

13        (5) INJURY.—The term “injury”—

14            (A) has the same meaning as the term “in-  
15       jury or loss of property, or personal injury or  
16       death” as used in section 1346(b)(1) of title 28,  
17       United States Code; and

18            (B) includes financial harm to a person  
19       from the loss of firewood gathering, fishing,  
20       timbering, grazing, or agricultural activities on  
21       lands damaged by the Hermit’s Peak/Calf Can-  
22       yon Fire, provided that the person engaged in  
23       that conduct at any time during the 3-year pe-  
24       riod preceding the Hermit’s Peak/Calf Canyon  
25       Fire.

(6) **MANAGER.**—The term “Manager” means an Independent Claims Manager appointed under section 4(a)(3).

(7) OFFICE.—The term “Office” means the Office of Hermit’s Peak/Calf Canyon Fire Claims established by section 4(a)(2).

(8) TRIBAL ENTITY.—The term “Tribal entity” includes any Indian Tribe, tribal organization, Indian-controlled organization serving Indians, Native Hawaiian organization, or Alaska Native entity, as such terms are defined or used in section 166 of the Workforce Innovation and Opportunity Act (25 U.S.C. 5304).

14 SEC. 4. COMPENSATION FOR VICTIMS OF HERMIT'S PEAK/  
15 CALF CANYON FIRE.

16 (a) IN GENERAL.—

(1) COMPENSATION.—Each injured person shall be entitled to receive from the United States compensation for injury suffered by the injured person as a result of the Hermit's Peak/Calf Canyon Fire.

21 (2) OFFICE OF HERMIT'S PEAK/CALF CANYON  
22 FIRE CLAIMS.—

(A) IN GENERAL.—There is established within the Federal Emergency Management

1 Agency an Office of Hermit's Peak/Calf Canyon  
2 Fire Claims.

3 (B) PURPOSE.—The Office shall receive,  
4 process, and pay claims in accordance with this  
5 Act.

6 (C) FUNDING.—The Office—

7 (i) shall be funded from funds made  
8 available to the Administrator under this  
9 Act;

10 (ii) may appoint and fix the com-  
11 pensation of such temporary personnel as  
12 may be necessary, without regard to the  
13 provisions of title 5, United States Code,  
14 governing appointments in competitive  
15 service; and

16 (iii) may reimburse other Federal  
17 agencies for claims processing support and  
18 assistance.

19 (3) OPTION TO APPOINT INDEPENDENT CLAIMS  
20 MANAGER.—The Administrator may appoint an  
21 Independent Claims Manager to—

22 (A) head the Office; and

23 (B) assume the duties of the Administrator  
24 under this Act.

1           (4) DETAIL.—Upon the request of the Adminis-  
2           trator, the head of any Federal department or agen-  
3           cy may detail, on a reimbursable basis, any of the  
4           personnel of that department or agency to the Fed-  
5           eral Emergency Management Agency to assist the  
6           Agency in carrying out the duties under this Act.

7           (b) SUBMISSION OF CLAIMS.—Not later than 2 years  
8           after the date on which regulations are first promulgated  
9           under subsection (f), an injured person may submit to the  
10          Administrator a written claim for 1 or more injuries suf-  
11          fered by the injured person in accordance with such re-  
12          quirements as the Administrator determines to be appro-  
13          priate.

14          (c) INVESTIGATION OF CLAIMS.—

15               (1) IN GENERAL.—The Administrator shall, on  
16               behalf of the United States, investigate, consider, as-  
17               certain, adjust, determine, grant, deny, or settle any  
18               claim for money damages asserted under subsection

19               (b).

20               (2) APPLICABILITY OF STATE LAW.—Except as  
21               otherwise provided in this Act, the laws of the State  
22               of New Mexico shall apply to the calculation of dam-  
23               ages under subsection (d)(4).

24               (3) EXTENT OF DAMAGES.—Any payment  
25               under this Act—



1 (A) shall be limited to actual compensatory  
2 damages measured by injuries suffered; and

3 (B) shall not include—

4 (i) interest before settlement or pay-  
5 ment of a claim; or

6 (ii) punitive damages.

7 (d) PAYMENT OF CLAIMS.—

8 (1) DETERMINATION AND PAYMENT OF  
9 AMOUNT.—

10 (A) IN GENERAL.—

11 (i) PAYMENT.—Not later than 180  
12 days after the date on which a claim is  
13 submitted under this Act, the Adminis-  
14 trator shall determine and fix the amount,  
15 if any, to be paid for the claim.

16 (ii) PRIORITY.—The Administrator, to  
17 the maximum extent practicable, shall pay  
18 subrogation claims submitted under this  
19 Act only after paying claims submitted by  
20 injured parties that are not insurance com-  
21 panies seeking payment as subrogees.

22 (B) PARAMETERS OF DETERMINATION.—

23 In determining and settling a claim under this  
24 Act, the Administrator shall determine only—

1 (i) whether the claimant is an injured  
2 person;

3 (ii) whether the injury that is the sub-  
4 ject of the claim resulted from the Her-  
5 mit's Peak/Calf Canyon Fire;

6 (iii) the amount, if any, to be allowed  
7 and paid under this Act; and

8 (iv) the person or persons entitled to  
9 receive the amount.

10 (C) INSURANCE AND OTHER BENEFITS.—

11 (i) IN GENERAL.—In determining the  
12 amount of, and paying, a claim under this  
13 Act, to prevent recovery by a claimant in  
14 excess of actual compensatory damages,  
15 the Administrator shall reduce the amount  
16 to be paid for the claim by an amount that  
17 is equal to the total of insurance benefits  
18 (excluding life insurance benefits) or other  
19 payments or settlements of any nature that  
20 were paid, or will be paid, with respect to  
21 the claim.

22 (ii) GOVERNMENT LOANS.—This sub-  
23 paragraph shall not apply to the receipt by  
24 a claimant of any government loan that is  
25 required to be repaid by the claimant.

1 (2) PARTIAL PAYMENT.—

2 (A) IN GENERAL.—At the request of a  
3 claimant, the Administrator may make 1 or  
4 more advance or partial payments before the  
5 final settlement of a claim, including final set-  
6 tlement on any portion or aspect of a claim that  
7 is determined to be severable.

8 (B) JUDICIAL DECISION.—If a claimant re-  
9 ceives a partial payment on a claim under this  
10 Act, but further payment on the claim is subse-  
11 quently denied by the Administrator, the claim-  
12 ant may—

13 (i) seek judicial review under sub-  
14 section (i); and

15 (ii) keep any partial payment that the  
16 claimant received, unless the Administrator  
17 determines that the claimant—

18 (I) was not eligible to receive the  
19 compensation; or

20 (II) fraudulently procured the  
21 compensation.

22 (3) RIGHTS OF INSURER OR OTHER THIRD  
23 PARTY.—If an insurer or other third party pays any  
24 amount to a claimant to compensate for an injury  
25 described in subsection (a), the insurer or other

1 third party shall be subrogated to any right that the  
2 claimant has to receive any payment under this Act  
3 or any other law.

4 (4) ALLOWABLE DAMAGES.—

5 (A) LOSS OF PROPERTY.—A claim that is  
6 paid for loss of property under this Act may in-  
7 clude otherwise uncompensated damages result-  
8 ing from the Hermit's Peak/Calf Canyon Fire  
9 for—

10 (i) an uninsured or underinsured  
11 property loss;

12 (ii) a decrease in the value of real  
13 property;

14 (iii) damage to physical infrastruc-  
15 ture, including irrigation infrastructure  
16 such as acequia systems;

17 (iv) a cost resulting from lost subsist-  
18 ence from hunting, fishing, firewood gath-  
19 ering, timbering, grazing, or agricultural  
20 activities conducted on land damaged by  
21 the Hermit's Peak/Calf Canyon Fire;

22 (v) a cost of reforestation or revegeta-  
23 tion on Tribal or non-Federal land, to the  
24 extent that the cost of reforestation or re-

1                   vegetation is not covered by any other Fed-  
2                   eral program; and

3                   (vi) any other loss that the Adminis-  
4                   trator determines to be appropriate for in-  
5                   clusion as loss of property.

6                   (B) BUSINESS LOSS.—A claim that is paid  
7                   for injury under this Act may include damages  
8                   resulting from the Hermit's Peak/Calf Canyon  
9                   Fire for the following types of otherwise uncom-  
10                  pensated business loss:

11                  (i) Damage to tangible assets or in-  
12                  ventory.

13                  (ii) Business interruption losses.

14                  (iii) Overhead costs.

15                  (iv) Employee wages for work not per-  
16                  formed.

17                  (v) Loss of business net income.

18                  (vi) Any other loss that the Adminis-  
19                  trator determines to be appropriate for in-  
20                  clusion as business loss.

21                  (C) FINANCIAL LOSS.—A claim that is  
22                  paid for injury under this Act may include dam-  
23                  ages resulting from the Hermit's Peak/Calf  
24                  Canyon Fire for the following types of other-  
25                  wise uncompensated financial loss:

1 (i) Increased mortgage interest costs.

2 (ii) An insurance deductible.

3 (iii) A temporary living or relocation  
4 expense.

5 (iv) Lost wages or personal income.

6 (v) Emergency staffing expenses.

7 (vi) Debris removal and other cleanup  
8 costs.

9 (vii) Costs of reasonable efforts, as  
10 determined by the Administrator, to reduce  
11 the risk of wildfire, flood, or other natural  
12 disaster in the counties impacted by the  
13 Hermit's Peak/Calf Canyon Fire to risk  
14 levels prevailing in those counties before  
15 the Hermit's Peak/Calf Canyon Fire, that  
16 are incurred not later than the date that is  
17 3 years after the date on which the regula-  
18 tions under subsection (f) are first promul-  
19 gated.

20 (viii) A premium for flood insurance  
21 that is required to be paid on or before  
22 May 31, 2024, if, as a result of the Her-  
23 mit's Peak/Calf Canyon Fire, a person that  
24 was not required to purchase flood insur-  
25 ance before the Hermit's Peak/Calf Can-

1                   yon Fire is required to purchase flood in-  
2                   surance.

3                   (ix) A disaster assistance loan re-  
4                   ceived from the Small Business Adminis-  
5                   tration.

6                   (x) Any other loss that the Adminis-  
7                   trator determines to be appropriate for in-  
8                   clusion as financial loss.

9           (e) ACCEPTANCE OF AWARD.—The acceptance by a  
10 claimant of any payment under this Act, except an ad-  
11 vance or partial payment made under subsection (d)(2),  
12 shall—

13           (1) be final and conclusive on the claimant,  
14           with respect to all claims arising out of or relating  
15           to the same subject matter; and

16           (2) constitute a complete release of all claims  
17           against the United States (including any agency or  
18           employee of the United States) under chapter 171 of  
19           title 28, United States Code (commonly known as  
20           the “Federal Tort Claims Act”), or any other Fed-  
21           eral or State law, arising out of or relating to the  
22           same subject matter.

23           (f) REGULATIONS AND PUBLIC INFORMATION.—

24           (1) REGULATIONS.—Notwithstanding any other  
25           provision of law, not later than 45 days after the

1 date of enactment of this Act, the Administrator  
2 shall promulgate and publish in the Federal Register  
3 interim final regulations for the processing and pay-  
4 ment of claims under this Act.

5 (2) PUBLIC INFORMATION.—

6 (A) IN GENERAL.—At the time at which  
7 the Administrator promulgates regulations  
8 under paragraph (1), the Administrator shall  
9 publish, online and in print, in newspapers of  
10 general circulation in the State of New Mexico,  
11 a clear, concise, and easily understandable ex-  
12 planation, in English and Spanish, of—

13 (i) the rights conferred under this  
14 Act; and

15 (ii) the procedural and other require-  
16 ments of the regulations promulgated  
17 under paragraph (1).

18 (B) DISSEMINATION THROUGH OTHER  
19 MEDIA.—The Administrator shall disseminate  
20 the explanation published under subparagraph  
21 (A) through websites, blogs, social media, bro-  
22 chures, pamphlets, radio, television, and other  
23 media that the Administrator determines are  
24 likely to reach prospective claimants.



1 (g) CONSULTATION.—In administering this Act, the  
2 Administrator shall consult with the Secretary of the Inte-  
3 rior, the Secretary of Energy, the Secretary of Agri-  
4 culture, the Administrator of the Small Business Adminis-  
5 tration, other Federal agencies, and State, local, and Trib-  
6 al authorities, as determined to be necessary by the Ad-  
7 ministrator, to—

8 (1) ensure the efficient administration of the  
9 claims process; and

10 (2) provide for local concerns.

11 (h) ELECTION OF REMEDY.—

12 (1) IN GENERAL.—An injured person may elect  
13 to seek compensation from the United States for 1  
14 or more injuries resulting from the Hermit’s Peak/  
15 Calf Canyon Fire by—

16 (A) submitting a claim under this Act;

17 (B) filing a claim or bringing a civil action  
18 under chapter 171 of title 28, United States  
19 Code (commonly known as the “Federal Tort  
20 Claims Act”); or

21 (C) bringing an authorized civil action  
22 under any other provision of law.

23 (2) EFFECT OF ELECTION.—An election by an  
24 injured person to seek compensation in any manner  
25 described in paragraph (1) shall be final and conclu-

1 sive on the claimant with respect to all injuries re-  
2 sulting from the Hermit's Peak/Calf Canyon Fire  
3 that are suffered by the claimant.

4 (3) ARBITRATION.—

5 (A) IN GENERAL.—Not later than 45 days  
6 after the date of enactment of this Act, the Ad-  
7 ministrator shall establish by regulation proce-  
8 dures under which a dispute regarding a claim  
9 submitted under this Act may be settled by ar-  
10 bitration.

11 (B) ARBITRATION AS REMEDY.—On estab-  
12 lishment of arbitration procedures under sub-  
13 paragraph (A), an injured person that submits  
14 a disputed claim under this Act may elect to  
15 settle the claim through arbitration.

16 (C) BINDING EFFECT.—An election by an  
17 injured person to settle a claim through arbitra-  
18 tion under this paragraph shall—

19 (i) be binding; and

20 (ii) preclude any exercise by the in-  
21 jured person of the right to judicial review  
22 of a claim described in subsection (i).

23 (4) NO EFFECT ON ENTITLEMENTS.—The value  
24 of compensation that may be provided under this  
25 Act shall not be considered income or resources for

1 any purpose under any Federal, State, or local laws,  
2 including laws relating to taxation, welfare, and pub-  
3 lic assistance programs, and no State or political  
4 subdivision thereof shall decrease any assistance oth-  
5 erwise provided to an injured person because of the  
6 receipt of benefits under this Act.

7 (i) JUDICIAL REVIEW.—

8 (1) IN GENERAL.—Any claimant aggrieved by a  
9 final decision of the Administrator under this Act  
10 may, not later than 60 days after the date on which  
11 the decision is issued, bring a civil action in the  
12 United States District Court for the District of New  
13 Mexico, to modify or set aside the decision, in whole  
14 or in part.

15 (2) RECORD.—The court shall hear a civil ac-  
16 tion under paragraph (1) on the record made before  
17 the Administrator.

18 (3) STANDARD.—The decision of the Adminis-  
19 trator incorporating the findings of the Adminis-  
20 trator shall be upheld if the decision is supported by  
21 substantial evidence on the record considered as a  
22 whole.

23 (j) ATTORNEY'S AND AGENT'S FEES.—

24 (1) IN GENERAL.—No attorney or agent, acting  
25 alone or in combination with any other attorney or

1 agent, shall charge, demand, receive, or collect, for  
2 services rendered in connection with a claim sub-  
3 mitted under this Act, fees in excess of the limita-  
4 tions established under section 2678 of title 28,  
5 United States Code.

6 (2) VIOLATION.—An attorney or agent who vio-  
7 lates paragraph (1) shall be fined not more than  
8 \$10,000.

9 (k) WAIVER OF REQUIREMENT FOR MATCHING  
10 FUNDS.—

11 (1) STATE, LOCAL, OR INDIVIDUAL PROJECT.—

12 (A) IN GENERAL.—Notwithstanding any  
13 other provision of law, a State, local, or indi-  
14 vidual project that is determined by the Admin-  
15 istrator to be carried out in response to the  
16 Hermit's Peak/Calf Canyon Fire under any  
17 Federal program that applies to an area af-  
18 fected by the Hermit's Peak/Calf Canyon Fire  
19 shall not be subject to any requirement for  
20 State or local matching funds to pay the cost  
21 of the project under the Federal program.

22 (B) FEDERAL SHARE.—The Federal share  
23 of the costs of a project described in subpara-  
24 graph (A) shall be 100 percent.

1           (2) OTHER NEEDS PROGRAM ASSISTANCE.—

2       Notwithstanding section 408(g)(2) of the Robert T.  
3       Stafford Disaster Relief and Emergency Assistance  
4       Act (42 U.S.C. 5174(g)(2)), for any emergency or  
5       major disaster declared by the President under that  
6       Act for the Hermit's Peak/Calf Canyon Fire, the  
7       Federal share of assistance provided under that sec-  
8       tion shall be 100 percent.

9       (l) APPLICABILITY OF DEBT COLLECTION REQUIRE-  
10      MENTS.—Section 3711(a) of title 31, United States Code,

11     shall not apply to any payment under this Act, unless—

12           (1) there is evidence of civil or criminal fraud,  
13       misrepresentation, presentation of a false claim; or

14           (2) a claimant was not eligible under subsection  
15       (d)(2) of this Act to any partial payment.

16       (m) INDIAN COMPENSATION.—Notwithstanding any  
17     other provision of law, in the case of an Indian Tribe, a  
18     Tribal entity, or a member of an Indian Tribe that sub-  
19     mits a claim under this Act—

20           (1) the Bureau of Indian Affairs shall have no  
21       authority over, or any trust obligation regarding,  
22       any aspect of the submission of, or any payment re-  
23       ceived for, the claim;

24           (2) the Indian Tribe, Tribal entity, or member  
25       of an Indian Tribe shall be entitled to proceed under

1       this Act in the same manner and to the same extent  
2       as any other injured person; and

3           (3) except with respect to land damaged by the  
4       Hermit's Peak/Calf Canyon Fire that is the subject  
5       of the claim, the Bureau of Indian Affairs shall have  
6       no responsibility to restore land damaged by the  
7       Hermit's Peak/Calf Canyon Fire.

8       (n) REPORT.—Not later than 1 year after the date  
9       of promulgation of regulations under subsection (f)(1),  
10      and annually thereafter, the Administrator shall submit  
11      to Congress a report that describes the claims submitted  
12      under this Act during the year preceding the date of sub-  
13      mission of the report, including, for each claim—

14           (1) the amount claimed;

15           (2) a brief description of the nature of the  
16      claim; and

17           (3) the status or disposition of the claim, in-  
18      cluding the amount of any payment under this Act.

19      (o) AUTHORIZATION OF APPROPRIATIONS.—There  
20      are authorized to be appropriated such sums as are nec-  
21      essary to carry out this Act.