

103^D CONGRESS
2^D SESSION

H. R. 4961

To establish the Coeur d'Alene Basin Restoration Corporation and authorize the Corporation to undertake all actions necessary for the cleanup of mining wastes and the restoration of natural resources in the watershed encompassing the Coeur d'Alene River, Coeur d'Alene Lake, and its tributaries, and the Spokane River in northern Idaho and western Washington.

IN THE HOUSE OF REPRESENTATIVES

AUGUST 12, 1994

Mr. LARocco introduced the following bill; which was referred jointly to the Committees on Natural Resources, Energy and Commerce, and Public Works and Transportation

A BILL

To establish the Coeur d'Alene Basin Restoration Corporation and authorize the Corporation to undertake all actions necessary for the cleanup of mining wastes and the restoration of natural resources in the watershed encompassing the Coeur d'Alene River, Coeur d'Alene Lake, and its tributaries, and the Spokane River in northern Idaho and western Washington.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Coeur d’Alene Basin
3 and Spokane River Restoration Act of 1994”.

4 **SEC. 2. PURPOSES.**

5 It is the purpose of this Act—

6 (1) to provide for the conservation, remediation,
7 and restoration of the Coeur d’Alene Basin and Spo-
8 kane River watersheds to the extent necessary to re-
9 pair and mitigate damages caused by mining wastes
10 generated in the Coeur d’Alene Basin, and to en-
11 hance the resources of the Coeur d’Alene Basin and
12 Spokane River;

13 (2) to create the Coeur d’Alene Basin Restora-
14 tion Corporation and to authorize it to carry out the
15 purposes of the Act; and

16 (3) to authorize the funds necessary to imple-
17 ment the provisions of this Act.

18 **SEC. 3. COEUR D’ALENE BASIN RESTORATION CORPORA-**
19 **TION.**

20 (a) ESTABLISHMENT OF CORPORATION.—There is
21 authorized to be established a nonprofit corporation, to be
22 known as the “Coeur d’Alene Basin Restoration Corpora-
23 tion”, which (1) shall have its offices in the Coeur d’Alene
24 Basin, (2) shall carry out its functions and responsibilities
25 in accordance with the provisions of this Act, (3) shall con-
26 tinue in force and effect in accordance with the provisions

1 of this Act, and (4) will not be considered an agency or
2 establishment of the United States Government for the
3 purpose of any Federal law.

4 (b) BOARD OF DIRECTORS.—(1) The Corporation
5 shall have a Board of Directors (hereinafter in this Act
6 referred to as the “Board”) consisting of 5 members: one
7 to be appointed by the State of Idaho; one to be appointed
8 by the Coeur d’Alene Tribe; one to be appointed by the
9 trustees established pursuant to the settlement agreement
10 of May 31, 1986, entered in State of Idaho v. Bunker Hill
11 Co. et al., Case No. 83–3161 (D. Idaho); one to be ap-
12 pointed jointly by the Secretary of Agriculture and the
13 Secretary of the Interior, as trustees of Federal natural
14 resources within the Coeur D’Alene Basin; and one to be
15 appointed by the Administrator of the United States Envi-
16 ronmental Protection Agency. The appointments shall be
17 made in accordance with the particular laws governing the
18 actions of the State, the Tribe, and the United States.

19 (2) Each member of the Board shall serve for a term
20 of 3 years. The members of the Board shall elect from
21 among themselves a chairman. The appointment as chair-
22 man shall be for the term of one year, and shall be rotated
23 equally among the members of the Board. The compensa-
24 tion of the members shall be fixed by the Board. The
25 members of the Board shall not be deemed to be officers

1 or employees of the United States for any purpose: *Pro-*
2 *vided*, That Board members appointed by the Adminis-
3 trator, the Secretary of Agriculture, or the Secretary of
4 the Interior may be officers or employees of the United
5 States. The Board may indemnify its officers, attorneys,
6 agents, and employees for liabilities and expenses incurred
7 in connection with the individuals' corporate activities.

8 (3) All actions and decisions of the Board shall be
9 made by consensus of the 5 members of the Board. The
10 Board shall meet at the call of the Chairman or upon re-
11 quest of any 3 members of the Board.

12 (4) The Board shall adopt and, as appropriate,
13 amend or repeal, appropriate procedures governing the
14 manner in which its corporate business may be conducted,
15 including but not limited to the appointment of corporate
16 officers, fixing compensation, assigning and delegating du-
17 ties to corporate personnel. The Board shall make avail-
18 able to the public a statement of its organization, prac-
19 tices, and procedures.

20 (5) As necessary to effectuate the purposes of this
21 Act, the Board, without regard to Federal laws governing
22 reduction of paperwork, acquisition of property and ad-
23 ministrative services, gifts, or public buildings, may (A)
24 acquire real property, including but not limited to patents
25 and proprietary data, as necessary in the transaction of

1 its business; (B) sell, lease, or otherwise dispose of real
2 and personal property; (C) enter into contracts, agree-
3 ments, and other arrangements, including financial assist-
4 ance for professional services, supplies, construction,
5 maintenance, management, and operation of equipment;
6 (D) accept gifts and donations of services and property
7 including, but not limited to, the use, possession, and con-
8 trol of real or personal property of the United States that
9 the President considers necessary for achieving the pur-
10 poses of this Act and transfers to the Board; and (E) con-
11 duct surveys, collect information, and otherwise monitor
12 activities.

13 (6) The Board may sue, and may be sued as expressly
14 provided in this Act, and shall be represented by its own
15 attorneys in all judicial and administrative proceedings
16 and, in any such proceedings, the Board shall have exclu-
17 sive authority to direct its corporate attorneys in the dis-
18 charge of their duties. In any court suit or action to which
19 the Corporation is a party, monetary damages shall be the
20 sole and exclusive remedy available against the Corpora-
21 tion and, in the event of any judgment against or settle-
22 ment involving the Corporation, such judgment may only
23 be paid from the Corporation's appropriated funds. The
24 Board may use binding arbitration or other dispute resolu-
25 tion processes and may settle or adjust any corporate

1 claims or contractual obligations without review or ap-
2 proval of the Attorney General of the United States. Not-
3 withstanding any other law, the courts of the United
4 States shall have original and exclusive jurisdiction over
5 all civil actions by or against the Corporation, provided
6 the Corporation may intervene in any court in any suit,
7 action, or proceeding in which it has an interest. The
8 Board may exempt information from mandatory release
9 under the Federal law if it determines that the informa-
10 tion if publicly released would harm the Corporation's in-
11 terests.

12 (c) FINANCIAL STATEMENTS.—The Corporation shall
13 prepare annual financial statements in accordance with
14 generally accepted accounting principles and shall be au-
15 dited annually by an independent certified public account-
16 ant chosen by the Board. The Comptroller General, audi-
17 tor for the State of Idaho, and/or auditor for the Coeur
18 d'Alene Tribe may review any audit and may report to
19 the Board, as well as the Congress, on the results of such
20 reviews, including appropriate recommendations, if any, if
21 a report, provided that neither the Comptroller General,
22 the auditor for the State of Idaho and auditor for the
23 Coeur d'Alene Tribe shall not have authority to withhold
24 from the Corporation or impound any funds provided
25 under this Act.

1 (d) GENERAL PROVISIONS.—(1) The Board shall
2 have no power to issue any shares of stock, or to declare
3 or pay any dividends.

4 (2) No part of the income of assets of the Corporation
5 shall inure to the benefit of the members of the Board,
6 any employee of the Corporation, or any other individual
7 except as salary or reasonable compensation for services.

8 (3) The Corporation may not contribute to or other-
9 wise support any political party or candidate for elective
10 public office.

11 (4) The Board shall make annual reports to Congress
12 on the status of the Restoration Plan and its implementa-
13 tion.

14 **SEC. 4. COEUR D'ALENE BASIN ADVISORY COMMITTEE.**

15 (a) ESTABLISHMENT.—In conjunction with the
16 Board, there shall be established an advisory group known
17 as the “Coeur d’Alene Basin Advisory Committee”, which
18 shall have the function and responsibility of advising the
19 Board in its actions. The Advisory Committee shall not
20 be considered an agency or instrumentality of the United
21 States for the purpose of any Federal law. The member-
22 ship of the Advisory Committee, as determined appro-
23 priate by the Board, may consist of the following mem-
24 bers: (1) a representative of the Washington Department
25 of Ecology; (2) a representative of each interested Federal

1 agency; (3) a representative of each interested State agen-
2 cy; (4) a representative of each interested tribal agency;
3 (5) a representative of each affected local government; (6)
4 representatives of affected industries within the Coeur
5 d'Alene Basin or Spokane River drainage; and (7) rep-
6 resentatives of the general public.

7 (b) MEMBERSHIP.—The members of the Advisory
8 Committee shall be appointed by, and serve at the pleasure
9 of, the Board. The members of the Advisory Committee
10 shall appoint a chairman from among their members. The
11 appointment as chairman shall be for the term of one year,
12 and shall be rotated equally among the members of the
13 Committee. The members of the Advisory Committee shall
14 serve without compensation. The members of the Advisory
15 Committee shall not be deemed to be officers or employees
16 of the United States for any purpose: *Provided*, That
17 members appointed by any Federal agency may be officers
18 or employees of the United States.

19 (c) GENERAL PROVISIONS.—The Advisory Commit-
20 tee shall meet at the call of the chairman of the Advisory
21 Committee, the call of the Board, or at the request of a
22 majority of the members of the Advisory Committee. The
23 Advisory Committee shall determine its organization and
24 prescribe its practices and procedures for carrying out its
25 functions and responsibilities under this Act. The Advisory

1 Committee shall make available to the public a statement
2 of its organization, practices, and procedures.

3 **SEC. 5. ADVISORY GROUPS.**

4 In addition to the Advisory Committee, the Board
5 may create such technical advisory groups as it deems nec-
6 essary or prudent to assist the Board in the fulfillment
7 of its duties under this Act. Members of technical advisory
8 groups shall serve without compensation, and shall not be
9 deemed to be officers or employees of the United States
10 for any purpose: *Provided*, That members appointed by
11 any Federal agency may be officers or employees of the
12 United States.

13 **SEC. 6. BASIN RESTORATION PLAN.**

14 (a) PREPARATION.—Within 5 years after the Cor-
15 poration is established, the Board shall prepare and adopt
16 a Basin Restoration Plan. The plan shall set forth a com-
17 prehensive strategic plan of action for the protection of
18 human health and welfare and the restoration and en-
19 hancement of land, fish, wildlife, biota, air, water, ground
20 water, drinking water supplies, and other such resources
21 within the Coeur d'Alene Basin and the Spokane River.
22 The plan shall (1) identify all existing point and nonpoint
23 sources of mining waste discharges and other pollution
24 discharges into the waters of the Coeur d'Alene Basin and
25 the Spokane River; (2) inventory existing projects and ac-

1 tivities intended to restore, remediate, or prevent damages
2 from mining waste pollution and other pollution; and (3)
3 identify additional projects needed to restore, remediate,
4 or prevent damages from mining waste pollution and other
5 pollution within the Coeur d'Alene Basin and the Spokane
6 River.

7 (b) EXISTING STUDIES AND PLANS.—The Board
8 shall use and incorporate existing studies and plans pre-
9 pared by State, tribal and Federal agencies for the res-
10 toration of the Coeur d'Alene Basin and the Spokane
11 River to the extent that it is practicable to do so.

12 (c) IMPLEMENTATION OF BASIN RESTORATION
13 PLAN.—

14 (1) The Board shall arrange for the coordinated
15 implementation of the plan by the State, tribal, Fed-
16 eral, and private parties participating in the Advi-
17 sory Committee.

18 (2) The Board may make grants to State, trib-
19 al, Federal, and private parties for the purposes of
20 implementing the plan.

21 (3) The Board may directly implement the plan
22 using Corporation employees or independent contrac-
23 tors.

24 (4) Nothing in this section is intended to pre-
25 vent the implementation of ongoing projects by other

1 agencies or parties to restore, remediate, or prevent
2 damages from mining wastes and other pollutants in
3 the Coeur d'Alene Basin and the Spokane River.
4 Nor is this section intended to prevent the Board
5 from implementing restoration projects on an in-
6 terim basis prior to completion of the plan.

7 (5) The Board shall monitor the effectiveness of
8 actions taken pursuant to the plan, and modify the
9 plan where necessary or appropriate.

10 (6) The Board shall have authority to enter
11 into such joint power agreements with State, tribal,
12 and Federal governments as are necessary to imple-
13 ment the Basin Restoration Plan.

14 (d) APPLICATION OF LIABILITY AND PERMITTING
15 REQUIREMENTS.—

16 (1) This Act expressly preempts any conflicting
17 Federal, State, or local laws, and in preparing and
18 implementing the plan, the Corporation shall be ex-
19 empt from any liability for the costs of removing or
20 remediating releases of hazardous materials, or for
21 damages to natural resources caused by the release
22 of hazardous materials, including but not limited to
23 the liability provisions of section 9607 of title 42 of
24 the United States Code, and any amending or suc-
25 cessor legislation.

1 (2) No Federal, State, tribal, or local permit
2 shall be required for any project conducted under
3 the authorities of this Act for the purpose of imple-
4 menting the restoration plan prepared by the Board.

5 (3) No project shall proceed under the authori-
6 ties of this Act, until the Board determines that the
7 project meets all standards, requirements, criteria,
8 or limitations under all Federal environmental laws,
9 including, but not limited to, the Toxic Substances
10 Control Act, the Safe Drinking Water Act, the Clean
11 Air Act, the Clean Water Act, the Solid Waste Dis-
12 posal Act. In addition, the Board must determine
13 that the project meets or exceeds all standards, re-
14 quirements, criteria, or limitations under all applica-
15 ble State and tribal environmental or facility siting
16 laws if such laws are more stringent than the Fed-
17 eral standards, requirements, criteria, or limitations.

18 (e) PUBLIC INFORMATION AND CONSULTATION.—
19 The Board shall maintain comprehensive programs to in-
20 form the general public of its actions, and to solicit public
21 comment in the preparation, adoption, and implementa-
22 tion of the restoration plan.

23 (f) COOPERATION WITH OTHER AGENCIES.—The
24 Board shall coordinate its actions in the preparation and
25 implementation of the plan with other agencies empowered

1 by State, tribal, or Federal governments to restore, reme-
2 diate, or prevent damages from mining wastes or other
3 pollutants within the Coeur d'Alene Basin and Spokane
4 River.

5 **SEC. 7. FUNDING OF COEUR D'ALENE BASIN RESTORATION**
6 **CORPORATION AND AUTHORIZATION OF AP-**
7 **PROPRIATIONS.**

8 (a) IN GENERAL.—The activities of the Corporation
9 shall be jointly funded through a combination of congres-
10 sional appropriations and private contributions from com-
11 panies that have been involved with mining activities in
12 the Coeur d'Alene Basin.

13 (b) TRUST FUND.—There is created on the books of
14 the Treasury of the United States a trust fund to be
15 known as the “Coeur d'Alene Basin Restoration Fund”,
16 which shall be administered by the Board. The Fund shall
17 consist of (1) amounts appropriated by Congress pursuant
18 to this Act, (2) amounts contributed by the mining compa-
19 nies of the Coeur d'Alene Basin pursuant to this Act, and
20 (3) any interest accruing from monies deposited into the
21 Coeur d'Alene Basin Restoration Fund. Moneys in the
22 trust fund may be used to fulfill the purposes of this Act,
23 and shall be available only when appropriated therefor.
24 Funds authorized under this Act shall remain available
25 until expended.

1 (c) AUTHORIZATION OF APPROPRIATIONS.—There is
2 authorized to be appropriated to the Coeur d’Alene Basin
3 Restoration Fund such sums as may be necessary.

4 **SEC. 8. SATISFACTION OR OFFSET AGAINST MINING COM-**
5 **PANIES LIABILITY.**

6 (a) SATISFACTION OF LIABILITIES.—It is Congress’
7 intent that the mining companies of the Coeur d’Alene
8 Basin that contributed to the release of hazardous mate-
9 rials in the Coeur d’Alene Basin and Spokane River should
10 contribute a fair portion of the cost of restoring natural
11 resources in the Coeur d’Alene Basin and Spokane River.
12 It is also Congress’ intent that the mining companies of
13 the Coeur d’Alene Basin should, upon payment of a fair
14 contribution, be assured that no further liability for re-
15 sponse costs or natural resource damages may be imposed
16 upon them. Therefore, provided that the mining compa-
17 nies of the Coeur d’Alene Basin contribute an amount cal-
18 culated to be the equivalent of 25 percent of the total
19 amount authorized by Congress pursuant to section 7(c),
20 the companies shall be deemed to have satisfied all liabil-
21 ities for response costs or natural resource damages within
22 the Coeur d’Alene Basin and Spokane River that may oth-
23 erwise be imposed on them under the terms of the Com-
24 prehensive Environmental Response, Compensation, and
25 Liability Act of 1980, the Superfund Amendments and

1 Reauthorization Act of 1986, and any amending or succes-
2 sor legislation.

3 (b) OFFSET.—If the mining companies of the Coeur
4 d’Alene Basin contribute an amount calculated to be less
5 than 25 percent of the total amount appropriated by Con-
6 gress pursuant to section 7(c), the companies shall be
7 granted an offset for such amount against liabilities for
8 response costs or natural resource damages within the
9 Coeur d’Alene Basin and Spokane River that may other-
10 wise be imposed on them under the terms of the Com-
11 prehensive Environmental Response, Compensation, and
12 Liability Act of 1980, the Superfund Amendments and
13 Reauthorization Act of 1986, and any amending or succes-
14 sor legislation.

15 (c) ACTIONS UNDER CERCLA.—Unless the compa-
16 nies satisfy their liabilities pursuant to subsection (a), the
17 Corporation, the State, the tribe, and the United States
18 may pursue all actions otherwise available to these entities
19 under the Comprehensive Environmental Response, Com-
20 pensation, and Liability Act of 1980 and any amending
21 or successor legislation regardless of whether some or all
22 of the Basin Restoration Plan is implemented in whole or
23 part and such actions shall not constitute a double recov-
24 ery. The companies shall be entitled to an offset to the
25 extent provided by subsection (b).

1 (d) STATUTES OF LIMITATION.—All applicable stat-
2 utes of limitation for cost recovery and natural resource
3 damage actions against the mining companies of the
4 Coeur d’Alene Basin are tolled until January 1, 2018.

5 **SEC. 9. DISSOLUTION OF CORPORATION.**

6 Upon completion of the implementation of the res-
7 toration plan, the Board shall prepare a report to Con-
8 gress describing the actions taken during its existence,
9 and recommending further actions that may be needed to
10 protect human health and welfare and water quality, natu-
11 ral resources, and fish and wildlife habitat within the
12 Coeur d’Alene Basin and the Spokane River. Upon sub-
13 mission of the report, the existence of the Corporation
14 shall terminate unless Congress takes further action to re-
15 authorize the Corporation. In no case shall the Corpora-
16 tion continue to exist more than 20 years after the enact-
17 ment of this Act into law.

18 **SEC. 10. DEFINITIONS.**

19 For purposes of this Act:

20 (1) The term “mining companies of the Coeur
21 d’Alene Basin” means Gulf Resources and Chemical
22 Corporation; Bunker Limited Partnership; Minerals
23 Corporation Idaho; Bunker Hill Mining Company
24 (U.S.) Inc.; BH Properties, Inc.; Hecla Mining Com-
25 pany; Stauffer Chemical Company; Asarco, Inc.;

1 Callahan Mining Corporation; Coeur d'Alene Mines
2 Corporation; Highland Surprise Consolidated-Mining
3 Company; Silver Bowl, Inc.; Sunshine Precious Met-
4 als, Inc.; Union Pacific Railroad; Abot Mining Com-
5 pany; American Silver Mining Company; Anaconda
6 Mining Company; Atlas Mining Company; Boulder
7 Creek Mining Company; Canyon Silver Mine, Inc.;
8 Consolidated Silver Corp.; Day Mines, Inc.; Dix
9 Steel Company; Douglas Mining Company; CDA
10 Crescent Mining Company; Lovon Fausett; Broyles
11 Bros. Drilling; Gold Leaf Mining Corp.; Helena Sil-
12 ver Mines; Highland Surprise; Hypothek Mining Co.;
13 Mascot Silver-Lead; Nabob Silver Lead Mines; Ne-
14 vada Stewart Mining Co.; New Hilarity Mining Co.;
15 Sidney Mining Co.; Sunshine Mining Co.; and their
16 successors and assigns.

17 (2) The term "Coeur d'Alene Basin" means the
18 watershed in northern Idaho containing the South
19 Fork of the Coeur d'Alene River, the mainstem of
20 the Coeur d'Alene River, and Lake Coeur d'Alene.

21 (3) The term "Spokane River" means the Spo-
22 kane River from its origin at Lake Coeur d'Alene in
23 northern Idaho to its confluence with the Columbia
24 River in eastern Washington.

1 **SEC. 11. STATUTORY INTERPRETATION.**

2 Nothing in this section shall be interpreted to dimin-
3 ish or enlarge the jurisdiction or powers of any department
4 or agency of the United States, any State, or any Indian
5 Tribe. Nothing in this Act shall be interpreted as authoriz-
6 ing the Corporation to assume authority over existing or
7 future remedial actions within the approximately 21-
8 square-mile facility known as the Bunker Hill National
9 Priority List Superfund Site, nor shall it be interpreted
10 as affecting any liability of the mining companies of the
11 Coeur d'Alene Basin for such remedial actions. Nothing
12 in this Act shall be interpreted as releasing the mining
13 companies of the Coeur d'Alene Basin from liability for
14 any releases of hazardous materials that may occur as the
15 result of future acts or events, nor shall any money appro-
16 priated under the authorities of this Act be used to clean
17 up, remove, or remediate such releases. The release of the
18 mining companies of the Coeur d'Alene Basin from liabil-
19 ity extends only to releases of hazardous materials prior
20 to the date of this Act or continuing and future releases
21 that may occur as the result of activities occurring prior
22 to the date of this Act.

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