

104<sup>TH</sup> CONGRESS  
1<sup>ST</sup> SESSION

# S. 339

To ensure the provision of appropriate compensation for the real property and mining claims taken by the United States as a result of the establishment of the White Sands Missile Range, New Mexico.

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## IN THE SENATE OF THE UNITED STATES

FEBRUARY 2 (legislative day, JANUARY 30), 1995

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

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## A BILL

To ensure the provision of appropriate compensation for the real property and mining claims taken by the United States as a result of the establishment of the White Sands Missile Range, 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 “White Sands Fair  
5        Compensation Act of 1995”.

6        **SEC. 2. FINDINGS.**

7        Congress makes the following findings:

1           (1) The White Sands Missile Range, New Mex-  
2           ico, is an installation that is vital to the national se-  
3           curity interests of the United States.

4           (2) The United States established the Range  
5           during World War II, and, in doing so, temporarily  
6           displacing ranchers and miners who owned land  
7           within the boundaries of the Range or whose liveli-  
8           hood depended on such land.

9           (3) These ranchers and miners made a signifi-  
10          cant contribution to the effort of the United States  
11          to win World War II and to the post-war national  
12          defense program by vacating land within the Range  
13          at the request of the United States Government.

14          (4) In 1975, all land within the Range was per-  
15          manently taken by the United States Government.

16          (5) The United States Government has never  
17          fully compensated ranchers and miners who owned  
18          land within the boundaries of the Range or whose  
19          livelihood depended on such land for the value of the  
20          land and claims taken by the Government.

21          (6) The method utilized by the United States  
22          Government to compensate such ranchers differs  
23          from the method utilized by the Government to com-  
24          pensate ranchers during the taking of land in the  
25          area in New Mexico that became the McGregor

1 Range and Extension Area of the Fort Bliss Military Reservation, Texas. Ranchers owning property  
2 in that were fully compensated for their ranches as  
3 operating units, including the carrying capacity of  
4 public domain lands associated with such ranches.  
5

6 (7) Through the Legacy Fellowship Program in  
7 Natural and Cultural Resource Management established by section 328 of Public Law 102-484, the  
8 Department of Defense is sponsoring a 5-year research project on the historical significance of ranching  
9 in the area that is now the White Sands Missile  
10 Range.  
11  
12

13 (8) The United States Government has an obligation to pay full compensation to ranchers and  
14 miners who owned land within the boundaries of the  
15 Range or whose livelihood depended on such land for  
16 the value of the land and claims that were taken by  
17 the Government.  
18

19 **SEC. 3. ESTABLISHMENT OF COMMISSION.**

20 (a) ESTABLISHMENT.—There is established in the  
21 Department of Defense a commission to be known as the  
22 White Sands Fair Compensation Commission (hereafter in  
23 this section referred to as the “Commission”).

24 (b) MEMBERSHIP.—

1           (1) NUMBER AND APPOINTMENT.—The Com-  
2 mission shall be composed of nine members ap-  
3 pointed by the Secretary of Defense as follows—

4           (A) one shall be an employee of the De-  
5 partment of Defense;

6           (B) one shall be an employee of the De-  
7 partment of the Interior who shall be appointed  
8 from among individuals recommended by the  
9 Secretary of the Interior;

10          (C) five shall be individuals appointed from  
11 among individuals recommended by the Sen-  
12 ators and Representatives from the State of  
13 New Mexico, with one individual appointed  
14 from among the recommendations of each such  
15 Senator and Representative; and

16          (D) two shall be individuals appointed  
17 from among individuals recommended by the  
18 Governor of New Mexico.

19          (2) EXPERTISE.—The Secretary shall, to the  
20 maximum extent practicable, make appointments  
21 under this subsection from among individuals rec-  
22 ommended to the Secretary who are present or  
23 former residents of the State of New Mexico and  
24 who have an expertise in matters of agricultural eco-

1       nomics or the history of the establishment of the  
2       White Sands Missile Range, New Mexico.

3       (c) TERMS AND VACANCIES.—Members of the Com-  
4       mission shall be appointed for the life of the Commission.  
5       Any vacancy in the Commission shall not affect its powers  
6       but shall be filled in the same manner as the original ap-  
7       pointment.

8       (d) COMPENSATION.—

9           (1) IN GENERAL.—Except as provided in para-  
10       graph (2), members of the Commission shall serve  
11       without pay or compensation.

12          (2) TRAVEL EXPENSES.—Each member of the  
13       Commission shall be allowed travel expenses, includ-  
14       ing per diem in lieu of subsistence, at rates author-  
15       ized for employees of agencies under subchapter I of  
16       chapter 57 of title 5, United States Code, while  
17       away from their homes or regular places of business  
18       in the performance of services for the Commission.

19       (e) OFFICERS.—The members of the Commission  
20       shall elect the Chairman of the Commission and any other  
21       officers that may be required for the Commission. The  
22       term of office of an officer of the Commission shall be  
23       established by the members of the Commission.

1 (f) QUORUM.—Five members of the Commission shall  
 2 constitute a quorum but a lesser number may hold hear-  
 3 ings.

4 (g) BYLAWS.—The Commission may make such by-  
 5 laws, rules, and regulations as it considers necessary to  
 6 carry out its functions.

7 (h) ADMINISTRATIVE SUPPORT.—The Secretary shall  
 8 provide the Commission with such professional and tech-  
 9 nical support, clerical staff and services, and administra-  
 10 tive support as the Secretary determines necessary for the  
 11 Commission to carry out its responsibilities under this Act.  
 12 Amounts required by the Secretary to carry out this sub-  
 13 section shall be paid from funds appropriated under sec-  
 14 tion 5(a).

15 (i) TERMINATION.—The Commission shall terminate  
 16 on the date that is 14 months after the completion of the  
 17 evaluations by the Commission of the claims submitted to  
 18 the Commission under section 4.

19 **SEC. 4. EVALUATION AND PAYMENT OF CLAIMS FOR COM-**  
 20 **PENSATION FOR TAKINGS RELATING TO**  
 21 **WHITE SANDS MISSILE RANGE.**

22 (a) IN GENERAL.—Claims for compensation for  
 23 takings of property associated with the establishment of  
 24 the White Sands Missile Range, New Mexico, shall be eval-

1 uated, and payments of such compensation made, in ac-  
2 cordance with this section.

3 (b) SUBMITTAL OF CLAIMS.—

4 (1) IN GENERAL.—Subject to paragraph (3),  
5 any individual described in paragraph (2) may sub-  
6 mit to the White Sands Fair Compensation Commis-  
7 sion a claim for full compensation for the taking of  
8 such individual's property as a result of the estab-  
9 lishment of the White Sands Missile Range.

10 (2) ELIGIBLE INDIVIDUALS.—The following in-  
11 dividuals may submit claims under this subsection:

12 (A) Individuals—

13 (i) who—

14 (I) owned real property that was  
15 taken by the United States for the  
16 purpose of establishing the area now  
17 known as the White Sands Missile  
18 Range, New Mexico; and

19 (II) engaged in ranching activi-  
20 ties on the real property at the time  
21 of the taking; and

22 (ii) who claim that the amount paid  
23 by the United States in 1975 in compensa-  
24 tion for the taking was not full compensa-

1           tion for the value of the property at the  
2           time of the taking.

3           (B) Individuals who—

4                 (i) possessed a mining claim in real  
5                 property that was so taken; and

6                 (ii) claim that the amount paid by the  
7                 United States in 1975 in compensation for  
8                 the taking was not full compensation for  
9                 value of the mining claim at the time of  
10                the taking.

11           (C) Heirs or assigns of the individuals de-  
12           scribed in subparagraphs (A) and (B).

13           (3) DEADLINE FOR CLAIMS.—A claim shall be  
14           submitted under this subsection not later than the  
15           end of the 14-month period beginning on the date of  
16           the enactment of this Act.

17           (c) EVALUATION OF CLAIMS.—

18                 (1) IN GENERAL.—The Commission shall evalu-  
19                 ate each claim submitted under this section. In eval-  
20                 uating a claim, the Commission shall—

21                         (A) determine whether or not the individ-  
22                         ual submitting the claim is eligible to submit  
23                         the claim;

24                         (B) if the individual is so eligible, deter-  
25                         mine whether or not the amount paid by the

1 United States to the individual in 1975 for the  
2 real property or mining claim of the individual,  
3 as the case may be, was full compensation for  
4 the value of the real property or mining claim  
5 at the time of the taking;

6 (C) if the amount so paid is determined  
7 not to have been such full compensation, deter-  
8 mine the amount that would constitute such full  
9 compensation; and

10 (D) notify the individual and the Secretary  
11 of Defense of the determinations.

12 (2) RULES FOR VALUATION OF REAL PROP-  
13 ERTY.—In determining the value of real property  
14 under paragraph (1)(B), the Commission—

15 (A) shall utilize established precedents for  
16 the valuation of real property in New Mexico  
17 that is similar to the real property subject to  
18 valuation;

19 (B) shall take into account the value, if  
20 any, added to the real property by Federal  
21 grazing permits associated with the real prop-  
22 erty; and

23 (C) may not take into account any lease  
24 payments paid by the United States Govern-

1           ment with respect to the real property between  
2           1942 and 1975.

3           (3) PRIORITY OF EVALUATION.—The Commis-  
4           sion shall give priority in the order of evaluating  
5           claims under this subsection to claims submitted by  
6           individuals who owned the real property subject to  
7           the claims continuously from 1941 until the taking  
8           of the real property in 1975.

9           (d) APPEAL.—

10           (1) IN GENERAL.—An individual submitting a  
11           claim under this section may appeal a determination  
12           of the Commission under subparagraph (B) or (C)  
13           of subsection (c)(1) by submitting a notice of appeal  
14           of the determination to the Secretary of Defense. An  
15           individual shall submit the appeal not later than 30  
16           days after receiving notice of the determination  
17           under subparagraph (D) of such subsection.

18           (2) REVIEW.—The Secretary shall review each  
19           appeal submitted to the Secretary under this sub-  
20           section. The Secretary shall complete the review not  
21           later than 60 days after the date of receiving the ap-  
22           peal.

23           (3) RELIEF.—Subject to paragraph (4), upon  
24           completion of the review of an appeal under this  
25           subsection, the Secretary shall—

1 (A) uphold the determination of the Com-  
2 mission; or

3 (B) establish an amount that is appro-  
4 priate to provide full compensation to the indi-  
5 vidual submitting the appeal for the value of  
6 the real property or mining claim, as the case  
7 may be, of the individual that was taken by the  
8 United States Government.

9 (4) LIMITATION ON ADJUSTMENT OF COM-  
10 PENSATION.—The amount of compensation estab-  
11 lished by the Secretary for a claim on appeal under  
12 paragraph (3)(B) may not be less than the amount  
13 of compensation determined by the Commission for  
14 the claim under subsection (c)(1).

15 (5) NOTIFICATION.—The Secretary shall notify  
16 each individual submitting an appeal under this sub-  
17 section of the decision of the Secretary under para-  
18 graph (3).

19 (6) FINALITY OF DECISION.—The decision of  
20 the Secretary under paragraph (3) shall not be sub-  
21 ject to judicial review.

22 (e) PAYMENT OF COMPENSATION.—

23 (1) PAYMENT.—Subject to paragraph (2), upon  
24 upholding the determination of the Commission with  
25 respect to a claim under paragraph (3)(A) of sub-

1 section (d) or establishing an appropriate amount of  
2 compensation with respect to the claim under para-  
3 graph (3)(B) of that subsection, the Secretary of  
4 Defense shall pay to the individual submitting the  
5 claim the amount, if any, that is so upheld or estab-  
6 lished, as the case may be.

7 (2) PAYMENT SUBJECT TO AVAILABILITY OF  
8 APPROPRIATIONS.—The Secretary may make pay-  
9 ments under this subsection in a fiscal year only to  
10 the extent that funds are appropriated for such pur-  
11 pose in advance in an appropriations Act.

12 **SEC. 5. AUTHORIZATION OF APPROPRIATIONS.**

13 (a) AUTHORIZATION FOR ACTIVITIES OF COMMIS-  
14 SION.—There are authorized to be appropriated such  
15 sums as may be necessary for the payment of the cost  
16 of the activities of the White Sands Fair Compensation  
17 Commission under this Act. Such sums shall be available  
18 for expenditure until the termination of the Commission  
19 under section 3(i).

20 (b) AUTHORIZATION FOR PAYMENT OF CLAIMS.—  
21 There is authorized to be appropriated \$20,300,000 for  
22 the purposes of payment of claims under section 4. Such  
23 amount shall remain available until expended.

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