United States Department of the Interior

BUREAU OF LAND MANAGEMENT

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In Reply Refer To:
CA-20139
CA-22901
3600 (CA-920)

August 28, 2015

HAND DELIVERED

DECISION

Cliff Kirkmyer	:	Mineral Materials Contract
Executive Vice President	:	CA-20139
Aggregates and Mining Resources	:	CA-22901
Cemex, Inc.	:	
1501 Belvedere Road	:	
West Palm Beach, FL 33406	:	

Summary of Decision. In this decision, the Bureau of Land Management (BLM) is rescinding and withdrawing from mineral material contracts 20139 and 22901 as a result of CEMEX's failure to fulfill the requirements necessary to trigger the contract effective date and begin production. To the extent CEMEX argues that the contracts are effective, BLM is notifying CEMEX that contract 20139 has expired by its own terms and is terminating both contracts for default. In addition, should CEMEX argue that the contracts were effective, CEMEX would owe and BLM would demand payments in lieu of production for a 16-year time period, forfeiture of the bid deposit, and forfeiture of the performance bonds held by BLM for the two contracts.

Background. The BLM issued two mineral materials sales contracts in March 1990 to Transmix Corporation (Transmix)[1] pursuant to the Materials Act of 1947, as amended, and the Federal Land Policy and Management Act (FLPMA). 30 U.S.C. §§ 601-604; 43 U.S.C. §§ 1701-84. The Materials Act authorizes the BLM to dispose of mineral material from the public lands, including sand and gravel, if not otherwise expressly authorized by other law, if not otherwise prohibited by law, and if the disposition would not be detrimental to the public interest. *See* 30 U.S.C. § 601; 43 CFR § 3600.0-3(a)(1) (1990). In addition, section 302 of FLPMA requires the Secretary of the Interior to manage public lands under multiple use and sustained yield principles in accordance with land use plans; to regulate through appropriate

[1] Several names have been used for the holder of these contracts. The ROD lists Transit Mixed Concrete Company or "TRANSMIX", while the contracts identify the purchaser as Transmix Corporation. In the U.S. Geological Survey Minerals Yearbook—2000, p.7.2, the Mineral Industry of California indicates that CEMEX purchased Transit Mixed Concrete Co. in November 2000. The article states "CEMEX, the new owner of Transit Mix Concrete Co. a division of Southdown, Inc., continued its permitting process for the proposed Soledad Canyon sand and gravel mining project (Los Angeles County)."

instruments, including contracts, the use, occupancy and development of the public lands; and to prevent the unnecessary or undue degradation of the public lands. 43 U.S.C. § 1732; 43 CFR 3600.0-3(b) (1990). The Bureau of Land Management (BLM) sells mineral materials by contract at no less than fair market value. 43 CFR 3610.1-2 (1990). Under a sales contract, a permittee has the right to extract and remove mineral materials until the contract terminates, and to use and occupy the project site if necessary to fulfill the contract. 43 CFR 3601.1-2 (1990). Under this statutory and regulatory scenario, the BLM offered mineral materials for competitive bid and awarded contracts to Transmix for tracts at Soledad Canyon in southern California.

The contracts provided for Transmix's purchase of the mineral materials and for "severance, extraction, and removal, and occupation for mining purposes." CA 20139 and 22901, Sec. 2. The contracts provide, "The Purchaser will be obligated for all terms of the contract upon signing. The production period for this contract will be a maximum of ten years with an effective date beginning the day the mining plan, to be submitted by the Purchaser, is approved by the Authorized Officer." Id., Sec.1.

On August 1, 2000, the Authorized Officer—Tim Salt, District Manager, California Desert District—approved the mining plan by signing the Record of Decision (ROD). The ROD represents BLM's authorization for implementation of the contracts. Because BLM's approval could not grant authorization to CEMEX for activities regulated by other local and Federal governmental offices, the ROD contains conditions of approval. The ROD includes a requirement that Transmix comply with: the mitigation measures in Appendix A, the provisions of the reclamation plan and the bonding requirements, all of the provisions of the ROD, and the provisions relating to obtaining additional agency approvals and reviews. These conditions of approval did not change the date of BLM's approval of the mining plan; the plan was approved on August 1, 2000, even though the conditions of that approval had not yet occurred.

The ROD describes the public interest for the sales contracts and grants approval of the project. It states:

> Without permitting of new or expanded aggregate mining operations, the California Department of Mines and Geology (CDMG) predicts available sources of aggregate reserves in the San Fernando Valley will be depleted by 2001, and Los Angeles County's aggregate reserves will be depleted by the year 2016. Authorizing the project as approved will help meet growing demand for aggregate in the local area and region. CDMG estimates aggregate demand will be two and two-thirds times as large as permitted reserves by the year 2044.
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> The Soledad Canyon area has been an important source of commercial sand and gravel since the 1960s. The area was officially classified by the State of California as [sic] "A Regionally Significant Construction Aggregate Resource Area" in 1987 pursuant to the provisions of the California Surface Mining and Reclamation Act of 1975. The site has previously been zoned by the County of Los Angeles to permit mining and several sand and gravel mining or aggregate processing operations are currently being conducted close to the site. BLM's South Coast Resource Management Plan for this area, finalized in 1994, also determined that continued aggregate mining was an appropriate land use activity in the Soledad Canyon area.

See ROD, pp.3-4.
Although originally issued to Transmix, in or about November 2000, CEMEX acquired the interests in both contracts.

The City of Santa Clarita (City) and many others appealed the BLM's decision to approve the ROD to the Interior Board of Land Appeals (IBLA), which affirmed the BLM decision in January 2002. That same month judicial litigation began involving numerous lawsuits among various parties, including the BLM, the City, the U.S. Fish and Wildlife Service, CEMEX, Los Angeles County, and the Center for Biological Diversity. In all of these lawsuits, the Department of the Interior supported and defended CEMEX's interests in the sales contracts, including by appearing as amicus curiae in some of the cases. Ultimately, the U.S. Court of Appeals for the Ninth Circuit approved a consent decree between the United States, CEMEX and the County of Los Angeles in February 2006. As a result, Los Angeles County issued a surface use permit to CEMEX.

In March 2006, CEMEX sent a letter to BLM describing ongoing litigation with the City and asking "for written clarification on certain matters relating to implementation" of the contracts. In particular, CEMEX asserted that the "effective date" provision in the contracts "related to production (i.e., mining) and not pre-mining activities, and thus requests confirmation from the BLM that certain pre-mining activities contemplated by CEMEX and listed in the letter will not trigger the effective date of the Federal Contracts." The activities listed included pursuit of agency permits, site preparatory work, and pre-production activities. At the same time, CEMEX stated that it wished "to pursue its responsibilities to the BLM as diligently as possible," but also wished "to avoid any prejudicial effects of such efforts." CEMEX stated in the letter that "it would seek to begin" obtaining the various permits required by the ROD, "actual preparation of the site," and "certain pre-production activities required by [Los Angeles] County" in its Environmental Impact Report for the project. CEMEX differentiated these types of activities from those related to actual mining or production, arguing mining activities were distinct from "use and occupancy" or activities ancillary to mining activities. CEMEX stated that it understood that these use and occupancy activities would not trigger the effective date of the contracts, and therefore would not trigger royalty payment obligations or begin the 10-year contract term. CEMEX argued that because those preparatory and ancillary activities do not sever or extract minerals, they are not tied to royalties or the contract term, and since the ROD requires third-party agency permits before actual project mining, CEMEX took the position that the ancillary activities likewise would not trigger the effective date of the contract. CEMEX concluded the letter by stating, "in the interests of diligently pursuing implementation of the Federal Contracts . . . we request written confirmation from the BLM that the range of ancillary activities discussed above would not trigger the effective date of the Federal Contracts."

In April 2006, the BLM responded to CEMEX, acknowledging that "CEMEX would like to begin a number of specific pre-mining activities for the project," and notifying it that pursuit of these activities would not trigger the start of royalty payments or the ten-year terms of the consecutive contracts. BLM requested that CEMEX provide, at its earliest convenience, a critical path schedule and estimated timeline for the three pre-production activities that CEMEX identified in its letter. CEMEX did not comply with that request. In the subsequent nine months, BLM has no evidence that CEMEX took any action to obtain the necessary permits or complete site preparatory work or pre-production activities.

In January 2007, without any involvement of the BLM, CEMEX and the City agreed to a "truce," a "mutual time-out," under which CEMEX agreed not to seek the necessary remaining permits or complete the site preparatory work or pre-production activities—the very activities that CEMEX described in its letter to BLM as its responsibilities that it wished to pursue as diligently as possible. CEMEX and the City publicly announced the truce in February 2007, although CEMEX indicated in its press statement that it had been developed in a series of meetings held with the City over the previous few months. The two parties announced their agreement to pursue a federal legislative solution as well as other options that would allow CEMEX to leave the federal mineral materials undeveloped and yet be compensated for failing to fulfill the contract terms. The two parties signed a four-part agreement, which included CEMEX's agreement not to make any applications, notices or other submittals to secure or advance any permits or seek review for any approvals for the project in calendar year 2007. Their apparent intent was to leave both the City and CEMEX in the same position at the end of the truce as at the beginning of it. In addition, the parties agreed to jointly develop for consideration legislation that would effectively pay CEMEX not to develop the mineral materials under the contract. At no time during its negotiations with the City did CEMEX affirmatively notify the BLM that CEMEX was pursuing action that would delay mineral development under the BLM contracts.

The BLM was not party to the negotiations that led up to the truce, was not a party to the truce, and did not learn of it until after CEMEX and the City announced it to the public.

CEMEX and the City initially announced that the truce was to last throughout calendar year 2007. No notice was given to the BLM. In December 2007, CEMEX and the City extended the truce for another six months. Again, no notice was given to the BLM. Ultimately the two parties extended the truce for a total of five years through 2012—with no notice to or involvement of the BLM.

In 2007, all of the litigation involving the United States was resolved in favor of the project. After the litigation ended, BLM wanted to see progress on the Soledad Canyon project and sent a letter to CEMEX in February 2008. In it, BLM reminded CEMEX that BLM had approved the project mining and reclamation plans and the supporting environmental documents in 2000 and Los Angeles County had done so in 2004. BLM reminded CEMEX that the IBLA and the federal courts had resolved all issues against the project in 2006, except for an outstanding California Environmental Quality Act (CEQA) suit (which did not involve the United States). It further reminded CEMEX of its obligations under the contract terms of the mineral materials contracts and of its responsibilities to secure the remaining permits, implement the contracts and commence production in a timely manner. BLM described the public interest at stake, and again reminded CEMEX that BLM had requested nearly two years previously, but had not yet received, the critical path schedule and timeline. The BLM repeated its request for a schedule and timeline seeking to clarify how and when CEMEX intended to proceed.

With no written response from CEMEX to its February 2008 letter, BLM wrote CEMEX in March 2008 summarizing a telephone conversation between the BLM State Director and CEMEX's General Counsel. BLM indicated it did not intend to interfere with or disrupt on-going efforts during the truce.

In April 2008, CEMEX confirmed receipt of BLM's March 2008 letter, and asserted that BLM did not require any further written information from CEMEX at the time. CEMEX explained that the truce, originally lasting for the entire calendar year of 2007, had been extended for six months; that is, through June 2008. CEMEX informed BLM that Senator Feinstein and Congressman McKeon had recently expressed public support for the parties' efforts at resolution of litigation between the City and CEMEX, to which the BLM was not a party. CEMEX promised to keep BLM informed of any developments during the process of negotiation between the City and CEMEX.

Nine months later, in January 2009, BLM notified CEMEX in writing of BLM's independent understanding that the truce had expired, and noted that legislation proposing to cancel CEMEX's contracts had failed to progress to hearing. BLM indicated that these developments marked the end of the lingering litigation surrounding the contracts. BLM specifically asked for an update of the status of the project and contract implementation. In particular, BLM asked about the pre-mining activities, including other agency permits, site preparatory work, and other pre-production activities that CEMEX indicated it intended to pursue three years earlier. BLM acknowledged that it had provided a significant amount of time for CEMEX to resolve issues relating to the project, but that CEMEX had a continuing legal obligation to ensure that public land resources under contract were appropriately developed, and that CEMEX had a responsibility to implement the contracts. BLM sought a timely update from CEMEX regarding its progress and anticipated plans for the project. No response from CEMEX was received.

In June 2009, six months later, BLM again wrote to CEMEX, noting it had not received a response to its January 2009 letter and requesting a project status update. BLM informed CEMEX that this marked the second official request for an update regarding contract implementation. BLM sought information from CEMEX regarding when it intended to proceed with securing the remaining other permits, beginning site preparation and pre-production activities, and when CEMEX intended to commence mining and processing and royalty payments.

A week later, CEMEX responded, explaining that it continued to work with the City and others on a legislative approach to resolving project conflicts. CEMEX indicated that the truce had been extended through 2009 and that no progress had been made towards obtaining air and water permits or satisfying other pre-production activities. CEMEX indicated it continued to take all necessary steps to protect the status of existing permits and applications but, because of the truce, CEMEX had not yet secured the remaining air and water permits for the project and therefore had not begun site preparation or pre-production activities.

From 2009 through 2014, neither BLM nor CEMEX wrote the other about the project or CEMEX's plans to comply with the contract terms. In that time period, CEMEX took no discernible action to obtain the remaining necessary permits or begin development of the contracted mineral materials. In February 2015, BLM requested a meeting with CEMEX to discuss the status of the project. BLM and CEMEX thereafter met on February 25 to discuss the project status.

In March 2015, BLM issued a letter to CEMEX referring to the February meeting and news reports indicating CEMEX had informed the City that it was beginning work on updating its permits. BLM again reminded CEMEX of its obligations under the contracts. BLM noted that CEMEX had not completed the other necessary agency applications, and had not received approvals or permits to begin project operations. In addition, BLM noted that CEMEX had obligations under the Mitigation and Monitoring Program required by the ROD and the provisions of the mining and reclamation plan. It noted that CEMEX failed to exercise due diligence in fulfilling the terms of the two contracts, and repeatedly failed to provide a schedule and timeline, or a clear path for fulfilling contract terms, offering instead the two-party truce it had entered into with the City of Santa Clarita, litigation, and legislation as reasons for its non-performance under the contracts. In the 15 years after BLM's approval of CEMEX's mine plan in the ROD, BLM noted that CEMEX had enjoyed an extended period of time to fulfill the contracts, but had not produced any mineral materials on site. BLM indicated that environmental considerations appeared stale and questioned how or if development of the site could proceed. BLM noted that contract cancellation was a potentially legally available option. BLM expressed its willingness to discuss options with CEMEX to resolve its lack of diligence on site.

Two weeks later, CEMEX sent a response to BLM (March 27, 2015). CEMEX claimed it had done nothing to breach the contracts, and asserted BLM had never demanded or suggested that CEMEX undertake specific actions to maintain the valid status of the contracts. Between 2008 and 2014, CEMEX claimed it had met with BLM representatives and Department of the Interior representatives in furthering its efforts with the City of Santa Clarita. It specifically mentioned support of its efforts under the truce by then Secretary Kempthorne, referred to meetings with then BLM Deputy Director Marcilynn Burke, Deputy Secretary David Hayes, and Secretary Ken Salazar, and more recently with Director Neil Kornze, and State Director Jim Kenna. CEMEX stated that none of these representatives ever raised lack of diligence or suggested breach of contract relating to CEMEX's efforts to resolve on-going issues with the City of Santa Clarita. In addition, CEMEX asserted that at no time during the February 2015 meeting it had with State Director Kenna, did the State Director discuss diligence or mention the possibility of breach. CEMEX claimed BLM knew of the discussions that CEMEX was having with the City yet now appeared willing to rely on those discussions to unravel the contracts. In addition, CEMEX took issue with the BLM's characterization of the environmental conditions at or near the project site. CEMEX claimed its interests in the contracts are valuable property interests and that BLM's March 2015 letter appeared to withdraw support for the project, contrary to earlier sworn testimony to the U.S. Senate in support of the project.

In response, BLM issued a letter to CEMEX on April 17, 2015. In that letter, BLM officially requested detailed explanation of specific actions taken by CEMEX to meet its obligations under the contracts and to secure each of the permits and approvals required by the ROD, with dates of actions taken and the status of each application process. BLM also sought the name of the government office contacts for each of the permits and approvals required by the ROD.

On April 29, 2015, CEMEX and BLM met to discuss the status of the project and the BLM's information request. BLM informed CEMEX that it sought clarity with respect to project status and wanted project specific details to move the project or issues forward. CEMEX indicated that

the information that BLM seeks would make it more difficult to move forward with the project and would provide a road map for those interested in litigating against CEMEX. BLM asserted its need for transparency in its actions. CEMEX questioned whether BLM had authority to request this information.

On May 22, 2015, CEMEX responded in writing to BLM's April 17, 2015 request. In its opening paragraph, CEMEX noted that it had asked BLM to identify its authority for its April information request, and receiving none, stated that it nonetheless voluntarily provided the information. In a footnote, CEMEX indicated the information contained in its May 22 letter is confidential and not subject to public release. CEMEX claimed it had diligently complied with applicable requirements relating to its contractual obligations with the BLM, stated that BLM misunderstood its March 2015 letter, and provided what it determined to be an appropriate level of detail in response to BLM's April 2015 request. CEMEX indicated that the truce began in 2007 and ended in 2012, during which time it claimed it had secured BLM's agreement that the truce would not impact the status of the contracts, the ROD or the project itself.

In addition, CEMEX argued that the BLM was aware of legislation that would cancel the contracts and terminate the project. CEMEX provided an overview of its actions to obtain its land use authorization from Los Angeles County in 2004, and other activity taken after the truce expired in 2012. CEMEX explained that certain permits were premature, already completed, under application, or not yet submitted. CEMEX recited its understanding of the litigation against the project, including the Consent Decree, NEPA, ESA, CEQA, and annexation litigation. It discussed the truce, claiming BLM knew of its agreement with the City not to make any additional applications, notices, or other submittals to secure or advance any federal, state, regional or local permits during the time period the truce was in effect. CEMEX then addressed the legislative efforts of the City of Santa Clarita that would have canceled the contracts, eliminate the project and preclude mining at the project site. CEMEX suggested a meeting to discuss a path forward.

In June, BLM responded to CEMEX's May 22, 2015 letter. In its response, BLM informed CEMEX that BLM's authority for requesting additional information from CEMEX was FLPMA section 302 (43 U.S.C. 1732) and 43 CFR 3601.3 (1990). BLM asked that CEMEX explain its confidentiality claim and why information relating to other agency permits was not already disclosed to the public and therefore not confidential. In addition, BLM asked CEMEX to provide a good faith estimated timeline for beginning its construction work and operations, the time needed to secure the additional necessary authorizations, and an explanation why CEMEX had not yet secured a number of authorizations from six of the nine other regulatory agencies that CEMEX previously claimed were premature for submission or that had not yet been formally submitted.

On July 10, 2015, CEMEX responded to BLM's June letter. CEMEX indicated that it was diligently pursuing the remaining authorizations needed to bring the project on-line in the near future and that it fully embraced dialogue with BLM to reach a common understanding of project issues. It again asserted that the BLM lacked authority to require project information from

CEMEX and that the information sought was both proprietary and confidential. CEMEX finally responded with a timeline for commencement of project construction and related operations. CEMEX reminded BLM that the BLM and the County had already approved the ROD [2000] and the land use permit [2004], that the reclamation plan and financial assurances (attached to the 1990 mining and reclamation plan) had been pre-approved by the California Department of Conservation, and that biological opinions had been issued by the U.S. Fish and Wildlife Service [the biological opinion for the unarmored threespine stickleback was issued in 1998; the biological opinion for the arroyo toad was issued in 2001].

CEMEX indicated that it could now reasonably estimate a timeline for beginning construction and operation of the project because for the first time there was no pending legislation, and because the truce with the City had been terminated. CEMEX claimed it was making excellent progress in its permitting efforts.

CEMEX then referred BLM to its twelve-page recitation in its May 22, 2015, letter as a response to BLM's request for additional information. It cited the multiple lawsuits, the two-party truce, numerous federal legislative efforts to cancel the CEMEX permits, and a limited shelf life as affecting the time frames for securing additional project permits.

Finally, CEMEX again asserted that BLM has no authority for asking for this detailed project specific information, and that the details of its overall project schedule, including future timetables and sequencing of filing and pursuing its outstanding permits is proprietary and confidential. CEMEX indicated that the public release of this information could cause substantial harm to CEMEX's business and commercial interests in the contracts and the projects, and that this information is not the type it would customarily release to the public.[2] CEMEX indicated its interest in further dialogue and meeting with the BLM.

Contract Terms. Two consecutive contracts were issued in 1990—CA 20139 and CA 22901. The 10-year production period for the second contract, CA 22901, had an effective date beginning the day after expiration of the first contract. Other than the total initial purchase price and the timing of reappraisals, the contracts are nearly the same. Contract provisions that are critical to this decision include:

1. Section 1. Effective Dates - The purchaser will be obligated for all terms of the contract upon signing. The production period for this contract will be a maximum of ten years with an effective date beginning the day the mining plan, to be submitted by the Purchaser, is approved by the Authorized Officer.

2. Section 2. Contract Area - The Government hereby sells to Purchaser and Purchaser hereby buys from Government, under the terms and conditions of this contract, the mineral materials described in Sec. 3 below, for severance, extraction, and removal, and occupation for mining purposes on [certain described lands].

[2] At a meeting with the City on July 23, 2015, the City showed BLM a copy of the May 22, 2015 letter from CEMEX to the BLM, indicating that the letter had been shared with the City and that the information in the letter had been publicly released, and therefore the confidentiality had been waived.

3. Section 4. Payments, passage of title, risk of loss, reappraisals - Title to materials sold hereunder shall pass to Purchaser only upon severance or extraction of and proper payment for such materials. …
   a) The bid deposit for this contract will be applied to the first installment payment of the total contract. Each installment payment shall be ten per cent of the fair market value of the total contract amount based on appraisal in effect on the due date of each installment payment, or the bid amount, whichever is greater.
   b) …
   c) The price per short ton of finished product for which payment is made during the first four years following approval of the mining plan by the Authorized Officer shall be the bid royalty of $0.50 per short ton, and shall not be subject to reappraisal during that four year period. The market value of the material for which payment has not yet been made shall be reappraised at the expiration of four years and at intervals of not less than every two years thereafter in accordance with the regulations set forth in 43 CFR Section 3610.1-2(b)….

4. Section 5. Bonds –
   a) …
   b) If all terms of the contract are not faithfully and fully performed by Purchaser, the performance bond required by 43 CFR 3610.1-5 shall be forfeited to the amount of damages determined by the Authorized Officer. If damages exceed the amount of the bond, Purchaser hereby acknowledges liability for such excess….

5. Section 6. Expiration of contract – this contract shall expire when the total amount of materials sold has been severed and removed or 10 years from the effective date of the production period unless an extension of time is granted.

6. Section 9. Special clauses and reserved items - The rights of the purchaser are subject to the regulations in 43 CFR Group 3600 (which are made a part of the contract), and the following stipulations marked Exhibit A, which are attached and made a part hereof….

   The Authorized Officer may grant an extension of time up to one year in accordance with the regulations in compensation for periods of mine plan review exceeding six months or legal challenges lasting more than six months which inhibit fulfillment of the contract by the Purchaser. This does not limit the Authorized Officer from issuing an extension of the contract for other reasons authorized by the regulations.

7. Sec. 10. Force Majeure - The Purchaser shall not be deemed to be in default in the performance of the terms of this contract if Purchaser is prevented from severing, or removing sand and gravel from the subject property, or otherwise prevented from

performing the terms of the contract, by causes beyond its control, including, but without being limited to: acts of God or the public enemy, interference, rulings or decisions by municipal, federal, state, or other governmental agencies, boards or commissions; any laws and/or regulations…; and catastrophe resulting from flood, fire, explosion, or other causes beyond the control of the Purchaser. If any of the stated contingencies occur, Purchaser shall immediately give the Authorized Officer written notice of the cause of the delay of production or performance. The Purchaser if delayed by force majeure shall use reasonable diligence to correct the cause of delay, if correctable, and if the condition that caused the delay is corrected, Purchaser shall immediately give the Authorized Officer written notice thereof and shall resume operations under this contract. If the condition that caused the delay cannot be corrected within six months despite reasonable diligence by the Purchaser to correct the condition, then the Purchaser may thereafter elect to terminate this contract without further obligation by giving written notice to the Authorized Officer of the election to terminate. This shall be in addition to rather than in limitation of any right on the part of the Purchaser to seek a rescission of the contract under the doctrines of impossibility of performance, frustration of purpose or other legal principles as might be applicable.

Exhibit A to both contracts requires compliance with the rules and regulations of the South Coast Air Quality Management District, the Regional Water Quality Control Board, and the California Surface Mining and Reclamation Act, among other things. In addition, a mining and reclamation plan was to be submitted and approved by the Authorized Officer. Exhibit A also requires the completion of an archaeological survey and a species/habitat survey before pit expansion commences.

Record of Decision. In August 2000, BLM issued its ROD for the Soledad Canyon Sand and Gravel Mining Project in Los Angeles County, attaching to it the two 1990 contracts referenced above, the 1998 Biological Opinion issued by the U.S. Fish and Wildlife Service addressing the unarmored threespine stickleback, and historic properties findings issued in 2000. In the ROD, BLM approved the Reduced North Fines Storage Area (RNFSA) alternative and thereby directed the manner in which Transmix was authorized to extract, produce and sell millions of tons of sand and gravel from the project site over the 20-year period, in conformance with the federal contracts. BLM required Transmix to comply with the mitigation measures in Appendix A to the ROD, the mining reclamation plan described in the final environmental impact statement (FEIS), and bonding requirements. In addition, the ROD directed Transmix to consult with and obtain approvals from certain identified regulatory agencies, and to secure any other permits and authorizations required by law. The ROD stated that Los Angeles County aggregate reserves were expected to be depleted by 2016 and that this project would help meet growing aggregate demand in the local and regional area. *See* ROD, p.3.

BLM's decision specifically approved: 1) the RNFSA, 2) the FEIS' mining reclamation plan, and 3) the Mitigation and Monitoring Program in Appendix A to the ROD, and incorporated 4) the terms and conditions of the FWS Biological Opinion and 5) the requirements of the Habitat Protection Plan. BLM required Transmix to comply with the provisions of these 5 listed documents, as well as provisions relating to the additional agency approvals and reviews, contract compliance, monitoring requirements, and bonding requirements. The BLM directed

Transmix to consult with and obtain approvals from a list of nine regulatory agencies, and obtain any other permits or authorizations required by law.

Mining and Reclamation Plan (MRP). In May 1990 and again in June 1997, Transmix submitted a multi-volume MRP. In it, Transmix described the site and explained how it would be developed. Pre-production activities included diking storm water runoff; the construction of settling ponds, ditches, and roads; and the securing of a right-of-way for product conveyance. In the May 1990 MRP, Transmix expressly stated that mining was scheduled to commence on November 15, 1991, after obtaining all of the required permits. The 1990 MRP states that once pre-production activities were concluded, mining would begin. Under the terms of the 1990 MRP, if production began as assumed, the mining operation would be completed by November 15, 2011. By 1997 this had changed. In the June 1997 MRP, Transmix expressly stated that based on the current permitting schedule mining would commence in 1998 and would be completed by 2018. Product would be cut and crushed and conveyed for ultimate sale. After these contracts expired, BLM anticipated it would offer for sale the remaining material in the contracted area. Attached to the 1997 MRP was a Storm Water Pollution Prevention Plan and a draft Notice of Intent for a permit to discharge storm water, and a 1997 revised Spill Prevention Control and Countermeasures Plan for aboveground storage tanks.

CONTRACT RESCISION / WITHDRAWAL FROM CONTRACTS FOR FAILURE TO ACHIEVE REASONABLE PROGRESS TOWARD EFFECTIVE DATE

CEMEX and the BLM executed both of the contracts at issue in 1990. BLM issued a ROD approving the project in 2000. The production period for the first contract was required to begin the day the mining plan was approved. BLM approved the mining plan on the day the ROD was approved. The production period for the second contract was required to begin the day after the first contract expired. To date, CEMEX has not complied with the requirements of the ROD or the contracts. Specifically CEMEX has:

1. Failed to progress with severance, extraction, and removal of mineral materials.
2. Failed to occupy the mineral materials site for mining purposes.
3. Failed to comply with the provisions of the approved mining plan.
4. Failed to take title to and pay the United States fair market value for mineral materials.
5. Failed to faithfully and fully perform all terms of the contracts.
6. Failed to immediately give the Authorized Officer written notice of the cause of the delay of production or performance of the contracts.
7. Failed to use reasonable diligence to correct the cause of delay of production or performance of the contracts.
8. Failed to elect termination of the contract due to delay that cannot be corrected within six months despite reasonable diligence by the Purchaser.

In addition, CEMEX has failed to comply with the terms and conditions of the 2000 Record of Decision approving the Soledad Sand and Gravel Mining Project in that it has:

1. Failed to consult with and failed to obtain the approvals, permits, and authorizations of other regulatory agencies.
2. Failed to initiate and/or conclude any additional environmental analysis required by the above regulatory agencies for the above approvals, permits, and authorizations.
3. Failed to verify, keep BLM informed of the current status, and provide copies of the approvals, permits, and authorizations of other regulatory agencies.
4. Failed to provide BLM with verification of the continued adequacy of CEQA compliance.
5. Failed to provide an estimated yet specific date (month, year) for or of submittal of the approvals, permits, and authorizations of other regulatory agencies.

In its letter dated March 17, 2006, CEMEX indicated its intent to begin pre-production activities, arguing that the effective date for the contracts should not be triggered and production should not occur until the other regulatory agency permits were acquired and site preparation and other pre-production activities were accomplished. In its response to CEMEX's March letter, BLM relied on CEMEX's representations that it would diligently begin securing the other regulatory agency permits and initiating site preparation and other pre-production activities. However, CEMEX never began site preparation, has failed to secure third-party regulatory permits, and has never initiated other pre-production activities. Additionally, CEMEX has generally refused BLM's requests for information relating to its efforts to honor the assertions in its March 2006 letter regarding its responsibilities to the BLM. Finally, CEMEX entered into an agreement with the City of Santa Clarita to seek to toll the requirements of the contracts (i.e., the "truce"), without consultation with the BLM or amendment or modification of the contracts.

CEMEX owes an implied duty of diligence, good faith, and reasonable progress under the contracts. However, in the 25 years since the contracts were issued, and 15 years since the ROD and mine plan were approved, CEMEX has not initiated pre-production activities leading to production, and has not otherwise performed under the contracts in a meaningful way.

The BLM has been accommodating to CEMEX in recognition of the external challenges that it faced. But the BLM is entrusted with the public interest of developing the sand, gravel, and aggregate resources from the Soledad Canyon, and that duty compels the BLM to withdraw from the contract. Based on the foregoing record, it is clear that CEMEX does not believe the first contract's production period ever commenced—and therefore, by its terms, the contract's effective date was never reached. While the BLM believes that alternative views may exist as a matter of law, the BLM believes that it is in the parties' mutual interest to view the contracts as never having become effective. As a result, and due to CEMEX's failure to make reasonable progress toward commencement of production, the BLM hereby rescinds Contract 20139 and Contract 22901. This decision is not a termination and the BLM does not consider this action as a default, which could prejudice CEMEX in future responsibility determinations for federal transactions.

SHOULD CEMEX ARGUE THAT THE CONTRACTS WERE EFFECTIVE:

CONTRACT 20139 HAS EXPIRED

Should CEMEX argue that the contracts were effective, the first contract, 20139, has expired by its terms. Contract 20139 provides a production period of ten years from the day the mining plan is approved. Transmix submitted an updated mining and reclamation plan to the BLM in June 1997. The plan was comprised of a mining plan and a reclamation plan, among other things. The mining plan addressed the two phases of mine production in accordance with the two executed contracts. It was anticipated that mining pursuant to the two contracts would commence in 1998 and conclude twenty years later, in 2018. Gross mine production by year reflected an increase over time in order to account for mine start-up operations.

On August 1, 2000, BLM approved the mining reclamation plan. Accordingly, contract 20139's 10-year term has passed and the contract has expired. Although CEMEX sought to obtain allowances from BLM about when the contract would be effective, which BLM agreed to in reliance on CEMEX's assertions of diligence, the parties never amended the contract terms, which remained the same and always stated on its face that this contract would become effective on the date BLM approves the mine plan.

THE CONTRACTS ARE TERMINATED FOR DEFAULT

Should CEMEX insist that the contracts were effective, and to the extent that CEMEX argues that contract 20139 has not expired by its terms, both contracts are terminated for default. CEMEX has materially failed to perform with reasonable diligence and failed to deliver reasonable progress. CEMEX has failed to reasonably apprise the BLM of its activities and anticipated schedule to commence production. CEMEX has undertaken, without consultation or consent from the BLM, voluntary action to delay its ability to achieve pre-production milestones and commence production. Specifically, CEMEX has failed in the following manner:

1. **CEMEX has failed to conduct pre-production activities, resulting in termination of the contracts.**

The BLM entered into contracts with Transmix in 1990 and signed the ROD, approving the project, in 2000. CEMEX subsequently acquired the interests of Transmix in the contracts. Section 1 of the contracts indicates the Purchaser is obligated for all terms of the contract upon signing. It also indicates that the effective date of the contract is the day the mine plan is approved. BLM approved the mine plan when it approved the ROD in 2000. IBLA upheld BLM's approval of the mine plan in 2002. Since acquisition of Transmix's interests, and since the day the BLM approved the mine plan, CEMEX has had a contractual and legal obligation to perform under the contracts.

In 2006, CEMEX sought concurrence from the BLM that pre-production activity would not trigger the production obligations of the contract. CEMEX represented that it would pursue its responsibilities to the BLM as diligently as possible in initiating pre-production activity, including site preparation and other activity. In reliance on this representation, BLM allowed

CEMEX to conduct pre-production activities without triggering the production obligations of the contracts. Yet the very year CEMEX made these representations to the BLM, and without informing BLM, it engaged in negotiation of the truce with the City of Santa Clarita and agreed not to pursue the very activities that CEMEX told BLM it would diligently pursue.

CEMEX's failure to fulfil the terms and conditions of the contracts requiring production and production payment and the continued failure of CEMEX to conduct pre-production activity is contrary to the terms of the contracts and federal regulation, and the contracts are terminated. 43 CFR 3610.1-3(a)(6) (1990).

2. **CEMEX has failed to diligently secure air and water quality and other permits, as required by the Contracts and the ROD, resulting in revocation of the ROD and termination of the contracts.**

The ROD requires the project proponent to secure approvals from a number of regulatory agencies before production may begin. *See* ROD, pp. 3, 7, and 8. CEMEX has failed to take the necessary steps to secure and has failed to secure the permits and other authorizations required by the ROD. All of the permits that CEMEX currently holds for this project were applied for and secured before 2004, and no additional regulatory agency permits have been secured since then. The pending State Water Resources permit application to which CEMEX refers in its July 2015 letter is pre-existing. Other permit applications have not yet been prepared, or finalized, or submitted. CEMEX's failure to prepare, finalize, or submit applications for regulatory approvals indicates a lack of diligence, which is required under Section 10 of the contracts and also breaches the implied duty of diligence, good faith, and reasonable progress that CEMEX owes to the BLM.

In addition, CEMEX's failure to secure other regulatory approvals indicates a lack of diligence in conformance with and violates the terms and conditions of the ROD. The BLM approved the mining plan when it approved the ROD in 2000. The ROD states that BLM approved the Reduced North Fines Storage Area alternative, the mining reclamation plan, the Mitigation and Monitoring Program, and incorporated the terms and conditions of the Biological Opinion and the Habitat Protection Plan (ROD, p.7). The ROD requires consultation with and approvals by other regulatory agencies before commencing operations on the project site. The conditions of approval are limitations on CEMEX's ability to act on BLM's approval, but do not change the date of BLM's approval or the effective date of the contracts. CEMEX has failed to comply with the ROD in that it has failed to consult with other regulatory agencies and obtain these other regulatory approvals. This failure is contrary to the terms and conditions of the ROD approving the project, and BLM revokes the ROD and terminates the contracts.

3. **CEMEX has failed to produce and make production payment to the United States resulting in termination of the contracts.**

Section 2 of the contracts recites Purchaser's obligations to sever, extract and remove mineral materials from the project site. Since 2000 (when BLM approved the ROD and the mining plan), CEMEX has not produced any mineral materials or made any production payment or payment in lieu of production to the United States.

Section 9 of the contracts incorporates federal regulation, 43 CFR Part 3600. Federal regulation requires a contract holder to annually produce an amount of mineral material to pay the United States a sum of money equal to the first installment. 43 CFR § 3610.1-3(a)(5) (1990). To date, CEMEX has not annually produced or made annual payments to the United States. This failure violates the terms of the contract and federal regulation, and BLM terminates the contracts.

4. **CEMEX has failed to produce and make production payment to the United States contrary to the purpose for which the contracts were issued and contrary to the terms of the contracts, resulting in termination of the contracts.**

The Materials Act of 1947, as amended ("Act"), and the implementing regulations found in 43 CFR Part 3600 (1990), authorize the disposition of mineral materials from the public lands. 30 U.S.C. §§ 601-604; 43 CFR § 3600.0-1 (1990). The BLM executed the two contracts at issue with Transmix, and its successor CEMEX, for the disposition of the mineral materials. The contracts require severance, extraction, and removal of mineral materials from the project site (Sec.2).

CEMEX's voluntary lack of timely development of these minerals by CEMEX, such as that evidenced during the truce, is contrary to the purpose for which these contracts were issued. CEMEX's voluntary lack of development of these minerals also frustrates the fulfillment of these contract terms and violates the duty CEMEX owes to the United States to exhibit diligence, good faith, and reasonable progress in fulfilling the contracts. This lack of timely development is contrary to the Act, its implementing regulations, the contract terms themselves, and the ROD approving the project, and BLM terminates the contracts.

5. **CEMEX has failed to comply with the procedures of Section 10 of the Contract resulting in termination of the contracts.**

Section 1 of the contracts indicates the Purchaser is obligated for all terms of the contract upon signing. Section 9 of the contracts provides for an extension of time "up to one year" for legal challenges lasting more than six months "which inhibit fulfillment of the contract by the Purchaser." The Force Majeure clause (Section 10) provides that the Purchaser is not in default in the performance of the contracts if it is prevented from "severing, or removing sand and gravel from the subject property, or otherwise prevented from performing the terms of the contract" by causes beyond its control. The purchaser is obligated however to "use reasonable diligence to correct the cause of delay," and if corrected, to "immediately give the Authorized Officer written notice" and "resume operations under [the] contract." If however, the delay cannot be corrected within 6 months, the purchaser may elect to terminate the contract by written notice. In addition, federal regulation allows the authorized offer to grant a one-time extension not to exceed one year, if the permittee submits a written request that shows that a delay in removal of mineral materials was due to causes beyond the control and without fault or negligence of the purchaser. 43 CFR 3610.1-7(b) (1990).

The BLM ROD for the project was approved in 2000. After CEMEX acquired the interests in the contracts from Transmix, its obligation to perform under the contracts began. At no time during the litigation against the project was judicial restraint placed on CEMEX precluding it from

removing mineral material under the contracts. To the contrary, any restraint that was placed on performance under the contracts was voluntarily imposed on CEMEX by CEMEX. Assuming for argument, but certainly not conceding, that the litigation prevented CEMEX from performing under the terms of the contracts, and that this was a "cause beyond its control" preventing it from the removal of mineral material, CEMEX was obligated to either resume operations under the contracts or elect to terminate them approximately nine years ago when the litigation ended. However, CEMEX has never given BLM written notice that performance was precluded under the contracts due to causes beyond its control, nor has CEMEX given BLM written notice of its diligence in correcting the cause of delay under the contracts. Moreover, CEMEX has not initiated, much less resumed, operations under the contracts. In short, CEMEX has never invoked the Force Majeure clause under the contracts for its failure to produce mineral materials or otherwise provided valid justification for its lack of production or performance. CEMEX is in violation of Section 1 and Section 10 of the contracts and the regulation. This failure is contrary to the terms and conditions of the contracts held by CEMEX and of federal regulation and BLM terminates the contracts.

6. **CEMEX has failed to respond to BLM requests for information or to keep BLM informed resulting in termination of the contracts.**

In attempting to assess whether CEMEX was acting in accordance with the contract terms and its representations that it would diligently pursue its responsibilities, BLM has repeatedly asked CEMEX to advise it how CEMEX planned to place the contracts into production. CEMEX has repeatedly ignored BLM's requests or has questioned BLM's right to the information BLM requests. In May and July of 2015, BLM received written communication from CEMEX that it intends to pursue implementation of the contracts. This information was only given to the BLM upon its demand, and CEMEX continues to maintain that BLM, as the public land manager, does not have the authority to request from CEMEX this level of "detailed information" about whether it is taking steps to fulfill its contracts with the BLM.

CEMEX indicates that it has now or will soon begin the preparation of the applications for some of the required permits. Yet in April 2006, CEMEX made the same express representations to the BLM. At that time, CEMEX indicated its intent to begin securing required permits, as well as beginning site preparation and pre-production activities, all of which were required with the approval of the mine plan in 2000. CEMEX said it wished to pursue its responsibilities to the BLM as diligently as possible. In April 2008, CEMEX promised to keep BLM informed of any developments during the process of negotiation between the City and CEMEX. In reliance on CEMEX's assertions, BLM then refrained and continued to refrain from exercising its rights under the contracts. However, and contrary to CEMEX's express statements, it has not taken any of the actions it promised to take in 2006 and when asked, refused to provide information regarding the status of its activities until prompted this year.

In fact, not more than 6-8 months after it represented that it would diligently pursue its responsibilities to the BLM and keep BLM informed, CEMEX entered the truce with the City. BLM was not informed until after the truce was announced. CEMEX has repeatedly remained silent about its development plans for the project site, notwithstanding the BLM's continued requests and CEMEX's hollow representations that it would provide information in response to those requests.

CEMEX owes a duty of diligence and good faith and BLM holds a reasonable expectation of progress in the performance of these contracts. CEMEX's lack of diligence to bring the contracts into development is evidenced by its lack of response to BLM's requests for schedules and timelines since 2006, and its lack of plans to initiate operations under the contracts since 2000 when the BLM approved the ROD and mine plan. Instead of providing information to the BLM about its implementation of the contracts, CEMEX has continued to pursue payment for non-production through legislation in amounts well in excess of the monetary deposits that Transmix made for the initial contracts. It entered into a truce with the City in order to secure and to pursue relief from contractual obligations—contractual obligations it had with the BLM, not the City. It failed to inform BLM of the truce or its contents. Since 2000, CEMEX has failed to diligently pursue development of the subject contracts.

Section 1 of the contracts indicates the purchaser is obligated to fulfill all terms of the contract upon signing. Section 2 of the contracts indicates that the purchaser buys the mineral materials described in Section 3 "for severance, extraction, and removal." Only for reasons beyond the control of the Purchaser are the contract terms suspended. The contracts were signed in 1990, and BLM approved the ROD in 2000. CEMEX has never been precluded from performing under the contracts. Even though litigation began after the IBLA approved the ROD in 2002, there has never been an injunction issued by any court. CEMEX's participation in the truce with the City of Santa Clarita was a voluntary two-party agreement. CEMEX's attempts to seek legislation to cancel the contracts included provisions to buy out CEMEX's interests in the contracts. BLM repeatedly rebuffed these legislative attempts.

CEMEX has failed to take the necessary, preliminary steps to implement the contracts, which begins with and includes its failure to keep BLM informed of its actions, instead choosing to relieve itself of the production requirements of the contracts through the truce and its legislative efforts. BLM is authorized by law to dispose of mineral materials under sales contracts. 30 U.S.C. §§ 601-604. For BLM to effectively administer those contracts, including the impacts of those contracts on the public land and its resources, BLM is authorized to regulate users of public land resources. 43 U.S.C. § 1732. It is axiomatic that BLM may seek from regulated parties the information necessary to assess their compliance with the contract terms and regulations. Moreover, section 10 of the contract requires the Purchaser to give written notice of the cause of any delay and the correction of any delay.

In this case, CEMEX has routinely failed to provide information that BLM has requested that would inform BLM about CEMEX's efforts to comply with the contract terms. BLM initially agreed to CEMEX's understanding that the effective date of the contracts would not begin to run while CEMEX engaged in permitting, site preparatory work, and other pre-production activities based solely on CEMEX's representations that it would actually engage in those activities. CEMEX's representations have proven to be misleading, and BLM relied on them to its detriment. CEMEX to date has never performed the promised activities and has repeatedly ignored BLM's status requests. CEMEX has even called into question BLM's authority to request information about CEMEX's compliance with the contract terms. CEMEX did not keep BLM informed of its settlement activities with the City of Santa Clarita, or its legislative activities on any voluntary, regular, or consistent basis, notwithstanding its pledge to do so and notwithstanding the requirements of section 10 of the contract. CEMEX's failure to keep BLM

informed about its activities has thwarted BLM's right to enforce the contract terms and is contrary to federal statutes, regulations, and the terms of the contracts. CEMEX's actions are contrary to Section 1, Section 2, and Section 10 of the contracts and BLM terminates the contracts.

For each and all of the above reasons, the BLM terminates both of the mineral materials sales contracts issued to CEMEX. This decision is final and may be appealed to the Interior Board of Land Appeals (IBLA).

CEMEX OWES IN LIEU OF PRODUCTION PAYMENTS

Should CEMEX argue that the contracts were effective, CEMEX owes and BLM demands payments in lieu of production for a 16-year time period. Since acquisition of Transmix's interests in the contracts, CEMEX has had a contractual and legal obligation to produce or to make annual payments to the United States in lieu of production. 43 CFR 3610.1-3(a)(5) (1990). Annual in lieu of production payments are to be made in the amount of the first installment and are due on or before the anniversary date of the execution of the contract. *Id.* CEMEX has failed to produce mineral material from the approved project site and has failed to make in lieu of production payments according to regulation (*see* Section 4a, and Section 3, of the contracts, *and see* 43 CFR 3610.1-3(a)(3)(1990)). This obligation arose on the anniversary date of the contracts following BLM's approval of the ROD and the mining plan. However, CEMEX has not produced any minerals and has made no in lieu production payments to the United States. At the initial contract amount without reappraisal, the total amount owed the United States is 15 years of in lieu of production payments or approximately $17.5 million.[3] CEMEX's failure to comply with the terms and conditions of making timely in lieu payments is contrary to the terms of the contract and federal regulation. BLM demands payment in the amount of $17,540,000 from CEMEX. 43 CFR 3610.1-3(a)(6) (1990). This demand for payment in lieu of production is appealable to the IBLA.

BLM WILL RETAIN THE BID DEPOSIT

CEMEX has failed to make required payments under the terms and conditions of the contracts resulting in forfeiture of the bid deposit.

Should CEMEX argue that the contracts were effective, CEMEX owes and BLM forfeits the bid deposit. Section 4(b) of the contracts requires the "faithful[] and full[] performance by Purchaser" of all terms under the contract or forfeiture of the performance bond. CEMEX has failed to sever, extract, and remove mineral materials from the project site and make payment to the United States according to the terms of the contracts (Sections 1, 2, and 4 of the contracts). BLM currently holds an advance payment on behalf of CEMEX in the amount of $700,000. By regulation, this sum may be forfeited in the event CEMEX fails to faithfully and fully perform the terms of the contracts by failing to produce mineral materials and make payment under the terms of the contracts for the past 25 years. CEMEX's failure to comply with the terms of the

[3] BLM is actually owed 16 years of in lieu production payments, however, CEMEX has on deposit the first year's in lieu payment. BLM will retain that deposit. As such, CEMEX owes an outstanding total of 15 years of in lieu production payments.

contract results in its forfeiture of the advance payment. BLM hereby forfeits the bid deposit. Forfeiture of the bid deposit is appealable to the IBLA.

BLM WILL DEMAND PAYMENT FROM THE SURETY

CEMEX has failed to comply with the terms and conditions of the contracts, which allows the BLM to demand payment from the Surety.

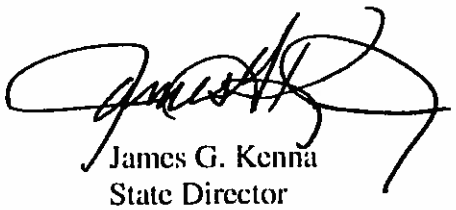
Should CEMEX argue that the contracts were effective BLM will demand forfeiture of the performance bonds. BLM regulation defines a performance bond as a bond that ensures compliance with the terms of the contract and reclamation of the site as required by the authorized officer. 43 CFR 3600.0-5(i) (1990). BLM regulation provides for the conversion, redemption, or sale of a performance bond upon default in the performance of the terms and conditions of the contracts. 43 CFR 3610.1-5(c) (1990). Section 5(b) of the contracts provides for the forfeiture of the performance bond if all terms of the contract are not faithfully and fully performed by Purchaser. CEMEX has not produced mineral materials on the project site and is, therefore, in violation of Section 2 of the contracts. CEMEX has not been prevented from severing, extracting, and removing mineral material from the project site and is therefore not entitled to delay under Section 10 of the contracts. Additionally, CEMEX has failed to comply with the procedural requirements of Section 10. CEMEX has failed to: give BLM immediate written notice of the cause of its delay in performing the contracts, correct the delay with reasonable diligence, give BLM immediate written notice that the cause of delay has been corrected, and resume operations under the contracts. In addition, if the delay could not be corrected with reasonable diligence, CEMEX failed to voluntarily terminate the contracts.

BLM accepted a surety bond for performance for each contract. On June 16, 2014, the BLM accepted a surety bond (SUR04418) in the amount of $1.4 million for contract CACA-20139, and a separate surety bond (SUR0017070) in the amount of approximately $2.1 million for contract CACA-22901. CEMEX submitted both of these bonds to address any potential non-compliance, reclamation, or decommissioning costs associated with sand and gravel operations under these contracts. To compensate BLM for the monetary losses it has sustained from CEMEX's failure to fulfil the terms of the contracts, including the value of the payments that CEMEX would have paid to BLM if it had properly developed the mineral materials under the sales contracts, BLM may demand payment from the surety for the performance bonds. The failure to comply with the terms and conditions of the contracts held by CEMEX is contrary to federal regulation, is contrary to the terms of the contracts, and justifies forfeiture of the performance bonds. BLM will demand forfeiture and payment of the performance bonds from the Surety.

APPEAL RIGHTS

These decisions may be appealed to the Interior Board of Land Appeals, Office of the Secretary, in accordance with the regulations contained in 43 CFR, Part 4, and the enclosed Form 1842-1. If an appeal is taken, your notice of appeal must be filed in this office (at the above address) within 30 days from receipt of this decision. The appellant has the burden of showing that the decisions appealed from are in error.

If you wish to file a petition pursuant to regulation 43 CFR 4.21 for a stay of the effectiveness of these decisions during the time that your appeal is being reviewed by the Board, the petition for a stay must accompany your notice of appeal. Copies of the notice of appeal and petition for a stay must also be submitted to each party named in this decision and to the Interior Board of Land Appeals and to the appropriate Office of the Solicitor (see 43 CFR 4.413), at the same time the original documents are filed with this office. If you request a stay, you have the burden of proof to demonstrate that a stay should be granted.



James G. Kenna
State Director

cc: District Manager, California Desert District
Field Manager, Palm Springs Field Office
CASO-920
Surety