AMENDMENT
TO RULES COMMITTEE PRINT 115–72
OFFERED BY MR. BEN RAY LUJÁN OF NEW MEXICO

Add at the end of title I the following:

SEC. ___. GOLD KING MINE CLAIMS.

(a) COMPENSATION FOR DAMAGES.—

(1) COMPENSATION.—Each claimant shall be entitled to receive from the United States—

(A) compensation for injury suffered by the injured person arising out of, or relating to the Gold King Mine Release; and

(B) damages described in subsection (a)(3), as determined by the Administrator.

(2) OPTION TO APPOINT INDEPENDENT CLAIMS MANAGER.—The Administrator may appoint an Independent Claims Manager to—

(A) head the Office; and

(B) assume the duties of the Administrator under this section.

(3) ALLOWABLE DAMAGES.—

(A) LOSS OF PROPERTY.—A claim that is paid for loss of property under this section may
include otherwise uncompensated damages arising out of or relating to the Gold King Mine Release for—

(i) an uninsured or underinsured property loss;

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

(iii) damage to physical infrastructure;

(iv) a cost resulting from lost tribal subsistence from hunting, fishing, farming, ranching, firewood gathering, timbering, grazing, or agricultural activities conducted on land damaged by the Gold King Mine Release;

(v) a cost of reforestation or revegetation on tribal or non-Federal land, to the extent that the cost of reforestation or revegetation is not covered by any other Federal program; and

(vi) any other loss that the Administrator determines to be appropriate for inclusion as loss of property.

(B) BUSINESS LOSS.—A claim that is paid for injury under this section may include dam-
ages arising out of or relating to the Gold King Mine Release for the following types of otherwise uncompensated business loss:

(i) Damage to tangible assets or inventory.

(ii) Business interruption losses.

(iii) Overhead costs.

(iv) Employee wages for work not performed.

(v) Any other loss that the Administrator determines to be appropriate for inclusion as business loss.

(C) FINANCIAL LOSS.—A claim that is paid for injury under this section may include damages arising out of or relating to the Gold King Mine Release for the following types of otherwise uncompensated financial loss:

(i) Increased mortgage interest costs.

(ii) An insurance deductible.

(iii) A temporary living or relocation expense.

(iv) Lost wages or personal income.

(v) Emergency staffing expenses.

(vi) Debris removal and other cleanup costs.
(vii) Any other loss that the Administrator determines to be appropriate for inclusion as financial loss.

(b) Submission of Claims.—Not later than 3 years after the date of enactment of the Water Resources Development Act of 2018, a claimant may submit to the Administrator a written claim for one or more injuries suffered by the claimant in accordance with such reasonable requirements as the Administrator determines to be appropriate.

(c) Payment of Claims.—

(1) Duties of the Administrator.—

(A) In General.—Notwithstanding any other provision of law, with respect to any claim submitted under this section for damages arising out of, or relating to, the Gold King Mine release, the Administrator shall—

(i) receive, process, and pay the claim;

or

(ii) settle the claim.

(B) Documentation of Claim.—In carrying out the duties described in subparagraph (A), the Administrator may request from a claimant or subrogee documentation to support the validity of a claim.
(2) INSURANCE AND OTHER BENEFITS.—

(A) IN GENERAL.—In determining the amount of, and paying, a claim under this section, to prevent recovery by a claimant in excess of actual compensatory damages, the Administrator shall reduce the amount to be paid for the claim by an amount that is equal to the total of insurance benefits or other payments or settlements of any nature that were paid, or will be paid, with respect to the claim.

(B) RIGHTS OF INSURERS AND OTHER THIRD PARTIES.—If an insurer or other third party pays an amount to a claimant to compensate for all or part of a claim, the insurer or other third party shall be subrogated to any right that the claimant has to receive payment under this section.

(3) FUNDING.—The Administrator shall administer and pay claims under this section from appropriations made available under section 1304 of title 31, United States Code.

(d) TIMING.—

(1) DEADLINE.—A claim under this section shall be submitted to the Administrator not later than 3 years after the date of enactment of this Act.
(2) DECISION.—

(A) IN GENERAL.—The Administrator shall make a decision with respect to a claim under this section not later than 180 days after the date on which an adequately documented claim is received by the Administrator.

(B) FEDERAL TORT CLAIMS ACT CLAIMS.—

(i) IN GENERAL.—In the case of an adequately documented claim under chapter 171 of title 28, United States Code, arising out of or relating to the Gold King Mine release submitted to the Administrator before the date of enactment of this Act, the Administrator shall make a decision on the claim not later than 180 days after that date of enactment.

(ii) APPLICABILITY.—Section 2680(a) of title 28, United States Code, shall not apply to a claim brought against the United States arising out of or relating to the Gold King Mine release.

(C) NOTICE.—The Administrator shall send, by certified or registered mail, to the
claimant and any subrogee written notice of the
decision under this paragraph.

(3) **Final Decision.**—The failure of the Admin-
istrator to make a final decision on a claim
under this section within a time period described in
paragraph (2) shall, at the option of the claimant at
any time after the end of the time period, be consid-
ered to be a final denial of the claim for purposes
of this section.

(e) **Acceptance of Award.**—The acceptance by a
claimant of any payment under this section, shall—

(1) be final and conclusive on the claimant;

(2) be considered to be a complete release of all
known claims against the United States (including
any agency or employee of the United States) under
this section and chapter 171 of title 28, United
States Code, arising out of or relating to the Gold
King Mine release; and

(3) include a certification by the claimant,
made under penalty of perjury and subject to section
1001 of title 18, United States Code, that the claim
is true and correct.

(f) **Judicial Review.**—A claimant aggrieved by a
final decision of the Administrator under this section may,
not later than 60 days after the date on which the decision
is issued, seek judicial review in the same manner as claims under section 1346(b)(1) of title 28, United States Code.

(g) ELECTION OF REMEDY.—A claimant may elect to seek compensation for damages arising out of or relating to the Gold King Mine release by—

(1) submitting a claim under this section;

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

or

(3) bringing an authorized civil action under any other provision of law.

(h) DEFINITIONS.—In this section:

(1) ADMINISTRATOR.—The term “Administrator” means the Administrator of the Environmental Protection Agency.

(2) CLAIM.—

(A) IN GENERAL.—The term “claim” means a written request for a certain sum for monetary compensation arising out of or relating to the Gold King Mine release for—

(i) injury or loss of property, or personal injury or death (within the meaning of section 1346(b)(1) of title 28, United States Code);
(ii) lost wages incurred before December 31, 2017;
(iii) lost net business income incurred before December 31, 2017;
(iv) diminished yield or loss of agricultural crops that occurred before December 31, 2017; or
(v) expenses arising out of the relocation of livestock or the provision of alternative water supplies to livestock incurred before December 31, 2017.

(B) EXCLUSION.—The term “claim” does not include—

(i) a request for reimbursement for response costs under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.), except as provided in this Act; or
(ii) a request for injunctive relief.

(3) CLAIMANT.—The term “claimant” means a person, State, or Tribe who—

(A) submits to the Administrator a claim under subsection (b); or
(B) before the date of enactment of this Act, submits to the Administrator a claim
under chapter 171 of title 28, United States Code (commonly known as the “Federal Tort Claims Act”), arising out of or relating to the Gold King Mine release.

(4) GOLD KING MINE RELEASE.—The term “Gold King Mine release” means the discharge on August 5, 2015, of approximately 3,000,000 gallons of contaminated water from the Gold King Mine north of Silverton, Colorado, into Cement Creek that occurred while the Environmental Protection Agency was conducting an investigation of the Gold King Mine to assess mine conditions.