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Union Pacific faces lawsuit over cleanup costs

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A company that operated more than 20 mines in Idaho's Silver Valley over the past century can sue a railroad that hauled ore to try to recover some of the hundreds of millions of dollars it has paid for environmental cleanup, a federal appeals court ruled.

Five years ago, Asarco LLC reached a \$482 million settlement with the federal government over the company's role in creating a massive Superfund site in the Coeur d'Alene River basin. However, Asarco later sued the Union Pacific Corp., saying the railroad also was responsible for the mining pollution and should foot part of the bill.

A lower court threw out Asarco's suit. But last week, the 9th U.S. Circuit Court of Appeals said the case could go to trial.

Asarco attorney Gregory Evans said the company was unfairly burdened with being the largest financial contributor to the Superfund cleanup, which has an estimated \$2 billion worth of remaining work.

"Through this litigation, I think that UP's impact on the environment will be further understood," Evans said.

In a brief email, UP spokesman Aaron Hunt said the railroad was disappointed with the court's decision and would continue to defend itself in court.

After mineral deposits were discovered in the Silver Valley during the late 1800s, Asarco became one of the largest mine operators. In earlier litigation, the company was found to be responsible for at least 22 percent of the heavy metals released into the Coeur d'Alene River.

The railroad was also a culprit, Asarco says in its lawsuit. By the late 1800s, Union Pacific had built a rail line extending from Tekoa, Washington, to Wallace. The rail bed was built with mine tailings, which leached heavy metals into waterways, and spills of ore concentrates from rail cars also spread pollution, the suit says.

Union Pacific has been involved in several Superfund cleanup projects during the past 20 years, including the creation of the 72-mile Trail of the Coeur d'Alenes, said Cliff Villa, an assistant attorney for the U.S. Environmental Protection Agency.

The EPA hired contractors to travel the length of the rail corridor, identifying the extent of the pollution, Villa said. The rails-to-trails project put an asphalt cap on the old rail bed as part of pollution containment. Union Pacific is responsible for the Trail of the Coeur d'Alenes' upkeep and maintenance.

In addition, Union Pacific and BNSF Railway paid for cleanup of an old railyard in Wallace and connecting rail spurs that followed Canyon and Nine Mile creeks to historic mining areas.

But Asarco's Evans said parts of the Trail of the Coeur d'Alenes are poorly maintained, and his company expects to find other UP pollution sources during the litigation's discovery process.

"To say that UP has satisfied its obligation by doing a couple of isolated cleanups ... overlooks the continuing and pervasive environmental impacts that UP's practices are having on the Coeur d'Alene basin," he said.