

**STATEMENT OF BARRY CONATY, HOLLAND & HART, LLP
ON BEHALF OF THE CITY OF HENDERSON, NEVADA**

**Before the
HOUSE COMMITTEE ON NATURAL RESOURCES
SUBCOMMITTEE ON ENERGY AND MINERAL RESOURCES**

**On
H.R. 2512
THE THREE KIDS MINE REMEDIATION AND RECLAMATION ACT**

December 13, 2011

Chairman Lamborn and members of the Subcommittee, my name is Barry Conaty. I am a partner with the law firm of Holland & Hart, LLP and I thank you for the opportunity to appear on behalf of the City of Henderson, Nevada and its Redevelopment Agency to discuss H.R. 2512, the Three Kids Mine Remediation and Reclamation Act. Specifically, I would like briefly to address, from Henderson's perspective, the policy rationale behind the provision of the bill which would obligate the Secretary of the Interior to administratively adjust the fair market value of the 948 acres of Federal land proposed for conveyance based on a reasonable approximate estimation of the costs to investigate and remediate both the Federal land and the 314 acres of private land included in the overall 1,262-acre project site.

Manganese is essential to iron and steel production and during the 1940s and 1950s, the Three Kids Mine was one of the primary domestic sources of

manganese in the United States. Historical documents gathered from the National Archives indicate that the United States was integrally involved in mining and milling operations at the Three Kids Mine site during this period. In addition, the United States leased portions of the private land at the site until 2003 for the storage of Federal stockpiles of manganese.

In 1942, the Defense Plant Corporation (DPC), a federal instrumentality, acquired from Manganese Ore Company surface rights to approximately 446 acres at the site, including most of the now-private land, for the development of an ore processing mill and related facilities. The DPC contracted with Manganese Ore Company to construct the mill. Title to the plant site and mill facilities was vested in the DPC.

The DPC leased the plant site and mill facilities to another federal instrumentality, the Metals Reserve Company (MRC), which in turn entered into contracts with Manganese Ore Company for the procurement of crude ore, the operation of the mill, and the purchase of manganese nodule output for national defense purposes. The DPC and MRC contracts vested the Federal government with rights to approve all significant aspects of the construction and operation of the mine and mill, which included the use of large tailings ponds that today contain several million cubic yards of contaminated waste material up to sixty feet in depth.

The WWII-era mill was deactivated in 1944, although Federal ore stockpiles remained at the site. The DPC interests transferred first to the War Assets Administration, which tried unsuccessfully to sell the mine facilities, and then to the General Services Administration. In the early 1950s, the mill was updated and the mine and mill were reactivated by Manganese, Inc. under contracts with the GSA. In 1955, Manganese, Inc. purchased the real property at the Site that had been under Federal ownership. Manganese, Inc. continued to mine and beneficiate ore for the United States under the GSA contracts until closure of the mine and mill in 1961. In addition, until 2003 private land at the site was leased to the GSA and, later, the Defense Logistics Agency, for the storage of processed manganese nodules under the Federal strategic materials stockpile program.

These mining, milling, stockpiling, and associated activities resulted in extensive environmental contamination of the project site, including most of the now-private land and substantial portions of the Federal land.

The Comprehensive Environmental Response, Compensation, and Liability Act, often referred to as CERCLA or the "Superfund" statute, imposes strict as well as joint and several liability on certain classes of "potentially responsible parties" or "PRPs" for response costs incurred by the state, the Federal government and third parties in cleaning up a contaminated site. PRPs can include the United States. In relevant part, PRPs include: (1) current owners and operators of a

facility where hazardous substances are being or were released; (2) persons who owned or operated a facility at the time of disposal of hazardous substances; and (3) persons who by contract "arranged for" the disposal of hazardous substances.

Federal CERCLA caselaw indicates that the United States could be held liable as a PRP with respect to environmental contamination conditions at both the Federal and private lands at the project site, including: (1) as the current "owner" of the Federal land; (2) as a former "owner" of the now-private land at the time hazardous substances were disposed between 1942 and 1955; (3) as an "operator" of the mine and mill site from 1942 through the 1950s; (4) as an "arranger" of the disposal of hazardous substances during the same period; and/or (5) as an "owner" or "operator" of the manganese stockpile site until 2003.

Henderson recognizes that the adjudication of CERCLA liability ultimately is a fact-specific inquiry. Apportioning liability for environmental harm caused by mining and milling operations that took place at the Three Kids Mine site over half a century ago would be a difficult and costly process, and it is not clear that there are other viable PRPs in addition to the United States.

Henderson, its Redevelopment Agency, and the Nevada Division of Environmental Protection, have been working, in coordination with the Department of the Interior, to craft and implement a cleanup strategy for the Three Kids Mine site that would avoid any protracted dispute over responsibility for the

costs of cleanup and that instead would focus resources on permanently solving environmental contamination problems at the site.

In light of the extensive involvement of the United States in historical mine and mill operations on both the Federal and private lands at the site, Henderson believes it only appropriate for the estimated costs of cleaning up the entire site to be addressed by the Secretary of the Interior in administratively adjusting the fair market value of the 948 acres of Federal land as would be required under H.R. 2512. It is the assemblage of the Federal land with the private land as facilitated by the legislation that makes remediation of the entire site feasible and economically practicable. Moreover, under the bill the United States would receive a release of liability for pre-existing environmental contamination conditions on both the Federal and private lands upon issuance of the Patent for the Federal land.

Mr. Chairman and members of the Subcommittee, thank you for the opportunity to testify on behalf of the City of Henderson and its Redevelopment Agency on H.R. 2512. I would be happy to answer any questions that you might have.