

1 ***DIVISION G—HERMIT’S PEAK/***
2 ***CALF CANYON FIRE ASSIST-***
3 ***ANCE ACT***

4 ***SEC. 101. SHORT TITLE.***

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

7 ***SEC. 102. FINDINGS AND PURPOSES.***

8 *(a) FINDINGS.—Congress finds that—*

9 *(1) on April 6, 2022, the Forest Service initiated*
10 *the Las Dispensas-Gallinas prescribed burn on Fed-*
11 *eral land in the Santa Fe National Forest in San*
12 *Miguel County, New Mexico, when erratic winds were*
13 *prevalent in the area that was also suffering from se-*
14 *vere drought after many years of insufficient precipi-*
15 *tation;*

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

21 *(3) on April 19, 2022, the Calf Canyon Fire,*
22 *also in San Miguel County, New Mexico, began burn-*
23 *ing on Federal land and was later identified as the*
24 *result of a pile burn in January 2022 that remained*
25 *dormant under the surface before reemerging;*

1 (4) on April 27, 2022, the Hermit’s Peak Fire
2 and the Calf Canyon Fire merged, and both fires were
3 reported as the Hermit’s Peak Fire or the Hermit’s
4 Peak/Calf Canyon Fire, which shall be referred to
5 hereafter as the Hermit’s Peak/Calf Canyon Fire;

6 (5) by May 2, 2022, the fire had grown in size
7 and caused evacuations in multiple villages and com-
8 munities in San Miguel County and Mora County,
9 including in the San Miguel county jail, the State’s
10 psychiatric hospital, the United World College, and
11 New Mexico Highlands University;

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

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

19 (8) the U.S. Forest Service has assumed respon-
20 sibility for the Hermit’s Peak/Calf Canyon Fire;

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

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

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

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

4 (2) *to provide for the expeditious consideration
5 and settlement of claims for those injuries.*

6 **SEC. 103. DEFINITIONS.**

7 *In this Act:*

8 (1) *ADMINISTRATOR.*—*The term “Adminis-*
9 *trator” means—*

10 (A) *the Administrator of the Federal Emer-*
11 *gency Management Agency; or*

12 (B) *if a Manager is appointed under section*
13 *104(a)(3), the Manager.*

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

16 (A) *the fire resulting from the initiation by*
17 *the Forest Service of a prescribed burn in the*
18 *Santa Fe National Forest in San Miguel Coun-*
19 *ty, New Mexico, on April 6, 2022;*

20 (B) *the pile burn holdover resulting from*
21 *the prescribed burn by the Forest Service, which*
22 *reemerged on April 19, 2022; and*

23 (C) *the merger of the two fires described in*
24 *subparagraphs (A) and (B), reported as the Her-*

1 *mit's Peak Fire or the Hermit's Peak Fire/Calf*
2 *Canyon Fire.*

3 (3) *INDIAN TRIBE.*—*The term “Indian Tribe”*
4 *means the recognized governing body of any Indian*
5 *or Alaska Native Tribe, band, nation, pueblo, village,*
6 *community, component band, or component reserva-*
7 *tion individually identified (including parentheti-*
8 *cally) in the list published most recently as of the*
9 *date of enactment of this Act pursuant to section 104*
10 *of the Federally Recognized Indian Tribe List Act of*
11 *1994 (25 U.S.C. 5131).*

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

14 (A) *an individual, regardless of the citizen-*
15 *ship or alien status of the individual; or*

16 (B) *an Indian Tribe, corporation, Tribal*
17 *corporation, partnership, company, association,*
18 *county, township, city, State, school district, or*
19 *other non-Federal entity (including a legal rep-*
20 *resentative) that suffered injury resulting from*
21 *the Hermit's Peak/Calf Canyon Fire.*

22 (5) *INJURY.*—*The term “injury” has the same*
23 *meaning as the term “injury or loss of property, or*
24 *personal injury or death” as used in section*
25 *1346(b)(1) of title 28, United States Code.*

1 (A) *IN GENERAL.*—*There is established*
2 *within the Federal Emergency Management*
3 *Agency an Office of Hermit’s Peak/Calf Canyon*
4 *Fire Claims.*

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

8 (C) *FUNDING.*—*The Office—*

9 (i) *shall be funded from funds made*
10 *available to the Administrator for carrying*
11 *out this section;*

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

18 (iii) *may reimburse other Federal*
19 *agencies for claims processing support and*
20 *assistance.*

21 (3) *OPTION TO APPOINT INDEPENDENT CLAIMS*
22 *MANAGER.*—*The Administrator may appoint an Inde-*
23 *pendent Claims Manager to—*

24 (A) *head the Office; and*

1 (B) assume the duties of the Administrator
2 under this Act.

3 (4) *DETAIL.*—Upon the request of the Adminis-
4 trator, the head of any Federal department or agency
5 may detail, on a reimbursable basis, any of the per-
6 sonnel of that department or agency to the Federal
7 Emergency Management Agency to assist the Agency
8 in carrying out the duties under this Act.

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

15 (c) *INVESTIGATION OF CLAIMS.*—

16 (1) *IN GENERAL.*—In accordance with subsection
17 (d), the Administrator shall, on behalf of the United
18 States, investigate, consider, ascertain, adjust, deter-
19 mine, grant, deny, or settle any claim for money
20 damages asserted under subsection (b).

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

1 (3) *EXTENT OF DAMAGES.*—Any payment under
2 *this Act*—

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

5 (B) shall not include—

6 (i) interest before settlement or pay-
7 ment of a claim; or

8 (ii) punitive damages.

9 (d) *PAYMENT OF CLAIMS.*—

10 (1) *DETERMINATION AND PAYMENT OF*
11 *AMOUNT.*—

12 (A) *IN GENERAL.*—

13 (i) *PAYMENT.*—Not later than 180
14 days after the date on which a claim is sub-
15 mitted under this Act, the Administrator
16 shall determine and fix the amount, if any,
17 to be paid for the claim.

18 (ii) *PRIORITY.*—The Administrator, to
19 the maximum extent practicable, shall pay
20 subrogation claims submitted under this Act
21 only after paying claims submitted by in-
22 jured parties that are not insurance compa-
23 nies seeking payment as subrogees.

1 (B) *PARAMETERS OF DETERMINATION.*—*In*
2 *determining and settling a claim under this Act,*
3 *the Administrator shall determine only—*

4 (i) *whether the claimant is an injured*
5 *person;*

6 (ii) *whether the injury that is the sub-*
7 *ject of the claim resulted from the Hermit’s*
8 *Peak/Calf Canyon Fire;*

9 (iii) *whether the person or persons are*
10 *otherwise eligible to receive any amount de-*
11 *termined under clause (iv); and*

12 (iv) *whether sufficient funds are avail-*
13 *able for payment and, if so, the amount, if*
14 *any, to be allowed and paid under this Act.*

15 (C) *INSURANCE AND OTHER BENEFITS.*—

16 (i) *IN GENERAL.*—*In determining the*
17 *amount of, and paying, a claim under this*
18 *Act, to prevent recovery by a claimant in*
19 *excess of actual compensatory damages, the*
20 *Administrator shall reduce the amount to be*
21 *paid for the claim by an amount that is*
22 *equal to the total of insurance benefits (ex-*
23 *cluding life insurance benefits) or other*
24 *payments or settlements of any nature that*

1 *were paid, or will be paid, with respect to*
2 *the claim.*

3 (ii) *GOVERNMENT LOANS.*—*This sub-*
4 *paragraph shall not apply to the receipt by*
5 *a claimant of any government loan that is*
6 *required to be repaid by the claimant.*

7 (2) *PARTIAL PAYMENT.*—

8 (A) *IN GENERAL.*—*At the request of a*
9 *claimant, the Administrator may make 1 or*
10 *more advance or partial payments, subject to the*
11 *determination required under paragraph (1)(B),*
12 *before the final settlement of a claim, including*
13 *final settlement on any portion or aspect of a*
14 *claim that is determined to be severable.*

15 (B) *JUDICIAL DECISION.*—*If a claimant re-*
16 *ceives a partial payment on a claim under this*
17 *Act, but further payment on the claim is subse-*
18 *quently denied by the Administrator, the claim-*
19 *ant may—*

20 (i) *seek judicial review under sub-*
21 *section (i); and*

22 (ii) *keep any partial payment that the*
23 *claimant received, unless the Administrator*
24 *determines that the claimant—*

1 (I) was not eligible to receive the
2 compensation; or

3 (II) fraudulently procured the
4 compensation.

5 (3) *RIGHTS OF INSURER OR OTHER THIRD*
6 *PARTY.*—If an insurer or other third party pays any
7 amount to a claimant to compensate for an injury de-
8 scribed in subsection (a), the insurer or other third
9 party shall be subrogated to any right that the claim-
10 ant has to receive any payment under this Act or any
11 other law.

12 (4) *ALLOWABLE DAMAGES.*—

13 (A) *LOSS OF PROPERTY.*—A claim that is
14 paid for loss of property under this Act may in-
15 clude otherwise uncompensated damages result-
16 ing from the Hermit's Peak/Calf Canyon Fire
17 for—

18 (i) an uninsured or underinsured
19 property loss;

20 (ii) a decrease in the value of real
21 property;

22 (iii) damage to physical infrastructure,
23 including irrigation infrastructure such as
24 acequia systems;

1 (iv) a cost resulting from lost subsist-
2 ence from hunting, fishing, firewood gath-
3 ering, timbering, grazing, or agricultural
4 activities conducted on land damaged by the
5 Hermit's Peak/Calf Canyon Fire;

6 (v) a cost of reforestation or revegeta-
7 tion on Tribal or non-Federal land, to the
8 extent that the cost of reforestation or re-
9 vegetation is not covered by any other Fed-
10 eral program; and

11 (vi) any other loss that the Adminis-
12 trator determines to be appropriate for in-
13 clusion as loss of property.

14 (B) *BUSINESS LOSS*.—A claim that is paid
15 for injury under this Act may include damages
16 resulting from the Hermit's Peak/Calf Canyon
17 Fire for the following types of otherwise uncom-
18 pensated business loss:

19 (i) Damage to tangible assets or inven-
20 tory, including natural resources.

21 (ii) Business interruption losses.

22 (iii) Overhead costs.

23 (iv) Employee wages for work not per-
24 formed.

25 (v) Loss of business net income.

1 (vi) Any other loss that the Adminis-
2 trator determines to be appropriate for in-
3 clusion as business loss.

4 (C) *FINANCIAL LOSS.*—A claim that is paid
5 for injury under this Act may include damages
6 resulting from the Hermit’s Peak/Calf Canyon
7 Fire for the following types of otherwise uncom-
8 pensated financial loss:

9 (i) Increased mortgage interest costs.

10 (ii) An insurance deductible.

11 (iii) A temporary living or relocation
12 expense.

13 (iv) Lost wages or personal income.

14 (v) Emergency staffing expenses.

15 (vi) Debris removal and other cleanup
16 costs.

17 (vii) Costs of reasonable efforts, as de-
18 termined by the Administrator, to reduce
19 the risk of wildfire, flood, or other natural
20 disaster in the counties impacted by the
21 Hermit’s Peak/Calf Canyon Fire to risk lev-
22 els prevailing in those counties before the
23 Hermit’s Peak/Calf Canyon Fire, that are
24 incurred not later than the date that is 3
25 years after the date on which the regula-

1 *tions under subsection (f) are first promul-*
2 *gated.*

3 *(viii) A premium for flood insurance*
4 *that is required to be paid on or before May*
5 *31, 2024, if, as a result of the Hermit’s*
6 *Peak/Calf Canyon Fire, a person that was*
7 *not required to purchase flood insurance be-*
8 *fore the Hermit’s Peak/Calf Canyon Fire is*
9 *required to purchase flood insurance.*

10 *(ix) A disaster assistance loan received*
11 *from the Small Business Administration.*

12 *(x) Any other loss that the Adminis-*
13 *trator determines to be appropriate for in-*
14 *clusion as financial loss.*

15 *(e) ACCEPTANCE OF AWARD.—The acceptance by a*
16 *claimant of any payment under this Act, except an advance*
17 *or partial payment made under subsection (d)(2), shall—*

18 *(1) be final and conclusive on the claimant, with*
19 *respect to all claims arising out of or relating to the*
20 *same subject matter; and*

21 *(2) constitute a complete release of all claims*
22 *against the United States (including any agency or*
23 *employee of the United States) under chapter 171 of*
24 *title 28, United States Code (commonly known as the*
25 *“Federal Tort Claims Act”), or any other Federal or*

1 *State law, arising out of or relating to the same sub-*
2 *ject matter.*

3 (f) *REGULATIONS AND PUBLIC INFORMATION.*—

4 (1) *REGULATIONS.*—*Notwithstanding any other*
5 *provision of law, not later than 45 days after the date*
6 *of enactment of this Act, the Administrator shall pro-*
7 *mulgate and publish in the Federal Register interim*
8 *final regulations for the processing and payment of*
9 *claims under this Act.*

10 (2) *PUBLIC INFORMATION.*—

11 (A) *IN GENERAL.*—*At the time at which the*
12 *Administrator promulgates regulations under*
13 *paragraph (1), the Administrator shall publish,*
14 *online and in print, in newspapers of general*
15 *circulation in the State of New Mexico, a clear,*
16 *concise, and easily understandable explanation,*
17 *in English and Spanish, of—*

18 (i) *the rights conferred under this Act;*

19 and

20 (ii) *the procedural and other require-*
21 *ments of the regulations promulgated under*
22 *paragraph (1).*

23 (B) *DISSEMINATION THROUGH OTHER*
24 *MEDIA.*—*The Administrator shall disseminate*
25 *the explanation published under subparagraph*

1 (A) through websites, blogs, social media, bro-
2 chures, pamphlets, radio, television, and other
3 media that the Administrator determines are
4 likely to reach prospective claimants.

5 (g) *CONSULTATION.*—In administering this Act, the
6 Administrator shall consult with the Secretary of the Inte-
7 rior, the Secretary of Energy, the Secretary of Agriculture,
8 the Administrator of the Small Business Administration,
9 other Federal agencies, and State, local, and Tribal authori-
10 ties, as determined to be necessary by the Administrator,
11 to—

12 (1) ensure the efficient administration of the
13 claims process; and

14 (2) provide for local concerns.

15 (h) *ELECTION OF REMEDY.*—

16 (1) *IN GENERAL.*—An injured person may elect
17 to seek compensation from the United States for 1 or
18 more injuries resulting from the Hermit’s Peak/Calf
19 Canyon Fire by—

20 (A) submitting a claim under this Act;

21 (B) filing a claim or bringing a civil action
22 under chapter 171 of title 28, United States Code
23 (commonly known as the “Federal Tort Claims
24 Act”); or

1 (C) *bringing an authorized civil action*
2 *under any other provision of law.*

3 (2) *EFFECT OF ELECTION.*—*In accordance with*
4 *subsection (e), an election by an injured person to*
5 *seek compensation in any manner described in para-*
6 *graph (1) shall be final and conclusive on the claim-*
7 *ant with respect to all injuries resulting from the*
8 *Hermit's Peak/Calf Canyon Fire that are suffered by*
9 *the claimant upon acceptance of an award.*

10 (3) *ARBITRATION.*—

11 (A) *IN GENERAL.*—*Not later than 45 days*
12 *after the date of enactment of this Act, the Ad-*
13 *ministrator shall establish by regulation proce-*
14 *dures under which a dispute regarding a claim*
15 *submitted under this Act may be settled by arbi-*
16 *tration.*

17 (B) *ARBITRATION AS REMEDY.*—*On estab-*
18 *lishment of arbitration procedures under sub-*
19 *paragraph (A), an injured person that submits*
20 *a disputed claim under this Act may elect to set-*
21 *tle the claim through arbitration.*

22 (C) *BINDING EFFECT.*—*An election by an*
23 *injured person to settle a claim through arbitra-*
24 *tion under this paragraph shall—*

25 (i) *be binding; and*

1 (ii) preclude any exercise by the in-
2 jured person of the right to judicial review
3 of a claim described in subsection (i).

4 (4) *NO EFFECT ON ENTITLEMENTS.*—*The value*
5 *of compensation that may be provided under this Act*
6 *shall not be considered income or resources for any*
7 *purpose under any Federal, State, or local laws, in-*
8 *cluding laws relating to taxation, welfare, and public*
9 *assistance programs, and no State or political sub-*
10 *division thereof shall decrease any assistance other-*
11 *wise provided to an injured person because of the re-*
12 *ceipt of benefits under this Act.*

13 (i) *JUDICIAL REVIEW.*—

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

21 (2) *RECORD.*—*The court shall hear a civil action*
22 *under paragraph (1) on the record made before the*
23 *Administrator.*

24 (3) *STANDARD.*—*The decision of the Adminis-*
25 *trator incorporating the findings of the Administrator*

1 *shall be upheld if the decision is supported by sub-*
2 *stantial evidence on the record considered as a whole.*

3 (j) *ATTORNEY'S AND AGENT'S FEES.*—

4 (1) *IN GENERAL.*—*No attorney or agent, acting*
5 *alone or in combination with any other attorney or*
6 *agent, shall charge, demand, receive, or collect, for*
7 *services rendered in connection with a claim sub-*
8 *mitted under this Act, fees in excess of the limitations*
9 *established under section 2678 of title 28, United*
10 *States Code.*

11 (2) *VIOLATION.*—*An attorney or agent who vio-*
12 *lates paragraph (1) shall be fined not more than*
13 *\$10,000.*

14 (k) *WAIVER OF REQUIREMENT FOR MATCHING*
15 *FUNDS.*—

16 (1) *STATE AND LOCAL PROJECT.*—

17 (A) *IN GENERAL.*—*Notwithstanding any*
18 *other provision of law, a State or local project*
19 *that is determined by the Administrator to be*
20 *carried out in response to the Hermit's Peak/Calf*
21 *Canyon Fire under any Federal program that*
22 *applies to an area affected by the Hermit's Peak/*
23 *Calf Canyon Fire shall not be subject to any re-*
24 *quirement for State or local matching funds to*

1 *pay the cost of the project under the Federal pro-*
2 *gram.*

3 *(B) FEDERAL SHARE.—The Federal share*
4 *of the costs of a project described in subpara-*
5 *graph (A) shall be 100 percent.*

6 *(2) OTHER NEEDS PROGRAM ASSISTANCE.—Not-*
7 *withstanding section 408(g)(2) of the Robert T. Staf-*
8 *ford Disaster Relief and Emergency Assistance Act*
9 *(42 U.S.C. 5174(g)(2)), for any emergency or major*
10 *disaster declared by the President under that Act for*
11 *the Hermit's Peak/Calf Canyon Fire, the Federal*
12 *share of assistance provided under that section shall*
13 *be 100 percent.*

14 *(3) AGRICULTURAL PROGRAM ASSISTANCE.—*

15 *(A) IN GENERAL.—Notwithstanding any*
16 *other provision of law, a State, local, or indi-*
17 *vidual project that is determined by the Sec-*
18 *retary of Agriculture to be carried out in re-*
19 *sponse to the Hermit's Peak/Calf Canyon Fire*
20 *under any Federal program that applies to an*
21 *area affected by the Hermit's Peak/Calf Canyon*
22 *Fire shall not be subject to any requirement for*
23 *State, local, or individual matching funds to pay*
24 *the cost of the project under the Federal pro-*
25 *gram.*

1 (B) *FEDERAL SHARE.*—*The Federal share*
2 *of the costs of a project described in subpara-*
3 *graph (A) shall be 100 percent.*

4 (l) *APPLICABILITY OF DEBT COLLECTION REQUIRE-*
5 *MENTS.*—*Section 3711(a) of title 31, United States Code,*
6 *shall not apply to any payment under this Act, unless—*
7 (1) *there is evidence of civil or criminal fraud,*
8 *misrepresentation, presentation of a false claim; or*
9 (2) *a claimant was not eligible under subsection*
10 *(d)(2) of this Act to any partial payment.*

11 (m) *INDIAN COMPENSATION.*—*Notwithstanding any*
12 *other provision of law, in the case of an Indian Tribe, a*
13 *Tribal entity, or a member of an Indian Tribe that submits*
14 *a claim under this Act—*

15 (1) *the Bureau of Indian Affairs shall have no*
16 *authority over, or any trust obligation regarding, any*
17 *aspect of the submission of, or any payment received*
18 *for, the claim;*

19 (2) *the Indian Tribe, Tribal entity, or member*
20 *of an Indian Tribe shall be entitled to proceed under*
21 *this Act in the same manner and to the same extent*
22 *as any other injured person; and*

23 (3) *except with respect to land damaged by the*
24 *Hermit's Peak/Calf Canyon Fire that is the subject of*
25 *the claim, the Bureau of Indian Affairs shall have no*

1 *responsibility to restore land damaged by the Her-*
2 *mit's Peak/Calf Canyon Fire.*

3 *(n) REPORT.—Not later than 1 year after the date of*
4 *promulgation of regulations under subsection (f)(1), and*
5 *annually thereafter, the Administrator shall submit to Con-*
6 *gress a report that describes the claims submitted under this*
7 *Act during the year preceding the date of submission of the*
8 *report, including, for each claim—*

9 *(1) the amount claimed;*

10 *(2) a brief description of the nature of the claim;*

11 *and*

12 *(3) the status or disposition of the claim, includ-*
13 *ing the amount of any payment under this Act.*

14 *(o) AUTHORIZATION OF APPROPRIATIONS.—There are*
15 *authorized to be appropriated such sums as are necessary*
16 *to carry out this Act.*

Attest:

Secretary.

117TH CONGRESS
2^D SESSION

H.R. 6833

AMENDMENT