

103^D CONGRESS
1ST SESSION

S. 1352

To amend the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (Superfund) to establish a public-private partnership demonstration project for the cleanup of ground water pollution in the San Gabriel Basin.

IN THE SENATE OF THE UNITED STATES

AUGUST 4 (legislative day, JUNE 30), 1993

Mrs. FEINSTEIN introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

A BILL

To amend the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (Superfund) to establish a public-private partnership demonstration project for the cleanup of ground water pollution in the San Gabriel Basin.

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 “San Gabriel Basin
5 Demonstration Project Act”.

6 **SEC. 2. FINDINGS.**

7 The Congress finds the following:

1 (1) The San Gabriel Basin presents a unique
2 set of environmental problems.

3 (2) The San Gabriel Valley is an area of one
4 hundred and ninety five square miles located ap-
5 proximately ten to twenty miles northeast of down-
6 town Los Angeles in Los Angeles County. It is the
7 home of 1,000,000 to 1,500,000 people who rely on
8 the ground water of the San Gabriel Basin for their
9 primary drinking water.

10 (3) The San Gabriel Basin is the most heavily
11 contaminated potable ground water basin in the
12 United States.

13 (4) The ground water in the San Gabriel Basin
14 is heavily contaminated with toxic volatile organic
15 compounds (VOCs) including trichloroethylene
16 (TCE), perchloroethylene (PCE), and carbon tetra-
17 chloride (CTC). The contamination levels vary
18 throughout the Valley.

19 (5) Four separate areas of contamination in the
20 San Gabriel Basin are listed in the National Priority
21 List (NPL) of Superfund. The areas where the VOC
22 contamination exceeds drinking water standards cov-
23 ers approximately thirty to forty square miles.

24 (6) The VOCs in the San Gabriel Basin have
25 been generated by hundreds of commercial and in-

1 industrial facilities scattered throughout the San Ga-
2 briel Valley, over a period of more than thirty years.

3 (7) The San Gabriel Basin is also heavily con-
4 taminated with nitrates as a result of hundreds of
5 years of agriculture and ranching in the Valley as
6 well as from industrial and residential septic sys-
7 tems.

8 (8) Once contaminated, ground water is very
9 difficult to clean up.

10 (9) A plume of polluted ground water will mi-
11 grate and spread contaminants wherever it flows.
12 The many areas of ground water contamination
13 throughout the San Gabriel Basin move at different
14 rates and in different directions, depending on the
15 density of the contaminants, the character of the aq-
16 uifer, and the local flow patterns. In the San Gabriel
17 Basin, flow patterns may be changing directions due
18 to fluctuating pumping rates throughout the Basin
19 and other factors.

20 (10) Complicating the cleanup in the San Ga-
21 briel Basin is the fact that forty-five different water
22 purveyors take water from the basin.

23 (11) Because the ground water flows under
24 hundreds of different facilities, apportioning respon-

1 sibility could be very complicated and could ulti-
2 mately be a very litigious process.

3 (12) There are approximately two hundred and
4 seventy five public water supply wells in the San Ga-
5 briel Basin. Eighty wells have contamination levels
6 exceeding current Federal drinking water standards.
7 Some of these wells have been abandoned and re-
8 placed with new wells in clean areas. In other con-
9 taminated wells, pumping continues but the ground
10 water is blended with clean water so that distributed
11 water meets the drinking water standards.

12 (13) The San Gabriel Basin presents a unique
13 opportunity for the community to solve a difficult
14 problem, by working together with the Federal Gov-
15 ernment in a public-private partnership.

16 **SEC. 3. SAN GABRIEL BASIN DEMONSTRATION PROJECT.**

17 Title I of the Comprehensive Environmental Re-
18 sponse, Compensation, and Liability Act of 1980
19 (Superfund) is amended by adding at the end the following
20 new section:

21 **“SEC. 127. SAN GABRIEL BASIN DEMONSTRATION PROJECT.**

22 “(a) TREATMENT OF WATER.—(1) As promptly as
23 practicable after the date of enactment of this section but
24 not later than six months after such date, the Adminis-
25 trator shall enter into one or more cooperative agreements

1 or contracts with the San Gabriel Basin Water Quality
2 Authority, or a successor public agency, (hereinafter in
3 this Act referred to as the 'Authority') to provide water
4 treatment to remove volatile organic compounds from the
5 ground water in the San Gabriel Basin. In the case of
6 the projects described in paragraph (3)(B), the contracts
7 or cooperative agreements shall also include the Water Re-
8 plenishment District of Southern California and the
9 Central Basin Municipal Water District. Implementation
10 of such contracts or cooperative agreements shall be con-
11 tingent upon a determination by the Administrator that
12 the preconditions of subsection (b) have been met.

13 “(2) The Authority may contract with other public
14 agencies to provide water treatment services or facilities
15 or related services and facilities, subject to approval by
16 the Administrator and pursuant to the decision rendered
17 in Los Angeles Superior Court Case Number 924128,
18 Upper San Gabriel Valley Municipal Water District v. City
19 of Alhambra, et al.

20 “(3) Contracts or cooperative agreements under this
21 subsection shall be consistent, insofar as possible, with the
22 April 17, 1990 draft Basin-Wide Technical Plan prepared
23 by the Administrator, and shall include but not be limited
24 to the following elements:

1 “(A) BALDWIN PARK.—Proposed capital ex-
2 penditures in the vicinity of Baldwin Park over the
3 next ten years, including \$4,500,000 for monitoring
4 wells, \$14,500,000 for up to seven wellhead treat-
5 ment plants, and \$136,000,000 for a conjunctive-use
6 plant designed to clean up the Basin and at the
7 same time allow utilization of the basin as a storage
8 facility which will increase reliability of water sup-
9 plies in Southern California. Such expenditures shall
10 include a water supply component jointly funded by
11 the Metropolitan Water District of Southern Califor-
12 nia and the Bureau of Reclamation (as authorized
13 by Public Law 102–579), and a VOC clean-up com-
14 ponent funded by the Project. Proposed operating
15 costs for these projects will increase gradually to
16 about \$32,000,000 per year at the end of the ten
17 year period.

18 “(B) WHITTIER NARROWS.—Proposed capital
19 expenditures, including \$1,000,000 for engineering
20 assessment, \$3,000,000 for monitoring wells,
21 \$11,500,000 for wellhead projects, and \$20,000,000
22 for regional treatment plants to prevent contami-
23 nated ground water from moving from the San Ga-
24 briel Basin toward the Central Basin through the
25 Whittier Narrows and proposed operating costs for

1 such projects which at the end of the ten year period
2 equal approximately \$3,000,000 per year.

3 “(C) PUENTE BASIN AREA.—Proposed capital
4 expenditures which include \$2,000,000 for engineer-
5 ing assessments, \$3,000,000 for monitoring wells,
6 and \$10,000,000 for regional plants in the Puente
7 Valley area to extract and treat highly contaminated
8 groundwater to meet water supply needs and pro-
9 posed operating costs for such projects which, at the
10 end of the ten year period will equal approximately
11 \$2,000,000 per year.

12 “(D) ARCADIA, EL MONTE, MONROVIA, GLEN-
13 DORA.—Proposed capital expenditures in these
14 areas, including \$3,000,000 for monitoring wells and
15 \$7,500,000 for up to five wellhead treatment plants
16 and proposed operating costs for such projects which
17 will equal about \$2,000,000 per year at the end of
18 the ten year period.

19 Federal funds made available under provisions of law
20 other than this section or other provisions of this Act for
21 any expenditure referred to in subparagraphs (A), (B),
22 (C), or (D) shall not be treated as costs of remedial action
23 recoverable under section 107(a)(4)(A) of this Act.

24 “(4) Contracts or cooperative agreements under this
25 subsection shall provide for consultation with—

1 “(A) the Upper San Gabriel Valley Municipal
2 Water District,

3 “(B) the Main San Gabriel Basin Watermaster,

4 “(C) the San Gabriel Valley Municipal Water
5 District.

6 “(D) the Three Valleys Municipal Water Dis-
7 trict,

8 “(E) the Central Basin Municipal Water Dis-
9 trict,

10 “(F) the Water Replenishment District of
11 Southern California,

12 “(G) the San Gabriel Valley Protective Associa-
13 tion,

14 “(H) the San Gabriel River Watermaster,

15 “(I) the Metropolitan Water District of South-
16 ern California,

17 “(J) the California State Water Resources Con-
18 trol Board, and

19 “(K) the California Regional Water Quality
20 Control Board, Los Angeles Region.

21 “(5) If the Basin-Wide Technical Plan is published
22 in final form after the date on which any contract or coop-
23 erative agreement under this subsection is entered into,
24 the contract or cooperative agreement shall be modified
25 by the parties to the extent necessary to be consistent with

1 the plan. Pursuant to such contract or cooperative agree-
2 ment, the Authority shall provide treatment for water
3 withdrawn from the Basin by qualified public water sys-
4 tems unless otherwise provided by the Metropolitan Water
5 District of Southern California.

6 “(6) No contract or cooperative agreement entered
7 into under this subsection shall take effect unless the Ad-
8 ministrator determines that all preconditions for imple-
9 menting the treatment project under this subsection have
10 been met, as provided in subsection (b), before the date
11 thirty months after the enactment of this section.

12 “(7) In providing water treatment under this sub-
13 section and apportioning costs under this section, the Ad-
14 ministrator and the Authority shall give credit for costs
15 incurred in the design, construction, and operation of any
16 previously approved project undertaken with respect to the
17 Basin and shall take appropriate steps to ensure continu-
18 ity.

19 “(b) PRECONDITIONS FOR IMPLEMENTATION OF
20 TREATMENT PROJECT.—(1) No water treatment shall be
21 provided pursuant to any contract or cooperative agree-
22 ment under subsection (a) until the Administrators, in
23 consultation with the Authority, finds that—

24 “(A) a sufficient number (at least 65 percent)
25 of the persons notified by the Administrator under

1 this Act prior to the date six months after the enact-
2 ment of this section that they may be potentially re-
3 sponsible parties have entered into long-term cost-
4 sharing contracts with the Administrator under this
5 subsection; and

6 “(B) those contracts are sufficient to provide
7 annual payment for at least 50 percent of the total
8 costs incurred by the Administrator after the date of
9 the enactment of this section in carrying out water
10 treatment under subsection (a).

11 “(2) The contracts with participating parties under
12 this subsection shall also require that each participating
13 party entering into such a contract will—

14 “(A) conduct an environmental site assessment
15 in accordance with subsection (i) of the property
16 owned or operated by that party by reason of which
17 such party has been designated as a potentially re-
18 sponsible party, and

19 “(B) carry out all removal and remedial action
20 required with respect to hazardous substances in the
21 soil above the water table on such property, to the
22 extent necessary to comply with the standards under
23 section 121.

24 “(3) Any person, including potentially responsible
25 parties identified by the Administrator after the date six

1 months after the enactment of this section, as well as all
2 local government entities within the San Gabriel Basin,
3 who submits a request to the Administrator to participate
4 in the project under this section shall be offered the oppor-
5 tunity to enter into cost sharing contracts under this sec-
6 tion and those who enter into such contracts shall be treat-
7 ed as a participating party for purposes of this section.

8 “(4) Each person desiring to participate under this
9 section shall enter into a contract under this section within
10 ninety days after the date on which the contract is offered
11 by the Administrator to such party.

12 “(5) The annual payment by each participating party
13 shall be made in accordance with an appropriate schedule
14 of periodic payments established by the Administrator and
15 the Authority to coincide with the funding necessary to
16 carry out this section. Each participating party shall be
17 given the opportunity to fund its periodic payment liability
18 on a present value basis by entering into a structured set-
19 tlement arrangement. If a participating party funds its
20 periodic payment liability through a structured settlement
21 arrangement, the Authority shall be named as the owner
22 and payee of the funding instrument at the time of the
23 purchase of the instrument. Any such arrangement is sub-
24 ject to the approval of the Administrator and the Author-
25 ity, particularly as to the schedule of payments and the

1 licensed insurance company utilized for these purposes. A
2 participating party may enter into a structured settlement
3 arrangement as a single entity, or may enter into such
4 an arrangement with other participating parties. Except
5 as provided in subsection (c)(5), if a structured settlement
6 arrangement is established pursuant to the provisions of
7 this section, the participating party to whom the settle-
8 ment relates shall be released from any and all further
9 liability with respect to the settlement.

10 “(6) No court shall have jurisdiction to review any
11 challenge to the removal or remedial action selected in any
12 contract or cooperative agreement under this section.

13 “(c) COST SHARING.—(1) Six months after the en-
14 actment of this section, the Administrator shall notify
15 each potentially responsible party and each other person
16 who has submitted notice to the Administrator under sub-
17 section (b)(4) of the Administrator’s intention to allocate
18 the total costs incurred by the Administrator for water
19 treatment under subsection (a). Within sixty days after
20 the Administrator notifies such potentially responsible
21 parties and other persons, any such parties and other per-
22 sons desiring to become participating parties shall so no-
23 tify the Administrator and agree to provide the Adminis-
24 trator with such information as the Administrator deems
25 necessary to allocate costs among participating parties

1 under this subsection. If the Administrator deems the in-
2 formation provided by any such person to be insufficient
3 to permit the Administrator to make cost allocations
4 under this subsection, the Administrator designate such
5 person as ineligible to be a participating party. If the par-
6 ties and other persons notified by the Administrator agree
7 on an allocation of costs among themselves within one
8 hundred and eighty days after the expiration of such sixty-
9 day period, the Administrator shall allocate costs in ac-
10 cordance with such agreement. If such parties fail to reach
11 an agreement for cost allocation within such one hundred
12 and eighty-day period, within thirty days after the expira-
13 tion of such one hundred and eighty-day period the Ad-
14 ministrator shall allocate costs in accordance with para-
15 graphs (2) and (3).

16 “(2) In allocating costs to each participating party
17 as provided in paragraph (1), the Administrator shall
18 make two allocations. The first allocation shall allocate
19 only those costs associated with the specific zone of con-
20 tamination located in proximity to the participating party.
21 The allocation shall be made among all participating par-
22 ties located in proximity to such zone, pursuant to the for-
23 mula established by the Administrator under paragraph
24 (3). The second allocation shall allocate those costs not
25 associated with specific zones of contamination. The allo-

1 cation shall be made among all participating parties, pur-
2 suant to the formula established by the Administrator
3 under paragraph (3).

4 “(3) When no agreement has been reached pursuant
5 to paragraph (1), the Administrator shall establish a for-
6 mula for allocating costs under this subsection. The for-
7 mula shall require that the share of the total costs to be
8 paid by a participating party shall be based upon the fol-
9 lowing factors:

10 “(A) The Standard Industrial Code Number (as
11 determined by the Secretary of Commerce) of the
12 participating party and the Administrator’s estimate
13 of the likelihood that industrial operations having
14 that SIC Number contributed to contamination of
15 the Basin.

16 “(B) The revenues attributable to the partici-
17 pating party’s facility in the San Gabriel Valley in
18 a baseline year established by the Administrator.

19 “(C) The ability of the participating party to
20 pay.

21 “(D) Prior expenditures made by the participat-
22 ing party for ground water mediation in the Basin
23 (not including any costs of litigation or other attor-
24 ney’s fees).

1 “(4) In allocating costs under this subsection the Ad-
2 ministrator shall also allocate a share of the total costs
3 of carrying out the water treatment project under sub-
4 section (a) to potentially responsible parties who do not
5 agree to become participating parties under this section.
6 The Administrator shall recover costs from such
7 nonparticipating parties pursuant to other provisions of
8 this Act. The total of all shares contributed by participat-
9 ing parties under this subsection shall not be more than
10 80 percent of the total costs of carrying out the water
11 treatment project authorized under subsection (a), except
12 as provided in paragraph (5).

13 “(5) At the time the Administrator enters into a con-
14 tract or cooperative agreement with the Authority under
15 subsection (a), the Administrator shall estimate the total
16 costs expected to be incurred by the Administrator under
17 subsection (a). Each contract with a participating party
18 under this section shall provide that the maximum obliga-
19 tion of that participating party under such contract shall
20 not exceed 200 percent of that participating party’s share
21 of such estimated total costs.

22 “(6) Amounts received from participating parties
23 shall be paid to the Authority and deposited in an interest
24 bearing account which shall be available only for purposes

1 of the water treatment project carried out under sub-
2 section (a).

3 “(d) LEVEL OF TREATMENT.—The water treatment
4 provided pursuant to contracts and cooperative agree-
5 ments under this section shall be adequate to insure that
6 the treated water will comply with the most stringent
7 standards applicable to drinking water under title XIV of
8 the Public Health Service Act (the Safe Drinking Water
9 Act) or under any provision of State law governing drink-
10 ing water quality.

11 “(e) RECOVERY OF FEDERAL SHARE OF COST.—
12 There are authorized to be appropriated to the Adminis-
13 trator such sums as may be necessary to cover 20 percent
14 of the total costs of carrying out the water treatment
15 project carried out under subsection (a). For purposes of
16 section 107, the Federal share of costs made available pur-
17 suant to this subsection shall be included as costs of reme-
18 dial action within the meaning of section 107(a)(4)(A)
19 which are recoverable by the United States Government
20 in an action under section 107 against potentially respon-
21 sible parties who are not participating parties. For pur-
22 poses of section 107 all actions taken by the Administrator
23 and the Authority in conformity with this section shall be
24 deemed to have been taken in conformity with the Na-
25 tional Contingency Plan.

1 “(f) EXEMPTION FROM OTHER LIABILITY.—No par-
2 ticipating party making contributions pursuant to an
3 agreement under this section and complying with sub-
4 section (b)(2) shall be liable, under any other provision
5 of this Act or the Solid Waste Disposal Act or under any
6 State statutory laws or rules of common law, for the costs
7 of any removal or remediation with respect to hazardous
8 substances released into the San Gabriel Basin, or for
9 costs or damages to natural resources associated with such
10 Basin, to the extent such release occurred before the en-
11 actment of this section and is identified in a site assess-
12 ment, and no participating party shall be required to abate
13 any such prior release of any hazardous substances into
14 the Basin (except to the extent required by subsection
15 (b)(2)(B)). The exemption provided by the preceding sen-
16 tence for any participating party shall cease to apply to
17 such participating party upon a determination by the Ad-
18 ministrators that such participating party—

19 “(1) has failed or refused to make any portion of
20 the contribution required of such party pursuant to
21 an agreement under this section,

22 “(2) has failed or refused to carry out the ac-
23 tivities required under subsection (b)(2), or

24 “(3) has filed a suit against another person for
25 contribution of costs as described in subsection (f).

1 “(g) CONTRIBUTION.—No participating party may
2 bring an action against any other person to require such
3 other person to contribute any part of the costs required
4 to be paid to the Administrator by such participating
5 party under this section.

6 “(h) RELATIONSHIP TO OTHER LAWS.—Except as
7 provided in subsection (f), nothing in this section shall be
8 construed to affect the liability of any person under any
9 other provision of this Act or under any other provision
10 of law with respect to hazardous substances, pollutants,
11 or contaminants in the San Gabriel Basin. Nothing in this
12 section shall be construed to affect the authority of the
13 Administrator to carry out removal or remedial action or
14 any other response action with respect to such hazardous
15 substances, pollutants, or contaminants in addition to the
16 demonstration project authorized by this section.

17 “(i) LIABILITY EXEMPTION FOR PUBLIC WATER
18 SYSTEMS.—Neither the owner or operator of a qualified
19 public water system shall be liable under any provision of
20 Federal statutory or common law affording rights of con-
21 tribution for costs or damages in any suit for recovery of
22 costs for a removal or remedial action with respect to haz-
23 ardous substances in the San Gabriel Basin if such a suit
24 is brought by a potentially responsible party that is not
25 a participating party under this section.

1 “(j) COMPREHENSIVE ENVIRONMENTAL COMPLI-
2 ANCE PROGRAM.—

3 “(1) GENERAL REQUIREMENTS.—To qualify as
4 a participating party under this section, a potentially
5 responsible party must establish a Comprehensive
6 Environmental Compliance Program and agree to
7 conduct an Environmental Site Assessment.

8 “(2) REGISTERED ENVIRONMENTAL ASSES-
9 SORS.—The Comprehensive Environmental Compli-
10 ance Program and Environmental Site Assessment
11 shall be prepared, signed, and dated by a registered
12 civil engineer or registered geologist in accordance
13 with State law, and the Program shall be certified
14 by a person who is capable of committing the finan-
15 cial resources necessary to implement the Program,
16 such as the owner, operator, or responsible corporate
17 officer, or in the case of a government agency, a
18 principal executive official or a ranking elected offi-
19 cial.

20 “(3) CONTENT OF ENVIRONMENTAL SITE AS-
21 SESSMENT.—The Environmental Site Assessment
22 required under this section shall contain—

23 “(A) an evaluation of practices and proce-
24 dures established by the current owner or oper-

1 ator of the facility for which the assessment is
2 conducted to—

3 “(i) ensure continuing compliance
4 with applicable environmental require-
5 ments; and

6 “(ii) identify and implement hazard-
7 ous waste reduction opportunities for the
8 facility.

9 “(B) the results of Level I Preliminary As-
10 sessment (noninvasive investigation and regu-
11 latory search), and if site conditions warrant,
12 the Level II Assessment (invasive sampling for
13 suspected hazardous materials and preparation
14 of remedial design specifications) and the Level
15 III Assessment (on-site remediation); and

16 “(C) demonstration of compliance with all
17 applicable State and Federal laws, such as, but
18 not limited to the ‘Community Right-to-Know
19 Act’ and ‘California Hazardous Water Reduc-
20 tion Act and Management Review’ (SB 14);

21 “(4) COPIES.—Copies of each environmental
22 site assessment shall be provided to the Adminis-
23 trator and the appropriate State official.

24 “(k) DEFINITIONS.—As used in this section—

1 “(1) QUALIFIED PUBLIC WATER SYSTEM.—The
2 term ‘qualified public water system’ means a ‘public
3 water system’, as defined in title XIV of the Public
4 Health Service Act (the Safe Drinking Water Act),
5 which is entitled, as of May 15, 1991, to withdraw
6 water from or store water in the San Gabriel Valley
7 Groundwater Basin, as determined under State law.

8 “(2) BASIN.—The terms ‘San Gabriel Basin’
9 and ‘the Basin’ means the San Gabriel Valley
10 Groundwater Basin underlying the San Gabriel Val-
11 ley in Los Angeles County, California.

12 “(3) POTENTIALLY RESPONSIBLE PARTY.—The
13 term ‘potentially responsible party’ means a person
14 who is identified by the Administrator as a person
15 who may be liable under section 107, or under any
16 provision of State law, for any amount with respect
17 to cleanup of hazardous substances in the San Ga-
18 briel Basin.

19 “(4) PARTICIPATING PARTY.—The term ‘par-
20 ticipating party’ means a person who has requested
21 to participate as provided in subsection (b)(4) and
22 who has entered into a contract with the Adminis-
23 trator under subsection (b).

24 “(5) STRUCTURED SETTLEMENT ARRANGE-
25 MENT.—The term ‘structured settlement arrange-

1 ment means an arrangement where the Authority
2 owns—

3 “(A) a settlement annuity or similar in-
4 strument issued by a company licensed to do
5 business as an insurance company under the
6 laws of any State which has a financial stability
7 rating from a nationally recognized insurance
8 company rating organization which rating is
9 satisfactory to the Administrator, or

10 “(B) any obligation of the United States,
11 that has a defined schedule of periodic pay-
12 ments which coincides with the schedule of peri-
13 odic payments determined to be appropriate for
14 the Basin cleanup.”.

○

S 1352 IS—2