

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:

1 **SEC. ____. GOLD KING MINE CLAIMS.**

2 (a) COMPENSATION FOR DAMAGES.—

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

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

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

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

13 (A) head the Office; and

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

16 (3) ALLOWABLE DAMAGES.—

17 (A) LOSS OF PROPERTY.—A claim that is
18 paid for loss of property under this section may

1 include otherwise uncompensated damages arising out of or relating to the Gold King Mine
2 Release for—
3

4 (i) an uninsured or underinsured
5 property loss;

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

8 (iii) damage to physical infrastructure;
9

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

16 (v) a cost of reforestation or revegetation on tribal or non-Federal land, to the
17 extent that the cost of reforestation or re-
18 vegetation is not covered by any other Federal
19 program; and
20

21 (vi) any other loss that the Administrator determines to be appropriate for inclusion as loss of property.
22
23

24 (B) BUSINESS LOSS.—A claim that is paid
25 for injury under this section may include dam-

1 ages arising out of or relating to the Gold King
2 Mine Release for the following types of other-
3 wise uncompensated business loss:

4 (i) Damage to tangible assets or in-
5 ventory.

6 (ii) Business interruption losses.

7 (iii) Overhead costs.

8 (iv) Employee wages for work not per-
9 formed.

10 (v) Any other loss that the Adminis-
11 trator determines to be appropriate for in-
12 clusion as business loss.

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

18 (i) Increased mortgage interest costs.

19 (ii) An insurance deductible.

20 (iii) A temporary living or relocation
21 expense.

22 (iv) Lost wages or personal income.

23 (v) Emergency staffing expenses.

24 (vi) Debris removal and other cleanup
25 costs.

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

4 (b) SUBMISSION OF CLAIMS.—Not later than 3 years
5 after the date of enactment of the Water Resources Devel-
6 opment Act of 2018, a claimant may submit to the Admin-
7 istrator a written claim for one or more injuries suffered
8 by the claimant in accordance with such reasonable re-
9 quirements as the Administrator determines to be appro-
10 priate.

11 (c) PAYMENT OF CLAIMS.—

12 (1) DUTIES OF THE ADMINISTRATOR.—

13 (A) IN GENERAL.—Notwithstanding any
14 other provision of law, with respect to any claim
15 submitted under this section for damages aris-
16 ing out of, or relating to, the Gold King Mine
17 release, the Administrator shall—

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

19 or

20 (ii) settle the claim.

21 (B) DOCUMENTATION OF CLAIM.—In car-
22 rying out the duties described in subparagraph
23 (A), the Administrator may request from a
24 claimant or subrogee documentation to support
25 the validity of a claim.

1 (2) INSURANCE AND OTHER BENEFITS.—

2 (A) IN GENERAL.—In determining the
3 amount of, and paying, a claim under this sec-
4 tion, to prevent recovery by a claimant in excess
5 of actual compensatory damages, the Adminis-
6 trator shall reduce the amount to be paid for
7 the claim by an amount that is equal to the
8 total of insurance benefits or other payments or
9 settlements of any nature that were paid, or
10 will be paid, with respect to the claim.

11 (B) RIGHTS OF INSURERS AND OTHER
12 THIRD PARTIES.—If an insurer or other third
13 party pays an amount to a claimant to com-
14 pensate for all or part of a claim, the insurer
15 or other third party shall be subrogated to any
16 right that the claimant has to receive payment
17 under this section.

18 (3) FUNDING.—The Administrator shall admin-
19 ister and pay claims under this section from appro-
20 priations made available under section 1304 of title
21 31, United States Code.

22 (d) TIMING.—

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

1 (2) DECISION.—

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

7 (B) FEDERAL TORT CLAIMS ACT
8 CLAIMS.—

9 (i) IN GENERAL.—In the case of an
10 adequately documented claim under chap-
11 ter 171 of title 28, United States Code,
12 arising out of or relating to the Gold King
13 Mine release submitted to the Adminis-
14 trator before the date of enactment of this
15 Act, the Administrator shall make a deci-
16 sion on the claim not later than 180 days
17 after that date of enactment.

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

23 (C) NOTICE.—The Administrator shall
24 send, by certified or registered mail, to the

1 claimant and any subrogee written notice of the
2 decision under this paragraph.

3 (3) FINAL DECISION.—The failure of the Ad-
4 ministrator to make a final decision on a claim
5 under this section within a time period described in
6 paragraph (2) shall, at the option of the claimant at
7 any time after the end of the time period, be consid-
8 ered to be a final denial of the claim for purposes
9 of this section.

10 (e) ACCEPTANCE OF AWARD.—The acceptance by a
11 claimant of any payment under this section, shall—

12 (1) be final and conclusive on the claimant;

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

19 (3) include a certification by the claimant,
20 made under penalty of perjury and subject to section
21 1001 of title 18, United States Code, that the claim
22 is true and correct.

23 (f) JUDICIAL REVIEW.—A claimant aggrieved by a
24 final decision of the Administrator under this section may,
25 not later than 60 days after the date on which the decision

1 is issued, seek judicial review in the same manner as
2 claims under section 1346(b)(1) of title 28, United States
3 Code.

4 (g) ELECTION OF REMEDY.—A claimant may elect
5 to seek compensation for damages arising out of or relat-
6 ing to the Gold King Mine release by—

7 (1) submitting a claim under this section;

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

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

13 (h) DEFINITIONS.—In this section:

14 (1) ADMINISTRATOR.—The term “Adminis-
15 trator” means the Administrator of the Environ-
16 mental Protection Agency.

17 (2) CLAIM.—

18 (A) IN GENERAL.—The term “claim”
19 means a written request for a certain sum for
20 monetary compensation arising out of or relat-
21 ing to the Gold King Mine release for—

22 (i) injury or loss of property, or per-
23 sonal injury or death (within the meaning
24 of section 1346(b)(1) of title 28, United
25 States Code);

1 (ii) lost wages incurred before Decem-
2 ber 31, 2017;

3 (iii) lost net business income incurred
4 before December 31, 2017;

5 (iv) diminished yield or loss of agricul-
6 tural crops that occurred before December
7 31, 2017; or

8 (v) expenses arising out of the reloca-
9 tion of livestock or the provision of alter-
10 native water supplies to livestock incurred
11 before December 31, 2017.

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

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

19 (ii) a request for injunctive relief.

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

22 (A) submits to the Administrator a claim
23 under subsection (b); or

24 (B) before the date of enactment of this
25 Act, submits to the Administrator a claim

1 under chapter 171 of title 28, United States
2 Code (commonly known as the “Federal Tort
3 Claims Act”), arising out of or relating to the
4 Gold King Mine release.

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

