

106TH CONGRESS  
2D SESSION

# H. R. 4574

To authorize the Secretary of the Interior to make compensation for damages arising from a prescribed burn on the Bandelier National Monument in the State of New Mexico.

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## IN THE HOUSE OF REPRESENTATIVES

MAY 25, 2000

Mr. UDALL of New Mexico introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committee on Resources, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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## A BILL

To authorize the Secretary of the Interior to make compensation for damages arising from a prescribed burn on the Bandelier National Monument in the State of 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 Com-  
5       pensation Act”.

6       **SEC. 2. PURPOSES.**

7       The purposes of this Act are—

1           (1) to fully compensate any and all persons, for  
2           the losses sustained by reason of the prescribed burn  
3           on May 4, 2000, on the Bandelier National Monu-  
4           ment in the State of New Mexico (in this Act re-  
5           ferred to as the “Cerro Grande fire”);

6           (2) to provide just compensation for the per-  
7           sonal injuries and losses of property, including the  
8           destruction and damage to homes, businesses, public  
9           and governmental buildings resulting from the Cerro  
10          Grande fire which went beyond the fire prescription;

11          (3) to provide for the expeditious consideration  
12          and settlement of claims for such personal injuries  
13          and property losses.

14 **SEC. 3. COMPENSATION.**

15          (a) IN GENERAL.—All persons who suffered personal  
16          injury or loss of property directly resulting from the deci-  
17          sion by the National Park Service or other Federal agency  
18          or entity to conduct the Cerro Grande fire and the failure  
19          of the National Park Service to maintain and control the  
20          burn in and around the area of Bandelier National Monu-  
21          ment shall be entitled to receive from the United States  
22          full compensation for such personal injury or loss of prop-  
23          erty.

24          (b) CLAIMS.—Claimants shall submit their claims in  
25          writing to the Secretary of the Interior (in this Act re-

1 ferred to as the “Secretary”), under such regulations as  
2 the Secretary prescribes under section 6, within one year  
3 after the date on which the regulations required by section  
4 5(d) are published in the Federal Register.

5 (c) DEATH.—In the event of a person’s death, a claim  
6 shall be submitted only by a claimant’s duly authorized  
7 legal representative.

8 **SEC. 4. ACTION ON CLAIMS.**

9 (a) IN GENERAL.—The Secretary, or the Secretary’s  
10 designee for the purpose of acting on behalf of the United  
11 States, shall investigate, consider, ascertain, adjust, deter-  
12 mine, and settle any claim for money damages asserted  
13 under section 3. Determinations, awards, and settlements  
14 under this Act shall be limited to actual or compensatory  
15 damages measured by the pecuniary injuries or losses in-  
16 volved and shall not include interest prior to settlement  
17 or punitive damages.

18 (b) APPLICABLE LAW.—Except as otherwise provided  
19 herein, the laws of the State of New Mexico shall apply  
20 to claims submitted under section 3.

21 (c) AMOUNT.—In determining the amount to be  
22 awarded under subsection (a), the Secretary shall reduce  
23 any such amount by an amount equal to the total of insur-  
24 ance benefits or other payments or settlements of any na-

1 ture previously paid with respect to such personal injury  
2 or property loss claims.

3 (d) ASSIGNMENT OR TRANSFER.—Except as to the  
4 United States, no claim cognizable under this Act shall  
5 be assigned or transferred.

6 (e) ACCEPTANCE AND SUBROGATION.—The accept-  
7 ance by the claimant of any award, compromise, or settle-  
8 ment under subsection (a), except an advance or partial  
9 payment made under section 5(c), shall be final and con-  
10 clusive on the claimant and shall constitute a complete re-  
11 lease of any claim against the United States by reason  
12 of the same subject matter. A release shall not, however,  
13 prevent an insurer with rights as a subrogee under its own  
14 name or that of the claimant from exercising any right  
15 of action against the United States to which it may be  
16 entitled under any other law for payments made to the  
17 claimant for a loss arising from the subject matter of the  
18 claimant's claim.

19 (f) INSURANCE AND CLAIMS.—Any claim for dam-  
20 ages which may be payable in whole or in part by a claim-  
21 ant's insurer shall not be paid by the Secretary unless and  
22 until the claimant provides written proof that the insurer  
23 has denied the claim, in whole or in part, or has failed  
24 to approve or deny such claim within 6 months of its pre-  
25 sentment. The claimant shall assign to the United States

1 any rights of action the claimant has or may have against  
2 any other third party, including an insurer.

3 **SEC. 5. AUTHORITY OF THE SECRETARY.**

4 (a) IN GENERAL.—In the determination and settle-  
5 ment of claims asserted under this Act, the Secretary shall  
6 limit determinations to—

7 (1) whether the losses sustained directly re-  
8 sulted from the Cerro Grande fire;

9 (2) the amounts to be allowed and paid pursu-  
10 ant to section 4(a); and

11 (3) the persons entitled to receive such  
12 amounts.

13 (b) TIME FOR AWARDS.—The Secretary shall deter-  
14 mine and fix the amount of awards, if any, in each claim  
15 within 12 months from the date on which the claim was  
16 submitted to the Secretary.

17 (c) ADVANCE OR PARTIAL PAYMENTS.—At the re-  
18 quest of a claimant, the Secretary is authorized to make  
19 advance or partial payments prior to final settlement on  
20 any portion or aspect of a claim determined to be logically  
21 severable.

22 (d) REGULATIONS.—Advance or partial payments  
23 shall be made available under subsection (c) under regula-  
24 tions promulgated by the Secretary, which regulations  
25 shall include provisions for such payments where the Sec-

1   retary determines that to delay payment until final settle-  
2   ment of the claim would impose a substantial hardship on  
3   the claimant. When a claimant pursues a cause of action  
4   as provided for in section 9, the claimant may be per-  
5   mitted to retain such advance or partial payments under  
6   a final court decision on the merits.

7   **SEC. 6. REGULATIONS.**

8       (a) **IN GENERAL.**—Notwithstanding any other provi-  
9   sion of law, the Secretary shall within 15 days after the  
10   date of enactment of this Act promulgate and publish in  
11   the Federal Register, final regulations and procedures for  
12   the handling of the claims authorized in section 3.

13       (b) **NOTICE.**—The Secretary shall also cause to be  
14   published, in newspapers with general circulation in the  
15   State of New Mexico, an explanation of the rights con-  
16   ferred by this Act and the procedural and other require-  
17   ments imposed by the rules of procedure promulgated by  
18   the Secretary. Such explanation shall be in clear, concise,  
19   and easily understandable language. In addition, the Sec-  
20   retary shall also disseminate such explanation concerning  
21   such rights and procedures, and other data helpful to  
22   claimants, in the State of New Mexico, by means of bro-  
23   chures, pamphlets, radio, television, and other media likely  
24   to reach prospective claimants.

1 **SEC. 7. COORDINATION.**

2       The claims program established by this Act shall, to  
3 the extent practicable, be coordinated with other disaster  
4 relief operations conducted by other Federal agencies  
5 under the various Disaster Relief Acts and other provi-  
6 sions of law. The Secretary shall consult with the heads  
7 of such other Federal agencies, and shall, as the Secretary  
8 deems necessary, consistent with the expeditious deter-  
9 mination of claims under section 4, make use of informa-  
10 tion developed by such agencies. The heads of all other  
11 Federal agencies performing disaster relief functions  
12 under such Acts and other Federal authorities shall pro-  
13 vide the Secretary, or the Secretary's designee, such infor-  
14 mation and records as the Secretary or designee shall  
15 deem necessary for the administration of this Act.

16 **SEC. 8. ANNUAL REPORT.**

17       At the end of the year following the date of enactment  
18 of this Act and each year thereafter until the completion  
19 of the handling of claims under section 3, the Secretary  
20 shall make an annual report to the Congress of all claims  
21 submitted to the Secretary under section 3 stating the  
22 name of each claimant, the amount claimed, a brief de-  
23 scription of the claim, and the status or disposition of the  
24 claim, including the amount of each administrative pay-  
25 ment and award under the Act.

1 **SEC. 9. OTHER ACTION.**

2 (a) **IN GENERAL.**—An action shall not be instituted  
3 in any court of the United States upon a claim against  
4 the United States which is included in a claim submitted  
5 under section 3 until the Secretary or the Secretary's des-  
6 ignee has made a final disposition of the pending claim.

7 (b) **WITHDRAWAL OF CLAIM.**—A pending claim may  
8 be withdrawn from consideration prior to final decision  
9 upon 15 days written notice and such withdrawal shall be  
10 deemed an abandonment of the claim for all purposes  
11 under this Act.

12 (c) **CIVIL ACTION.**—After withdrawal of a claim or  
13 after the final decision of the Secretary or the Secretary's  
14 designee on a claim under this Act, a claimant may elect  
15 to file a civil action asserting such claim against the  
16 United States in any court of competent jurisdiction under  
17 any other provision of applicable law. If such an action  
18 is filed, there shall be no further consideration or pro-  
19 ceedings on the claim under this Act.

20 (d) **REVIEW.**—Any claimant aggrieved by a final deci-  
21 sion of the Secretary on a claim under section 3 may file  
22 within 60 days from the date of such decision with the  
23 United States District Court for the District of New Mex-  
24 ico a petition praying that such decision be modified or  
25 set aside in whole or in part. The court shall hear such  
26 appeal on the record made before the Secretary. The filing

1 of such an appeal shall constitute an election of remedies.  
2 The decision of the Secretary incorporating the Sec-  
3 retary's findings of fact therein if supported by substantial  
4 evidence on the record considered, as a whole shall be con-  
5 clusive.

6 (e) CONSTRUCTION.—Except to the extent otherwise  
7 provided, nothing in this Act shall be construed to prevent  
8 any claimant under this Act from exercising any rights  
9 to which the claimant may be entitled under any other  
10 provision of law.

11 (f) FEES.—Attorney and agent fees shall be paid out  
12 of the awards hereunder. No attorney or agent on account  
13 of services rendered in connection with a claim shall re-  
14 ceive in excess of 10 per centum of the amount paid in  
15 connection with such claim, any contract to the contrary  
16 shall be notwithstanding. Whoever violates this subsection  
17 shall be fined a sum not to exceed \$10,000.

18 **SEC. 10. DEFINITION.**

19 For the purposes of this Act, the term “person”  
20 means any individual, Native American tribe, corporation,  
21 partnership, company, business entity, municipality, town-  
22 ship, association, or other non-Federal entity.

1 **SEC. 11. AUTHORIZATION OF APPROPRIATIONS.**

2       To carry out this Act there is authorized to be appro-  
3 priated to the Secretary of the Interior \$500,000,000 and  
4 such additional sums as may be warranted.

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