

**Written Testimony of Cliff Kirkmyer, EVP, Aggregate Resources, CEMEX USA
Committee on Energy & Natural Resources
United States Senate
Hearing on S. 771: The Soledad Canyon Settlement Act of 2013
November 20, 2013**

Good afternoon Mr. Chairman and member of the Committee. My name is Cliff Kirkmyer, Executive Vice President of Aggregate Resources for CEMEX, Inc. ("CEMEX"). In the United States CEMEX operates in 35 states producing and selling cement, ready-mix concrete, aggregates, and related building materials. Our network includes 13 cement plants, 46 distribution terminals, nearly 100 aggregate quarries, and more than 400 ready-mix concrete plants. CEMEX was named the EPA Energy Star Partner of the Year for 2009 and 2010.

I want to first thank you for the opportunity to present written testimony for today's hearing on S. 771, the Soledad Canyon Settlement Act of 2013. CEMEX *supports* S. 771, introduced on April 18, 2013 by Senators Barbara Boxer, D-CA and Diane Feinstein, D-CA. S. 771 is important legislation needed to resolve a regional land use conflict that has existed within Los Angeles County for almost two decades. In fact, S. 771 may be the final opportunity to amicably end this two-decade-old dispute between the City of Santa Clarita and CEMEX over an aggregate mine that CEMEX wishes to operate in Soledad Canyon, near the City.

CEMEX asks that S. 771 be passed with certain reasonable changes as discussed in my testimony below.

Brief History of the Soledad Canyon Project and Dispute

In 1990, following a public bidding process, CEMEX was awarded by the United States Bureau of Land Management (BLM) two ten-year, consecutively-running, mineral material contracts to extract 56 million tons of federally-owned aggregate from the Soledad Canyon area of unincorporated Los Angeles County. During the period between 2000 and 2004, following more than a decade of environmental review, both the BLM and the County of Los Angeles issued land use approvals for the 20-year mining project. The City of Santa Clarita, the nearest municipality to the mine site, objected to the mine, which led to years of litigation challenging

the environmental reviews of the mine project. Although CEMEX has prevailed in no less than five lawsuits against the mine in the U.S. District Courts and the Ninth Circuit Court of Appeals, and has few remaining permit hurdles to clear, in February 2007, Santa Clarita and CEMEX declared a truce from the ongoing legal and political battles and announced they would seek a legislative solution to the dispute. After six years of trying to find the right legislative vehicle to effectuate a lasting resolution, S.771 is now the result of that agreement.

S. 771 is the Right Answer to the Long-Standing Dispute

For nearly two decades, CEMEX, at great effort and cost, diligently pursued its obligations under the federal mineral contracts to entitle and develop the Soledad Canyon mine. CEMEX is in the business of natural resources extraction, and it remains fully prepared to implement the contracts if the legislative effort fails. Indeed, despite recent environmental issues raised by concerned stakeholders, earlier this year the California Department of Conservation affirmed its long-held view that pursuit of the Soledad project remains in the public interest due to certain economic and environmental advantages. Thus, if S. 771 does not succeed this year, mining in Soledad Canyon will become a reality in the very near future. This bill, with the appropriate revisions discussed below, represents the best, and perhaps last chance to legislatively resolve the long-standing mining dispute fairly and productively, in a way that meets the needs of all of the affected stakeholders, including the City of Santa Clarita and CEMEX.

S. 771 strikes the right balance because it addresses widely held public concerns while seeking to fairly compensate CEMEX. It would end the possibility of mining at the Soledad Canyon site by removing those specific mining contracts from federal mineral entry, contract or lease, and would require the BLM to cancel CEMEX's contractual right to mine at the Soledad Canyon contract site. In return, the bill would attempt to ensure that CEMEX is fairly compensated for its loss, by providing a means for CEMEX to recover fair compensation for the loss of the contracts.

Once S. 771 is signed into law, the Secretary of the Interior would offer for sale approximately 10,200 acres of federal land near Victorville, CA, which is currently on the BLM's "disposal list." The lands identified on the map were carefully selected to prevent any environmentally sensitive lands from being sold as part of this legislation. Lands in line to be developed would

also be subject to full California Environmental Quality Act review. A map of the specific acreage to be sold is included in S. 771.

The proceeds from the land sales would be deposited into a special account in the United States Treasury. Based on the provisions in S. 771, the Secretary of the Interior would then use funds from this account to fairly compensate CEMEX for its cancelled contracts.

Once S. 771 is signed into law, the Secretary of the Interior would, among other things, determine the fair market value of the CEMEX contracts being cancelled in Soledad Canyon. If CEMEX does not agree with the Secretary of the Interior's determination of fair compensation, CEMEX would be allowed to ask the United States Court of Federal Claims to determine a fair amount.

Thus, CEMEX and the City of Santa Clarita welcome this important legislation as a balanced, fair resolution of a costly and difficult dispute that spread across a large region for several decades. Santa Clarita would no longer face the prospect of mining operations that they object to as incompatible with its long-term regional planning goals; and, CEMEX would recover the fair value of its loss arising out of cancellation of the Soledad Canyon contracts and foregoing its hard-fought rights to pursue development of the mine. The parties involved have been refining this bill together for six years, and S. 771, once revised, needs to pass this year in order to preserve this mutually beneficial compromise.

There is Strong Legislative Precedent for S. 771

S. 771 is not seeking to break new ground. There is ample legislative precedent for this type of financial process for a land swap. For more than a decade, this financial process using a similar "account" system has been successfully employed in various pieces of land transaction legislation. Past examples include:

- Southern Nevada Public Lands Management Act (October 19 1998): Directed the Secretary of the Interior to dispose of federal lands in Clark County, Nevada. To date, the bill has produced more than \$2.7 billion of land sales revenue for the specific purposes receiving funds from the special account set up as part of the legislation.

- Ivanpah Valley Airport Public Lands Transfer Act (October 27, 2000): Directed the Secretary of the Interior to convey federal lands in Ivanpah Valley, Nevada to Clark County, Nevada for the development of an airport. Payments received from the County were deposited in a special account dedicated to the acquisition of in-holdings in the Mojave National Preserve.
- Lincoln County Conservation, Recreation, And Development Act (November 30, 2004): Directed the Secretary of the Interior to conduct sales of specified lands in Lincoln County, Nevada, with proceeds of the land sales placed in a special account and dedicated to specific purposes. This bill specifically prohibited mining on the lands sold.
- White Pine County Conservation, Recreation, And Development Act (December 20, 2006): Directed the Secretary of the Interior to conduct sales of specified BLM lands in White Pine County, Nevada, with proceeds of the sales placed in a special account and dedicated for specific purposes.

CEMEX Requests Reasonable Changes to S. 771

CEMEX is grateful for the tremendous efforts of Senator Boxer and Senator Feinstein in seeking to craft legislation that resolves this decades-long problem and that seeks to balance the interests of the varying stakeholders. It also is important to understand that CEMEX believes some reasonable concerns remain with S. 771, which need to be addressed in order to allow both entities to fairly benefit from the legislation. Of primary concern is to imbue the legislation with a shared sense of responsibility and contribution by all stakeholders, which would be reflected in the requirement that the City of Santa Clarita agree to contribute as reimbursement to the United States any BLM royalties lost due to the contract cancellation, rather than having such amounts be deducted from the compensation otherwise due to CEMEX. Attached is a letter dated April 30, 2013 from CEMEX to Senator Boxer outlining these remaining concerns regarding the legislation. CEMEX remains hopeful that these concerns will be addressed by this Committee and during the mark-up process, and is enthusiastic about the potential of S. 771. Senator Boxer and her staff, as well as the City of Santa Clarita, have expressed a willingness to work to resolve CEMEX's concerns during the course of the legislative process.

Thank you again for the opportunity to present CEMEX's testimony to the Committee on this important legislation that is so essential to ending two decades of strife in the region.