

110TH CONGRESS
2D SESSION

H. R. 5887

To provide to the Secretary of Interior a mechanism to cancel contracts for the sale of materials CA-20139 and CA-22901, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

APRIL 24, 2008

Mr. MCKEON introduced the following bill; which was referred to the Committee on Natural Resources, and in addition to the Committee on Ways and Means, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To provide to the Secretary of Interior a mechanism to cancel contracts for the sale of materials CA-20139 and CA-22901, 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 “Soledad Canyon Mine
5 Act”.

6 **SEC. 2. FINDING AND PURPOSES.**

7 (a) FINDINGS.—The Congress finds the following:

1 (1) Transit Mix Concrete Corporation holds two
2 valid Federal contracts, numbered CA-20139 and
3 CA-22901, issued under the Materials Act of 1947,
4 for the extraction of approximately 56,000,000 tons
5 of sand and gravel from the Federal mineral estate
6 in lands located in Soledad Canyon adjacent to the
7 city of Santa Clarita, California.

8 (2) It is in the best interest of the citizens of
9 California and the Federal Government to cancel the
10 Contracts and prohibit future mining in the Soledad
11 Canyon area of California.

12 (3) TMC should receive as just compensation
13 for such cancellation the fair market value of the
14 Contracts and all costs, fees, and covered liabilities
15 incurred by TMC in good faith in its efforts to de-
16 velop the Contracts.

17 (4) A site-specific solution that is fair to TMC
18 and that seeks to protect the environment and mini-
19 mize impacts on local transportation systems is in
20 the best interest of the Nation.

21 (5) Considerable sums of money have been ex-
22 pended by TMC and the city of Santa Clarita on
23 legal and other services in trying to ensure their in-
24 terests are protected with respect to Contracts CA-
25 20139 and CA-22901.

1 (b) PURPOSES.—The purposes of this Act are the fol-
2 lowing:

3 (1) To provide to the Bureau of Land Manage-
4 ment the authority to cancel contracts CA–20139
5 and CA–22901 and prohibit future mining in the
6 Soledad Canyon.

7 (2) To provide a means for TMC to recover as
8 just compensation for the cancellation of the Con-
9 tracts the fair market value of, and TMC’s expendi-
10 tures and covered liabilities pursuing the develop-
11 ment of, the Contracts.

12 (3) To provide the Bureau of Land Manage-
13 ment tools to verify expenses incurred by TMC and
14 provide relief.

15 (4) To provide timelines for the verification of
16 costs incurred by TMC and the determination of just
17 compensation, and to provide a dispute resolution
18 process.

19 **SEC. 3. DEFINITIONS.**

20 In this Act:

21 (1) CONTRACTS.—The term “Contracts” means
22 Bureau of Land Management mineral contracts
23 numbered CA–20139 and CA–22901.

24 (2) COVERED LIABILITIES.—The term “covered
25 liabilities” includes any court-ordered or court-ap-

1 proved payment, settlement, or other liability on the
2 part of TMC for damages, costs, compensation, or
3 reimbursement to any third party for agreements en-
4 tered into by TMC in good faith prior to January
5 1, 2008, in order to exercise rights under the Con-
6 tracts.

7 (3) MATERIALS ACT OF 1947.—The term “Ma-
8 terials Act of 1947” means the Act of July 31,
9 1947, (chapter 406; 61 Stat. 681; 30 U.S.C. 601–
10 604).

11 (4) SECRETARY.—The term “Secretary” means
12 the Secretary of the Interior.

13 (5) TMC.—The term “TMC” means the Tran-
14 sit Mixed Concrete Corporation and its successors in
15 interest, including CEMEX USA.

16 **SEC. 4. CANCELLATION OF THE CONTRACTS.**

17 (a) CONTRACT CANCELLATIONS.—The Secretary
18 shall cancel Bureau of Land Management mineral con-
19 tracts CA–20139 and CA–22901 and withdraw those
20 areas that were subject to the Contracts from further min-
21 eral entry under all mineral leasing and sales authorities
22 available to the Secretary, effective on the date of the en-
23 actment of this Act.

24 (b) COMPENSATION.—

1 (1) IN GENERAL.—As compensation for the
2 cancellation of the Contracts, TMC shall receive fair
3 market value of the Contracts and TMC’s expendi-
4 tures and covered liabilities in trying to bring the
5 Contracts into commercial production. As such com-
6 pensation, the Secretary shall provide to TMC sur-
7 face and mineral interests and additional value in
8 accordance with subsection (d) having a total value
9 equal to the amount described in paragraph (3). All
10 such expenditures must have been incurred by TMC
11 in good faith in connection with its efforts to bring
12 the Contracts into commercial production: *Provided,*
13 *however,* that compensation for covered liabilities
14 may be paid to TMC under this section for up to 15
15 years following the effective date of this Act.

16 (2) INCREASE IN ADJUSTED BASIS OF CON-
17 TRACT UPON CANCELLATION.—For purposes of the
18 Internal Revenue Code of 1986, the adjusted basis
19 of any contract to which section 4(a) applies shall be
20 increased (immediately before the cancellation of
21 such contract under such section) by the excess (if
22 any) of—

23 (A) the fair market value of such contract
24 (determined immediately before such cancella-
25 tion), over

1 (B) the adjusted basis of such contract (as
2 determined immediately before the application
3 of this section).

4 (3) VALUE DESCRIBED.—The compensation
5 provided for in paragraph (1) is equal to the sum of
6 the following:

7 (A) All amounts paid to the United States
8 by TMC with respect to the Contracts as bonus
9 bids or other prepayments.

10 (B) Interest on amounts referred to in
11 subparagraph (A), from the date of payment of
12 such amounts to the United States, at a rate
13 determined by the Secretary.

14 (C) Amounts expended by TMC in secur-
15 ing the contracts and trying to bring them into
16 production, including—

17 (i) all actual costs, including fees, as-
18 sociated with the engineering and environ-
19 mental studies, and permitting pro-
20 ceedings, that were incurred in good faith
21 in TMC's efforts to exercise the rights
22 granted under the Contract terms; and

23 (ii) all actual legal costs, including
24 fees and covered liabilities, incurred in
25 good faith in TMC's efforts to exercise the

1 rights granted in the Contracts, including
2 all fees and costs associated with securing
3 permits and entitlements, litigation to com-
4 pel, secure, or defend permits or entitle-
5 ments, and litigation in connection with
6 disputes relating to mineral and surface es-
7 tate rights to the property that is the sub-
8 ject of the Contracts.

9 (D) The fair market value of the Con-
10 tracts.

11 (4) DETERMINATION OF FAIR MARKET
12 VALUE.—The Secretary shall, within six months
13 after the date of enactment of this Act, determine by
14 mineral appraisal the fair market value of the con-
15 tracts at the time of such determination for pur-
16 poses of paragraph (3)(D), determine by mineral ap-
17 praisal or other generally accepted applicable ap-
18 praisal techniques the fair market value of the sur-
19 face and mineral estate identified in the map re-
20 ferred to in subsection (d), and notify TMC of those
21 determinations. In determining the fair market value
22 of the Contracts, the Secretary shall assume that—

23 (A) TMC has obtained all permits and en-
24 titlements necessary to mine, produce, process,
25 and sell sand and gravel from the Contracts;

1 (B) mining operations under the Contracts
2 have commenced at the time of the determina-
3 tion, with maximum annual production volumes
4 that—

5 (i) are based on the projected supply
6 and demand outlook at the time of deter-
7 mination; and

8 (ii) reflect depletion of the reserves of
9 the Contracts within the effective periods
10 of the Contract;

11 (C) the fair market value of the Contracts
12 includes the present value of expected future
13 net cash flows to be derived from the mining,
14 producing, processing, and sale of the sand and
15 gravel contained in the Contracts over the min-
16 imum time necessary to mine, produce, process,
17 and sell such sand and gravel, taking into con-
18 sideration—

19 (i) the material deposit contained in
20 the contract sites and its quality, volume,
21 minability, and reclamation requirements;

22 (ii) the proximity of the contract sites
23 to markets;

24 (iii) the type of market that could be
25 served from the contract sites, including

1 future supply, demand, and probable price
2 increases based upon construction material
3 data developed by the State of California;

4 (iv) the cost of mining, producing,
5 processing, and selling the material re-
6 served in the contract sites;

7 (v) the types and costs of transpor-
8 tation for such production from the con-
9 tract sites to markets;

10 (vi) royalties, taxes, and fees to mine
11 and sell the production from the contract
12 sites;

13 (vii) similar market sales of materials
14 the area or region of the contract sites;
15 and

16 (viii) the net present values of ex-
17 pected future cash flows from proposed
18 mining operations of the Contract sites
19 taking into consideration, at a minimum,
20 the matters referred to in clauses (i)
21 through (viii).

22 (c) SUBMISSION OF EXPENSES INCURRED.—

23 (1) IN GENERAL.—To assist in the verification
24 of the amounts expended referred to in subsection
25 (b)(3)(C), TMC shall submit to the Secretary within

1 60 days after the date of enactment of this Act an
2 itemized list of such amounts, with enough detail
3 and supporting documentation so the Secretary can
4 determine that the expenses are associated with the
5 Contracts.

6 (2) ARBITRATION.—The Secretary shall issue
7 the determination of the amounts expended referred
8 to in subsection (b)(3)(C) within 60 days after re-
9 ceipt of the itemized list required under paragraph
10 (1). If the Secretary disapproves such list, the Sec-
11 retary shall, upon request of TMC, determine the
12 economic value invested for purposes of subsection
13 (b)(3) through arbitration in accordance with sub-
14 chapter IV of chapter 5 of title 5, United States
15 Code.

16 (d) RETURN OF VALUE OPPORTUNITIES FOR
17 TMC.—

18 (1) IN GENERAL.—Within six months after the
19 completion of the requirements of subsections (b)
20 and (c), the Secretary shall provide to TMC the fol-
21 lowing:

22 (A) Surface and mineral estate interests
23 and additional value under subsection (b)(1)
24 using the surface and mineral estate as de-
25 scribed and delineated as Area A on the map

1 entitled “Cemex USA and City of Victorville,
2 California Land Disposal and Acquisition
3 Agreement” and on file with the Secretary, con-
4 sisting of approximately 5,000 acres.

5 (B) If the fair market value of the surface
6 and mineral estate used under subparagraph
7 (A) is less than the sum described in subsection
8 (b)(3), additional mineral or surface estate
9 under subsection (b)(1) using the surface and
10 mineral estate as described and delineated as
11 Area B on the map entitled “Cemex USA and
12 City of Victorville, California Land Disposal
13 and Acquisition Agreement” and on file with
14 the Secretary, consisting of approximately
15 3,000 acres as is necessary so that the sum of
16 the values provided under subparagraph (A)
17 and this subparagraph does not exceed the sum
18 described in subsection (b)(3).

19 (C) If the sum of the fair market values of
20 the surface and mineral estates and additional
21 value provided under subparagraphs (A) and
22 (B) is less than the sum described in subsection
23 (b)(3), additional value as is necessary so that
24 the sum of the values provided under subpara-
25 graphs (A) and (B) and this subparagraph does

1 not exceed the sum described in subsection
2 (b)(3), in the form of one or more of the fol-
3 lowing that are mutually agreed to by the Sec-
4 retary and TMC:

5 (i) Credits that may be applied
6 against future royalties, bonus bids, or
7 rental fees for Federal lands administered
8 by the Secretary and located within the
9 State of California, including leases for all
10 submerged lands of the outer Continental
11 Shelf.

12 (ii) Interest in the mineral estate in
13 Federal lands in the State of California
14 that are available for sale under the Min-
15 eral Leasing Act (30 U.S.C. 181 et seq.)
16 or other law administered by the Secretary.

17 (iii) Interests in the surface estate in
18 Federal lands in the State of California
19 that are under the administrative jurisdic-
20 tion of the Secretary and that are available
21 for disposal.

22 (e) TREATMENT OF CREDITS.—

23 (1) TERM.—Credits provided under subsection

24 (d) shall expire at the end of the 10-year period be-

1 ginning on the date the credits are issued by the
2 Secretary.

3 (2) ASSIGNMENT.—TMC may assign credits
4 provided to TMC under subsection (d) to any person
5 who satisfies the same requirements to hold the Con-
6 tracts as those that applied to TMC under the Mate-
7 rials Act of 1947.

8 (f) REFERRAL TO COURT OF CLAIMS.—

9 (1) REFERRAL.—If within 12 months after the
10 date of enactment of this Act, the Secretary and
11 TMC do not reach agreement under subsections (b),
12 (c), and (d) regarding the financial and mineral pro-
13 duction opportunities to be provided by the Sec-
14 retary to TMC under subsection (b)(1), or, if within
15 3 months after TMC receives notice in accordance
16 with subsection (b)(4) of the fair market value de-
17 termined by the Secretary of the surface and min-
18 eral estate identified in the maps referred to in sub-
19 section (d) TMC or the city of Victorville, California,
20 notifies the Secretary that it disagrees with the Sec-
21 retary’s determination, the Secretary shall refer the
22 issues upon which TMC, or the city of Victorville,
23 California, and the Secretary are not in agreement
24 with respect to such an agreement or fair market

1 value to the United States Court of Federal Claims
2 for resolution

3 (2) RESOLUTION BY COURT.—In any referral
4 under this subsection, the court shall—

5 (A) determine de novo the values described
6 in subsection (b) and (d), including the fair
7 market values of the surface and mineral es-
8 tates as described and delineated on the maps
9 referred to in subsection (d)(1); and

10 (B) determine and order the Secretary to
11 provide financial and mineral production oppor-
12 tunities consistent with subparagraph (A), for
13 purposes of subsections (b)(1) and (d).

14 **SEC. 5. LIMITATIONS ON FUTURE LEASING FOR LAND OR**
15 **MINERAL ESTATE IN THE VICTOR VALLEY**
16 **AREA OF CALIFORNIA.**

17 Notwithstanding anything in this Act to the contrary,
18 prior to any lease, transfer, or other disposition of land
19 or any mineral or surface estate for any area that is lo-
20 cated in the city of Victorville, California, the city of
21 Victorville’s sphere of influence, or the city of Victorville’s
22 proposed sphere of influence, all as delineated on the map
23 entitled “Cemex USA and City of Victorville, California
24 Land Disposal and Acquisition Agreement” and on file
25 with the Secretary, the Secretary shall—

- 1 (1) consult with the city of Victorville, Cali-
- 2 fornia, and surface owners in that area; and
- 3 (2) prohibit mining in that area.

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