

105TH CONGRESS
1ST SESSION

S. 774

To provide for the stabilization, enhancement, restoration, and management of the Coeur d'Alene River basin watershed.

IN THE SENATE OF THE UNITED STATES

MAY 21, 1997

Mr. CRAIG (for himself and Mr. KEMPTHORNE) introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

A BILL

To provide for the stabilization, enhancement, restoration, and management of the Coeur d'Alene River basin watershed.

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 “Coeur d'Alene River
5 Basin Environmental Restoration Act of 1997”.

6 **SEC. 2. PURPOSES.**

7 The purposes of this Act are—

8 (1) to provide for the stabilization, enhance-
9 ment, restoration, and management of the Coeur
10 d'Alene River basin to the extent necessary to repair

1 and mitigate environmental damage caused by past
2 mining development;

3 (2) to reduce any unacceptable risks to human
4 health in the Coeur d’Alene River basin;

5 (3) to improve the surface waters of the Coeur
6 d’Alene River basin;

7 (4) to develop and implement a comprehensive
8 watershed management and enhancement plan for
9 the Coeur d’Alene River basin; and

10 (5) to authorize the funds necessary to imple-
11 ment the plan and this Act.

12 **SEC. 3. DEFINITIONS.**

13 In this Act:

14 (1) **ACTION PLAN.**—The term “action plan”
15 means the plan for the stabilization, enhancement,
16 restoration, and management of the Coeur d’Alene
17 River basin prepared under section 5(a).

18 (2) **BUNKER HILL SUPERFUND FACILITY.**—The
19 term “Bunker Hill Superfund Facility” means the
20 21-square mile area known by that name that is list-
21 ed on the National Priorities List established under
22 section 105(a)(8)(B) of the Comprehensive Environ-
23 mental Response, Compensation, and Liability Act
24 of 1980 (42 U.S.C. 9605(a)(8)(B)) as of the date of
25 enactment of this Act.

1 (3) COEUR D'ALENE RIVER BASIN.—The term
2 “Coeur d'Alene River basin” means the watersheds
3 in northern Idaho, including the Bunker Hill
4 Superfund Facility, that contain—

5 (A) the South Fork of the Coeur d'Alene
6 River and tributaries of the fork;

7 (B) Beaver and Prichard Creeks, which
8 are tributaries of the North Fork of the Coeur
9 d'Alene River;

10 (C) the main stream of the Coeur d'Alene
11 River below the South Fork, including the lat-
12 eral lakes;

13 (D) Lake Coeur d'Alene; and

14 (E) any area downstream of Lake Coeur
15 d'Alene that is allegedly affected by mining-re-
16 lated activities in the areas described in sub-
17 paragraphs (A) through (D).

18 (4) COMMISSION.—The term “Commission”
19 means the Coeur d'Alene River Basin Commission
20 established by section 6.

21 (5) FUND.—The term “Fund” means the
22 Coeur d'Alene Trust Fund established by section 4.

23 (6) GOVERNOR.—The term “Governor” means
24 the Governor of the State of Idaho.

25 (7) PERSON.—The term “person” means—

1 (A) an individual, firm, corporation, asso-
 2 ciation, partnership, consortium, joint venture,
 3 or commercial entity;

4 (B) the Federal Government; or

5 (C) a State, municipality, commission, po-
 6 litical subdivision of a State, Indian tribe, or
 7 interstate body.

8 (8) SECRETARY.—The term “Secretary” means
 9 the Secretary of the Army.

10 **SEC. 4. COEUR D’ALENE TRUST FUND.**

11 (a) ESTABLISHMENT.—There is established in the
 12 Treasury of the United States a trust fund to be known
 13 as the “Coeur d’Alene Trust Fund”, consisting of—

14 (1) amounts that are appropriated to the Fund
 15 under section 10;

16 (2) amounts that are redirected to the Fund
 17 under subsection (b);

18 (3) amounts contributed under section
 19 7(a)(2)(A)(i);

20 (4) amounts contributed by any other person or
 21 trust; and

22 (5) any interest earned on investment of
 23 amounts in the Fund under subsection (d).

24 (b) REDIRECTION OF FUNDS.—All cash and other as-
 25 sets received, and to be received, by the Natural Resource

1 Trustees, as specified in the Second Modified Amended
2 Joint and Substantively Consolidated Plan of Reorganiza-
3 tion filed in United States Bankruptcy Court for the Dis-
4 trict of Idaho, Case No. 93-02986 and Case No. 93-
5 02987, and in any subsequent plans or orders issued by
6 the court in those proceedings, shall be contributed to the
7 Fund.

8 (c) EXPENDITURES FROM FUND.—

9 (1) IN GENERAL.—Subject to paragraph (2), on
10 request of the Secretary, the Secretary of the Treas-
11 ury shall transfer from the Fund to the Secretary,
12 without further Act of appropriation, such amounts
13 as are required pursuant to paragraph (2) and sec-
14 tions 5 and 8 to carry out this Act.

15 (2) ADMINISTRATIVE EXPENSES.—An amount
16 not exceeding 10 percent of the expenditures made
17 under this Act for each fiscal year shall be available
18 during the fiscal year to pay administrative expenses
19 in carrying out this Act.

20 (d) INVESTMENT OF FUNDS.—

21 (1) IN GENERAL.—The Secretary of the Treas-
22 ury shall invest such portion of the Fund as is not,
23 in the judgment of the Secretary of the Treasury,
24 required to meet current withdrawals. Investments

1 may be made only in interest-bearing obligations of
2 the United States.

3 (2) ACQUISITION OF OBLIGATIONS.—For the
4 purpose of investments under paragraph (1), obliga-
5 tions may be acquired—

6 (A) on original issue at the issue price; or

7 (B) by purchase of outstanding obligations
8 at the market price.

9 (3) SALE OF OBLIGATIONS.—Any obligation ac-
10 quired by the Fund may be sold by the Secretary of
11 the Treasury at the market price.

12 (4) CREDITS TO THE FUND.—The interest on,
13 and the proceeds from the sale or redemption of, any
14 obligations held in the Fund shall be credited to and
15 form a part of the Fund.

16 (e) TRANSFERS OF AMOUNTS.—

17 (1) IN GENERAL.—The amounts required to be
18 transferred to the Fund under this section shall be
19 transferred at least monthly from the general fund
20 of the Treasury to the Fund on the basis of esti-
21 mates made by the Secretary of the Treasury.

22 (2) ADJUSTMENTS.—Proper adjustment shall
23 be made in amounts subsequently transferred to the
24 extent prior estimates were in excess of or less than
25 the amounts required to be transferred.

1 (f) FINANCIAL STATEMENTS.—In conformance with
2 generally accepted accounting principles, the Secretary
3 shall prepare annual financial statements concerning ex-
4 penditures from the Fund. The financial statements shall
5 be audited annually by the Comptroller General of the
6 United States.

7 **SEC. 5. ACTION PLAN.**

8 (a) DEVELOPMENT.—At the request of the Governor,
9 the Secretary shall request from the Secretary of the
10 Treasury and provide to the State of Idaho amounts from
11 the Fund, up to a maximum of \$1,000,000, for the Com-
12 mission to use to develop an action plan to support and
13 enhance natural recovery of the Coeur d’Alene River basin
14 through cost-effective measures, which may vary from lo-
15 cation to location, in the Coeur d’Alene River basin.

16 (b) PRACTICES.—The action plan shall embody cost-
17 effective practices designed to achieve—

18 (1) reductions of discharges of historic mine
19 drainage, to the extent appropriate and feasible;

20 (2) isolation, capping, or removal of mine
21 tailings, concentrates, or other mining waste to the
22 extent appropriate and feasible;

23 (3) improvement of habitat by adding plantings
24 and reducing exposures of certain fish and wildlife
25 to heavy metals;

1 (4) stabilization of river banks and rights-of-
2 way; and

3 (5) any other appropriate restoration options
4 that are consistent with this Act.

5 (c) CONTENTS.—The action plan shall—

6 (1) identify priority programs, activities, and
7 projects for addressing mining waste and discharges
8 and other point and nonpoint sources of elevated
9 concentrations of metals created prior to the date of
10 enactment of this Act;

11 (2) describe the methods for funding and sched-
12 ules for the programs, activities, and projects, in-
13 cluding the use of Federal and other sources of
14 funds;

15 (3) include a strategy for—

16 (A) environmental improvement of the
17 Coeur d'Alene River basin, in light of any final,
18 approved total maximum daily load for the
19 South Fork of the Coeur d'Alene drainage de-
20 veloped under section 303(d) of the Federal
21 Water Pollution Control Act (33 U.S.C.
22 1313(d)); and

23 (B) the promotion of prevention and man-
24 agement practices to reduce the quantity of nu-
25 trient loading in the Coeur d'Alene River basin;

1 (4) characterize and assess relevant data on en-
 2 vironmental problems of the Coeur d'Alene River
 3 basin, including assessment of trends in water qual-
 4 ity, natural resources, and use of Coeur d'Alene
 5 River basin resources;

6 (5) to the extent practicable, use and incor-
 7 porate—

8 (A) available Federal and tribal studies
 9 and data; and

10 (B) plans prepared, and priorities estab-
 11 lished by, the State of Idaho or private parties
 12 (including the Coeur d'Alene River Basin Res-
 13 toration Project Citizens' Advisory Committee)
 14 for the stabilization, enhancement, and restora-
 15 tion of the Coeur d'Alene River basin; and

16 (6) include procedures for public comment on
 17 the contents and implementation of the action plan.

18 (d) IMPLEMENTATION.—

19 (1) SUBMISSION OF ACTION PLAN.—The Gov-
 20 ernor shall submit a completed action plan to the
 21 Secretary by the date that is 2 years after the date
 22 of enactment of this Act.

23 (2) PAYMENT OF BALANCE OF FUND.—Imme-
 24 diately on submission of the action plan by the Gov-
 25 ernor, the Secretary shall provide the remaining

1 amounts in the Fund to the State of Idaho, to be
2 held in trust to fund the implementation of the ac-
3 tion plan by the Governor, in conjunction with the
4 Commission.

5 (e) POWERS OF THE SECRETARY.—As necessary in
6 carrying out this Act and without regard to chapter 35
7 of title 44, United States Code, the Federal Property and
8 Administrative Services Act of 1949 (40 U.S.C. 471 et
9 seq.), the Public Buildings Act of 1959 (40 U.S.C. 601
10 et seq.), or any other Federal law relating to reduction
11 of paperwork, acquisition of property and administrative
12 services, or public buildings, the Secretary may use
13 amounts in the Fund to—

14 (1) enter into contracts, agreements, and other
15 arrangements, including financial arrangements for
16 professional services, supplies, construction, mainte-
17 nance, management, and operation of equipment;

18 (2) purchase, lease, and otherwise dispose of
19 real and personal property; and

20 (3) carry out such other activities, including the
21 hiring of staff, as are necessary to develop and im-
22 plement the action plan.

23 (f) GIFTS.—As necessary in carrying out this Act, the
24 Secretary may accept, use, and dispose of gifts or dona-
25 tions of services and property.

1 **SEC. 6. COEUR D'ALENE RIVER BASIN COMMISSION.**

2 (a) ESTABLISHMENT.—There is established a com-
3 mission to be known as the “Coeur d’Alene River Basin
4 Commission” to work in conjunction with the Governor
5 in the development and implementation of the action plan.
6 Except as provided in subsection (b), the members of the
7 Commission shall be appointed by the Governor.

8 (b) MEMBERSHIP.—The Commission shall consist
9 of—

10 (1) 1 representative of the Governor;

11 (2) 1 representative of the Idaho Department of
12 Environmental Quality;

13 (3) 1 representative of the Idaho Department of
14 Lands;

15 (4) 1 representative of the Environmental Pro-
16 tection Agency, to be appointed by the Adminis-
17 trator of the Environmental Protection Agency;

18 (5) 1 representative of the Department of the
19 Interior and the Department of Agriculture, to be
20 appointed jointly by the Secretary of the Interior
21 and the Secretary of Agriculture;

22 (6) 1 representative of each of the county gov-
23 ernments of Benewah County, Kootenai County, and
24 Shoshone County, Idaho;

25 (7) 1 representative of the trustees established
26 under the settlement agreement of May 31, 1986,

1 entered in State of Idaho v. Bunker Hill Co., No.
2 83–3161 (D. Idaho);

3 (8) 1 representative of the Coeur d’Alene Tribe,
4 appointed by the Tribe;

5 (9) 2 representatives of the Coeur d’Alene River
6 Basin Restoration Project Citizens’ Advisory Com-
7 mittee;

8 (10) 1 representative of the mining industry;
9 and

10 (11) 1 representative of other affected indus-
11 tries.

12 (c) TERMS.—

13 (1) IN GENERAL.—The term of a member of
14 the Commission shall be 3 years.

15 (2) VACANCIES.—Any vacancy in the Commis-
16 sion shall be filled in the manner in which the initial
17 appointment was made.

18 (d) INITIAL APPOINTMENTS.—The initial members of
19 the Commission shall be appointed not later than 90 days
20 after the date of enactment of this Act.

21 (e) CHAIRPERSON.—The members of the Commission
22 shall elect annually a chairperson from among the mem-
23 bers of the Commission.

24 (f) ADVISORY COMMITTEES.—In working in conjunc-
25 tion with the Governor in the development and implemen-

1 tation of the action plan, the Commission shall appoint,
2 and consult as appropriate—

3 (1) a technical advisory committee; and

4 (2) a citizens' advisory committee.

5 (g) EMPLOYMENT STATUS.—

6 (1) IN GENERAL.—Except as provided in para-
7 graph (2), a member of the Commission shall not be
8 considered to be an officer or employee of the United
9 States for any purpose.

10 (2) FEDERAL REPRESENTATIVES.—A member
11 of the Commission appointed under paragraph (4) or
12 (5) of subsection (b) may be an officer or employee
13 of the United States.

14 (h) PROCEDURES.—

15 (1) ACTION BY MAJORITY VOTE.—The Commis-
16 sion shall act by simple majority vote of the Com-
17 mission.

18 (2) AVAILABILITY TO THE PUBLIC.—The Com-
19 mission shall make available to the public a state-
20 ment of the organization, practices, and procedures
21 of the Commission.

22 (3) PUBLIC HEARINGS.—All Commission meet-
23 ings shall be open to the public.

1 (i) FUNDING.—Funds made available under sub-
 2 section (a) or (d) of section 5 shall be used to pay the
 3 necessary expenses of the Commission.

4 **SEC. 7. LIMITATIONS ON LIABILITY.**

5 (a) PERSONS ENGAGED IN COEUR D'ALENE RIVER
 6 BASIN ACTIVITIES.—

7 (1) STAY.—

8 (A) IN GENERAL.—On the motion of a per-
 9 son against whom an administrative or judicial
 10 action described in subparagraph (B) is pend-
 11 ing on the date of enactment of this Act or is
 12 brought after that date, the agency or court
 13 shall stay the proceeding with respect to that
 14 person until the earliest of—

15 (i) the date on which the person en-
 16 ters into an enforceable agreement under
 17 paragraph (2);

18 (ii) the date that is 2 years after the
 19 date on which the Governor submits the
 20 action plan to the Secretary under section
 21 5; or

22 (iii) the date that is 5 years after the
 23 date of enactment of this Act.

24 (B) ACTION.—An action referred to in
 25 subparagraph (A) is an action to impose liabil-

1 ity under the Comprehensive Environmental
2 Response, Compensation, and Liability Act of
3 1980 (42 U.S.C. 9601 et seq.), the Federal
4 Water Pollution Control Act (33 U.S.C. 1251 et
5 seq.), or the Solid Waste Disposal Act (42
6 U.S.C. 6901 et seq.) for any response cost, re-
7 sponse or other cleanup or corrective action, ob-
8 ligation, penalty, or natural resource damage,
9 within the Coeur d'Alene River basin attrib-
10 utable to any release or threatened release of a
11 hazardous substance resulting from a mining or
12 mining-related activity in the Coeur d'Alene
13 River basin undertaken before the date of en-
14 actment of this Act.

15 (2) ENFORCEABLE AGREEMENTS.—

16 (A) IN GENERAL.—An enforceable agree-
17 ment referred to in paragraph (1) is an agree-
18 ment entered into between the State of Idaho
19 and a person that—

20 (i) requires the person to contribute,
21 over a period of up to 10 years, the per-
22 son's fair share (which may include funds,
23 land, interests in land, goods, or services)
24 in an amount or value determined by the
25 Governor, in conjunction with the Commis-

1 sion, after consideration of all relevant fac-
2 tors, including—

3 (I) the past contributions and ef-
4 forts and existing commitments of the
5 person toward environmental improve-
6 ment in the Coeur d'Alene River
7 basin;

8 (II) the importance of maintain-
9 ing the viability of mining and the
10 mining companies and other activities
11 that have been active and continue to
12 be active in the Coeur d'Alene River
13 basin;

14 (III) the estimated cost to imple-
15 ment the action plan;

16 (IV) any waiver, release, settle-
17 ment, or other agreement relating to
18 the Coeur d'Alene River basin; and

19 (V) any control strategy required
20 by a final, approved total maximum
21 daily load for the South Fork; and

22 (ii) requires the person to provide fi-
23 nancial assurances and pay stipulated pen-
24 alties adequate to guarantee performance
25 under the agreement.

1 (B) ENFORCEMENT.—

2 (i) IN GENERAL.—An enforceable
3 agreement under subparagraph (A) shall
4 be enforceable by any party to the agree-
5 ment in a civil action brought in the Unit-
6 ed States District Court for the District of
7 Idaho.

8 (ii) ATTORNEY'S FEES.—A prevailing
9 party in a civil action under clause (i) shall
10 be entitled to attorney's fees and costs.

11 (C) LIABILITY OF PERSONS THAT ENTER
12 INTO ENFORCEABLE AGREEMENTS.—A person
13 that enters into an enforceable agreement de-
14 scribed in subparagraph (A) shall not be sub-
15 ject to any action or liability for any response
16 cost, response or other cleanup or corrective ac-
17 tion, obligation, penalty, or natural resource
18 damage under the Comprehensive Environ-
19 mental Response, Compensation, and Liability
20 Act of 1980 (42 U.S.C. 9601 et seq.), the Fed-
21 eral Water Pollution Control Act (33 U.S.C.
22 1251 et seq.), or the Solid Waste Disposal Act
23 (42 U.S.C. 6901 et seq.) attributable to a re-
24 lease or threatened release of a hazardous sub-
25 stance resulting from mining or mining-related

1 activity in the Coeur d'Alene River basin under-
 2 taken before the date of enactment of this Act,
 3 except as set forth in subparagraphs (A) and
 4 (B) of subsection (a)(3).

5 (D) DISMISSAL OF ACTION.—On the mo-
 6 tion of a person with respect to which a stay
 7 has been granted under paragraph (1), the
 8 court shall dismiss the action with respect to
 9 that person if the person enters into an enforce-
 10 able agreement under this paragraph.

11 (3) NO EFFECT ON LIABILITY UNDER PERMITS
 12 OR CERTAIN CONSENT DECREES AND AGREE-
 13 MENTS.—This Act shall not have any effect on—

14 (A) the liability or obligations of any per-
 15 son for mining or mining-related activity in the
 16 Coeur d'Alene River basin undertaken before
 17 the date of enactment of this Act covered by a
 18 permit under any of the Acts referred to in
 19 paragraph (1); or

20 (B) the terms of, or the obligations of any
 21 party, under—

22 (i) the consent decrees entered in
 23 United States v. Asarco Inc., Civil No. 94-
 24 0206-N-HLR (D. Idaho) and United

1 States v. Union Pacific Railroad Co., No.
2 CV 95–152–N–HLR (D. Idaho);

3 (ii) the settlement agreement dated
4 May 31, 1986, entered in State of Idaho v.
5 Bunker Hill Co., et al., No. CV 83–3161
6 (D. Idaho);

7 (iii) any settlement agreements en-
8 tered in Coeur d’Alene Tribe v. ASARCO
9 Inc., et al., No. CV 91–0342–N–EJL (D.
10 Idaho);

11 (iv) the credit and tolling agreement
12 dated March 22, 1996, between Hecla
13 Mining Company and the State of Idaho.

14 (b) LIABILITY OF THE GOVERNOR, COMMISSION, AND
15 STATE.—The Governor, the State of Idaho, and the Com-
16 mission shall not be liable for—

17 (1) any activity conducted by any of them in ac-
18 cordance with the action plan or for any response
19 cost, response or other cleanup or corrective action,
20 or operation and maintenance of any water treat-
21 ment system as a part of the activity; or

22 (2) any obligation or any penalty or natural re-
23 source damages under the Comprehensive Environ-
24 mental Response, Compensation, and Liability Act
25 of 1980 (42 U.S.C. 9601 et seq.), the Federal Water

1 Pollution Control Act (33 U.S.C. 1251 et seq.), the
2 Solid Waste Disposal Act (42 U.S.C. 6901 et seq.),
3 or any other Federal law for any release or threat-
4 ened release of a hazardous substance resulting from
5 a mining activity in the Coeur d'Alene River basin
6 undertaken before the date of enactment of this Act.

7 (c) INNOCENT LANDOWNERS.—A person that has a
8 current or former interest in real property shall not be
9 liable for—

10 (1) any response cost or response or other
11 cleanup or corrective action; or

12 (2) any obligation or any penalty or natural re-
13 source damages under the Comprehensive Environ-
14 mental Response, Compensation, and Liability Act
15 of 1980 (42 U.S.C. 9601 et seq.), the Federal Water
16 Pollution Control Act (33 U.S.C. 1251 et seq.), or
17 the Solid Waste Disposal Act (42 U.S.C. 6901 et
18 seq.);

19 that is attributable to any release or threatened release
20 of a hazardous substance resulting from a mining activity
21 in the Coeur d'Alene River basin undertaken before the
22 date of enactment of this Act if the person establishes that
23 any liability that the person would have, absent this sub-
24 section, would arise solely on the basis of the transport
25 of the hazardous substance to the real property by air,

1 surface, or groundwater pathways from outside the bound-
2 ary of the real property.

3 **SEC. 8. COOPERATIVE AGREEMENTS.**

4 (a) **AUTHORITY.**—The Secretary may enter into co-
5 operative agreements with the Governor and the Commis-
6 sion to carry out activities necessary to implement the ac-
7 tion plan.

8 (b) **FUNDING OF COOPERATIVE AGREEMENTS.**—The
9 Secretary shall obtain from the Fund such sums as are
10 necessary to carry out activities under cooperative agree-
11 ments entered into under subsection (a).

12 **SEC. 9. EFFECT ON TRIBAL AUTHORITY.**

13 Nothing in this Act impairs, impedes, waives, preju-
14 dices, or in any way limits any civil or regulatory jurisdic-
15 tion or inherent sovereign authority of the Coeur d’Alene
16 Tribe over land, water, resources, or activities within the
17 Coeur d’Alene Indian Reservation, but the Coeur d’Alene
18 Tribe shall be bound by determinations that are made
19 under and in accordance with this Act.

20 **SEC. 10. FUNDING.**

21 (a) **AUTHORIZATION OF APPROPRIATIONS.**—There
22 are authorized to be appropriated to the Fund such sums
23 as are necessary to carry out this Act.

24 (b) **OTHER FUNDING.**—The Secretary, the Secretary
25 of the Interior, the Secretary of Agriculture, and the Ad-

1 administrator of the Environmental Protection Agency may
2 use research, development, demonstration, and other ap-
3 propriated funds, in a manner consistent with the pur-
4 poses for which the funds are appropriated, to carry out
5 activities that are part of, or consistent with, the action
6 plan.

○