

AMENDMENT TO RULES COMMITTEE PRINT
117-54
OFFERED BY MS. LEGER FERNÁNDEZ OF NEW
MEXICO

Add at the end of title LVIII the following:

1 **SEC. 5806. HERMIT'S PEAK/CALF CANYON FIRE ASSIST-**
2 **ANCE.**

3 (a) FINDINGS AND PURPOSES.—

4 (1) FINDINGS.—Congress finds that—

5 (A) on April 6, 2022, the Forest Service
6 initiated the Las Dispensas-Gallinas prescribed
7 burn on Federal land in the Santa Fe National
8 Forest in San Miguel County, New Mexico,
9 when erratic winds were prevalent in the area
10 that was also suffering from severe drought
11 after many years of insufficient precipitation;

12 (B) on April 6, 2022, the prescribed burn,
13 which became known as the “Hermit’s Peak
14 Fire”, exceeded the containment capabilities of
15 the Forest Service, was declared a wildfire, and
16 spread to other Federal and non-Federal land;

17 (C) on April 19, 2022, the Calf Canyon
18 Fire, also in San Miguel County, New Mexico,

1 began burning on Federal land and was later
2 identified as the result of a pile burn in Janu-
3 ary 2022 that remained dormant under the sur-
4 face before reemerging;

5 (D) on April 27, 2022, the Hermit's Peak
6 Fire and the Calf Canyon Fire merged, and
7 both fires were reported as the Hermit's Peak
8 Fire or the Hermit's Peak/Calf Canyon Fire,
9 (referred hereafter in this subsection as the
10 "Hermit's Peak/Calf Canyon Fire");

11 (E) by May 2, 2022, the fire had grown in
12 size and caused evacuations in multiple villages
13 and communities in San Miguel County and
14 Mora County, including in the San Miguel
15 county jail, the State's psychiatric hospital, the
16 United World College, and New Mexico High-
17 lands University;

18 (F) on May 4, 2022, the President issued
19 a major disaster declaration for the counties of
20 Colfax, Mora, and San Miguel, New Mexico;

21 (G) on May 20, 2022, U.S. Forest Service
22 Chief Randy Moore ordered a 90-day review of
23 prescribed burn policies to reduce the risk of
24 wildfires and ensure the safety of the commu-
25 nities involved;

1 (H) the U.S. Forest Service has assumed
2 responsibility for the Hermit's Peak/Calf Can-
3 yon Fire;

4 (I) the fire resulted in the loss of Federal,
5 State, local, Tribal, and private property; and

6 (J) the United States should compensate
7 the victims of the Hermit's Peak/Calf Canyon
8 Fire.

9 (2) PURPOSES.—The purposes of this section
10 are—

11 (A) to compensate victims of the Hermit's
12 Peak/Calf Canyon Fire, for injuries resulting
13 from the fire; and

14 (B) to provide for the expeditious consider-
15 ation and settlement of claims for those inju-
16 ries.

17 (b) DEFINITIONS.—In this section:

18 (1) ADMINISTRATOR.—The term “Adminis-
19 trator” means—

20 (A) the Administrator of the Federal
21 Emergency Management Agency; or

22 (B) if a Manager is appointed under sub-
23 section (c)(1)(C), the Manager.

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

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

5 (B) the pile burn holdover resulting from
6 the prescribed burn by the Forest Service,
7 which reemerged on April 19, 2022; and

8 (C) the merger of the two fires described
9 in subparagraphs (A) and (B), reported as the
10 Hermit's Peak Fire or the Hermit's Peak Fire/
11 Calf Canyon Fire.

12 (3) INDIAN TRIBE.—The term “Indian Tribe”
13 means the recognized governing body of any Indian
14 or Alaska Native Tribe, band, nation, pueblo, village,
15 community, component band, or component reserva-
16 tion individually identified (including parenthetically)
17 in the list published most recently as of the date of
18 enactment of this Act pursuant to section 104 of the
19 Federally Recognized Indian Tribe List Act of 1994
20 (25 U.S.C. 5131).

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

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

1 (B) an Indian Tribe, corporation, Tribal
2 corporation, partnership, company, association,
3 county, township, city, State, school district, or
4 other non-Federal entity (including a legal rep-
5 resentative) that suffered injury resulting from
6 the Hermit’s Peak/Calf Canyon Fire.

7 (5) INJURY.—The term “injury” has the same
8 meaning as the term “injury or loss of property, or
9 personal injury or death” as used in section
10 1346(b)(1) of title 28, United States Code.

11 (6) MANAGER.—The term “Manager” means
12 an Independent Claims Manager appointed under
13 subsection (c)(1)(C).

14 (7) OFFICE.—The term “Office” means the Of-
15 fice of Hermit’s Peak/Calf Canyon Fire Claims es-
16 tablished by subsection (c)(1)(B).

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

24 (c) COMPENSATION FOR VICTIMS OF HERMIT’S
25 PEAK/CALF CANYON FIRE.—

1 (1) IN GENERAL.—

2 (A) COMPENSATION.—Each injured person
3 shall be entitled to receive from the United
4 States compensation for injury suffered by the
5 injured person as a result of the Hermit’s Peak/
6 Calf Canyon Fire.

7 (B) OFFICE OF HERMIT’S PEAK/CALF CAN-
8 YON FIRE CLAIMS.—

9 (i) IN GENERAL.—There is established
10 within the Federal Emergency Manage-
11 ment Agency an Office of Hermit’s Peak/
12 Calf Canyon Fire Claims.

13 (ii) PURPOSE.—The Office shall re-
14 ceive, process, and pay claims in accord-
15 ance with this section.

16 (iii) FUNDING.—The Office—

17 (I) shall be funded from funds
18 made available to the Administrator
19 under this section;

20 (II) may appoint and fix the
21 compensation of such temporary per-
22 sonnel as may be necessary, without
23 regard to the provisions of title 5,
24 United States Code, governing ap-
25 pointments in competitive service; and

1 (III) may reimburse other Fed-
2 eral agencies for claims processing
3 support and assistance.

4 (C) OPTION TO APPOINT INDEPENDENT
5 CLAIMS MANAGER.—The Administrator may ap-
6 point an Independent Claims Manager to—

7 (i) head the Office; and

8 (ii) assume the duties of the Adminis-
9 trator under this section.

10 (2) SUBMISSION OF CLAIMS.—Not later than 2
11 years after the date on which regulations are first
12 promulgated under paragraph (6), an injured person
13 may submit to the Administrator a written claim for
14 1 or more injuries suffered by the injured person in
15 accordance with such requirements as the Adminis-
16 trator determines to be appropriate.

17 (3) INVESTIGATION OF CLAIMS.—

18 (A) IN GENERAL.—The Administrator
19 shall, on behalf of the United States, inves-
20 tigate, consider, ascertain, adjust, determine,
21 grant, deny, or settle any claim for money dam-
22 ages asserted under paragraph (2).

23 (B) APPLICABILITY OF STATE LAW.—Ex-
24 cept as otherwise provided in this section, the
25 laws of the State of New Mexico shall apply to

1 the calculation of damages under paragraph
2 (4)(D).

3 (C) EXTENT OF DAMAGES.—Any payment
4 under this section—

5 (i) shall be limited to actual compen-
6 satory damages measured by injuries suf-
7 fered; and

8 (ii) shall not include—

9 (I) interest before settlement or
10 payment of a claim; or

11 (II) punitive damages.

12 (4) PAYMENT OF CLAIMS.—

13 (A) DETERMINATION AND PAYMENT OF
14 AMOUNT.—

15 (i) IN GENERAL.—

16 (I) PAYMENT.—Not later than
17 180 days after the date on which a
18 claim is submitted under this section,
19 the Administrator shall determine and
20 fix the amount, if any, to be paid for
21 the claim.

22 (II) PRIORITY.—The Adminis-
23 trator, to the maximum extent prac-
24 ticable, shall pay subrogation claims
25 submitted under this section only

1 after paying claims submitted by in-
2 jured parties that are not insurance
3 companies seeking payment as
4 subrogees.

5 (ii) PARAMETERS OF DETERMINA-
6 TION.—In determining and settling a claim
7 under this section, the Administrator shall
8 determine only—

9 (I) whether the claimant is an in-
10 jured person;

11 (II) whether the injury that is
12 the subject of the claim resulted from
13 the fire;

14 (III) the amount, if any, to be al-
15 lowed and paid under this section; and

16 (IV) the person or persons enti-
17 tled to receive the amount.

18 (iii) INSURANCE AND OTHER BENE-
19 FITS.—

20 (I) IN GENERAL.—In deter-
21 mining the amount of, and paying, a
22 claim under this section, to prevent
23 recovery by a claimant in excess of ac-
24 tual compensatory damages, the Ad-
25 ministrator shall reduce the amount

1 to be paid for the claim by an amount
2 that is equal to the total of insurance
3 benefits (excluding life insurance ben-
4 efits) or other payments or settle-
5 ments of any nature that were paid,
6 or will be paid, with respect to the
7 claim.

8 (II) GOVERNMENT LOANS.—This
9 subparagraph shall not apply to the
10 receipt by a claimant of any govern-
11 ment loan that is required to be re-
12 paid by the claimant.

13 (B) PARTIAL PAYMENT.—

14 (i) IN GENERAL.—At the request of a
15 claimant, the Administrator may make 1
16 or more advance or partial payments be-
17 fore the final settlement of a claim, includ-
18 ing final settlement on any portion or as-
19 pect of a claim that is determined to be
20 severable.

21 (ii) JUDICIAL DECISION.—If a claim-
22 ant receives a partial payment on a claim
23 under this section, but further payment on
24 the claim is subsequently denied by the
25 Administrator, the claimant may—

1 (I) seek judicial review under
2 paragraph (9); and

3 (II) keep any partial payment
4 that the claimant received, unless the
5 Administrator determines that the
6 claimant—

7 (aa) was not eligible to re-
8 ceive the compensation; or

9 (bb) fraudulently procured
10 the compensation.

11 (C) RIGHTS OF INSURER OR OTHER THIRD
12 PARTY.—If an insurer or other third party pays
13 any amount to a claimant to compensate for an
14 injury described in paragraph (1), the insurer
15 or other third party shall be subrogated to any
16 right that the claimant has to receive any pay-
17 ment under this section or any other law.

18 (D) ALLOWABLE DAMAGES.—

19 (i) LOSS OF PROPERTY.—A claim that
20 is paid for loss of property under this sec-
21 tion may include otherwise uncompensated
22 damages resulting from the Hermit’s Peak/
23 Calf Canyon Fire for—

24 (I) an uninsured or underinsured
25 property loss;

- 1 (II) a decrease in the value of
- 2 real property;
- 3 (III) damage to physical infra-
- 4 structure, including irrigation infra-
- 5 structure such as acequia systems;
- 6 (IV) a cost resulting from lost
- 7 subsistence from hunting, fishing,
- 8 firewood gathering, timbering, graz-
- 9 ing, or agricultural activities con-
- 10 ducted on land damaged by the Her-
- 11 mit's Peak/Calf Canyon Fire;
- 12 (V) a cost of reforestation or re-
- 13 vegetation on Tribal or non-Federal
- 14 land, to the extent that the cost of re-
- 15 forestation or revegetation is not cov-
- 16 ered by any other Federal program;
- 17 and
- 18 (VI) any other loss that the Ad-
- 19 ministrator determines to be appro-
- 20 priate for inclusion as loss of prop-
- 21 erty.
- 22 (ii) BUSINESS LOSS.—A claim that is
- 23 paid for injury under this section may in-
- 24 clude damages resulting from the Hermit's
- 25 Peak/Calf Canyon Fire for the following

1 types of otherwise uncompensated business
2 loss:

3 (I) Damage to tangible assets or
4 inventory.

5 (II) Business interruption losses.

6 (III) Overhead costs.

7 (IV) Employee wages for work
8 not performed.

9 (V) Any other loss that the Ad-
10 ministrator determines to be appro-
11 priate for inclusion as business loss.

12 (iii) FINANCIAL LOSS.—A claim that
13 is paid for injury under this section may
14 include damages resulting from the Her-
15 mit’s Peak/Calf Canyon Fire for the fol-
16 lowing types of otherwise uncompensated
17 financial loss:

18 (I) Increased mortgage interest
19 costs.

20 (II) An insurance deductible.

21 (III) A temporary living or relo-
22 cation expense.

23 (IV) Lost wages or personal in-
24 come.

25 (V) Emergency staffing expenses.

1 (VI) Debris removal and other
2 cleanup costs.

3 (VII) Costs of reasonable efforts,
4 as determined by the Administrator,
5 to reduce the risk of wildfire, flood, or
6 other natural disaster in the counties
7 impacted by the Hermit's Peak/Calf
8 Canyon Fire to risk levels prevailing
9 in those counties before the Hermit's
10 Peak/Calf Canyon Fire, that are in-
11 curred not later than the date that is
12 3 years after the date on which the
13 regulations under paragraph (6) are
14 first promulgated.

15 (VIII) A premium for flood in-
16 surance that is required to be paid on
17 or before May 31, 2024, if, as a result
18 of the Hermit's Peak/Calf Canyon
19 Fire, a person that was not required
20 to purchase flood insurance before the
21 Hermit's Peak/Calf Canyon Fire is re-
22 quired to purchase flood insurance.

23 (IX) A disaster assistance loan
24 received from the Small Business Ad-
25 ministration.

1 (X) Any other loss that the Ad-
2 ministrator determines to be appro-
3 priate for inclusion as financial loss.

4 (5) ACCEPTANCE OF AWARD.—The acceptance
5 by a claimant of any payment under this section, ex-
6 cept an advance or partial payment made under
7 paragraph (4)(B), shall—

8 (A) be final and conclusive on the claim-
9 ant, with respect to all claims arising out of or
10 relating to the same subject matter; and

11 (B) constitute a complete release of all
12 claims against the United States (including any
13 agency or employee of the United States) under
14 chapter 171 of title 28, United States Code
15 (commonly known as the “Federal Tort Claims
16 Act”), or any other Federal or State law, aris-
17 ing out of or relating to the same subject mat-
18 ter.

19 (6) REGULATIONS AND PUBLIC INFORMA-
20 TION.—

21 (A) REGULATIONS.—Notwithstanding any
22 other provision of law, not later than 45 days
23 after the date of enactment of this section, the
24 Administrator shall promulgate and publish in
25 the Federal Register interim final regulations

1 for the processing and payment of claims under
2 this section.

3 (B) PUBLIC INFORMATION.—

4 (i) IN GENERAL.—At the time at
5 which the Administrator promulgates regu-
6 lations under subparagraph (A), the Ad-
7 ministrator shall publish, online and in
8 print, in newspapers of general circulation
9 in the State of New Mexico, a clear, con-
10 cise, and easily understandable expla-
11 nation, in English and Spanish, of—

12 (I) the rights conferred under
13 this section; and

14 (II) the procedural and other re-
15 quirements of the regulations promul-
16 gated under subparagraph (A).

17 (ii) DISSEMINATION THROUGH OTHER
18 MEDIA.—The Administrator shall dissemi-
19 nate the explanation published under
20 clause (i) through websites, blogs, social
21 media, brochures, pamphlets, radio, tele-
22 vision, and other media that the Adminis-
23 trator determines are likely to reach pro-
24 spective claimants.

1 (7) CONSULTATION.—In administering this sec-
2 tion, the Administrator shall consult with the Sec-
3 retary of the Interior, the Secretary of Energy, the
4 Secretary of Agriculture, the Administrator of the
5 Small Business Administration, other Federal agen-
6 cies, and State, local, and Tribal authorities, as de-
7 termined to be necessary by the Administrator, to—

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

10 (B) provide for local concerns.

11 (8) ELECTION OF REMEDY.—

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

16 (i) submitting a claim under this sec-
17 tion;

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

22 (iii) bringing an authorized civil action
23 under any other provision of law.

24 (B) EFFECT OF ELECTION.—An election
25 by an injured person to seek compensation in

1 any manner described in subparagraph (A)
2 shall be final and conclusive on the claimant
3 with respect to all injuries resulting from the
4 Hermit's Peak/Calf Canyon Fire that are suf-
5 fered by the claimant.

6 (C) ARBITRATION.—

7 (i) IN GENERAL.—Not later than 45
8 days after the date of enactment of this
9 Act, the Administrator shall establish by
10 regulation procedures under which a dis-
11 pute regarding a claim submitted under
12 this section may be settled by arbitration.

13 (ii) ARBITRATION AS REMEDY.—On
14 establishment of arbitration procedures
15 under clause (i), an injured person that
16 submits a disputed claim under this section
17 may elect to settle the claim through arbi-
18 tration.

19 (iii) BINDING EFFECT.—An election
20 by an injured person to settle a claim
21 through arbitration under this subpara-
22 graph shall—

23 (I) be binding; and

24 (II) preclude any exercise by the
25 injured person of the right to judicial

1 review of a claim described in para-
2 graph (9).

3 (D) NO EFFECT ON ENTITLEMENTS.—

4 Nothing in this section affects any right of a
5 claimant to file a claim for benefits under any
6 Federal entitlement program.

7 (9) JUDICIAL REVIEW.—

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

15 (B) RECORD.—The court shall hear a civil
16 action under subparagraph (A) on the record
17 made before the Administrator.

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

23 (10) ATTORNEY'S AND AGENT'S FEES.—

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

1 attorney or agent, shall charge, demand, re-
2 ceive, or collect, for services rendered in connec-
3 tion with a claim submitted under this section,
4 fees in excess of the limitations established
5 under section 2678 of title 28, United States
6 Code.

7 (B) VIOLATION.—An attorney or agent
8 who violates subparagraph (A) shall be fined
9 not more than \$10,000.

10 (11) WAIVER OF REQUIREMENT FOR MATCHING
11 FUNDS.—

12 (A) STATE AND LOCAL PROJECT.—

13 (i) IN GENERAL.—Notwithstanding
14 any other provision of law, a State or local
15 project that is determined by the Adminis-
16 trator to be carried out in response to the
17 Hermit's Peak/Calf Canyon Fire under any
18 Federal program that applies to an area
19 affected by the Hermit's Peak/Calf Canyon
20 Fire shall not be subject to any require-
21 ment for State or local matching funds to
22 pay the cost of the project under the Fed-
23 eral program.

1 (ii) FEDERAL SHARE.—The Federal
2 share of the costs of a project described in
3 clause (i) shall be 100 percent.

4 (B) OTHER NEEDS PROGRAM ASSIST-
5 ANCE.—Notwithstanding section 408(g)(2) of
6 the Robert T. Stafford Disaster Relief and
7 Emergency Assistance Act (42 U.S.C.
8 5174(g)(2)), for any emergency or major dis-
9 aster declared by the President under that Act
10 for the Hermit’s Peak/Calf Canyon Fire, the
11 Federal share of assistance provided under that
12 section shall be 100 percent.

13 (12) APPLICABILITY OF DEBT COLLECTION RE-
14 QUIREMENTS.—Section 3711(a) of title 31, United
15 States Code, shall not apply to any payment under
16 this section, unless—

17 (A) there is evidence of civil or criminal
18 fraud, misrepresentation, presentation of a false
19 claim; or

20 (B) a claimant was not eligible under para-
21 graph (4)(B) of this section to any partial pay-
22 ment.

23 (13) INDIAN COMPENSATION.—Notwithstanding
24 any other provision of law, in the case of an Indian

1 Tribe, a Tribal entity, or a member of an Indian
2 Tribe that submits a claim under this section—

3 (A) the Bureau of Indian Affairs shall
4 have no authority over, or any trust obligation
5 regarding, any aspect of the submission of, or
6 any payment received for, the claim;

7 (B) the Indian Tribe, Tribal entity, or
8 member of an Indian Tribe shall be entitled to
9 proceed under this section in the same manner
10 and to the same extent as any other injured
11 person; and

12 (C) except with respect to land damaged
13 by the Hermit's Peak/Calf Canyon Fire that is
14 the subject of the claim, the Bureau of Indian
15 Affairs shall have no responsibility to restore
16 land damaged by the Hermit's Peak/Calf Can-
17 yon Fire.

18 (14) REPORT.—Not later than 1 year after the
19 date of promulgation of regulations under paragraph
20 (6)(A), and annually thereafter, the Administrator
21 shall submit to Congress a report that describes the
22 claims submitted under this section during the year
23 preceding the date of submission of the report, in-
24 cluding, for each claim—

25 (A) the amount claimed;

1 (B) a brief description of the nature of the
2 claim; and

3 (C) the status or disposition of the claim,
4 including the amount of any payment under
5 this section.

6 (15) AUTHORIZATION OF APPROPRIATIONS.—

7 There are authorized to be appropriated such sums
8 as are necessary to carry out this section.

