

THREE KIDS MINE REMEDIATION AND RECLAMATION ACT

JULY 8, 2013.—Committed to the Committee of the Whole House on the State of
the Union and ordered to be printed

Mr. HASTINGS of Washington, from the Committee on Natural
Resources, submitted the following

R E P O R T

[To accompany H.R. 697]

[Including cost estimate of the Congressional Budget Office]

The Committee on Natural Resources, to whom was referred the bill (H.R. 697) to provide for the conveyance of certain Federal land in Clark County, Nevada, for the environmental remediation and reclamation of the Three Kids Mine Project Site, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Three Kids Mine Remediation and Reclamation Act”.

SEC. 2. DEFINITIONS.

In this Act:

(1) **FEDERAL LAND.**—The term “Federal land” means the approximately 948 acres of Bureau of Reclamation and Bureau of Land Management land within the Three Kids Mine Project Site, as depicted on the map.

(2) **HAZARDOUS SUBSTANCE; POLLUTANT OR CONTAMINANT; REMEDY.**—The terms “hazardous substance”, “pollutant or contaminant”, and “remedy” have the meanings given those terms in section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601).

(3) **HENDERSON REDEVELOPMENT AGENCY.**—The term “Henderson Redevelopment Agency” means the redevelopment agency of the City of Henderson, Nevada, established and authorized to transact business and exercise the powers of the agency in accordance with the Nevada Community Redevelopment Law (Nev. Rev. Stat. 279.382 to 279.685).

(4) **MAP.**—The term “map” means the map entitled “Three Kids Mine Project Area” and dated February 6, 2012.

(5) **RESPONSIBLE PARTY.**—The term “Responsible Party” means the private sector entity designated by the Henderson Redevelopment Agency, and ap-

proved by the State of Nevada, to complete the assessment, remediation, reclamation and redevelopment of the Three Kids Mine Project Site).

(6) SECRETARY.—The term “Secretary” means the Secretary of the Interior.

(7) STATE.—The term “State” means the State of Nevada.

(8) THREE KIDS MINE PROJECT SITE.—The term “Three Kids Mine Project Site” means the approximately 1,262 acres of land that is—

(A) comprised of—

(i) the Federal land; and

(ii) the approximately 314 acres of adjacent non-Federal land; and

(B) depicted as the “Three Kids Mine Project Site” on the map.

SEC. 3. LAND CONVEYANCE.

(a) IN GENERAL.—Notwithstanding sections 202 and 203 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1712, 1713), not later than 90 days after the date on which the Secretary determines that the conditions described in subsection (b) have been met, and subject to valid existing rights and applicable law, the Secretary shall convey to the Henderson Redevelopment Agency all right, title, and interest of the United States in and to the Federal land.

(b) CONDITIONS.—

(1) APPRAISAL; FAIR MARKET VALUE.—

(A) IN GENERAL.—As consideration for the conveyance under subsection (a), the Henderson Redevelopment Agency shall pay the fair market value of the Federal land, if any, as determined under subparagraph (B) and as adjusted under subparagraph (F).

(B) APPRAISAL.—The Secretary shall determine the fair market value of the Federal land based on an appraisal—

(i) that is conducted in accordance with nationally recognized appraisal standards, including—

(I) the Uniform Appraisal Standards for Federal Land Acquisitions; and

(II) the Uniform Standards of Professional Appraisal Practice; and

(ii) that does not take into account any existing contamination associated with historical mining on the Federal land.

(C) REMEDIATION AND RECLAMATION COSTS.—

(i) IN GENERAL.—The Secretary shall prepare a reasonable estimate of the costs to assess, remediate, and reclaim the Three Kids Mine Project Site.

(ii) CONSIDERATIONS.—The estimate prepared under clause (i) shall be—

(I) based on the results of a comprehensive Phase II environmental site assessment of the Three Kids Mine Project Site prepared by the Henderson Redevelopment Agency or a Responsible Party that has been approved by the State; and

(II) prepared in accordance with the current version of the ASTM International Standard E-2137-06 (2011) entitled “Standard Guide for Estimating Monetary Costs and Liabilities for Environmental Matters”.

(iii) ASSESSMENT REQUIREMENTS.—The Phase II environmental site assessment prepared under clause (ii)(I) shall, without limiting any additional requirements that may be required by the State, be conducted in accordance with the procedures of—

(I) the most recent version of ASTM International Standard E-1527-05 entitled “Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process”; and

(II) the most recent version of ASTM International Standard E-1903-11 entitled “Standard Guide for Environmental Site Assessments: Phase II Environmental Site Assessment Process”.

(iv) REVIEW OF CERTAIN INFORMATION.—

(I) IN GENERAL.—The Secretary shall review and consider cost information proffered by the Henderson Redevelopment Agency, the Responsible Party, and the State in the preparation of the estimate under this subparagraph.

(II) FINAL DETERMINATION.—If there is a disagreement among the Secretary, Henderson Redevelopment Agency, and the State over the reasonable estimate of costs under this subparagraph, the parties shall jointly select 1 or more experts to assist the Secretary in making the final estimate of the costs.

(D) DEADLINE.—Not later than 30 days after the date of enactment of this Act, the Secretary shall begin the appraisal and cost estimates under subparagraphs (B) and (C), respectively.

(E) APPRAISAL COSTS.—The Henderson Redevelopment Agency or the Responsible Party shall reimburse the Secretary for the costs incurred in performing the appraisal under subparagraph (B).

(F) ADJUSTMENT.—The Secretary shall administratively adjust the fair market value of the Federal land, as determined under subparagraph (B), based on the estimate of remediation, and reclamation costs, as determined under subparagraph (C).

(2) MINE REMEDIATION AND RECLAMATION AGREEMENT EXECUTED.—

(A) IN GENERAL.—The conveyance under subsection (a) shall be contingent on—

(i) the Secretary receiving from the State written notification that a mine remediation and reclamation agreement has been executed in accordance with subparagraph (B); and

(ii) the Secretary concurring, not later than 30 days after the date of receipt of the written notification under clause (i), that the requirements under subparagraph (B) have been met.

(B) REQUIREMENTS.—The mine remediation and reclamation agreement required under subparagraph (A) shall be an enforceable consent order or agreement between the State and the Responsible Party who will be obligated to perform under the consent order or agreement administered by the State that—

(i) obligates the Responsible Party to perform, after the conveyance of the Federal land under this Act, the remediation and reclamation work at the Three Kids Mine Project Site necessary to ensure all remedial actions necessary to protect human health and the environment with respect to any hazardous substances, pollutant, or contaminant will be taken, in accordance with all Federal, State, and local requirements; and

(ii) contains provisions determined to be necessary by the State and the Henderson Redevelopment Agency, including financial assurance provisions to ensure the completion of the remedy.

(3) NOTIFICATION FROM AGENCY.—As a condition of the conveyance under subsection (a), not later than 90 days after the date of execution of the mine remediation and reclamation agreement required under paragraph (2), the Secretary shall accept written notification from the Henderson Redevelopment Agency that the Henderson Redevelopment Agency is prepared to accept conveyance of the Federal land under subsection (a).

SEC. 4. WITHDRAWAL.

(a) IN GENERAL.—Subject to valid existing rights, for the 10-year period beginning on the earlier of the date of enactment of this Act or the date of the conveyance required by this Act, the Federal land is withdrawn from all forms of—

(1) entry, appropriation, operation, or disposal under the public land laws;

(2) location, entry, and patent under the mining laws; and

(3) disposition under the mineral leasing, mineral materials, and the geothermal leasing laws.

(b) EXISTING RECLAMATION WITHDRAWALS.—Subject to valid existing rights, any withdrawal under the public land laws that includes all or any portion of the Federal land for which the Bureau of Reclamation has determined that the Bureau of Reclamation has no further need under applicable law is relinquished and revoked solely to the extent necessary—

(1) to exclude from the withdrawal the property that is no longer needed; and

(2) to allow for the immediate conveyance of the Federal land as required under this Act.

(c) EXISTING RECLAMATION PROJECT AND PERMITTED FACILITIES.—Except as provided in subsection (a), nothing in this Act diminishes, hinders, or interferes with the exclusive and perpetual use by the existing rights holders for the operation, maintenance, and improvement of water conveyance infrastructure and facilities, including all necessary ingress and egress, situated on the Federal land that were constructed or permitted by the Bureau of Reclamation before the effective date of this Act.

SEC. 5. ACEC BOUNDARY ADJUSTMENT.

Notwithstanding section 203 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1713), the boundary of the River Mountains Area of Critical Environmental Concern (NVN 76884) is adjusted to exclude any portion of the Three Kids Mine Project Site consistent with the map.

SEC. 6. RESPONSIBILITIES OF THE PARTIES.

(a) **RESPONSIBILITY OF PARTIES TO MINE REMEDIATION AND RECLAMATION AGREEMENT.**—On completion of the conveyance under section 3, the responsibility for complying with the mine remediation and reclamation agreement executed under section 3(b)(2) shall apply to the Responsible Party and the State of Nevada.

(b) **SAVINGS PROVISION.**—If the conveyance under this Act has occurred, but the terms of the agreement executed under section 3(b)(2) have not been met, nothing in this Act—

(1) affects the responsibility of the Secretary to take any additional response action necessary to protect public health and the environment from a release or the threat of a release of a hazardous substance, pollutant, or contaminant; or

(2) unless otherwise expressly provided, modifies, limits, or otherwise affects—

(A) the application of, or obligation to comply with, any law, including any environmental or public health law; or

(B) the authority of the United States to enforce compliance with the requirements of any law or the agreement executed under section 3(b)(2).

SEC. 7. SOUTHERN NEVADA PUBLIC LANDS MANAGEMENT ACT.

Southern Nevada Public Land Management Act of 1998 (31 U.S.C. 6901 note; Public Law 105–263) shall not apply to land conveyed under this Act.

PURPOSE OF THE BILL

The purpose of H.R. 697 is to provide for the conveyance of certain Federal land in Clark County, Nevada, for the environmental remediation and reclamation of the Three Kids Mine Project Site.

BACKGROUND AND NEED FOR LEGISLATION

The Three Kids Mine (TKM), located in Clark County, Nevada, operated from 1916 until 1961. The United States, through the Defense Plant Corporation (DPC), owned 446 acres of the TKM Project site from 1942 to 1955. DPC leased the site to U.S. Metals Reserve Company (MRC). MRC contracted with the Manganese Ore Company to construct and operate a mill from 1942 through 1944 to produce manganese for national defense purposes. From 1950 to 1959, the U.S. contracted with Manganese, Inc., to beneficiate federally owned ore. The U.S. also leased private lands to stockpile manganese nodules associated with the site as late as 2003.

The TKM project site is approximately 1,262 acres and includes 948 acres of federal lands now managed by the Bureau of Land Management (BLM) and Bureau of Reclamation (BOR), and 314 acres of private lands, where the mill site and processing plant is located. The TKM project site is east of the City of Henderson, Nevada. The City has annexed the area.

The site is contaminated with arsenic, lead and other heavy metals and petroleum hydrocarbons. Cost estimates for cleanup and reclamation of the site range from \$300 million to \$1.2 billion. The lower cost estimates apply to onsite remediation and disposal of tailings and other materials in the open pits if it can be accomplished without contaminating groundwater. The higher cost estimate is associated with offsite disposal of the contaminated material.

The City of Henderson, the Henderson Redevelopment Agency, the Nevada Department of Environmental Protection (NDEP), Lakemoor Development, LLC, and BLM negotiated a plan to clean up and redevelop the TKM Project site that includes the purchase of 948 acres of federal lands and relieves the federal government

of the environmental liability associated with mining, milling and ore-storage activities at the site at no cost to the U.S. taxpayer.

The Three Kids Mine Remediation and Reclamation Act (H.R. 697) would provide for the conveyance of approximately 948 acres of federal land to the City of Henderson if certain conditions are met: namely that the NDEP is satisfied that the developer has the ability and financial security to clean up, remediate and reclaim the TKM project site. The purchase price would be adjusted to reflect the actual cleanup cost of the federal and non-federal lands where the federal government has environmental liability resulting from the mill, processing facilities and the storage of federal-owned manganese nodules.

All in all, this is a win-win scenario. The environmental problems are addressed, the abandoned mine site is reclaimed and the land redeveloped for beneficial use, all at no cost to the American taxpayer. If successful, this could provide a framework for other abandoned mine sites that are near or adjacent to small towns and larger urban areas.

During Full Committee consideration of the bill, Congressman Doug Lamborn (R-CO) offered an amendment in the nature of a substitute. The amendment is similar to the Senate version of the legislation and includes a savings clause that explicitly states that the Secretary of the Interior is liable for the environmental cleanup if the patent has been issued but the terms of the agreement under section 3(b)(2) have not been met. This would be the case even if the savings clause was not included in the legislation.

The legislation requires a rigorous environmental assessment of the site to prepare an appropriate cleanup and remediation plan that will be conducted under a consent order. The parties responsible for the remediation and redevelopment will be required to have sufficient bonds and insurance in place prior to commencement of any remediation activities for a third party to complete the remediation outlined in the consent order if the developer is unable to complete the task.

The consent order required in section 3 of the bill and administered by the State of Nevada ensures that cleanup must be "Comprehensive Environmental Response, Compensation, and Liability Act-protective" and meet "residential" cleanup standards.

COMMITTEE ACTION

H.R. 697 was introduced on February 14, 2013, by Congressman Joseph Heck (R-NV). The bill was referred to the Committee on Natural Resources, and within the Committee to the Subcommittees on Public Lands and Environmental Regulation and Energy and Mineral Resources. On March 21, 2013, the Subcommittee on Energy and Mineral Resources held a hearing on the bill. On June 12, 2013, the Full Natural Resources Committee met to consider the bill. The Subcommittees on Public Lands and Environmental Regulation and Energy and Mineral Resources were discharged by unanimous consent. Congressman Doug Lamborn (R-CO) offered an amendment in the nature of a substitute designated .025 to the bill; the amendment was adopted by unanimous consent. No further amendments were offered and the bill, as amended, was then adopted and ordered favorably reported to the House of Representatives by unanimous consent.

COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

Regarding clause 2(b)(1) of rule X and clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee on Natural Resources' oversight findings and recommendations are reflected in the body of this report.

COMPLIANCE WITH HOUSE RULE XIII

1. Cost of Legislation. Clause 3(d)(1) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison by the Committee of the costs which would be incurred in carrying out this bill. However, clause 3(d)(2)(B) of that rule provides that this requirement does not apply when the Committee has included in its report a timely submitted cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974. Under clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and section 403 of the Congressional Budget Act of 1974, the Committee has received the following cost estimate for this bill from the Director of the Congressional Budget Office:

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H.R. 697 would require the Bureau of Land Management (BLM) to sell 950 acres of federal land, some of which are contaminated by hazardous waste, to the city of Henderson, Nevada. Under the bill, the agency would determine the sale price by estimating the fair market value of the land and reducing that amount by the estimated cost of any necessary environmental remediation and mining reclamation activities at the site. The city of Henderson would be responsible for those costs following the sale. Based on information from BLM, CBO estimates that implementing the legislation would have no significant impact on the federal budget. Enacting the bill would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply.

Roughly 15 percent of the lands that would be sold under the bill are contaminated and will require mine reclamation and environmental remediation. Based on information provided by BLM and the city of Henderson, CBO estimates that the agency is unlikely to receive any financial compensation for any of the land because remediation and reclamation costs would exceed the land's fair market value. Because CBO expects that the affected lands would not generate any receipts under current law over the next 10 years, we estimate that conveying the lands under the bill would have no significant impact on the federal budget.

H.R. 697 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would not affect the budgets of state, local, or tribal governments.

The CBO staff contact for this estimate is Jeff LaFave. The estimate was approved by Theresa Gullo, Deputy Assistant Director for Budget Analysis.

2. Section 308(a) of Congressional Budget Act. As required by clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974, this bill does not contain any new budget authority, spending authority, credit authority, or an increase or decrease in revenues or

tax expenditures. Based on information from BLM, CBO estimates that implementing the legislation would have no significant impact on the federal budget.

3. General Performance Goals and Objectives. As required by clause 3(c)(4) of rule XIII, the general performance goal or objective of this bill is to provide for the conveyance of certain Federal land in Clark County, Nevada, for the environmental remediation and reclamation of the Three Kids Mine Project Site.

EARMARK STATEMENT

This bill does not contain any Congressional earmarks, limited tax benefits, or limited tariff benefits as defined under clause 9(e), 9(f), and 9(g) of rule XXI of the Rules of the House of Representatives.

COMPLIANCE WITH PUBLIC LAW 104-4

This bill contains no unfunded mandates.

COMPLIANCE WITH H. RES. 5

Directed Rule Making. The Chairman does not believe that this bill directs any executive branch official to conduct any specific rule-making proceedings.

Duplication of Existing Programs. This bill does not establish or reauthorize a program of the federal government known to be duplicative of another program. Such program was not included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111-139 or identified in the most recent Catalog of Federal Domestic Assistance published pursuant to the Federal Program Information Act (Public Law 95-220, as amended by Public Law 98-169) as relating to other programs.

PREEMPTION OF STATE, LOCAL OR TRIBAL LAW

This bill is not intended to preempt any State, local or tribal law.

CHANGES IN EXISTING LAW

If enacted, this bill would make no changes in existing law.

APPENDIX I: MAP

