

105TH CONGRESS
1ST SESSION

H. R. 1691

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

IN THE HOUSE OF REPRESENTATIVES

MAY 21, 1997

Mrs. CHENOWETH (for herself and Mr. CRAPO) introduced the following bill;
which was referred to the Committee on Transportation and Infrastruc-
ture, and in addition to the Committee on Commerce, for a period to be
subsequently determined by the Speaker, in each case for consideration
of such provisions as fall within the jurisdiction of the committee con-
cerned

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—

1 (1) to provide for the stabilization, enhance-
2 ment, restoration, and management of the Coeur
3 d’Alene River basin to the extent necessary to repair
4 and mitigate environmental damage caused by past
5 mining development;

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

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

10 (4) to develop and implement a comprehensive
11 watershed management and enhancement plan for
12 the Coeur d’Alene River basin; and

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

15 **SEC. 3. DEFINITIONS.**

16 In this Act:

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

21 (2) BUNKER HILL SUPERFUND FACILITY.—The
22 term “Bunker Hill Superfund Facility” means the
23 21-square-mile area known by the name that is list-
24 ed on the National Priorities List established under
25 section 105(a)(8)(B) of the Comprehensive Environ-

1 mental Response, Compensation, and Liability Act
2 of 1980 (42 U.S.C. 9605(a)(8)(B)) as of the date of
3 enactment of this Act.

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

8 (A) the South Fork of the Coeur d’Alene
9 River and tributaries of the fork;

10 (B) Beaver and Prichard Creeks, which
11 are tributaries of the North Fork of the Coeur
12 d’Alene River;

13 (C) the main stream of the Coeur d’Alene
14 River below the South Fork, including the lat-
15 eral lakes;

16 (D) Lake Coeur d’Alene; and

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

21 (4) COMMISSION.—The term “Commission”
22 means the Coeur d’Alene River Basin Commission
23 established by section 6.

24 (5) FUND.—The term “Fund” means the
25 Coeur d’Alene Trust Fund established by section 4.

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

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

4 (A) an individual, firm, corporation, asso-
5 ciation, partnership, consortium, joint venture,
6 or commercial entity;

7 (B) the Federal Government; or

8 (C) a State, municipality, commission, po-
9 litical subdivision of a State, Indian tribe, or
10 interstate body.

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

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

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

17 (1) amounts that are appropriated to the Fund
18 under section 10;

19 (2) amounts that are redirected to the Fund
20 under subsection (b);

21 (3) amounts contributed under section
22 7(a)(2)(A)(i);

23 (4) amounts contributed by any other person or
24 trust; and

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

3 (b) REDIRECTION OF FUNDS.—All cash and other as-
4 sets received, and to be received, by the Natural Resources
5 Trustees, as specified in the Second Modified Amended
6 Joint and Substantively Consolidated Plan of Reorganiza-
7 tion filed in United States Bankruptcy Court for the Dis-
8 trict of Idaho, Case No. 93–02986 and Case No. 93–
9 02987, and in any subsequent plans or orders issued by
10 the court in those proceedings, shall be contributed to the
11 Fund.

12 (c) EXPENDITURES FROM FUND.—

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

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

24 (d) INVESTMENT OF FUNDS.—

1 (1) IN GENERAL.—The Secretary of the Treas-
2 ury shall invest such portion of the Fund as is not,
3 in the judgment of the Secretary of the Treasury,
4 required to meet current withdrawals. Investments
5 may be made only in interest-bearing obligations of
6 the United States.

7 (2) ACQUISITION OF OBLIGATIONS.—For the
8 purpose of investments under paragraph (1), obliga-
9 tions may be acquired—

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

11 (B) by purchase of outstanding obligations
12 at the market price.

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

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

20 (e) TRANSFERS OF AMOUNTS.—

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

1 (2) ADJUSTMENTS.—Proper adjustment shall
2 be made in amounts subsequently transferred to the
3 extent prior estimates were in excess of or less than
4 the amounts required to be transferred.

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

11 **SEC. 5. ACTION PLAN.**

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

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

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

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

4 (3) improvement of habitat by adding plantings
5 and reducing exposures of certain fish and wildlife
6 to heavy metals;

7 (4) stabilization of river banks and rights-of-
8 way; and

9 (5) any other appropriate restoration options
10 that are consistent with this Act.

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

12 (1) identify priority programs, activities, and
13 projects for addressing mining waste and discharges
14 and other point and nonpoint sources of elevated
15 concentrations of metals created prior to the date of
16 enactment of this Act;

17 (2) describe the methods for funding and sched-
18 ules for the programs, activities, and projects, in-
19 cluding the use of Federal and other sources of
20 funds;

21 (3) include a strategy for—

22 (A) environmental improvement of the
23 Coeur d’Alene River basin, in light of any final,
24 approved total maximum daily load for the
25 South Fork of the Coeur d’Alene drainage de-

1 developed under section 303(d) of the Federal
2 Water Pollution Control Act (33 U.S.C.
3 1313(d)); and

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

7 (4) characterize and assess relevant data on en-
8 vironmental problems of the Coeur d'Alene River
9 basin, including assessment of trends in water qual-
10 ity, natural resources, and use of Coeur d'Alene
11 River basin resources;

12 (5) to the extent practicable, use and incor-
13 porate—

14 (A) available Federal and tribal studies
15 and data; and

16 (B) plans prepared, and priorities estab-
17 lished by, the State of Idaho or private parties
18 (including the Coeur d'Alene River Basin Res-
19 toration Project Citizens' Advisory Committee)
20 for the stabilization, enhancement, and restora-
21 tion of the Coeur d'Alene River basin; and

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

24 (d) IMPLEMENTATION.—

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

5 (2) PAYMENT OF BALANCE OF FUND.—Imme-
6 diately on submission of the action plan by the Gov-
7 ernor, the Secretary shall provide the remaining
8 amounts in the Fund to the State of Idaho, to be
9 held in trust to fund the implementation of the ac-
10 tion plan by the Governor, in conjunction with the
11 Commission.

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

21 (1) enter into contracts, agreements, and other
22 arrangements, including financial arrangements for
23 professional services, supplies, construction, mainte-
24 nance, management, and operation of equipment;

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

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

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

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

10 (a) ESTABLISHMENT.—There is established a com-
11 mission to be known as the “Coeur d’Alene River Basin
12 Commission” to work in conjunction with the Governor
13 in the development and implementation of the action plan.
14 Except as provided in subsection (b), the members of the
15 Commission shall be appointed by the Governor.

16 (b) MEMBERSHIP.—The Commission shall consist
17 of—

18 (1) 1 representative of the Governor;

19 (2) 1 representative of the Idaho Department of
20 Environmental Quality;

21 (3) 1 representative of the Idaho Department of
22 Lands;

23 (4) 1 representative of the Environmental Pro-
24 tection Agency, to be appointed by the Adminis-
25 trator of the Environmental Protection Agency;

1 (5) 1 representative of the Department of the
2 Interior and the Department of Agriculture, to be
3 appointed jointly by the Secretary of the Interior
4 and the Secretary of Agriculture;

5 (6) 1 representative of each of the county gov-
6 ernments of Benewah County, Kootenai County, and
7 Shoshone County, Idaho;

8 (7) 1 representative of the trustees established
9 under the settlement agreement of May 31, 1986,
10 entered in State of Idaho v. Bunker Hill Co., No.
11 83–3161 (D. Idaho);

12 (8) 1 representative of the Coeur d’Alene Tribe,
13 appointed by the Tribe;

14 (9) 2 representatives of the Coeur d’Alene River
15 Basin Restoration Project Citizens’ Advisory Com-
16 mittee;

17 (10) 1 representative of the mining industry;
18 and

19 (11) 1 representative of other affected indus-
20 tries.

21 (c) TERMS.—

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

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

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

7 (e) CHAIRPERSON.—The members of the Commission
8 shall elect annually a chairperson from among the mem-
9 bers of the Commission.

10 (f) ADVISORY COMMITTEES.—In working in conjunc-
11 tion with the Governor in the development and implemen-
12 tation of the action plan, the Commission shall appoint,
13 and consult as appropriate—

14 (1) a technical advisory committee; and

15 (2) a citizens' advisory committee.

16 (g) EMPLOYMENT STATUS.—

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

21 (2) FEDERAL REPRESENTATIVES.—A member
22 of the Commission appointed under paragraph (4) or
23 (5) of subsection (b) may be an officer or employee
24 of the United States.

25 (h) PROCEDURES.—

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

4 (2) AVAILABILITY TO THE PUBLIC.—The Com-
5 mission shall make available to the public a state-
6 ment of the organization, practices, and procedures
7 of the Commission.

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

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

13 **SEC. 7. LIMITATIONS ON LIABILITY.**

14 (a) PERSONS ENGAGED IN COEUR D'ALENE RIVER
15 BASIN ACTIVITIES.—

16 (1) STAY.—

17 (A) IN GENERAL.—On the motion of a per-
18 son against whom an administrative or judicial
19 action described in subparagraph (B) is pend-
20 ing on the date of enactment of this Act or is
21 brought after that date, the agency or court
22 shall stay the proceeding with respect to that
23 person until the earliest of—

1 (i) the date on which the person en-
2 ters into an enforceable agreement under
3 paragraph (2);

4 (ii) the date that is 2 years after the
5 date on which the Governor submits the
6 action plan to the Secretary under section
7 5; or

8 (iii) the date that is 5 years after the
9 date of enactment of this Act.

10 (B) ACTION.—An action referred to in
11 subparagraph (A) is an action to impose liabil-
12 ity under the Comprehensive Environmental
13 Response, Compensation, and Liability Act of
14 1980 (42 U.S.C. 9601 et seq.), the Federal
15 Water Pollution Control Act (33 U.S.C. 1251 et
16 seq.), or the Solid Waste Disposal Act (42
17 U.S.C. 6901 et seq.) for any response cost, re-
18 sponse or other cleanup or corrective action, ob-
19 ligation, penalty, or natural resource damage,
20 within the Coeur d’Alene River basin attrib-
21 utable to any release or threatened release of a
22 hazardous substance resulting from a mining or
23 mining-related activity in the Coeur d’Alene
24 River basin undertaken before the date of en-
25 actment of this Act.

1 (2) ENFORCEABLE AGREEMENTS.—

2 (A) IN GENERAL.—An enforceable agree-
3 ment referred to in paragraph (1) is an agree-
4 ment entered into between the State of Idaho
5 and a person that—

6 (i) requires the person to contribute,
7 over a period of up to 10 years, the per-
8 son's fair share (which may include funds,
9 land, interests in land, goods, or services)
10 in an amount or value determined by the
11 Governor, in conjunction with the Commis-
12 sion, after consideration of all relevant fac-
13 tors, including—

14 (I) the past contributions and ef-
15 forts and existing commitments of the
16 person toward environmental improve-
17 ment in the Coeur d'Alene River
18 basin;

19 (II) the importance of maintain-
20 ing the viability of mining and the
21 mining companies and other activities
22 that have been active and continue to
23 be active in the Coeur d'Alene River
24 basin;

1 (III) the estimated cost to imple-
2 ment the action plan;

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

6 (V) any control strategy required
7 by a final, approved total maximum
8 daily load for the South Fork; and

9 (ii) requires the person to provide fi-
10 nancial assurances and pay stipulated pen-
11 alties adequate to guarantee performance
12 under the agreement.

13 (B) ENFORCEMENT.—

14 (i) IN GENERAL.—An enforceable
15 agreement under subparagraph (A) shall
16 be enforceable by any party to the agree-
17 ment in a civil action brought in the
18 United States District Court for the Dis-
19 trict of Idaho.

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

23 (C) LIABILITY OF PERSONS THAT ENTER
24 INTO ENFORCEABLE AGREEMENTS.—A person
25 that enters into an enforceable agreement de-

scribed in subparagraph (A) shall not be subject to any action or liability for any response cost, response or other cleanup or corrective action, obligation, penalty, or natural resource damage under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.), the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), or the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.) attributable to a release or threatened release of a hazardous substance resulting from mining or mining-related activity in the Coeur d'Alene River basin undertaken before the date of enactment of this Act, except as set forth in subparagraphs (A) and (B) of subsection (a)(3).

(D) DISMISSAL OF ACTION.—On the motion of a person with respect to which a stay has been granted under paragraph (1), the court shall dismiss the action with respect to that person if the person enters into an enforceable agreement under this paragraph.

(3) NO EFFECT ON LIABILITY UNDER PERMITS OR CERTAIN CONSENT DECREES AND AGREEMENTS.—This Act shall not have any effect on—

1 (A) the liability or obligations of any per-
2 son for mining or mining-related activity in the
3 Coeur d'Alene River basin undertaken before
4 the date of enactment of this Act covered by a
5 permit under any of the Acts referred to in
6 paragraph (1); or

7 (B) the terms of, or the obligations of any
8 party, under—

9 (i) the consent decrees entered in
10 United States v. Asarco Inc., Civil No. 94–
11 0206–N–HLR (D. Idaho) and United
12 States v. Union Pacific Railroad Co., No.
13 CV 95–152–N–HLR (D. Idaho);

14 (ii) the settlement agreement dated
15 May 31, 1986, entered in State of Idaho v.
16 Bunker Hill Co., et al., No. CV 83–3161
17 (D. Idaho);

18 (iii) any settlement agreements en-
19 tered in Coeur d'Alene Tribe v. ASARCO
20 Inc., et al., No. CV 91–0342–N–EJL (D.
21 Idaho);

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

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

4 (1) any activity conducted by any of them in ac-
5 cordance with the action plan or for any response
6 cost, response or other cleanup or corrective action,
7 or operation and maintenance of any water treat-
8 ment system as a part of the activity; or

9 (2) any obligation or any penalty or natural re-
10 source damages under the Comprehensive Environ-
11 mental Response, Compensation, and Liability Act
12 of 1980 (42 U.S.C. 9601 et seq.), the Federal Water
13 Pollution Control Act (33 U.S.C. 1251 et seq.), the
14 Solid Waste Disposal Act (42 U.S.C. 6901 et seq.),
15 or any other Federal law for any release or threat-
16 ened release of a hazardous substance resulting from
17 a mining activity in the Coeur d'Alene River basin
18 undertaken before the date of enactment of this Act.

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

22 (1) any response cost or response or other
23 cleanup or corrective action; or

24 (2) any obligation or any penalty or natural re-
25 source damages under the Comprehensive Environ-

1 mental Response, Compensation, and Liability Act
2 of 1980 (42 U.S.C. 9601 et seq.), the Federal Water
3 Pollution Control Act (33 U.S.C. 1251 et seq.), or
4 the Solid Waste Disposal Act (42 U.S.C. 6901 et
5 seq.);

6 that is attributable to any release or threatened release
7 of a hazardous substance resulting from a mining activity
8 in the Coeur d'Alene River basin undertaken before the
9 date of enactment of this Act if the person establishes that
10 any liability that the person would have, absent this sub-
11 section, would arise solely on the basis of the transport
12 of the hazardous substance to the real property by air,
13 surface, or groundwater pathways from outside the bound-
14 ary of the real property.

15 **SEC. 8. COOPERATIVE AGREEMENTS.**

16 (a) **AUTHORITY.**—The Secretary may enter into co-
17 operative agreements with the Governor and the Commis-
18 sion to carry out activities necessary to implement the ac-
19 tion plan.

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

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

2 Nothing in this Act impairs, impedes, waives, preju-
3 dices, or in any way limits any civil or regulatory jurisdic-
4 tion or inherent sovereign authority of the Coeur d’Alene
5 Tribe over land, water, resources, or activities within the
6 Coeur d’Alene Indian Reservation, but the Coeur d’Alene
7 Tribe shall be bound by determinations that are made
8 under and in accordance with this Act.

9 **SEC. 10. FUNDING.**

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

13 (b) **OTHER FUNDING.**—The Secretary, the Secretary
14 of the Interior, the Secretary of Agriculture, and the Ad-
15 ministrator of the Environmental Protection Agency may
16 use research, development, demonstration, and other ap-
17 propriated funds, in a manner consistent with the pur-
18 poses for which the funds are appropriated, to carry out
19 activities that are part of, or consistent with, the action
20 plan.

○