

106TH CONGRESS
2D SESSION

S. 2736

To provide compensation for victims of the fire initiated by the National Park Service at Bandelier National Monument, New Mexico.

IN THE SENATE OF THE UNITED STATES

JUNE 15, 2000

Mr. DOMENICI (for himself and Mr. BINGAMAN) introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

A BILL

To provide compensation for victims of the fire initiated by the National Park Service at Bandelier National Monument, 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 “Cerro Grande Fire As-
5 sistance Act”.

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

7 (a) FINDINGS.—Congress finds that—

8 (1) on May 4, 2000, the National Park Service
9 initiated a prescribed burn on Federal land at Ban-

1 delier National Monument in New Mexico during the
2 peak of the fire season in the Southwest;

3 (2) on May 5, 2000, the prescribed burn, which
4 became known as the “Cerro Grande Prescribed
5 Fire”, exceeded the containment capabilities of the
6 National Park Service, was reclassified as a wildland
7 burn, and spread to other Federal and non-Federal
8 land, quickly becoming characterized as a wildfire;

9 (3) by May 7, 2000, the fire had grown in size
10 and caused evacuations in and around Los Alamos,
11 New Mexico, including the Los Alamos National
12 Laboratory, 1 of the leading national research lab-
13 oratories in the United States and the birthplace of
14 the atomic bomb;

15 (4) on May 13, 2000, the President issued a
16 major disaster declaration for the counties of
17 Bernalillo, Cibola, Los Alamos, McKinley, Mora, Rio
18 Arriba, Sandoval, San Juan, San Miguel, Santa Fe,
19 Taos, and Torraine, New Mexico;

20 (5) the fire resulted in the loss of Federal,
21 State, local, tribal, and private property;

22 (6) the Secretary of the Interior and the Na-
23 tional Park Service have assumed responsibility for
24 the fire and subsequent losses of property; and

1 (7) the United States should compensate the
2 victims of the Cerro Grande fire.

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

4 (1) to compensate victims of the fire at Cerro
5 Grande, New Mexico, for injuries resulting from the
6 fire; and

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

9 **SEC. 3. DEFINITIONS.**

10 In this Act:

11 (1) CERRO GRANDE FIRE.—The term “Cerro
12 Grande fire” means the fire resulting from the initi-
13 ation by the National Park Service of a prescribed
14 burn at Bandelier National Monument, New Mexico,
15 on May 4, 2000.

16 (2) DIRECTOR.—The term “Director” means—

17 (A) the Director of the Federal Emergency
18 Management Agency; or

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

21 (3) 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 cor-
 2 poration, partnership, company, association,
 3 county, township, city, State, school district, or
 4 other non-Federal entity (including a legal rep-
 5 resentative);

6 that suffered injury resulting from the Cerro Grande
 7 fire.

8 (4) INJURY.—The term “injury” has the same
 9 meaning as the term “injury or loss of property, or
 10 personal injury or death” as used in section
 11 1346(b)(1) of title 28, United States Code.

12 (5) MANAGER.—The term “Manager” means
 13 an Independent Claims Manager appointed under
 14 section 4(a)(3).

15 (6) OFFICE.—The term “Office” means the Of-
 16 fice of Cerro Grande Fire Claims established by sec-
 17 tion 4(a)(2).

18 **SEC. 4. COMPENSATION FOR VICTIMS OF CERRO GRANDE**

19 **FIRE.**

20 (a) IN GENERAL.—

21 (1) COMPENSATION.—Each injured person shall
 22 be entitled to receive from the United States com-
 23 pensation for injury suffered by the injured person
 24 as a result of the Cerro Grande fire.

25 (2) OFFICE OF CERRO GRANDE FIRE CLAIMS.—

1 (A) IN GENERAL.—There is established
2 within the Federal Emergency Management
3 Agency an Office of Cerro Grande Fire Claims.

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

7 (C) FUNDING.—The Office—

8 (i) shall be funded from funds made
9 available to the Director under this title;
10 and

11 (ii) may reimburse other Federal
12 agencies for claims processing support and
13 assistance.

14 (3) OPTION TO APPOINT INDEPENDENT CLAIMS
15 MANAGER.—The Director may appoint an Inde-
16 pendent Claims Manager to—

17 (A) head the Office; and

18 (B) assume the duties of the Director
19 under this Act.

20 (b) SUBMISSION OF CLAIMS.—Not later than 2 years
21 after the date on which regulations are first promulgated
22 under subsection (f), an injured person may submit to the
23 Director a written claim for 1 or more injuries suffered
24 by the injured person in accordance with such require-
25 ments as the Director determines to be appropriate.

1 (c) INVESTIGATION OF CLAIMS.—

2 (1) IN GENERAL.—The Director shall, on behalf
3 of the United States, investigate, consider, ascertain,
4 adjust, determine, grant, deny, or settle any claim
5 for money damages asserted under subsection (b).

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

10 (3) EXTENT OF DAMAGES.—Any payment
11 under this Act—

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

14 (B) shall not include—

15 (i) interest before settlement or pay-
16 ment of a claim; or

17 (ii) punitive damages.

18 (d) PAYMENT OF CLAIMS.—

19 (1) DETERMINATION AND PAYMENT OF
20 AMOUNT.—

21 (A) IN GENERAL.—

22 (i) PAYMENT.—Not later than 180
23 days after the date on which a claim is
24 submitted under this Act, the Director

1 shall determine and fix the amount, if any,
2 to be paid for the claim.

3 (ii) PRIORITY.—The Director, to the
4 maximum extent practicable, shall pay sub-
5 rogation claims submitted under this Act
6 only after paying claims submitted by in-
7 jured parties that are not insurance com-
8 panies seeking payment as subrogees.

9 (B) PARAMETERS OF DETERMINATION.—
10 In determining and settling a claim under this
11 Act, the Director shall determine only—

12 (i) whether the claimant is an injured
13 person;

14 (ii) whether the injury that is the sub-
15 ject of the claim resulted from the fire;

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

18 (iv) the person or persons entitled to
19 receive the amount.

20 (C) INSURANCE AND OTHER BENEFITS.—

21 (i) IN GENERAL.—In determining the
22 amount of, and paying, a claim under this
23 Act, to prevent recovery by a claimant in
24 excess of actual compensatory damages,
25 the Director shall reduce the amount to be

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

7 (ii) GOVERNMENT LOANS.—This sub-
8 paragraph shall not apply to the receipt by
9 a claimant of any government loan that is
10 required to be repaid by the claimant.

11 (2) PARTIAL PAYMENT.—

12 (A) IN GENERAL.—At the request of a
13 claimant, the Director may make 1 or more ad-
14 vance or partial payments before the final set-
15 tlement of a claim, including final settlement on
16 any portion or aspect of a claim that is deter-
17 mined to be severable.

18 (B) JUDICIAL DECISION.—If a claimant re-
19 ceives a partial payment on a claim under this
20 Act, but further payment on the claim is subse-
21 quently denied by the Director, the claimant
22 may—

23 (i) seek judicial review under sub-
24 section (i); and

1 (ii) keep any partial payment that the
2 claimant received, unless the Director de-
3 termines that the claimant—

4 (I) was not eligible to receive the
5 compensation; or

6 (II) fraudulently procured the
7 compensation.

8 (3) RIGHTS OF INSURER OR OTHER THIRD
9 PARTY.—If an insurer or other third party pays any
10 amount to a claimant to compensate for an injury
11 described in subsection (a), the insurer or other
12 third party shall be subrogated to any right that the
13 claimant has to receive any payment under this Act
14 or any other law.

15 (4) ALLOWABLE DAMAGES.—

16 (A) LOSS OF PROPERTY.—A claim that is
17 paid for loss of property under this Act may in-
18 clude otherwise uncompensated damages result-
19 ing from the Cerro Grande fire for—

20 (i) an uninsured or underinsured
21 property loss;

22 (ii) a decrease in the value of real
23 property;

24 (iii) damage to physical infrastruc-
25 ture;

1 (iv) a cost resulting from lost tribal
2 subsistence from hunting, fishing, firewood
3 gathering, timbering, grazing, or agricul-
4 tural activities conducted on land damaged
5 by the Cerro Grande 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 Director
12 determines to be appropriate for inclusion
13 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 Cerro Grande fire for the fol-
17 lowing types of otherwise uncompensated busi-
18 ness loss:

19 (i) Damage to tangible assets or in-
20 ventory.

21 (ii) Business interruption losses.

22 (iii) Overhead costs.

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

1 (v) Any other loss that the Director
2 determines to be appropriate for inclusion
3 as business loss.

4 (C) FINANCIAL LOSS.—A claim that is
5 paid for injury under this Act may include dam-
6 ages resulting from the Cerro Grande fire for
7 the following types of otherwise uncompensated
8 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
18 determined by the Director, to reduce the
19 risk of wildfire, flood, or other natural dis-
20 aster in the counties specified in section
21 2(a)(4), to risk levels prevailing in those
22 counties before the Cerro Grande fire, that
23 are incurred not later than the date that is
24 3 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
5 May 12, 2002, if, as a result of the Cerro
6 Grande fire, a person that was not re-
7 quired to purchase flood insurance before
8 the Cerro Grande fire is required to pur-
9 chase flood insurance.

10 (ix) Any other loss that the Director
11 determines to be appropriate for inclusion
12 as financial loss.

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

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

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

1 eral or State law, arising out of or relating to the
2 same subject matter.

3 (f) REGULATIONS AND PUBLIC INFORMATION.—

4 (1) REGULATIONS.—Notwithstanding any other
5 provision of law, not later than 45 days after the
6 date of enactment of this Act, the Director 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
12 the Director promulgates regulations under
13 paragraph (1), the Director shall publish, in
14 newspapers of general circulation in the State
15 of New Mexico, a clear, concise, and easily un-
16 derstandable explanation, in English and Span-
17 ish, of—

18 (i) the rights conferred under this
19 Act; and

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

23 (B) DISSEMINATION THROUGH OTHER
24 MEDIA.—The Director shall disseminate the ex-
25 planation published under subparagraph (A)

1 through brochures, pamphlets, radio, television,
2 and other media that the Director determines
3 are likely to reach prospective claimants.

4 (g) CONSULTATION.—In administering this Act, the
5 Director shall consult with the Secretary of the Interior,
6 the Secretary of Energy, the Secretary of Agriculture, the
7 Administrator of the Small Business Administration,
8 other Federal agencies, and State, local, and tribal au-
9 thorities, as determined to be necessary by the Director
10 to—

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

13 (2) provide for local concerns.

14 (h) ELECTION OF REMEDY.—

15 (1) IN GENERAL.—An injured person may elect
16 to seek compensation from the United States for 1
17 or more injuries resulting from the Cerro Grande
18 fire by—

19 (A) submitting a claim under this Act;

20 (B) filing a claim or bringing a civil action
21 under chapter 171 of title 28, United States
22 Code; or

23 (C) bringing an authorized civil action
24 under any other provision of law.

1 (2) EFFECT OF ELECTION.—An election by an
2 injured person to seek compensation in any manner
3 described in paragraph (1) shall be final and conclu-
4 sive on the claimant with respect to all injuries re-
5 sulting from the Cerro Grande fire that are suffered
6 by the claimant.

7 (3) ARBITRATION.—

8 (A) IN GENERAL.—Not later than 45 days
9 after the date of enactment of this Act, the Di-
10 rector shall establish by regulation procedures
11 under which a dispute regarding a claim sub-
12 mitted under this Act may be settled by arbitra-
13 tion.

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

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

22 (i) be binding; and

23 (ii) preclude any exercise by the in-
24 jured person of the right to judicial review
25 of a claim described in subsection (i).

1 (4) NO EFFECT ON ENTITLEMENTS.—Nothing
2 in this Act affects any right of a claimant to file a
3 claim for benefits under any Federal entitlement
4 program.

5 (i) JUDICIAL REVIEW.—

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

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

16 (3) STANDARD.—The decision of the Director
17 incorporating the findings of the Director shall be
18 upheld if the decision is supported by substantial
19 evidence on the record considered as a whole.

20 (j) ATTORNEY'S AND AGENT'S FEES.—

21 (1) IN GENERAL.—No attorney or agent, acting
22 alone or in combination with any other attorney or
23 agent, shall charge, demand, receive, or collect, for
24 services rendered in connection with a claim sub-

1 mitted under this Act, fees in excess of 10 percent
2 of the amount of any payment on the claim.

3 (2) VIOLATION.—An attorney or agent who vio-
4 lates paragraph (1) shall be fined not more than
5 \$10,000.

6 (k) WAIVER OF REQUIREMENT FOR MATCHING
7 FUNDS.—

8 (1) IN GENERAL.—Notwithstanding any other
9 provision of law, a State or local project that is de-
10 termined by the Director to be carried out in re-
11 sponse to the Cerro Grande fire under any Federal
12 program that applies to an area affected by the
13 Cerro Grande fire shall not be subject to any re-
14 quirement for State or local matching funds to pay
15 the cost of the project under the Federal program.

16 (2) FEDERAL SHARE.—The Federal share of
17 the costs of a project described in paragraph (1)
18 shall be 100 percent.

19 (l) APPLICABILITY OF DEBT COLLECTION REQUIRE-
20 MENTS.—Section 3716 of title 31, United States Code,
21 shall not apply to any payment under this Act.

22 (m) INDIAN COMPENSATION.—Notwithstanding any
23 other provision of law, in the case of an Indian tribe, a
24 tribal entity, or a member of an Indian tribe that submits
25 a claim under this Act—

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

5 (2) the Indian tribe, tribal entity, or member of
6 an Indian tribe shall be entitled to proceed under
7 this Act in the same manner and to the same extent
8 as any other injured person; and

9 (3) except with respect to land damaged by the
10 Cerro Grande fire that is the subject of the claim,
11 the Bureau of Indian Affairs shall have no responsi-
12 bility to restore land damaged by the Cerro Grande
13 fire.

14 (n) REPORT.—Not later than 1 year after the date
15 of promulgation of regulations under subsection (f)(1),
16 and annually thereafter, the Director shall submit to Con-
17 gress a report that describes the claims submitted under
18 this Act during the year preceding the date of submission
19 of the report, including, for each claim—

20 (1) the amount claimed;

21 (2) a brief description of the nature of the
22 claim; and

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

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

○