

104TH CONGRESS
2D SESSION

S. 1614

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

IN THE SENATE OF THE UNITED STATES

MARCH 14 (legislative day, MARCH 13), 1996

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, and for other purposes.

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 1996”.

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

1 d’Alene River basin to the extent necessary to repair
2 and mitigate environmental damage caused by past
3 mining development;

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

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

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

11 **SEC. 3. DEFINITIONS.**

12 In this Act:

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

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

4 (B) the Federal Government; and

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

8 (8) PRIVATE PERSON.—The term “private per-
9 son” means a person other than the Federal Govern-
10 ment or a State, municipality, commission, political
11 subdivision of a State, Indian tribe, or interstate
12 body.

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

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

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

19 (1) such amounts as are appropriated to the
20 Fund under section 9;

21 (2) amounts contributed by a private person
22 under section 7(b);

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

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

3 (b) EXPENDITURES FROM FUND.—

4 (1) IN GENERAL.—Subject to paragraph (2),
5 upon request by the Secretary, the Secretary of the
6 Treasury shall transfer from the Fund to the Sec-
7 retary such amounts as are required pursuant to
8 paragraph (2) and section 5 to carry out this Act.

9 (2) ADMINISTRATIVE EXPENSES.—An amount
10 not exceeding 10 percent of the amounts in the
11 Fund shall be available in each fiscal year to pay the
12 administrative expenses necessary to carry out this
13 Act.

14 (c) INVESTMENT OF FUNDS.—

15 (1) IN GENERAL.—The Secretary of the Treas-
16 ury shall invest such portion of the Fund as is not,
17 in the judgment of the Secretary of the Treasury,
18 required to meet current withdrawals. Investments
19 may be made only in interest-bearing obligations of
20 the United States.

21 (2) ACQUISITION OF OBLIGATIONS.—For the
22 purpose of investments under paragraph (1), obliga-
23 tions may be acquired—

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

1 (B) by purchase of outstanding obligations
2 at the market price.

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

6 (4) CREDITS TO FUND.—The interest on, and
7 the proceeds from the sale or redemption of, any ob-
8 ligations held in the Fund shall be credited to and
9 form a part of the Fund.

10 (d) TRANSFERS OF AMOUNTS.—

11 (1) IN GENERAL.—The amounts required to be
12 transferred to the Fund under this section shall be
13 transferred at least monthly from the general fund
14 of the Treasury to the Fund on the basis of esti-
15 mates made by the Secretary of the Treasury.

16 (2) ADJUSTMENTS.—Proper adjustment shall
17 be made in amounts subsequently transferred to the
18 extent prior estimates were in excess of or less than
19 the amounts required to be transferred.

20 (e) FINANCIAL STATEMENTS.—In conformance with
21 generally accepted accounting principles, the Secretary
22 shall prepare annual financial statements concerning ex-
23 penditures from the Fund. The financial statements shall
24 be audited annually by the Comptroller General.

1 **SEC. 5. ACTION PLAN.**

2 (a) DEVELOPMENT.—

3 (1) IN GENERAL.—At the request of the Gov-
4 ernor, the Secretary shall request from the Secretary
5 of the Treasury and provide to the State of Idaho
6 amounts from the Fund, up to a maximum of
7 \$500,000, for the Governor to use, in conjunction
8 with the Coeur d’Alene River Basin Commission, to
9 develop an action plan to support and enhance natu-
10 ral recovery of the Coeur d’Alene River basin
11 through cost-effective measures, which may vary
12 from location to location, in the Coeur d’Alene River
13 basin.

14 (b) PRACTICES.—The action plan shall embody prac-
15 tices designed to achieve—

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

18 (2) isolation, capping, or removal of mine
19 tailings, to the extent appropriate and feasible;

20 (3) improvement of habitat by adding plantings
21 and reducing exposures of certain fish and wildlife
22 to heavy metals;

23 (4) stabilization of river banks and rights of
24 way; and

25 (5) any other appropriate available restoration
26 options that are consistent with this Act.

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

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

7 (2) describe the methods for funding and sched-
8 ules for the programs, activities, and projects, in-
9 cluding the use of Federal and other sources of
10 funds;

11 (3) include a strategy for environmental im-
12 provement of the Coeur d’Alene River basin, includ-
13 ing the promotion of prevention and management
14 practices to reduce the quantity of nutrient loading
15 in the Coeur d’Alene River basin;

16 (4) characterize and assess relevant data on en-
17 vironmental problems of the Coeur d’Alene River
18 basin, including assessment of trends in water qual-
19 ity, natural resources, and use of Coeur d’Alene
20 River basin resources;

21 (5) to the extent practicable, use and incor-
22 porate—

23 (A) available Federal and tribal studies
24 and data; and

1 (B) plans prepared, and priorities estab-
 2 lished by, the State of Idaho or private parties,
 3 including the Coeur d'Alene River Basin Res-
 4 toration Project Citizens' Advisory Committee,
 5 for the stabilization, enhancement, and restoration
 6 of the Coeur d'Alene River basin; and

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

9 (d) IMPLEMENTATION.—

10 (1) SUBMISSION OF ACTION PLAN.—The Gov-
 11 ernor shall submit a completed action plan to the
 12 Secretary by June 1, 1997.

13 (2) PAYMENT OF BALANCE OF FUND.—Imme-
 14 diately on submission of the action plan by the Gov-
 15 ernor, the Secretary shall provide the remaining
 16 amounts in the Fund to the State of Idaho, to be
 17 held in trust to fund the implementation of the ac-
 18 tion plan by the Governor, in conjunction with the
 19 Commission.

20 (3) EXTENSION OF DEADLINE.—On written no-
 21 tice by the Governor to the Secretary, the deadline
 22 for submission of the action plan shall be extended
 23 for up to 24 months.

24 (e) POWERS OF SECRETARY.—As necessary in carry-
 25 ing out this Act and without regard to Federal laws gov-

1 erving reduction of paperwork, acquisition of property and
2 administrative services, or public buildings, the Secretary
3 may use amounts in the Fund to—

4 (1) enter into contracts, agreements, and other
5 arrangements, including financial arrangements for
6 professional services, supplies, construction, mainte-
7 nance, management, and operation of equipment;

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

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

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

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

17 (a) ESTABLISHMENT.—There is established a com-
18 mission to be known as the “Coeur d’Alene River Basin
19 Commission” to work in conjunction with the Governor
20 in the development and implementation of the action plan.
21 Except as provided in subsection (b), the members of the
22 Commission shall be appointed by the Governor.

23 (b) MEMBERSHIP.—The Commission shall consist
24 of—

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

3 (2) 1 representative of the Idaho Department of
4 Fish and Game;

5 (3) 1 representative of the Environmental Pro-
6 tection Agency, to be appointed by the Adminis-
7 trator of the Environmental Protection Agency;

8 (4) 1 representative of the Department of the
9 Interior and the Department of Agriculture, to be
10 appointed jointly by the Secretary of the Interior
11 and the Secretary of Agriculture;

12 (5) 1 representative of each of the county gov-
13 ernments of Benewah County, Kootenai County, and
14 Shoshone County, Idaho;

15 (6) 1 representative of the trustees established
16 under the settlement agreement of May 31, 1986,
17 entered in State of Idaho v. Bunker Hill Co., No.
18 83–3161 (D. Idaho);

19 (7) 1 representative of the Coeur d’Alene Tribe,
20 appointed by the Tribe;

21 (8) 2 representatives of the Coeur d’Alene River
22 Basin Restoration Project Citizens’ Advisory Com-
23 mittee;

24 (9) 1 representative of the mining industry; and

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

3 (c) TERMS.—

4 (1) IN GENERAL.—The term of a member of
5 the Commission shall be 2 years.

6 (2) VACANCIES.—Any vacancy on the Commis-
7 sion shall be filled in the manner in which the ap-
8 pointment was made.

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

12 (e) CHAIRPERSON.—The members of the Commission
13 shall elect annually a chairperson from among the mem-
14 bers of the Commission.

15 (f) ADVISORY COMMITTEES.—In working in conjunc-
16 tion with the Governor in the development and implemen-
17 tation of the action plan, the Commission shall appoint,
18 and consult as appropriate—

19 (1) a technical advisory committee; and

20 (2) a citizens' advisory committee.

21 (g) EMPLOYMENT STATUS.—

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

1 (2) FEDERAL REPRESENTATIVES.—A member
2 of the Commission appointed under subsection (b)
3 (3) or (4) may be an officer or employee of the Unit-
4 ed States.

5 (h) PROCEDURES.—

6 (1) ADOPTION, AMENDMENT, AND REPEAL.—
7 The Commission shall adopt and, as appropriate,
8 amend or repeal by majority vote procedures govern-
9 ing the manner in which the business of the Com-
10 mission may be conducted.

11 (2) AVAILABILITY TO THE PUBLIC.—The Com-
12 mission shall make available to the public a state-
13 ment of the organization, practices, and procedures
14 of the Commission.

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

17 (i) FUNDING.—Funds made available under section
18 5 (a) and (d) shall be used to pay the necessary expenses
19 of the Commission.

20 **SEC. 7. LIMITATIONS ON LIABILITY.**

21 (a) PERSONS ENGAGED IN COEUR D'ALENE RIVER
22 BASIN ACTIVITIES.—

23 (1) IN GENERAL.—Except as provided in para-
24 graph (2), a person shall have no liability under the
25 Comprehensive Environmental Response, Compensa-

1 tion, and Liability Act of 1980 (42 U.S.C. 9601 et
2 seq.), the Federal Water Pollution Control Act (33
3 U.S.C. 1251 et seq.), or the Solid Waste Disposal
4 Act (42 U.S.C. 6901 et seq.) for any response cost,
5 response or other cleanup or corrective action, obli-
6 gation, penalty, or natural resource damage, within
7 the Coeur d’Alene River basin attributable to any re-
8 lease or potential release of a hazardous substance
9 resulting from a mining-related or other activity in
10 the Coeur d’Alene River basin undertaken before the
11 date of enactment of this Act, except that—

12 (A) the liability and obligations of any per-
13 son for activity covered by the terms of a Fed-
14 eral or State permit shall continue to be deter-
15 mined in accordance with the terms of the per-
16 mit; and

17 (B) this paragraph shall not affect the
18 terms and obligations of the consent decrees en-
19 tered in *United States v. Asarco Inc.*, Civil No.
20 94-0206-N-HLR, United States District
21 Court, District of Idaho.

22 (2) TERMINATION OF LIABILITY LIMITATION.—

23 (A) IN GENERAL.—Paragraph (1) shall
24 cease to apply with respect to a person if, on
25 the date that is 2 years after the date on which

1 the Governor submits the action plan to the
2 Secretary, the person has not entered into an
3 enforceable agreement described in subpara-
4 graph (B).

5 (B) ENFORCEABLE AGREEMENT.—An en-
6 forceable agreement referred to in subpara-
7 graph (A) is an agreement entered into by the
8 State of Idaho and a person that requires the
9 person to contribute, over a period up to 10
10 years, the person's fair share, which may in-
11 clude funds, land, interests in lands, goods and
12 services, in an amount or value determined by
13 the Governor, in conjunction with the Commis-
14 sion, after consideration of all relevant factors,
15 including—

16 (i) the past contributions and efforts
17 and existing commitments of the person to-
18 ward environmental improvement in the
19 Coeur d'Alene River basin;

20 (ii) the importance of maintaining the
21 viability of mining and the mining compa-
22 nies and other activities that have been ac-
23 tive and continue to be active in the Coeur
24 d'Alene River basin; and

1 (iii) the estimated cost to implement
2 the action plan.

3 (C) LIABILITY OF PERSONS THAT ENTER
4 INTO AGREEMENTS.—

5 (i) NO ACTION AGAINST PERSON IN
6 COMPLIANCE.—A person that enters into
7 an enforceable agreement described in sub-
8 paragraph (B) shall not be subject to any
9 action or liability for cleanup under the
10 Comprehensive Environmental Response,
11 Compensation, and Liability Act of 1980
12 (42 U.S.C. 9601 et seq.), the Federal
13 Water Pollution Control Act (33 U.S.C.
14 1251 et seq.), and the Solid Waste Dis-
15 posal Act (42 U.S.C. 6901 et seq.) result-
16 ing from mining related or other activity in
17 the Coeur d’Alene River basin undertaken
18 before the date of enactment of this Act,
19 except as set forth in subsection (a)(1) (A)
20 and (B), if the person is in compliance
21 with the terms of the enforceable agree-
22 ment.

23 (ii) TOLLING OF PERIOD OF LIMITA-
24 TIONS.—The period of limitations applica-
25 ble to an action described in clause (i)

1 shall be tolled during the term of any en-
2 forceable agreement.

3 (iii) RELEASE.—On completion of per-
4 formance of an enforceable agreement, the
5 person executing the agreement shall be
6 released from all liability under the Com-
7 prehensive Environmental Response, Com-
8 pensation, and Liability Act of 1980 (42
9 U.S.C. 9601 et seq.), the Federal Water
10 Pollution Control Act (33 U.S.C. 1251 et
11 seq.), and the Solid Waste Disposal Act
12 (42 U.S.C. 6901 et seq.).

13 (D) LIABILITY OF THE GOVERNOR, COM-
14 MISSION, AND STATE.—The Governor, the State
15 of Idaho, and the Commission shall not be lia-
16 ble under the Comprehensive Environmental
17 Response, Compensation, and Liability Act of
18 1980 (42 U.S.C. 9601 et seq.), the Federal
19 Water Pollution Control Act (33 U.S.C. 1251 et
20 seq.), the Solid Waste Disposal Act (42 U.S.C.
21 6901 et seq.), or any other Federal law for any
22 activities conducted in accordance with the ac-
23 tion plan.

24 (b) INNOCENT LANDOWNERS.—A person shall have
25 no liability under the Comprehensive Environmental Re-

1 sponse, Compensation, and Liability Act of 1980 (42
2 U.S.C. 9601 et seq.), the Federal Water Pollution Control
3 Act (33 U.S.C. 1251 et seq.), or the Solid Waste Disposal
4 Act (42 U.S.C. 6901 et seq.) for any response cost, re-
5 sponse or other cleanup or corrective action, obligation,
6 penalty, or natural resource damages within the Coeur
7 d'Alene River basin attributable to any release or potential
8 release of a hazardous substance resulting from a mining-
9 related activity in the Coeur d'Alene River basin engaged
10 in on or before the date of enactment of this Act if the
11 person establishes by a preponderance of the evidence that
12 the release or potential release was caused solely by an
13 act or omission of a third party (other than the person
14 or an employee or agent of that person).

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 pur-
8 suant to 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 of the Inte-
14 rior, the Secretary of Agriculture, the Secretary of the
15 Army, and the Administrator of the Environmental Pro-
16 tection Agency may use research, development, dem-
17 onstration, and other appropriated funds, in a manner
18 consistent with the purposes for which the funds are ap-
19 propriated, to carry out activities that are part of, or con-
20 sistent with, the action plan.

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