Statement of
Steven A. Ellis
Acting Deputy Director
Bureau of Land Management
Department of the Interior
Senate Energy & Natural Resources Committee
Subcommittee on Public Lands, Forests & Mining
S. 771, Soledad Canyon Settlement Act
November 20, 2013

Thank you for the opportunity to testify on S.771, the Soledad Canyon Settlement Act. The bill directs the Secretary of the Interior (Department) to cancel two valid existing Federal mineral contracts in Soledad Canyon, California, and to compensate the contract holder for the value of its cancelled contracts with public funds. S. 771 also requires the Department to sell public lands in southern California to provide compensation to the contract holder for the cancellation of the contracts and partial compensation to the U.S. Treasury for lost royalties. The Department opposes S. 771, which would use taxpayer funds and public resources to buy out valid contracts that the contract holder has not fulfilled. The Department is concerned about the precedent of buying out valid contracts with taxpayer funds, loss of royalties to the U.S. and State Treasuries, and the sale of public lands to compensate a private entity.

Background

Soledad Canyon, 30 miles north of downtown Los Angeles, contains several hundred million tons of valuable mineral materials. As one of the largest sand and gravel deposits in the region, the State of California Mining and Geology Board has designated the Soledad Canyon deposit as a "Regionally Significant Construction Aggregate Resource" in recognition of its importance to the residential, commercial, industrial, and infrastructure development of the San Fernando Valley and Santa Clarita area in southern California. Soledad Canyon has been mined for more than 40 years. The project site, which is estimated to contain 356 million tons of sand and gravel resources, has been impacted by significant ground disturbing activities and contains stock piles of mineral material and abandoned processing equipment from previous mining operations. Two active aggregate mine sites are currently operated on private land between the Soledad Canyon mine and the City of Santa Clarita.

Much of the mineral estate in the Soledad Canyon area is managed by the Bureau of Land Management (BLM). The Mineral Materials Act authorizes the BLM to sell mineral materials at fair market value in conformance with publicly developed agency land use plans, with additional analysis and public participation under the National Environmental Policy Act (NEPA) prior to project approval. In the 1980's, the Soledad Canyon mine site was the subject of a mineral trespass. As a result of litigation associated with the trespass action, the BLM held a court-directed competitive sale in 1990 for the site. The BLM awarded CEMEX (through its predecessor, Transit-Mixed) two competitive contracts to mine 56 million tons of Federal subsurface sand and gravel in Soledad Canyon over a 20-year period under the Minerals Materials Act. Once underway, the project would produce and deliver concrete as well as asphalt. In 2000, following public involvement under BLM's land use planning and NEPA processes, the BLM published an Environmental Impact Statement for the sand and gravel project at Soledad Canyon and signed the Record of Decision approving the project with mitigation measures. The City of Santa Clarita acquired surface ownership of the site after the contracts were awarded to CEMEX.

The minimum royalties to the Federal government from the two CEMEX contracts (56 million tons) total $28 million, based on the original 1989 bid amount of $0.50 per ton. The first 10-year contract is for 14 million tons with minimum royalties of $7 million, while the second 10-year contract is for 42 million tons with minimum royalties of $21 million. The contracts require periodic reappraisal of the royalty value after the first four years of the contracts. As such, actual royalties could be approximately $123 million, based on current royalty rates in the range of $1.50 per ton. Royalty values fluctuate based on fair market values, regional aggregate supply, and related factors.

The City of Santa Clarita opposes the mining project; residents have expressed concerns about impacts on air quality, traffic congestion, quality of life and natural resources. Santa Clarita's city center is located about 10 miles southwest of the Soledad Canyon mine site. A ridgeline blocks views of the mine site from residential and commercial areas in the City of Santa Clarita, as well as from State Highway 14. The nearest residences are located about 1.5 miles from the site.

Multiple appeals and lawsuits by the City of Santa Clarita and others have challenged the project; each time, the United States has prevailed and the BLM's project approval has been upheld. The last remaining lawsuits were resolved in 2008, removing remaining legal barriers to the project. To date, CEMEX has elected not to fulfill its valid existing contract obligations in deference to the City of Santa Clarita's concerns.

S. 771

S. 771 directs the Department of the Interior to cancel the two Federal contracts for sand and gravel material with CEMEX in the Soledad Canyon area, near the City of Santa Clarita, California. The bill prohibits future mineral material disposal on these lands and requires the Department to compensate CEMEX for the fair market value of the cancelled contracts, less the projected lost royalties to the Federal government over the first 10-year period of the contracts. Compensation would be obtained by selling approximately 10,000 acres of BLM managed public lands near Victorville, California, at fair market value, with right of first refusal given to the City of Victorville and the County of San Bernardino. If revenue from the sales of the public lands near Victorville, California is insufficient to fully compensate CEMEX for the fair market value of the sand and gravel material to be mined under their contracts, the City of Santa Clarita would provide the Department with compensation equal to the difference.

The Department has several concerns with S. 771. The value to the U.S. Treasury of the Federal sand and gravel resources attributable to these contracts is substantial: as noted earlier the approved project for 56 million tons of sand and gravel has a minimum royalty value of $28 million, with a projected royalty as high as $123 million, based on periodic fair market re-appraisals. By cancelling these contracts, the legislation deprives the U.S. Treasury (and to a lesser extent, the State of California, which receives 4% of the royalty) of the full value of the contracts which includes these royalty payments. Furthermore, the Treasury would not be fully compensated for the lost revenue that would be generated from royalties due to the Federal government because the legislation only accounts for the amount of sand and gravel that is produced during the first 10 years of the two 10-year contracts. Because the legislation also prohibits future mineral materials mining on the lands, sale of the remaining 300 million tons of aggregate and future Federal royalties, estimated at a minimum of $450 million, would be forgone under the bill as well despite remaining under Federal ownership. There are also substantial concerns about the precedent that would be set by liquidating non-renewable Federal assets to partially settle a dispute that would, in a normal course, be handled between the two disputing parties.

Additionally, the bill obviates the BLM's land use planning and NEPA process and decision, which has been upheld by the Federal courts and identified sand and gravel leasing as an appropriate use of the public resources at, and around, the existing mine. The elimination of this aggregate deposit from use would result in a shortage of aggregate supplies to the northern Los Angeles County region. This region has a 50-year demand for 476 million tons of aggregate with only 77 million tons of permitted aggregate resources, which is less than 10 years of aggregate supply. If Soledad Canyon is not mined, the permitted supply of aggregate resource would drop to less than five years. Aggregate resources, which are heavy and bulky, would need to be transported from greater distances.

Finally, S. 771 directs the Department to sell 10,000 acres of public land near Victorville, CA to provide the compensation to CEMEX and the U.S. Treasury. These public lands are located approximately 70 miles east of Soledad Canyon in San Bernardino County. There are valid, existing rights and authorized uses located on the Victorville public lands, including 85 mining claims and 34 rights-of-way. Approximately 25 percent of the Victorville lands are currently encumbered with mining claims. The disposal of 10,000 acres of public land in the Victorville area would forever prevent those public lands or resources from being used for the benefit of the greater public.

Conclusion

Thank you for the opportunity to provide testimony on S. 771. I will be glad to answer any questions.