IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
SOUTHERN DIVISION
No. 7:23-CV-897

IN RE:	)	
CAMP LEJEUNE WATER LITIGATION	)	
	)	**UNITED STATES' MOTION TO**
	)	**STRIKE JURY TRIAL DEMAND**
This Document Relates To:	)	
ALL CASES	)	
	)	

Pursuant to Federal Rule of Civil Procedure 39(a)(2), Defendant United States of America moves to strike the jury trial demand in Plaintiffs' Master Complaint [Dkt. 25]. "[A] plaintiff in an action against the United States has a right to trial by jury only where Congress has affirmatively and unambiguously granted that right by statute." *Lehman v. Nakshian*, 453 U.S. 156, 168 (1981). The Camp Lejeune Justice Act of 2022 ("CLJA"), Pub. L. No. 117-168, § 804, 136 Stat. 1802, 1802-04 (2022), which simply provides for "appropriate relief" and states that "[n]othing in this subsection shall impair the right of any party to a trial by jury," *id.* § 804(d), fails to affirmatively and unambiguously grant a right to a jury trial against the United States. Accordingly, the CLJA does not permit jury trials against the United States, and the Court should strike the jury trial demand in Plaintiffs' Master Complaint.

In support of this Motion to Strike, the United States submits and relies upon its accompanying Memorandum in Support.

Dated: November 20, 2023

Respectfully Submitted

BRIAN M. BOYNTON
Principal Deputy Assistant Attorney General
Civil Division

J. PATRICK GLYNN
Director, Torts Branch
Environmental Torts Litigation Section

BRIDGET BAILEY LIPSCOMB
Assistant Director
Environmental Torts Litigation Section

ADAM BAIN
Senior Trial Counsel
Environmental Torts Litigation Section

NATHAN BU
Trial Attorney
Environmental Torts Litigation Section

/s/ Haroon Anwar
HAROON ANWAR
Trial Attorney, Torts Branch
Environmental Torts Litigation Section
Civil Division, Torts Branch
U.S. Department of Justice
P. O. Box 340
Washington, D.C. 20044
E-mail: haroon.anwar@usdoj.gov
Telephone: (202) 598-3946

CERTIFICATE OF SERVICE

I hereby certify that on November 20, 2023, a copy of the foregoing document was served on all counsel of record by operation of the court's electronic filing system and can be accessed through that system.

/s/ Haroon Anwar
HAROON ANWAR

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
SOUTHERN DIVISION
No. 7:23-CV-897

IN RE:	)	
CAMP LEJEUNE WATER LITIGATION	)	
	)	**MEMORANDUM IN SUPPORT OF**
	)	**UNITED STATES' MOTION TO**
This Document Relates To:	)	**STRIKE JURY TRIAL DEMAND**
ALL CASES	)	
	)	

Pursuant to Federal Rule of Civil Procedure 39(a)(2), Defendant United States of America moves to strike the jury trial demand in Plaintiffs' Master Complaint [Dkt. 25]. "[A] plaintiff in an action against the United States has a right to trial by jury only where Congress has affirmatively and unambiguously granted that right by statute." *Lehman v. Nakshian*, 453 U.S. 156, 168 (1981). The Camp Lejeune Justice Act of 2022 ("CLJA"), Pub. L. No. 117-168, § 804, 136 Stat. 1802, 1802-04 (2022), which simply provides for "appropriate relief" and states that "[n]othing in this subsection shall impair the right of any party to a trial by jury," *id.* § 804(d), fails to affirmatively and unambiguously grant a right to a jury trial against the United States. Accordingly, the CLJA does not permit jury trials against the United States, and the Court should strike the jury trial demand in Plaintiffs' Master Complaint.

NATURE OF THE CASE

Plaintiffs have filed tort actions against the United States pursuant to the CLJA to seek recovery for harm allegedly caused by exposure to water at Camp Lejeune.

BACKGROUND

The CLJA provides that certain individuals may bring an action in this Court for "appropriate relief for harm that was caused by exposure to the water at Camp Lejeune." CLJA § 804(b). The statute expressly precludes the United States from relying on certain defenses that

would otherwise be available in tort claims against the United States, such as the discretionary function exception, 28 U.S.C. § 2680(a), and statutes of limitations and statutes of repose other than the one expressly set out in the CLJA. *See* CLJA §§ 804(f), (j). The CLJA also makes this Court the exclusive venue for such claims, with the caveat that "[n]othing in this subsection shall impair the right of any party to a trial by jury." *Id.* § 804(d).

Multiple plaintiffs have filed individual actions against the United States under the CLJA, and pursuant to Case Management Order No. 2 ("CMO 2"), Plaintiffs' Leadership filed a Master Complaint containing "allegations that are suitable for adoption by reference in individual CLJA actions." CMO 2, Dkt. 23, p. 5. In the Master Complaint, Plaintiffs demand a trial by jury "[p]ursuant to Fed. R. Civ. P. 38 and CLJA § 804(d)." *See* Plaintiffs' Master Complaint, Dkt. 25, pp. 1, 44.

ARGUMENT

The Seventh Amendment preserves the right to trial by jury "[i]n Suits at common law, where the value in controversy shall exceed twenty dollars." U.S. Const., amend. VII. Because there was no such right at common law for claims against the sovereign, "[i]t has long been settled that the Seventh Amendment right to trial by jury does not apply in actions against the Federal Government." *Lehman*, 453 U.S. at 160; *City of Monterey v. Del Monte Dunes at Monterey, Ltd.*, 526 U.S. 687, 719 (1999) (recognizing the settled proposition that "the Seventh Amendment does not apply" in "suits against the United States").

Although jury trials may be provided by federal statute, Fed. R. Civ. P. 38(a), Congress has "almost always conditioned" a waiver of the United States' sovereign immunity "upon a plaintiff's relinquishing any claim to a jury trial," and "[t]he appropriate inquiry, therefore, is whether Congress clearly and unequivocally departed from its usual practice," *Lehman*, 453 U.S.

at 161-62; *York v. Russo*, 835 F.2d 876 (4th Cir. 1987) ("The Supreme Court has held that there is no right to a trial by jury in suits against the government unless the statute under which suit is brought explicitly provides for a jury trial."). Like the "waiver of [sovereign] immunity itself," the "limitations and conditions upon which the Government consents to be sued must be strictly observed and exceptions thereto are not to be implied." *Lehman*, 453 U.S. at 161 (quotations omitted); *Library of Congress v. Shaw*, 478 U.S. 310, 319–20 (1986) (statutes allowing claims against the United States should be "read narrowly to preserve certain immunities that the United States has enjoyed historically"). Therefore, plaintiffs are not entitled to a jury trial unless "Congress has affirmatively and unambiguously granted that right by statute." *Lehman*, 453 U.S. at 168.

There is no such affirmative and unambiguous waiver here. The CLJA's subsection describing the cause of action provides that individuals may "obtain appropriate relief for harm that was caused by exposure to the water at Camp Lejeune." CLJA, § 804(b). However, the Supreme Court held in *Lehman* that statutory language authorizing "legal or equitable relief" against the United States was insufficient to supply an affirmative and unambiguous jury trial right. *Lehman*, 453 U.S. at 163. The Court declined to place weight on the word "legal" given the background principle that "the Seventh Amendment has no application in actions at law against the Government." *Id.* The use of the phrase "appropriate relief" in the CLJA is an even weaker basis to infer a jury trial right. Nor does it matter that the CLJA makes jurisdiction exclusive in district court. *See* CLJA, § 804(d). The Supreme Court has held that a statute's grant of exclusive jurisdiction to district courts does not include a jury trial right, explaining that there must be "an affirmative statutory grant of the right." *Lehman*, 453 U.S. at 164-65.

Likewise, the language in the CLJA's jurisdiction and venue provision stating that "[n]othing in this subsection shall impair the right of any party to a trial by jury," CLJA, § 804(d), does not provide a right to a jury trial against the United States. Rather than affirmatively authorizing jury trials, this statutory text by its terms indicates only that restricting jurisdiction and venue was not intended to also restrict any preexisting right to a jury trial that might exist. But subsection (d) does not address the existence of such a right, much less clearly grant such a right, and thus does not rise to the level of "affirmatively and unambiguously" providing for jury trials in CLJA cases against the United States. *Lehman*, 453 U.S. at 168.[1]

Indeed, the language of Section 804(d) is phrased in the negative and does not constitute a positive grant of rights at all. Thus, even apart from the longstanding principle that jury rights against the United States must be unequivocal, on its face the statute's language does not purport to create a jury right, and instead merely confirms that the statute does not operate to eliminate any right to a jury trial that might otherwise exist. *See Cooper Indus., Inc. v. Aviall Servs., Inc.*, 543 U.S. 157, 166-67 (2004) (reasoning that the phrase "[n]othing in this subsection shall diminish the right of any person to bring an action for contribution" did not establish a cause of action for contribution). The text of Section 804(d) certainly does not constitute the sort of

[1] Given the lack of clarity about which preexisting jury trial right might be referenced by Section 804(d), it is not immediately evident what function this provision is meant to have, if any. It is plausible that Congress included a sentence about jury trials in Section 804(d) "in a more general excess of caution" to alleviate concerns that restricting venue to this Court might restrict other rights. *Cyan, Inc. v. Beaver Cnty. Employees Ret. Fund*, 583 U.S. 416, 138 S. Ct. 1061, 1074 (2018). It is plausible that Congress included a sentence about jury trials as it might relate to a third-party complaint or cross claim. *See* Fed. R. Civ. P. 13(g), 14. But speculation about Congress's motives in enacting the provision is irrelevant because the Supreme Court has been clear that "the text of a law controls over purported legislative intentions." *Oklahoma v. Castro-Huerta*, 142 S. Ct. 2486, 2496-97 (2022). Thus, "the uncertainty surrounding Congress's reasons for drafting that clause does not matter." *Cyan*, 138 S. Ct. at 1075. Any uncertainty in Section 804(d) cannot supply the sort of affirmative and unambiguous right to a jury trial that would be necessary under Supreme Court precedent to establish such a right, particularly given that the United States is aware of no explanation for why Congress would have phrased the provision in this negative fashion had it intended to create an affirmative right to a jury trial in CLJA cases.

"affirmative" and "unambiguous" language that would be necessary to create a right to a jury trial against the United States.

Notably absent in the CLJA is the explicit language found in other statutory provisions that unequivocally grant a jury trial right in an action against the United States. For example, 28 U.S.C. § 2402 states that "any action against the United States [for certain tax refund claims] shall, at the request of either party to such action, be tried by the court with a jury." Similarly, the Presidential and Executive Office Accountability Act includes a provision specifying that, in certain actions by federal employees against their executive agency employers, "any party may demand a jury trial where a jury trial would be available in an action against a private defendant under the relevant law." 28 U.S.C. § 3901(b). Further underscoring the contrast with these other statutes, the CLJA was not preceded by significant legislative consideration of, or attention to, the consequences of allowing jury trials in this specific context. *See Lehman*, 453 U.S. at 161 n.8 (noting that Congress granted jury trials in tax refund cases "[o]nly after much debate, and after the conferees became convinced that there would be no danger of excessive verdicts as a result of jury trials in that unique context"); United States' Statement of Interest Regarding Attorneys' Fees, Dkt. 34, pp. 10-11 (discussing the CLJA's legislative history).

The absence of a jury trial right in CLJA actions is also consistent with the nature of the cause of action and the history of tort litigation against the United States. For almost 80 years since the Federal Tort Claims Act's enactment in 1946, tort claims against the United States have proceeded without a jury. In enacting the CLJA in 2022, Congress relied on the FTCA's waiver of sovereign immunity in 28 U.S.C. § 1346(b) and adopted most of the conditions of that waiver, while expressly abrogating a few of them in the CLJA. *See* United States' Statement of Interest Regarding Attorneys' Fees, Dkt. 34, pp. 5-14. One condition of that waiver in Section 1346 is

the prohibition of jury trials against the United States. *See* 28 U.S.C. § 2402 ("Any action against the United States under section 1346 shall be tried by the court without a jury [except for certain tax refund cases]."). Because a CLJA claim is an "action against the United States under section 1346," it "*shall* be tried by the court *without a jury*." *Id.* (emphases added); *Lehman*, 453 U.S. at 161 ("[I]n tort actions against the United States, Congress has similarly provided that trials shall be to the court without a jury.").

Given the plain language of Section 804(d) and the applicable legal principles, there is no need to resort to legislative history. Indeed, "[l]egislative history generally will be irrelevant" in determining whether sovereign immunity has been waived because such a waiver must be "unmistakably clear in the language of the statute." *Dellmuth*, 491 U.S. at 240 (citation omitted). In any event, such history underscores that there was no clear waiver. Prior to the enactment of the CLJA, the Members of the House of Representatives that wrote and introduced the CLJA into Congress stated that the CLJA permits claims against the United States "under the Federal Tort Claims Act," which does not permit a jury trial. *See* United States' Statement of Interest Regarding Attorneys' Fees, Dkt. 34 at 10 (discussing CLJA legislative history in explaining why gaps are filled by the FTCA). The United States is not aware of any statements by members or committees specifically regarding jury trials prior to enactment of the CLJA.[2]

On November 1, 2023, the Members who had prior to the bill's enactment stated that the CLJA permits claims "under the Federal Tort Claims Act" entered a statement in the

[2] Prior to the enactment of the CLJA, the Department of Justice shared "Technical Assistance" on the pending bill. *See* Ex. A, U.S. Dep't Justice, *Technical Assistance on Section 706 of HR 3967* (May 2, 2022). The Technical Assistance advocated for an alternative "no-fault compensation scheme" and identified several concerns with permitting litigation in federal court, including that the CLJA "permits jury trials that would not be available under the FTCA." The Technical Assistance elsewhere said that cases would be tried "potentially before a jury." The Technical Assistance imprecisely and incorrectly made these assumptions about the CLJA based on a preliminary assessment. Indeed, these assumptions were at odds with those pre-enactment statements from Members that the CLJA permits claims against the United States "under the Federal Tort Claims Act." Dkt. 34 at 10. In any event, absent unambiguous text, "recourse to legislative history will be futile." *Dellmuth*, 491 U.S. at 240.

Congressional Record that "it has always been our intent for the [CLJA] to stand separate and apart from the Federal Tort Claims Act in all respects," including by providing a right to a jury trial against the United States. 169 Cong. Rec. E1036 (daily ed. Nov. 1, 2023). However, even if it were appropriate to consider legislative history to infer the waiver of sovereign immunity – which it is not – it would be inappropriate to consider *post-enactment* legislative history, which "is not a legitimate tool of statutory interpretation" because it "by definition 'could have had no effect on the congressional vote... .'" *Bruesewitz v. Wyeth LLC*, 562 U.S. 223, 242 (2011) (citation omitted).

Particularly given the well-established rule that jury trials are available only when a statute "affirmatively and unambiguously grant[s] that right," *Lehman*, 453 U.S. at 168, the CLJA does not sufficiently evince an intent by Congress to allow for jury trials in tort actions against the United States for the first time. The statute contains no express indication that Congress sought to deviate from ordinary practice, let alone that Congress did so "clearly and unequivocally." *Id.* at 162. Under controlling Supreme Court precedent, there is no right to a jury trial against the United States under the CLJA. Accordingly, the Court should strike the jury trial demand in Plaintiffs' Master Complaint. *See* Fed. R. Civ. P. 39(a)(2) ("When a jury trial has been demanded under Rule 38…[t]he trial on all issues so demanded must be by jury unless…the court, on motion or its own, finds that on some or all of the issues there is no federal right to a jury trial.").

CONCLUSION

The Court should strike the jury trial demand in Plaintiffs' Master Complaint, pursuant to Federal Rule of Civil Procedure 39(a)(2).

Dated: November 20, 2023

Respectfully Submitted

BRIAN M. BOYNTON
Principal Deputy Assistant Attorney General
Civil Division

J. PATRICK GLYNN
Director, Torts Branch
Environmental Torts Litigation Section

BRIDGET BAILEY LIPSCOMB
Assistant Director
Environmental Torts Litigation Section

ADAM BAIN
Senior Trial Counsel
Environmental Torts Litigation Section

NATHAN BU
Trial Attorney
Environmental Torts Litigation Section

/s/ Haroon Anwar
HAROON ANWAR
Trial Attorney, Torts Branch
Environmental Torts Litigation Section
Civil Division, Torts Branch
U.S. Department of Justice
P. O. Box 340
Washington, D.C. 20044
E-mail: haroon.anwar@usdoj.gov
Telephone: (202) 598-3946

CERTIFICATE OF SERVICE

I hereby certify that on November 20, 2023, a copy of the foregoing document was served on all counsel of record by operation of the court's electronic filing system and can be accessed through that system.

/s/ Haroon Anwar
HAROON ANWAR

EXHIBIT A

PACT ACT Section 706 Camp Lejeune
Department of Justice Technical Assistance and Proposed Alternative
May 2, 2022

Thank you for the opportunity to share our views on Section 706 of the Honoring Our Promise to Address Comprehensive Toxics Act (PACT Act). The Department of Justice strongly supports expanding Veterans' access to health care and benefits to address the health effects of harmful environmental exposures that occurred during military service. A no-fault compensation program is preferable to litigation because it would allow Veterans to recover more quickly and without the need for expensive litigation. But we are concerned that the current proposal in Section 706 related to Camp LeJeune is inefficient and will be costly for service members and other individuals, as well as the federal government. Rather than create a system for swift and efficient payment of worthy claims, Section 706 will reset decades-old litigation, at great time and expense for all involved. We therefore recommend that Congress consider an alternative solution that would replace individual litigation of these matters with a no-fault compensation scheme of the type that has worked well in similar contexts.

Background

Section 706 of the PACT Act aims to compensate service members and others who were exposed to contaminants in drinking water at Camp Lejeune, North Carolina, between 1953 and 1987. Service members and others who were stationed at or worked at Camp Lejeune during that time have developed cancer and other diseases that may be related to water contamination. The Agency for Toxic Substances and Disease Registry estimates that as many as one million people were stationed at Camp Lejeune during that timeframe.

For nearly twenty years, the Department has been litigating Federal Tort Claims Act (FTCA) cases seeking compensation for harm alleged to have resulted from exposure to contaminated water at Camp Lejeune. The Department has obtained dismissals of these cases, primarily under three legal defenses provided by the FTCA.

As currently drafted, Section 706 of the PACT Act would facilitate recoveries for Camp Lejeune claimants that are not otherwise possible under the FTCA. Section 706 accomplishes this by allowing causes of action in federal court while prohibiting the assertion of the legal defenses. Section 706 explicitly precludes the Government from raising immunity defenses under the FTCA, which would include the *Feres* doctrine (where the Supreme Court in *Feres v. United States* precluded claims for injuries incident to military service), the discretionary function exception, or any state statute of repose. Section 706 also restarts the statute of limitations for Camp Lejeune suits, lowers the standard of proof on causation, and permits jury trials that would not be available under the FTCA. Finally, Section 706 permits a service member to recover without showing that the federal government acted negligently or otherwise wrongfully, essentially creating a strict-liability theory of recovery.

While Section 706 seeks to make recovery easier for claimants, it would nonetheless require litigation of individual claims, because each plaintiff would still need to establish causation under the new cause of action, and they would each need to litigate their individual claim for damages.

Significant Concerns Raised by Section 706

The Department supports providing an appropriate mechanism to compensate service members for harms suffered at Camp Lejeune. But we have significant concerns about how the current bill would accomplish this goal. We believe that the approach proposed in the current Section 706 will be inefficient for all parties, especially those harmed by contamination at Camp Lejeune, create adverse precedent for future mass-tort incidents, and necessitate numerous resources from both the Department and the federal district court.

First, case-by-case district court litigation of potentially hundreds of thousands of claims will be extremely burdensome for the plaintiffs, the government, and the courts. Plaintiffs will likely have to go through many years of discovery before recovering anything. While the bill aims to make recovery more likely by removing certain federal defenses and lowering relevant burdens, the bill still requires those injured to pursue the lengthy path of litigation—requiring individuals to first file administrative claims with the Department of Defense, then file a lawsuit in district court, then prove causation and damages (potentially before a jury), and then withstand a potential appeal. All of these steps will be expensive and time-consuming, given that the bill would allow the filing of old claims from decades ago. Moreover, the cases are likely to be delayed, particularly if (as expected) there is an influx of cases in the single district court—the Eastern District of North Carolina—that will have exclusive jurisdiction under the proposed bill. The litigation-oriented remedy that Section 706 creates is therefore unlikely to meet its goal of offering an easy or quick path to recovery for the thousands of affected service members.

Second, we have serious institutional concerns about the precedent that would be set by creating a separate federal tort action against the government for a particular class of plaintiffs, as a carve-out to the FTCA. Enacting this bill could encourage other plaintiffs who have lost under the FTCA to come to Congress and ask for a similar legislative exception, rather than providing a uniform set of rules under the FTCA for all individuals as exists under current law. The contemplated carve-out from generally applicable FTCA litigation standards is unprecedented. In the past, when Congress wanted to provide remedies for a particular group of claimants who had been unsuccessful in litigation, Congress created a unique remedial program, similar to that proposed below, rather than creating a separate federal tort cause of action.

Third, we worry that Section 706, as currently drafted, would result in differing recoveries to similarly situated plaintiffs. Especially if damages awards are to be decided by a jury, as the statute contemplates, it is likely that litigation will produce a broad range of remedial outcomes even among plaintiffs who have suffered similar harms. The potential unfairness of those outcomes may undermine the statute's goal of providing redress for those affected by contamination at Camp Lejeune.

Finally, the bill would lead to an influx of federal-court litigation that would be extremely resource-intensive for both the Department, DoD, and the federal district court in the Eastern District of North Carolina. For its part, the Department's Civil Division estimates that 75 additional attorneys and 15 paralegals would be required to handle the thousands of expected claims. That would more than quadruple the size of the Division's Environmental Torts Section—the office which now handles the Camp Lejeune litigation as well as all the other toxic tort cases brought against the United States. The expected resource drain on the Eastern District of North Carolina stemming from the influx of litigation, as noted above, might further impede the Act's goal of ensuring Veterans and others have a swift path to recovery.

Proposed Alternative

For these reasons, the Department feels strongly that it would better serve all the parties to establish a non-adversarial compensation program for those injured at Camp Lejeune, rather than creating a new cause of action. The Department has substantial experience with administering compensation programs, including the program established through the Radiation Exposure Compensation Act (RECA). The RECA program, for example, was enacted as a non-adversarial alternative to litigation for individuals who contracted illnesses following exposure to radiation as a result of the United States' atmospheric nuclear testing program and uranium ore processing operations during the Cold War. Under this program, the Department has approved over 39,000 claims, awarding over $2.5 billion. Similarly, the September 11th Victim Compensation Fund is another non-adversarial compensation program, which has awarded over $9.8 billion to over 44,000 individuals suffering as a result of the September 11th attacks.

If the goal of the PACT Act is to allow Veterans and others to recover more quickly and without the need for expensive court proceedings, a non-adversarial program of this sort would be preferable to litigation. And creating a no-fault compensation program avoids creating the precedent of a separate federal tort cause of action for future cases where compensation is unavailable under the FTCA. We think that such an alternative would provide the most straightforward path to fulfilling our country's commitment to Veterans and their families.

The proposed revised Section 706 of the PACT Act, appended to this memorandum, would create an administrative compensation scheme similar to the program established by RECA. It would provide appropriate relief for harm that was caused by exposure to the water at Camp Lejeune, and it would require the Attorney General to establish procedures for individuals to submit claims for payments under the Act. It would further require that the Attorney General consult with the Secretary of Health and Human Services on establishing guidelines for determining the documentation necessary to establish a basis for eligibility for compensation for an injury or condition based on exposure to water at Camp Lejeune. It would also establish a trust fund for payment of meritorious claims.

Importantly, the proposed revised Section 706 would contain provisions to ensure that the process moves quickly to compensate Veterans. It would require the Attorney General to complete the determination on each claim within 12 months of the filing of the claim, make a final determination within 90 days after receiving a request for review of a denial, and pay the

claim no later than six weeks after approval. Revised Section 706 allows judicial review within 180 days of denial in the United States District Court for the Eastern District of North Carolina, where the court will review the denial on the administrative record and set aside denials that are arbitrary, capricious, an abuse of discretion, or not in accordance with law. We understand that such litigation is extremely rare in RECA cases, however, and that out of the tens of thousands of administrative adjudications, only 16 administrative decisions were appealed to district court.

Thus, under a compensation program like RECA, many Veterans would receive compensation within roughly a year of filing a claim; we think that the current proposal, by contrast, would lead to significantly longer recovery times. And because the program would prioritize speedy recovery, it would not require the significant resources that would be required to fund protracted litigation under the current proposal.

In addition, the proposed revised Section 706 would ensure consistency in resolving service members' claims. Because all claims would be resolved under the same procedures established by the Attorney General, there is no risk—as there is under the current proposal—that different district court or magistrate judges would take markedly different approaches to the relevant issues. Moreover, the proposed revised Section 706 contains a provision limiting attorney's fees, ensuring that the bulk of recovery in each case will go to the Veterans themselves and not to their lawyers.

Conclusion

In conclusion, the Department strongly supports providing Veterans exposed to contaminants in drinking water at Camp Lejeune necessary benefits and services for any harms they may have suffered as a result of exposure. The administrative compensation program proposed in the Department's revised Section 706 would provide the most effective and efficient way to compensate Veterans, and the Department therefore recommends that legislators consider this alternative to the current proposal.

APPENDIX: PROPOSED REVISED SECTION 706 FOR DISCUSSION

SEC. 706. CAMP LEJEUNE, NORTH CAROLINA CONTAMINATED WATER EXPOSURE COMPENSATION.

(a) IN GENERAL.—An individual, including a veteran (as defined in section 101 of title 38, United States Code), who resided, worked, or was otherwise exposed (including in utero exposure) for not less than 30 days during the period beginning on August 1, 1953, and ending on December 31, 1987, to water at Camp Lejeune, North Carolina, that was supplied by, or on behalf of, the United States, or the legal representative of such an individual, may file a claim for payment with the Attorney General to obtain appropriate relief for harm that was caused by exposure to the water at Camp Lejeune.

(b) DETERMINATION AND PAYMENT OF CLAIMS.—

(1) ESTABLISHMENT OF FILING PROCEDURES.—The Attorney General shall establish procedures for submission of claims for payments under this Act. The burden of proof shall be on the party submitting the claim to show a causal connection between the water at Camp Lejeune and the harm.

(2) DETERMINATION OF CLAIMS.—

(A) IN GENERAL.—The Attorney General shall, in accordance with this section, determine whether each claim filed under this Act meets the requirements of this Act. All reasonable doubt with regard to whether a claim meets the requirements of this Act shall be resolved in favor of the claimant.

(B) CONSULTATION.—The Attorney General shall, in consultation with the Secretary of Health and Human Services, establish guidelines for determining what documentation is necessary to establish a basis for eligibility for compensation for an injury or condition based on exposure to water at Camp Lejeune.

(C) PAYMENT OF CLAIMS.—The Attorney General shall establish guidelines for determining amounts of compensation for injuries or conditions, including reasonable compensation for medical expenses, lost wages, and pain and suffering.

(i) IN GENERAL.—The Attorney General shall pay, from amounts available in the Camp Lejeune Fund, claims filed under this Act that the Attorney General determines meet the requirements of this Act. **[NOTE: A different section would need to establish a Fund.]**

(ii) HEALTH AND DISABILITY BENEFITS RELATING TO WATER EXPOSURE.—Any award made under this section shall be offset by the amount of any disability award, payment, or benefit provided to the claimant—

(I) under—

(A) any program under the laws administered by the Secretary of Veterans Affairs; [**NOTE**: **We will propose revised language to account for the circumstances where an award under this program is made prior to any award under a VA disability benefits program or other applicable benefits]**

(B) the Medicare program under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.); or

(C) the Medicaid program under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.); and

(II) in connection with health care or a disability relating to exposure to the water at Camp Lejeune.

(iii) RIGHT OF SUBROGATION.— Upon payment of a claim under this section, the United States Government is subrogated for the amount of the payment to a right or claim that the individual to whom the payment was made may have against any person on account of injuries referred to in subsection (a).

(D) ACTION ON CLAIMS.—

(i) IN GENERAL.—The Attorney General shall complete the determination on each claim filed in accordance with the procedures established under subsection (b)(1) not later than 12 months after the claim is filed. For purposes of determining when the 12-month period ends, a claim under this Act shall be deemed filed as of the date of its receipt by the Attorney General. In the event of the denial of a claim, the claimant shall be permitted a reasonable period in which to seek administrative review of the denial by the Attorney General. The Attorney General shall make a final determination with respect to any administrative review within 90 days after the receipt of the claimant's request for such review. In the event the Attorney General fails to render a determination within 12 months after the date of the receipt of such request, the claim shall be deemed awarded as a matter of law and paid.

(ii) ADDITIONAL INFORMATION.— The Attorney General may request from any claimant under this Act any reasonable additional information or documentation necessary to complete the determination on the claim in accordance with the procedures established under subsection (b)(1).

(iii) PAYMENT WITHIN 6 WEEKS.— The Attorney General shall ensure that an approved claim is paid not later than 6 weeks after the date on which such claim is approved.

(E) PAYMENT IN FULL SETTLEMENT OF CLAIMS AGAINST THE UNITED STATES.— Except as otherwise authorized by law, the acceptance of payment by an individual under this section shall be in full satisfaction of all claims of or on behalf of that individual against the United States that arise out of exposure to water contamination at Camp Lejeune under subsection (a).

(F) JUDICIAL REVIEW.—An individual whose claim for compensation under this Act is denied may seek judicial review within 180 days of denial solely in a district court of the United States. The court shall have jurisdiction to review the denial on the administrative record and shall hold unlawful and set aside the denial if it is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.

(c) ATTORNEY FEES.—

(1) GENERAL RULE.—Notwithstanding any contract, the representative of an individual may not receive, for services rendered in connection with the claim of an individual under this Act, more than that percentage specified in subsection (2) of a payment made under this Act on such claim.

(2) APPLICABLE PERCENTAGE LIMITATIONS.—The percentage referred to in subsection (1) is—

(i) 2 percent for the filing of an initial claim; and

(ii) 10 percent with respect to—

(I) any claim with respect to which a representative has made a contract for services before the date of the enactment of the Camp Lejeune Contaminated Water Exposure Compensation Act; or

(II) a resubmission of a denied claim.

(3) PENALTY.—Any such representative who violates this section shall be fined not more than $5,000.

(d) EXCEPTION FOR COMBATANT ACTIVITIES.—This section does not apply to any claim for harm arising out of the combatant activities of the Armed Forces.