



**United States Department of the Interior
Bureau of Land Management
California Desert District**

Record of Decision

for the

**Soledad Canyon Sand and Gravel Mining Project
Los Angeles County, California**

Prepared by:

**United States Department of the Interior
Bureau of Land Management
California State Office
California Desert District
Palm Springs-South Coast Field Office**

**BLM Case File No. CA-22901 and CA-20139
OEPC #DES-99-13 and #DES-99-57
OEPC #FES-00-18**

Approved by:

**Tim Salt, District Manager
California Desert District**

AUG 01 2003

Date

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EXECUTIVE SUMMARY

This document, prepared by the U.S. Department of the Interior Bureau of Land Management (BLM), is the Record of Decision (ROD) for the Soledad Canyon Sand and Gravel Mining Project. This ROD is prepared in accordance with the National Environmental Policy Act (NEPA) and Title 40 of the Code of Federal Regulations Parts 1505 and 1506.

It is BLM's decision to approve the Reduced North Fines Storage Area (NFSA) alternative with additional environmental modifications as described further in this ROD and in the Final Environmental Impact Statement (FEIS) published by BLM on June 2, 2000.

This decision directs the manner in which the Transit Mixed Concrete Company (TMC) is authorized to extract a total of 78 million tons of material and to produce and sell approximately 56.1 million tons of sand and gravel in the Soledad Canyon area of northeastern Los Angeles County, California over a 20-year period in conformance with Federal contracts issued by BLM to TMC in 1990. TMC will operate a concrete batch plant to produce and deliver ready-mixed concrete to satisfy the substantial demand for these resources in the greater Los Angeles market area. A map is attached for reference (Figure 1).

As a condition of approval, TMC is required to comply with the mitigation measures specified in Appendix A of this ROD; the provisions of the mining reclamation plan as described in the FEIS; and the bonding requirements also specified in this ROD. In addition, TMC must consult with and obtain approvals from the regulatory agencies listed in Table 1 of this ROD, and any other permits or authorizations required by law. These agencies may require additional environmental analyses and additional mitigation measures before granting any permits.

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.

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 a "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.

The FEIS considered eight alternatives described further in this ROD. The Reduced NFSA alternative with additional modifications was chosen because it permits the economic development of the Federal mineral resource with the least environmental impacts. BLM carefully considered all reasonable and practical means to minimize adverse environmental impacts to air quality, public health and safety, water resources, traffic congestion, noise, visual quality and wildlife, including listed threatened or endangered species as described further in this ROD.

Key provisions of the Reduced NFSA alternative, as modified in this decision, include:

- A conveyor belt transport system has been added, which will decrease truck traffic, resulting in a significant reduction in PM-10 (air emissions).
- The mine cut will be deeper, therefore allowing for additional storage at the mine site instead of the north fines storage area.
- Fines (mine waste) will not be stored on the north side of the mountain until year 15 of the contract period instead of year one as originally proposed.
- There will be a 50 percent reduction of fines in north fines storage area.
- The ridge line reduction that will occur as a result of mining will be 80 to 150 feet instead of the 120-230 feet presented in the original proposal.

Because of the size of the Soledad Canyon Project, the complexity of the regulatory network in Los Angeles County and California, and the public concerns raised about the environmental impacts of this project, implementation of the Mitigation and Monitoring Program described further in this ROD and in the FEIS will include an Independent compliance tracking system and periodic monitoring reports which will be developed by BLM in coordination with TMC and the appropriate permitting agencies.

During the environmental review process, which included publication of a Draft EIS (May 6, 1999) and a Supplement to the Draft EIS (November 17, 1999), the combined public comment periods provided for eight months of public review. All public comments received on these two documents were carefully analyzed and BLM's responses are included in the FEIS. Comments received by the Los Angeles County Planning Commission as part of the State's separate California Environmental Quality Act (CEQA) process regarding this project are also included in the FEIS with official responses to the issues raised.

Finally, as part of the NEPA review process, BLM coordinated and consulted with the U.S. Fish and Wildlife Service (USFWS), the U.S. Army Corps of Engineers, the U.S. Environmental Protection Agency, the South Coast Air Quality Management District, the Southern California Association of Governments, the Governor's Office of Planning and Research, the California Department of Conservation Division of Mines and Geology, the California Department of Transportation, and the State Water Quality Control

Board. In addition, BLM and the County of Los Angeles coordinated in the preparation of their respective NEPA and CEQA documents.

This decision may be appealed to the Interior Board of Land Appeals, Office of the Secretary, in accordance with the regulations at Title 43 of the Code of Federal Regulations Part 4. Additional information on the appeals process is provided further in this ROD.

Additional information on this decision can be obtained from BLM's Palm Springs/South Coast Field Office, 690 W. Garnet Avenue, P.O. Box 1260, North Palm Springs, California, 92258, telephone 760-251-4800.

DECISION

BLM approves the following:

1. Reduced North Fines Storage Area alternative as described in section 2.4.2 and 3.2.14 of the FEIS with conveyor system mitigation measure AQ3.
2. Mining reclamation plan as described in section 2.2 of the FEIS.
3. Mitigation and Monitoring Program included in Appendix A of this document. All practical means to avoid or minimize environmental harm have been adopted.
4. Incorporation of the terms and conditions prescribed by USFWS in the Biological Opinion attached as Appendix C of this document.
5. Incorporation by reference of the requirements identified in the Habitat Protection Plan included in the FEIS Technical Appendices F6.

Conditions of the approval

As a condition of approval, TMC is required to comply with all of the provisions cited above (1-5) as well as the provisions relating to the additional agency approvals and reviews, contract compliance, monitoring requirements, and bonding requirements discussed further below.

1. Compliance with other agencies' regulatory requirements

TMC must consult with and obtain approvals from the regulatory agencies listed in Table 1 on the following page, and obtain any other permits or authorizations required by law. These agencies may require additional environmental analyses before granting any permits.

Table 1: Additional Agency Approvals and Reviews

AGENCY	APPROVAL or REVIEW
County of Los Angeles	<ul style="list-style-type: none"> - Surface Mining Permit - Reclamation Plan & Financial Assurance - Building Permits - Code Compliance - CEQA Compliance
Los Angeles County Department of Health, Local Enforcement Agency	- Hazardous Materials Handler Permit
California Department of Conservation, Division of Mines and Geology	<ul style="list-style-type: none"> - Review Surface Mining & Reclamation Plan - Review of Financial Assurance
California Regional Water Quality Control Board - Los Angeles Region	<ul style="list-style-type: none"> - General Industrial Activities Stormwater Permit pursuant to the National Pollutant Discharge Elimination System - Section 401 Water Quality Certification
California State Water Resources Control Board	- Permit to Appropriate Water
South Coast Air Quality Management District	- Permits for Fueling and Maintenance Facilities, Equipment Operations, Dust Emissions Discharge
U.S. Department of the Army, Corps of Engineers	- Section 404 Clean Water Act Permit
California Department of Fish and Game	- Section 1603 Stream/Lake Alteration Permit
U.S. Fish and Wildlife Service	- Biological Opinion

2. Terms of the contracts

Compliance with the terms and stipulations listed in the two contracts BLM awarded to TMC by competitive bid on March 9, 1990 (Contract No. CA-22901 and Contract No. CA-20139) is required. Copies of the two TMC contracts are provided in Appendix B. As part of the contracts granting TMC the right to produce 56.1 million tons of Federally-owned sand and gravel, TMC is required to pay the Federal government a minimum of \$28 million in royalties. Seventy-six (76) percent of the royalties (\$21.28 million) will go to the Federal Land and Reclamation Fund, 20 percent (\$5.6 million) to the Federal treasury, and four percent (\$1.12 million) to the State of California, of which half (\$560,000) will go to the County of Los Angeles

3. Monitoring Requirements

Because of the size of the Soledad Canyon Project, the complexity of the regulatory network in Los Angeles County and California, and the public concerns raised about the environmental impacts of this project, implementation of the Mitigation and Monitoring Program described above and in the FEIS will include provision for an independent compliance tracking system and periodic monitoring reports to be developed in coordination with TMC and the appropriate permitting agencies.

3. Bonding Requirements

In accordance with Federal, State and County regulations and policy, TMC is required to provide financial assurances that reclamation of mining sites will occur. Federal regulations require that a performance bond amounting to 20 percent of the contract value be deposited with the BLM. In this case, the first Federal contract value (for the first phase of the project) is equal to \$7 million. The required bond amount is calculated as $\$7 \text{ million} \times .20 = \1.4 million , which is the penal sum of bond 526-09-34. Moreover, in accordance with the Memorandum of Understanding (MOU) entered into by the State of California and the BLM, the State of California has agreed that "Any federally required financial assurance may be used to satisfy local and State surety requirements" (California Department of Conservation - Division of Mines and Geology, et al. 1992). In accordance with the MOU, the State of California has already agreed that the Performance and Reclamation Bond submitted by TMC to the BLM with regard to this project (Bond Number 526-09-34) may be used to satisfy State of California and County requirements for the financial assurance of the Reclamation Plan; however, the County has the authority to require additional bonding if deemed necessary. This bond was submitted to the BLM in March 1990. Subsequently, in April 1992, a co-obligee rider was attached to and became a part of Bond 526-09-34, naming the State Mining and Geology Board and the County as additional obligees. In April 1992, this rider was acknowledged and accepted by the BLM authorized officer and was submitted by TMC to the County with a request that the County submit the bond to the State for review and approval.

ALTERNATIVES CONSIDERED

Alternatives Analyzed in Detail

Eight alternatives were considered in detail in the FEIS. These alternatives are summarized below.

1. TMC's Proposed Action

TMC's proposed mining plan would have extracted a total of 83 million tons of material, and produced approximately 56.1 million tons of sand and gravel over a 20-year period. The proposed action included plans to operate a concrete batch plant producing ready-mixed concrete and to deliver ready-mixed concrete to the local markets within the greater Los Angeles area.

2. Reduced North Fines Storage Area Alternative

Under this alternative, the volume and area of the NFSA will be reduced by using a different approach to the mining cut sequence than the proposed action. This approach will result in a 50 percent reduction of fines into the NFSA. The ridgeline reduction will be 80-150 feet as compared to 120-230 feet in the proposed action. The total product shipped will remain at 56.1 million tons. All other aspects of the operation and reclamation plans will remain as described for the proposed action. This alternative, with the addition of a conveyor belt system mitigation measure which will reduce PM-10 (air quality) emissions, was identified in the FEIS as the agency's preferred alternative.

3. Batch Plant Location Alternative

This alternative examined locating the batch plant near Lang Station adjacent to the intersection of Soledad Canyon Road and the Antelope Valley Freeway. This would have required delivering aggregate to the plant by trucks.

4. Reclaimed Water Alternative

This alternative considered use of other water sources such as reclaimed water. The nearest existing potential sources of reclaimed water that could serve the project are County wastewater treatment plants located in Palmdale, Saugus, and Valencia. Presently, no large-scale reclaimed water systems are known to be available in the Santa Clarita Valley.

5. Product Transportation Alternative

This alternative considered construction of a conveyor system, loading facility and rail spur to an existing rail line south of the project site. The conveyor system would have been constructed to go under Soledad Canyon Road to the loading facility for transporting aggregate product from the site to the Los Angeles market.

6. Alternative North Fines Storage Area Alternative

This alternative considered an alternate NFSA immediately north of the proposed project fines storage site and adjacent to the Antelope Valley Freeway. This alternative had the objective of providing the required fines storage area with potentially less impact on possible future uses in Bee Canyon. All other mining operations would have remained the same as those of the proposed action.

7. Reduced Quantity Mining Concept Alternative

Under this alternative, mining activity would have progressed in a manner similar to the proposed action except that mining activity would have been curtailed after completion of up to 50 percent of Cut 3, which would have avoided the lowering of the northeast-southwest ridgeline that occurs through the completion of Cuts 3 and 4 of the proposed mining plan. This alternative involved mining 47 million tons of material to produce 32 million tons of sand and gravel, significantly lower than the contract amount.

8. No Action Alternative

With this alternative, no mining and reclamation plan would be approved at this time. Since the surface is privately owned, the property may be used for other purposes, but not for sand and gravel mining of the Federal resources. In its current state, there is an existing quarry as well as stockpiles at the project site. The no action alternative is the environmentally preferable alternative.

Alternatives Considered but Eliminated from Detailed Analysis

Several other alternatives were considered during scoping which were not analyzed in detail in the EIS because they were not feasible. These are summarized below.

Nine alternative potential mining sites were considered as sources of sand and gravel prior to selection of the Soledad Canyon site. Two potential mining sites north of Redlands in western San Bernardino County were dropped from consideration due to the presence of threatened and endangered species in the mining area and designation of the area by BLM as an Area of Critical Environmental Concern. Two sites near Corona in northern Riverside County were rejected due to presence of threatened and endangered species, and high royalty requirements relative to low material quality. Two sites in southern Orange County off Ortega Highway were dropped from consideration because of questionable material quality, impacts to sensitive habitats, and excessive distance from the primary target market, resulting in high hauling costs and excessive air quality impacts. A site near the town of Littlerock in Antelope Valley was determined infeasible also due to excessive distance from the primary target market. The Moorpark site in Ventura County is owned by TMC and was considered as an alternative; however, this site contains a high amount of sand (88 percent) and could not produce enough gravel without excessive mining to supply the primary target market. One

mining site in the Angeles National Forest was considered and then dropped from detailed analysis due to low material quality and lack of access.

Another mining concept considered production of 170 million tons of sand and gravel versus 56 million tons, by mining the entire ridge from the top down. Adverse impacts to most resources would have been incrementally greater than the 56 million ton alternative.

Another alternative proposed disposing of the excess fines at regional landfills rather than onsite. However, this would have resulted in significant impacts to public services since most landfills are near capacity and do not need fill material. Also, the impact of hauling fines to landfills on air quality and traffic would have been substantially greater, and was not considered economically feasible.

MANAGEMENT CONSIDERATIONS

After close examination of the findings of the analysis and the results of public review, and after consultation with other agencies and local governments, the Reduced North Fines Storage Area (NFSA) alternative, as modified, was selected because it provides for the economic development of an important mineral resource while reducing identified environmental impacts to an acceptable level. Mitigation measures have been adopted to ensure that all reasonable means to avoid or reduce environmental harm have been incorporated into the project as approved by this decision. This decision is consistent with the BLM's South Coast Resource Management Plan (1994), as well as Los Angeles County's zoning for the area. A summary of management considerations which includes economic, environmental and administrative factors considered is presented below.

Soledad Canyon has been an important commercial supply of minerals since the 1960's. The area is designated by the State and zoned by Los Angeles County for sand and gravel extraction and processing. Since the 1960's the area has supplied high quality mineral commodities for the Los Angeles market. Moreover, these mineral resources are extremely valuable since the market is located close to the production area, significantly reducing haul costs and air emissions.

The Soledad Canyon mining site is considered suitable for mineral extraction. The area is considered suitable for mineral extraction activities because it will:

- Provide a reliable and economically sound source of construction minerals primarily for development within the Santa Clarita Valley and the greater Los Angeles area.
- Develop a source of ready-mixed concrete for the Santa Clarita Valley.
- Develop construction mineral reserves in an area designated as a "Regionally Significant Construction Aggregate Area" by the State of California.
- Provide a minimum of \$28 million in royalty payments to the Federal government, with a portion to be shared with the State of California and Los Angeles County.
- Be located within a historic mining area.

Project helps meet aggregate supply need. The California Division of Mines and Geology (CDMG) in a 1994 Mineral Land Classification Report and in a 1999 Los Angeles Aggregate Resources Study estimates that:

- Current permitted reserves in the San Fernando Production-Consumption Region will be depleted by year 2001.
- Current permitted reserves in Los Angeles County will be depleted by 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.
- In 1997, 36 millions tons of aggregate were utilized in Los Angeles County (approximately 2.5 tons per person)
- 50 percent of all aggregate produced is for public works projects and is paid for using tax dollars.
- The average cost of a ton of aggregate doubles when hauled a distance of 35 miles.
- It takes as much as 200,000 tons of aggregate to build one mile of a eight-lane highway.

Considering these depletion rates and expected demand, if this project were not approved, these materials would have to come from more distant sources. This would increase the cost to taxpayers by as much as an additional \$3 to \$4 a ton in transportation cost and possibly even more due a decrease in supply. Therefore, additional taxpayer cost to use more distant sources would be \$75 to \$100 million dollars over the 20-year life of the project. A similar cost increase would accrue to private customers using sand and gravel resources.

The approximate time to bring a mine on line is six to nine years. The cost and time requirements of opening a new mine continue to increase. At a consumption rate of 36 million tons annually in Los Angeles County, the aggregate source at Soledad Canyon will help in preventing material shortages in the near future and will hold down construction cost for Los Angeles County public works projects.

Project as approved is in conformance with BLM land use plan. In accordance with Title 43 Code of Federal Regulations Part 1610.5-3, the project as approved is in conformance with the BLM's South Coast Resource Management Plan (June 1994). On page 16, the plan states: "Unless specifically prohibited by existing or future withdrawal, BLM split estate lands are available for mineral leasing, subject to application stipulations." No withdrawals are proposed or in effect in the project area.

Land use is consistent with State and County plans. The project site is located in a "Regionally Significant Construction Aggregate Resource Area," designated by the California State Mining and Geology Board per the Surface Mining and Reclamation Act of 1975 (SMARA). The project site is zoned M-2 for heavy manufacturing by the County. Mineral extraction is a permitted use for sites zoned M-2.

While the Los Angeles County Planning Commission voted on December 1, 1999 to deny TMC's permit request, that decision has been appealed to the Los Angeles County Board of Supervisors. As of the date of this ROD, no final determination on the project has been made by Los Angeles County.

Air quality Impacts are in conformance with Federal and State standards. The project as approved conforms with all applicable local, State and Federal laws, regulations and statutes pertaining to air quality. Notice of the final conformity determination was made to the applicable agencies and to the public on June 21, 2000. Both the South Coast Air Quality Management District and the Southern California Association of Governments (SCAG) concurred that the conformity determination was appropriate and that the project was consistent with the population and growth projections developed by SCAG and used in the 1994 State Implementation Plan and 1997 Air Quality Management Plan. On July 11, 2000, the U.S. Environmental Protection Agency also reviewed and concurred with BLM's final conformity determination for this project.

The project as approved includes a series of mitigation measures, based on modeling conducted in coordination with the South Coast Air Quality Management District, which reduce air quality impacts per National Ambient Air Quality Standards (NAAQS). Emissions below the NAAQS are considered safe, providing an adequate margin of safety to protect the public health and welfare, including risks associated with dust-induced respiratory ailments, specifically, Valley Fever, asthma, silicosis, and conjunctivitis.

Furthermore, BLM consulted with the Valley Fever Center for Excellence, located in Tucson, Arizona to determine relative risk of the Project site as a contributor to Valley Fever. It was concluded that this risk is low because the project is located largely in an area of previous disturbance and a relatively small amount of topsoil will be disturbed. Moreover, the project is located on the south side of the ridge, which receives strong, direct sunshine that destroys the viability of Valley Fever spores in topsoil.

Mitigation measures to reduce air quality impacts include minimizing truck idling, using a covered conveyor system to transport fines and minimize the use of trucks, watering at the site, using chemical dust suppressants, using reformulated, low-emission diesel fuel, and several others as specified in this ROD under Appendix A, Mitigation and Monitoring Program.

Public health and safety are protected. Although mining has occurred in Soledad Canyon since the 1960's, land use in the area has been changing over the past 10 years to accommodate increased suburban housing development. Of primary concern for BLM was whether or not a reasonable mining and reclamation plan could be developed without significantly affecting the health and safety of the current and future residents. Based on coordination and fact-finding with agencies and organizations including the South Coast Air Quality Management District, the U.S. Environmental Protection Agency, the SCAG, and the Valley Fever Center for Excellence, the project as approved, provides the best option for avoiding significant effects to the health and safety of the local residents, while still developing a valuable mineral resource.

In order to further minimize any potential hazards to public health and safety, a number of mitigation measures will be implemented, including: 1) Public access will be restricted to reduce potential for accidents by a) fencing the active mining area and posting signs restricting access to the project site, and b) installing a gate to the facility to control public access; 2) Strict compliance with all regulations and requirements of the Office of Safety and Health Administration, the Mine Safety and Health Administration, all applicable County 1994 Uniform Fire codes, and other applicable safety regulations and emergency plans; and 3) TMC will not remove topsoil on high wind days.

Water resources are protected. TMC has secured legal rights to utilize water from the alluvial aquifer of the Santa Clara River south of the project site to support the mining project. TMC has entered into a lease agreement with C.A. Rasmussen Co. allowing TMC to utilize Rasmussen's riparian rights to water. There are existing wells on the Rasmussen property that have been used to extract water in accordance with Rasmussen's riparian rights. TMC has also applied to the State Water Quality Control Board for a permit to appropriate additional water from the Santa Clara River.

A jurisdictional analysis of the project site by the U.S. Army Corps of Engineers (USACE) was requested by BLM on July 14, 2000 to ensure compliance with the Clean Water Act. The USACE concluded that the project would require a Section 404 permit, due to the presence of at least two small, unnamed ephemeral/intermittent streams which exhibit physical evidence of seasonal storm flow. Further discussions between BLM and the USACE concluded that the potential impacts to waters of the U.S. are not likely to be significant; therefore an EIS is not required for Section 404 review. In total, approximately half an acre of U.S. waters would be disturbed. Moreover, the FEIS concludes that no wetlands occur in the mining operation area and potential significant impacts to water quality will be avoided.

Traffic Impacts are minimized. Overall, the project as approved will generate 347 trucks making round trips from and to the site each day in the first 10 years, and increasing to 582 trucks in the second 10 years. During morning and afternoon peak traffic hours in the second 10 years of mining, 43 and 24 truck roundtrips to the Antelope Valley Freeway would be generated, respectively. These volumes are well below the 150 peak hour trip criteria per County guidelines from the 1997 Los Angeles County Traffic Impact Analysis Guidelines (Department of Public Works) and the Los Angeles Congestion Management Program, indicating that the project would not significantly impact the freeway system. Currently, the California Department of Transportation estimates there are 76,000 average daily trips on the Antelope Valley Freeway during a typical workday. The project (using the highest number of trucks estimated and factoring in the impacts of trucks vs. passenger vehicles) would increase this volume by about 1.5 percent. Traffic additions to freeways beyond the Antelope Valley Freeway as a result of the project would be less than in the immediate area, and are therefore also well below the Los Angeles CMP impact thresholds.

Adverse impacts to threatened and endangered species and their habitat minimized. Consistent with the Biological Opinion (BO) for this project (FWS #1-8-96-41), a BLM-approved Habitat Protection Plan outlines mitigation measures and a monitoring program to protect sensitive ecological habitats in the project vicinity, including unarmored threespine stickleback habitat (UTS; *Gasterosteus aculeatus williamsoni*). Specifically, TMC must cease or curtail water extraction if two of four action levels are exceeded. These action levels include water temperature, oxygen level, stream depth and stream flow. In addition, TMC will be bound by permit conditions of its SWRCB permit to appropriate water, as well as the terms of the Water Shortage Contingency Plan submitted to the SWRCB Division of Water Rights.

In addition, several recent listings and critical habitat proposals or designations have been made since the BO was issued. Descriptions of those listings and designations and their relationship to the project follow.

The Santa Ana sucker, which was federally listed as threatened on April 12, 2000, occurs in various locations along the Santa Clara River upstream from River's End Trailer Park, which is at the west end of the proposed mining site. The Santa Clara River population was excluded from the Federal listing because it is considered to be an introduced population. Therefore, the provisions of Section 7 of the Endangered Species Act are not applicable to this population.

The coastal California gnatcatcher was listed as an endangered species on March 30, 1993, and 15 critical habitat units were proposed for this species on February 7, 2000. There are no known occurrences of the coastal California gnatcatcher on the project site and it is considered to have low potential for supporting this species. The nearest proposed critical habitat unit is approximately two miles from the project site. BLM has therefore determined that the activities associated with the Soledad Canyon mining project will have no effect on the coastal California gnatcatcher or its proposed critical habitat.

The arroyo southwestern toad was listed as an endangered species on December 16, 1994, and 21 critical habitat units were proposed for this species on February 16, 2000. There are no known occurrences of the arroyo southwestern toad on the project site. The closest proposed critical habitat unit is the upper Santa Clara River unit, which includes a reach of the Santa Clara River from Bee Canyon downstream to the confluence with Castaic Creek. The proposed upper Santa Clara River critical habitat unit is more than one mile downstream from the project site. Because of the measures prescribed in FWS #1-8-96-F-41 to maintain water quality and quantity in the immediate vicinity of the project site, BLM has determined that the activities associated with the Soledad Canyon mining project will not destroy or adversely modify proposed critical habitat for the arroyo southwestern toad.

The Southern California Evolutionarily Significant Unit (ESU) of steelhead was listed as an endangered species on August 18, 2000, and critical habitat was designated for this

ESU on February 16, 2000. Six hydrologic units were designated as critical habitat for the Southern California ESU, including one (Hydrologic Unit #18070102) for the Santa Clara River system. Primary constituent elements for the designated critical habitat include: spawning sites, food resources, water quality and quantity, and riparian vegetation.

The nearest known occurrence of steelhead in the Santa Clara River system is more than 30 miles downstream from the project site in Ventura County. Because of the long distance between the nearest occupied habitat and the project site, the intermittent nature of the Santa Clara River downstream from the project site (the riverbed is dry for several months of the year from Mint Canyon to Interstate 5), and the measures prescribed in FWS #1-8-96-F-41 to maintain water quality and quantity in the immediate vicinity of the project site, BLM has determined that the activities associated with the Soledad Canyon mining project will have no effect on the Southern California steelhead ESU or its designated critical habitat.

Blasting impacts are minimized. In order to efficiently excavate the tightly compacted sand and gravel conglomerate, a program of low-yield blasting will be implemented to loosen the material. Commentators raised concerns about blasting impacts.

The effects and characteristics of blasting have been studied by various researchers and governmental agencies, and standards have been established to limit the effects that blasting may have on surrounding areas. The three main effects that potentially result from blasting include ground vibration, airblast and flyrock. The Department of the Interior, Office of Surface Mining Reclamation and Enforcement (OSMRE) addresses these aspects in regulations developed to provide adequate protection to receptors. Due to the placement of charges underground, and the brief duration of the blast, blasting events will not significantly raise the community noise equivalent level. Overall, blasting noise impacts will be minimal.

Analyses presented in the FEIS concluded that blast induced ground vibrations are well below the vibration significance criteria, resulting in an impact that would not damage residential structures. However, TMC will be required to conduct a public awareness program that notifies local residences and businesses within a half mile of the blast of the blasting schedule and other facets related to blasting.

Compliance with OSMRE standards for blasting operations will provide adequate protection to receptors from airblast and flyrock. The intervening ridgeline at the project site will also substantially minimize any airblast impacts. Compliance with the OSMRE standards will reduce potentially significant impacts to less than significant, and is required as a condition of approval for this Project by BLM.

Visual Impacts are reduced. The project as approved will reduce significant visual impacts by requiring mitigation measures that will result in the ridgeline being lowered by 80-150 feet rather than 120-230 feet as in the original proposed action. Mitigation measures such as 1) concurrent reclamation/revegetation, and 2) recontouring to mimic existing topography, will help to reduce and minimize these impacts. The visual impact of lowering the local ridge line is not mitigable to less than significant; however after reclamation over time, these mitigation measures will help to reduce the significance of these impacts. An additional mitigation measures includes the use of specially designed lighting systems to direct lights to specific areas, thus preventing stray lighting from spilling onto surrounding areas or upward.

Cultural resources and historic properties avoided. The project site was surveyed in compliance with BLM Class III level standards CEQA, and a report was subsequently produced by Roderic McLean in 1990 titled "A Cultural Resource Assessment of a 460-Acre Parcel in Soledad Canyon, California" published in Santa Ana, California by Chambers Group Inc. The report identified and recorded two historic period archaeological sites. One site was determined to be outside the area of potential effect, and a determination of eligibility is not required. The other site is located within the area of potential effect. Upon review of the information contained in the report, BLM concluded that no associative values were identified in the cultural resources study, and the informative values are considered limited and not significant. This site was determined to be not eligible for the National Register of Historic Places. Therefore, the BLM determines that there will be no historic properties affected by this project (See Appendix D).

PUBLIC INVOLVEMENT

Opportunities for Public Participation

The BLM made a diligent effort to involve the public throughout the environmental review process. The public was formally notified of BLM's intent to prepare an Environmental Impact Statement (EIS) for the proposed Soledad Canyon sand and gravel mining Project on October 16, 1995 when notice was published in the *Federal Register*. A BLM news release was also issued to local media organizations on October 25, 1995. Following identification of issues during the public scoping process, consultation with appropriate agencies, and gathering of detailed resource data, preparation of the Draft EIS was initiated.

On May 6, 1999, BLM published the draft EIS on the proposed mining and reclamation plan filed by TMC. That publication initiated a 60-day public comment period through July 5, 1999, which was later extended in response to public requests until September 13, 1999 to coincide with the closing of the County's public comment period. The County's comment period was conducted based on a separate draft Environmental Impact Report (EIR) which was prepared in accordance with the CEQA.

During the Federal public comment period, BLM held two public hearings on June 2, 1999 at Sulphur Springs Elementary School in Canyon Country, California. The testimony received at these public hearings was recorded and transcribed. Those transcriptions, along with BLM's responses to the issues raised through public comment, are included in the final EIS.

After careful review of these comments, BLM decided to prepare and publish a supplemental draft EIS to further analyze issues raised by the public, particularly air quality impacts, and to analyze a new mitigation measure to transport fines material to an onsite storage area via a conveyor belt system rather than open trucks as originally proposed. During the preparation of the supplement, BLM extended the public comment period on the draft EIS until the supplement was published and underwent full public review. That supplement was completed and published November 17, 1999, and BLM accepted public comments on both the supplement and draft EIS until January 10, 2000. All comments received on both documents were printed in the final EIS, along with BLM's responses to each issue raised.

BLM also included in the final EIS all public comment letters received during the public comment period of the draft EIR, and the transcripts of public hearings held by the Los Angeles Planning Commission on April 21, 1999, May 11, 1999, July 14, 1999, and September 22, 1999.

The final EIS included BLM's official response to each public land issue raised through the County's EIR process. The final EIS was published on June 2, 2000.

Subsequent to publication of the final EIS, BLM received a number of additional comments from private citizens, local organizations, and other government entities. No significant new issues or information were identified that would require preparation of a supplemental EIS. These comments addressed BLM's coordination with other Federal, State, and local governments and the administrative appeal process. Clarification of these matters is provided below.

Interagency Coordination

As part of the environmental review process, BLM coordinated with the U.S. Army Corps of Engineers, the U.S. Environmental Protection Agency (EPA), the South Coast Air Quality Management District, and the Southern California Association of Governments (SCAG). SCAG concluded that the final EIS appropriately considered its comments on the draft EIS and had no further comments. SCAG also noted that the final EIS was regionally significant per Areawide Clearinghouse criteria and published a description of the Project in the June 15, 2000 Intergovernmental Review Report. EPA concurs with BLM's conformity determination and cited prior letters from SCAG and the South Coast Air Quality Management District. BLM consulted with Army Corps, resulting in a determination that the project is subject to Army Corps' jurisdiction and that a 404 permit would be required.

Coordination with County of Los Angeles

BLM and the County of Los Angeles coordinated during preparation of their respective environmental review documents. The County's draft EIR and BLM's draft EIS were released concurrently for public review. BLM extended the public comment period on the draft EIS to coincide with the County's deadline for comments on their EIR of September 13, 1999. BLM extended the deadline again until January 10, 2000 upon issuance of the supplement. The final EIS included all public comments received on the draft EIR and as well as the draft EIS and supplement. This includes all oral comments received at the Los Angeles County Regional Planning Commission hearings and the BLM public meeting held on June 2, 1999. Los Angeles County has not made a final decision on the project, and the matter is currently pending before the Los Angeles County Board of Supervisors.

ADMINISTRATIVE APPEALS PROCESS

This decision may be appealed to the Interior Board of Land Appeals, Office of the Secretary, in accordance with the regulations contained in 43 Code of Federal Regulations, Part 4.

Notice of appeal

A notice of appeal must be filed with the BLM's California Desert District Office, 6221 Box Springs Boulevard, Riverside, California, 92507 within 30 days from the date public notice of this decision is published in the *Federal Register*. A copy of the notice must also be filed with the Office of the Regional Solicitor, U.S. Department of the Interior, 2800 Cottage Way, Room E-1712, Sacramento, California 95825.

An appellant has the option of filing the statement of reasons together with the notice of appeal or filing a separate statement of reasons for appealing within 30 days as described further below.

The appellant has the burden of showing that the Federal decision is in error.

Petition for a stay

If any appellant wishes to file a petition for a stay (suspension) of the effectiveness of this decision during the time the appeal is being reviewed by the Board pursuant to Part 4, Subpart B, § 4.21 of Title 43, Code of Federal Regulations, the petition for a stay must accompany the notice of appeal. A petition for a stay is required to show sufficient justification based on the standards listed below. Copies of the notice of appeal and petition for a stay must be submitted to the Interior Board of Land Appeals, Office of the Secretary, 4015 Wilson Boulevard, Arlington, Virginia 22203 and the Office of the Regional Solicitor, U.S. Department of the Interior, 2800 Cottage Way, Room E-1712, Sacramento, California 95825 at the same time the original documents are filed with the BLM's California Desert District Office cited above.

If the appellant requests a stay, he or she has the burden of proof to demonstrate that a stay should be granted. Except as otherwise provided by law or other pertinent regulations, a petition for a stay of a decision pending appeal shall show sufficient justification based on the following standards: 1). The relative harm to the parties if the stay is granted or denied; 2). The likelihood of the appellant's case succeeding on the merits; 3). The likelihood of immediate and irreparable harm if the stay is not granted; and 4). Whether the public interest favors granting the stay.

Statement of reasons

If an appellant chooses not to provide his or her reasons for appealing at the time the notice of appeal is filed as explained above, a statement of reasons must be filed with the Interior Board of Land Appeals within 30 days after filing the notice of appeal. A copy of the statement of reasons must also be filed with the Office of the Regional Solicitor, U.S. Department of the Interior, 2800 Cottage Way, Room E-1712, Sacramento, California 95825. If the appellant fully stated his or her reasons for appealing when filing the notice of appeal, no additional statement is necessary.

APPENDICES

Appendix A
Mitigation and Monitoring Program

**Appendix A: MITIGATION and MONITORING PROGRAM
SOLEDAD CANYON SAND AND GRAVEL MINING PROJECT**

No.	Mitigation Measure Description	Time Frame For Implementation	Monitoring Agency	Verification/ Monitoring Action	Timing of Verification
Geotechnical					
G1.	Slope stability in the North Fines Storage Area (NFSA) will be obtained by constructing 2:1 (horizontal to vertical) slopes at 75 percent relative compaction and compacting the outer 30 feet of material on the slope to 80 percent relative compaction. To mitigate the potential for surficial instability, the outer 10 feet of the proposed fill slopes will be constructed with a soil material having minimum strength characteristics of cohesion equal to 175 pounds per square foot (psf) and angle of internal friction equal to 35 degrees or some other alternative soil strength combination that will result in the minimum factor of safety of 1.5.	During mining	County of Los Angeles Department of Public Works	Site Plan review by Agency. Periodic testing of fill materials to verify strength parameters of fill soil and relative compaction by TMC and reported to agency.	At regular intervals throughout Project lifetime after NFSA construction begins
G2.	Fill slope stability in the Cut 1 fill area will be obtained by constructing 2:1 (horizontal to vertical) slopes and by achieving 75 percent relative compaction. Benches will be constructed at 15-foot-wide and 90-foot vertical intervals. To mitigate the potential for surficial instability, the outer 10 feet of the proposed fill slopes will be constructed with a soil material having minimum strength characteristics of cohesion equal to 175 psf and angle of internal friction equal to 35 degrees or some other alternative soil strength combination that will result in the minimum factor of safety of 1.5.	During mining	County of Los Angeles Department of Public Works	Site Plan review by Agency. Periodic testing of fill materials to verify strength parameters of fill soil and relative compaction by TMC and reported to Agency.	At regular intervals throughout Project lifetime after Cut 3 filling begins
G3.	Ultimately, the former gravel pit high walls will be altered to a 1.15:1 (horizontal to vertical) slope using 15-foot-wide benches at 100-foot vertical intervals. The bottom of the pit walls on the west, north, and northeast sides will be buttressed with fill to provide a buffer zone and increase slope stability.	During mining	County of Los Angeles Department of Public Works	Site Plan review by Agency and periodic testing of fill materials to verify strength parameters of fill soil and relative compaction by TMC and reported to Agency.	At regular intervals throughout Project lifetime
G4.	To achieve suitable factors of safety for cut slopes, the following mitigation is presented. For the cut slopes at the northeast portion of the mining area, overall inclinations of the slopes will be flattened from 1.15:1 to 1.25:1. For the cut slopes at the far northeast portion of the mining area, the overall inclinations of the slopes will be flattened from 1.15:1 to 1.30:1.	During mining	County of Los Angeles Department of Public Works - Building and Safety	A California-registered engineering geologist shall periodically monitor the cut slope process.	At regular intervals throughout Project lifetime

G5.	Interim mining cuts will be constructed using 35-foot-wide benches over 35-foot elevational changes during the removal of the native material while controlling surface runoff and erosion.	During mining	County of Los Angeles Department of Public Works	A California-registered engineering geologist shall periodically monitor the process.	At regular intervals throughout Project lifetime
G6.	The mining activity will be regularly monitored throughout the life of the Project by a California registered civil engineer or engineering geologist, and periodic testing of the fill materials will be performed to verify strength parameters of the fill soil and relative compaction. The mine operator will maintain all records of correspondence, reports, and designs provided by the registered professional.	During mining	County of Los Angeles Department of Public Works	The following monitoring actions shall be performed under the direction of a California-registered civil engineer or engineering geologist: 1) Periodic testing of fill materials to verify strength parameters of fill soil and relative compaction, 2) Verification of compliance with Mitigation Measures G1, G2, G3, G4, G5, and G7	At regular intervals throughout Project lifetime
G7.	Proposed mining and reclamation specifications and procedures will be in accordance with the County of Los Angeles Planning and Zoning Code, Title 22, Part 9, Chapter 22.56 surface mining permits.	Project startup and during mining	County of Los Angeles Department of Public Works	Site Plan and Reclamation Plan review by Agency and approval and periodic testing of fill materials to verify strength parameters of fill soil and relative compaction by TMC and reported to Agency.	Site Plan and Reclamation Plan review and approval are a condition of approval prior to construction Periodic testing shall be carried out at regular intervals throughout Project lifetime

Water Resources					
WR1.	TMC will conduct a monitoring program for water resources and sensitive ecological habitats in the immediate vicinity of the Project. The Habitat Protection Plan will include the following components:	Project startup and during mining	State Water Resources Control Board (SWRCB)	Habitat Protection Plan review and approval	Condition of Approval and throughout Project lifetime
	<p>a) Four existing monitoring wells will be maintained to monitor water levels of the Santa Clara River underflow during the life of the Project.</p> <p>b) Surface flows of the Santa Clara River will be monitored during the life of the Project at a location(s) to be determined in conjunction with Responsible Agencies prior to the start of mining.</p> <p>c) The riparian and aquatic habitat in the immediate vicinity of the site will be monitored as detailed in the habitat protection plan presented in Appendix F6 of the FEIS.</p> <p>d) The Habitat Protection Plan contains action levels that will trigger adjustments to mining operations to reduce Project water consumption to avoid significant degradation of the ecologically sensitive habitats attributable to the Project. Operational adjustments will include one or more of the following: a) Seasonal sand and gravel production adjustments through stockpiling materials, b) seasonal management of concrete production, c) stockpiling fines temporarily to eliminate water used in the compaction process, d) increased use of dust palliatives for dust control, e) temporary reduction or cessation of pumping of river underflows, and f) cessation of mining operations, if necessary.</p>			Periodic site visits	

Flood					
F1.	The Project will include construction of seven desilting/debris basins according to the specifications of the Drainage Concept Plan to control surface runoff and sedimentation. During final design, the Applicant shall submit detailed plans for the debris basins including a static and seismic slope study that analyzes all proposed debris basin slopes greater than 3:1 gradient. Plans shall be approved by the DPW prior to the commencement of grading work on the project.	Before project work or mining commences in the catchment area above each watercourse	County of Los Angeles Department of Public Works	Desilting/debris basin design review and approval	Condition of Approval prior to construction
F2.	A 45-inch culvert will be installed under Soledad Canyon Road to accommodate existing runoff conditions as well as conditions for the Project. Construction of desilting/debris Basin 2E and the addition of the 45-inch-diameter culvert under Soledad Canyon Road are Project design features that result in beneficial impacts by correcting inadequate existing conditions.	Project startup	County of Los Angeles Department of Public Works	Design review and approval	Prior to construction
F3.	Proper maintenance and cleaning of erosion control facilities and desilting/debris basins will be conducted as part of the Project operations. Inspection frequencies and maintenance procedures are required by the Stormwater Pollution Prevention Plan (SWPPP) (see Appendix B1 FEIS). These procedures are detailed in the Storm Water Management Practices section of that plan. The following provision will be added to the SWPPP: stormwater desilting/debris basins will be inspected after every storm event and every 24 hours during prolonged storm events. Prevention of spills of hazardous materials, such as petroleum fuels and products, is addressed in the Spill Prevention Control and Countermeasures Plan (SPCCP) (see Appendix B2 FEIS).	During mining	County of Los Angeles Department of Public Works	Monthly inspection of stormwater and erosion control facilities for compliance with SWPPP, by TMC and reported to Agency. Inspections of stormwater desilting/debris basins after every storm event and every 24 hours during prolonged storm events for compliance with SWPPP by TMC and reported to Agency.	Monthly, throughout Project lifetime After every storm event and every 24 hours during prolonged storm events throughout Project lifetime

Water Quality					
WQ1.	The proposed Drainage Concept Plan will be implemented by TMC. The drainage concept establishes a drainage plan and facility requirements for the project and provides the design parameters for the location, sizing, and scheduling of the erosion control facilities to handle the runoff, sedimentation, and debris flows generated by the Project. The plan addresses drainage during the premining road construction and grading phase, during the mining operation, and after completion of mining.	Project startup and during mining	County of Los Angeles Department of Public Works - Hydraulic/Water Conservation Division	Desilting/debris basin design review and approval by Agency.	Condition of Approval prior to construction, and throughout Project lifetime
WQ2.	TMC will implement provisions of the SWPPP. The SWPPP (1) identifies potential sources of pollutants that will adversely affect stormwater discharges from the site and (2) describes in detail specific best management practices to reduce the levels of pollutants in stormwater discharges. Key elements of the SWPPP include a preventive maintenance program for vehicles and the stormwater conveyance systems, a system of good housekeeping measures to control contamination of runoff, and a system of desilting/debris basins designed for settling out excess suspended sediments in the site runoff, thus controlling downstream sedimentation.	Project startup and during mining	County of Los Angeles Department of Public Works CRWQCB - Los Angeles Region	SWPPP review and comment by Agency. Monthly inspection of stormwater facilities for compliance with SWPPP by TMC and reported to Agency.	Condition of Approval prior to construction and throughout Project lifetime

WQ3.	<p>TMC will implement provisions of the SPCCP. Use of secondarily contained aboveground storage tanks (ASTs) to hold dust palliative, diesel fuel, waste oil, fresh motor oil, and hydraulic fluid onsite will minimize exposure of these products to surface water and groundwater. As previously stated, the risk of undetected leaks is much smaller with ASTs than with underground storage tanks (USTs). Additionally, the SPCCP identifies procedures and controls that will be implemented over the life of the Project to prevent and minimize the release of chemicals into the area's surface waters. The SPCCP's main focus is storage of diesel, hydraulic oil, motor oil, and waste oil in all ASTs having capacities of greater than 55 gallons (no USTs are planned for the facility). However, areas of the site designated for storage of smaller volumes of potentially hazardous materials (e.g., solvents and cleaners) are also covered in the SPCCP. General compliance requirements relating to facility operations that are addressed in the SPCCP include spill response, leaks and malfunctions, rainwater accumulation, inspection, changes, training, and record keeping.</p>	Project startup and during mining	<p>County of Los Angeles Department of Public Works</p> <p>CRWQCB - Los Angeles Region</p>	<p>SPCCP review and comment by Agency. Annual inspection of ASTs and spill containment facilities for compliance with SPCCP by TMC and reported to Agency.</p>	<p>Condition of Approval prior to construction and throughout Project lifetime</p>
WQ4.	<p>The proposed onsite sanitary septic tank leach field will be built following County review and approval of the location to ensure that there will be no possible impact on water quality. If an appropriate onsite location for the leach field is not found because of the presence of impermeable soils, fractured rock, or other geotechnical limitations, TMC will install a septic tank onsite that is designed for routine pumpout.</p>	Project startup	<p>County of Los Angeles Department of Public Works</p>	<p>Site visit, review and testing for suitable location of septic tank leach field</p>	<p>Prior to construction</p>
WQ5.	<p>Desilting/debris basins will not be removed until disturbed areas have been successfully revegetated.</p>	<p>During mining and following mine closure</p>	<p>County of Los Angeles Department of Public Works</p>	<p>Site visit and review following each reclamation phase/ prior to removal of associated sediment retention basin</p>	<p>Prior to removal of sediment retention basins</p>

No.	Mitigation Measure Description	Time Frame For Implementation	Monitoring Agency	Verification/Monitoring Action	Timing of Verification
Notes					
N1.	<p>The Applicant will conduct blasting operations in general conformance with the federal OSMRE regulations as stated in 30 CFR, Chapter VII, Sections 816.61 through 816.88, and other applicable regulations. Conformance shall be demonstrated through preparation of a detailed Blasting Plan identifying project compliance with the stated requirements (as minimum standards) and through monitoring of blasting activities. The Blasting Plan shall be reviewed and approved by the County prior to conducting any blasting onsite. The Blasting Plan shall provide for the following:</p> <ol style="list-style-type: none"> a. Submission and approval by the County of the specific blast design prior to blasting, where such blasting will occur within 1,000 feet of habitable buildings outside the permit area. b. Conducting a public awareness program, including notification of all residents within mile of any part of the permit area of the opportunity to request a preblast survey. The notification is to be done at least 30 days prior to initiation of blasting. A TMC information officer who can be contacted by telephone for information will be designated. c. Publication of the anticipated blasting schedule at least 10 days prior to the beginning of the blasting program via a newspaper of general circulation in the Project area and by direct mail to residents within mile, and republication at least every 12 months or whenever substantive changes to the schedule are to be implemented. d. Placement of warning signs and access controls to blast areas. e. Incorporation of the provision that blasting shall be conducted to prevent injury to persons, damage to public or private property outside the permit area, adverse impacts on any underground mine, and change in course, channel, or availability of surface or groundwater outside of the permit area. 	Project startup and during mining	<p>County of Los Angeles Department of Public Works</p> <p>Office of Surface Mining Reclamation and Enforcement (OSMRE)</p> <p>Mine Safety and Health Administration (MSHA)</p>	<p>The Blasting Plan is subject to review and approval by the LADPW, OSMRE, and MSHA</p> <p>Specific blast designs are subject to LADPW approval</p>	Prior to blasting operations

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| | <p>f. Conducting blasting so that the maximum air overpressure shall not exceed 133 dB (2-Hz minimum) measured directly between the nearest occupied residence and the blast site (ref. U.S. Bureau of Mines Report of Investigations 8485 (1980) "Structure Response and Damage Produced by Airblast from Surface Mining").</p> <p>g. Conducting blasting so that the peak particle velocity generated from any blast shall not exceed 0.5 in/sec for vibration frequencies below 40 Hz, and 2.0 in/sec for vibration frequencies of 40 Hz or more, measured directly between the nearest residence and the blast site (U.S. Bureau of Mines 1980b). Other methods of determining acceptable particle vibration such as the use of scaled-distance equations shall be allowed subject to approval by the County.</p> <p>h. Conducting periodic monitoring offsite to ensure compliance with airblast and vibration standards and provide a seismograph record of each blast. Monitoring shall be conducted at a representative residential receptor and at a representative location adjacent to the Santa Clara River riparian habitat.</p> <p>i. Controlling flyrock at the blast site in accordance with OSMRE regulations. That is, flyrock traveling in the air or along the ground shall not be cast from the blasting site.</p> <p>j. Maintain records as specified by the County of all blasts for a minimum 3-year period.</p> <p>k. Identification of conditions when blasting will be curtailed, including atmospheric conditions that are conducive to transmission and amplification of noise offsite, and/or conditions conducive to the transport of high levels of fugitive dust emissions offsite. The Blasting Plan will identify such conditions where blasting is to be curtailed by the Applicant. The program shall also specify the candidate control measures specifically aimed at reducing blasting fugitive emissions.</p> <p>l. Identification of other parameters affecting blasting such as the regulatory requirement that blasting be conducted during daylight hours. Blasting shall be prohibited on Sundays and specified holidays.</p> <p>m. Implementing specific measures to prevent nitrate contamination of surface and</p> | | | | |
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N2.	Based on the proposed lot configurations of the proposed Bee Canyon Mobile Home Park, trailers located west of the westernmost boundary of the TMC Project may be subject to significant noise during Mining Cut 3 operations. If the Bee Canyon Mobile Home Park is constructed, the noise impact will be reduced to less than significant by constructing berms or cut slopes to shield lots from direct noise exposure as confirmed through acoustic evaluation (based on final grading contours of the Bee Canyon project). It is anticipated that these measures would be applicable only if the Bee Canyon Park were actually constructed. If a soundwall is to be constructed, a detailed study will be conducted by qualified personnel in the fields of structural engineering, environmental noise assessment, and architectural acoustics.	Prior to implementation of Cut 3 if Bee Canyon Mobile Home Park is constructed.	County of Los Angeles Department of Public Works	Berm design review and approval	Once, prior to implementation of Cut 3 if Bee Canyon Mobile Home Park is constructed
N3.	At the River's End Trailer Park and the Bee Canyon Mobile Home Park, if constructed, soundwalls or berms will be constructed adjacent to affected lots to mitigate offsite truck transportation noise.	Prior to Project Implementation	County of Los Angeles Department of Public Works	Berm design review and approval	Once, prior to Project Implementation

Public Services					
PS1.	Fire prevention training for all employees will be conducted based on Cal-OSHA standards, and fire prevention equipment will be available onsite.	Throughout project	Occupational Safety and Health Administration (OSHA) Los Angeles County Fire Department (LACFD)	The Project site shall be subject to unscheduled visits by OSHA and/or LACFD inspectors to ensure compliance with the fire prevention regulations	At any given time during Project construction and mine operations
PS2.	No explosives will be stored onsite.	During mining	OSHA LACFD	The Project site shall be subject to unscheduled visits by OSHA and/or LACFD inspectors to ensure compliance with the fire prevention regulations	At any given time during mine operations
PS3.	The water storage facilities onsite will be accessible to fire equipment by an all weather road capable of supporting 50,000 pounds. The road width should be a minimum of 26 feet within 25 feet of either side of the tank connection.	During mining	LACFD	The Project site shall be subject to unscheduled visits by LACFD inspectors to ensure compliance with the fire prevention regulations	At any given time during mine operations
PS4.	The water storage tanks should have a 4 inch and 2.5 inch outlet with National Standard threads. These outlets should be no more than 6 feet from the road.	During mining	LACFD	The Project site shall be subject to unscheduled visits by LACFD inspectors to ensure compliance with the fire prevention regulations	At any given time during mine operations
PS5.	The minimum road width shall be 20 feet throughout the mining operation and must reach to within 150 feet of all buildings and equipment.	During mining	LACFD	The Project site shall be subject to unscheduled visits by LACFD inspectors to ensure compliance with the fire prevention regulations	At any given time during mine operations
PS6.	Grades on gravel roads should not exceed 10 percent. If they are paved, then a 15 percent grade is acceptable.	During mining	LACFD	The Project site shall be subject to unscheduled visits by LACFD inspectors to ensure compliance with the fire prevention regulations	At any given time during mine operations
PS7.	Turnarounds should be provided on any road that exceeds 300 feet or one every 0.25 mile to 0.5 mile. The minimum radius is 32 feet.	During mining	Los Angeles County Fire Department (LACFD)	The Project site shall be subject to unscheduled visits by LACFD inspectors to ensure compliance with the fire prevention regulations	At any given time during mine operations

PS8.	A minimum 200-foot fuel break will be provided around any mining operation.	During mining	LA
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Appendix B

Contracts for the Sale of Units of Materials

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

OFFICE: PALM SPRINGS-SOUTH COAST
RESOURCE AREA

CONTRACT NO: CA-22901

CONTRACT FOR THE SALE OF UNITS OF MATERIALS.

This agreement is made under authority of the act of July 31, 1947 (61 Stat. 681) as amended (30 U.S.C. 601-604) and the regulations thereunder set forth in 43 CFR, Group 3600, between the United States of America (hereinafter called the "Government"), acting through the Authorized Officer of the Bureau of Land Management (hereinafter called the "Authorized Officer"), and Transmix Corporation. (hereinafter called the "Purchaser").

Witnesseth, That the parties hereto mutually agree as follows:

- Sec. 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 of the day after expiration of Contract Serial No. 20139 between the Purchaser and the Authorized Officer.
- Sec. 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 the following-described lands situated in the County of Los Angeles, State of California.

Township: 4 North, Range 14 West, SB Meridian,

Section 1: Lot 2, SW 1/4 NE 1/4, NW 1/4 SE 1/4, SW 1/4 SE 1/4
Section 9: SE 1/4 NE 1/4, NE 1/4 SW 1/4, S 1/2 SW 1/4, SE 1/4
Section 12: NW 1/4 NE 1/4
Section 16: NW 1/4 NE 1/4, N 1/2 NW 1/4

Containing: 640.16 acres more or less.

- Sec. 3. Amount and price of materials - The total purchase price shall be determined by multiplying the total quantity of each kind of mineral material designated by the respective unit price as set forth below, or as changed through reappraisal hereunder.

Kind of Materials	Quantity	Price per unit	Total
Sand and Gravel	42,160,000 short tons	\$0.50	\$21,080,000

The contract measure will be based on a truck loaded ton of finished product (at scale).

Determination by the Authorized Officer of the quantity of materials taken shall be by weight and shall be binding on Purchaser subject to appeal only as provided in Sec. 8.

Sec. 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. No part of the materials sold hereunder shall be severed, extracted, or removed by Purchaser until advance payment for such materials has been made in accordance with the following.

- 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.

Each additional installment payment shall become due and payable without prior notice whenever the value of materials severed or extracted hereunder shall equal the sum of the first and subsequent installments already paid by the Purchaser, or on the anniversary date of the previous installment payment, whichever is sooner.

The total purchase price shall equal the sum of the total quantities severed and removed or designated for severance and removal under the terms of this contract, multiplied by the royalty rate in effect at the time advance payment is made. The balance due where less than a full installment remains to be paid upon the "total price," will be the value of material remaining to be severed and removed for which advance payment has not already been made. The total purchase price must be paid prior to sixty (60) days before expiration date of the contract.

If any additional installment payment is not made by the time required under this section, operations under contract shall be suspended immediately and no materials may be removed from contract area during the period of such suspension. Materials severed, extracted, or removed during any such period of suspension shall be deemed taken in trespass and be charged to and paid for by Purchaser at triple the unit contract price therefor, or at triple the reappraised unit price if a reappraisal has been made. Resumption of taking will be authorized in writing, by the Authorized Officer only after such required payments have been made. Any suspension under this section shall not be added to the period of the contract.

- b) Risk of loss - Purchaser shall assume complete risk of loss for all materials, title to which has passed. If material covered by this contract, title to which has not passed, is damaged or destroyed, Purchaser shall be liable for all loss suffered if Purchaser, his contractors, or subcontractors, or employees of any of them, are directly or indirectly responsible for the damage. If such material is damaged or destroyed without fault on their part, Purchaser shall be liable for loss sustained to the extent that it is caused by his failure to sever, extract, or remove the damaged material under the circumstances and terms of this contract except that nothing herein shall be construed to relieve either party from liability for breach of contract or any wrongful or negligent act.
- c) The price per short ton of finished product for which payment is made shall be reappraised 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), and will be the higher of either the original royalty bid of \$0.50 per short ton or the market value as established by appraisal.

- d) Refunds or credits will be made to the Purchaser as permitted by the regulations set forth in 43 CFR Section 3610.1-4.

Sec. 5. Bonds -

- a) The Purchaser shall within the 30 day period after receipt of this contract file with the Authorized Officer and shall maintain at all times the bonds required under the regulations in 43 CFR 3610.1-5 to be furnished as a condition to the issuance of this contract in the amount of twenty per cent of the fair market value of the total contract amount.
- 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. Upon satisfactory performance of this contract, the bonds shall be canceled, or if cash or United States bonds were furnished in lieu of a surety bond, such cash or securities shall be returned to Purchaser.
- c) Whenever any bond furnished under this contract is found unsatisfactory by the Authorized Officer, he or she may require a new bond which is satisfactory to him or her.

Sec. 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.

Sec. 7 Equal opportunity clause - This permit is subject to the provisions of Executive Order No. 11246 of Sept 24, 1965, as amended, which sets forth the nondiscrimination clauses. A copy of this order may be obtained from the signing officer.

Sec. 8 Appeal - An appeal from a decision by the Authorized Officer may be made pursuant to 43 CFR Part 4 and to the Interior Board of Land Appeals (IBLA).

Sec. 9 Special clauses and reserved items - The rights of Purchaser shall be subject to the regulations in 43 CFR Group 3600, (which are made a part of this contract), and the following stipulations marked Exhibit A, which are attached hereto and made a part hereof. The attached stipulations appear as 1 page hereafter.

Tally weight tickets will be required to be furnished to the Authorized Officer. Weights will be made of finished product at certified scales at the pit site or another point approved by the Authorized Officer. All tickets must show the material weight, time of weighing and weighmaster's signature, and shall also include gross weight, tare weight and calculated net weight unless another method of the weighing is approved by the Authorized Officer. All weights will be attached to a monthly reporting form (Exhibit B). Each report form and attached weight tickets shall be sent to the Authorized Officer no later than 10 days after the report month.

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.

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 of such municipal, state, federal, or other governmental bodies; 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.

In Witness whereof, the parties hereto have executed this contract as the day first above written.

Purchaser

The United States of America

Transmix Corporation

(Individual or firm name)

4760 Valley Boulevard

Los Angeles, California 90032

(Address)

Daniel A. Pelton

(Signature)

March 8, 1990

(Date)

Kenneth Walden
(Authorized Officer)

Area Manager
(Title)

3/9/90

(Date)

If this contract is executed by a corporation, it must affix its corporate seal.

EXHIBIT A

Special Stipulations CA-22901

1. The Purchaser must comply with the rules and regulations of the South Coast Air Quality Management District.
2. The Purchaser must comply with the rules and regulations of the State of California, Regional Water Quality Control Board, Los Angeles Region.
3. The Purchaser must comply with the State of California Mining and Reclamation Act.
4. The Purchaser must comply with both the Act of June 21, 1949 (30 U.S.C. 54) and Section 9 of the Act of December 29, 1916 (39 Stat. 864 ; 43 U.S.C. 299).
5. In accordance with the regulations at 43 CFR 3602.1-1 and 3602.1-2, a mining and reclamation plan shall be submitted to the Authorized Officer. Operations will not commence until activities proposed in the mining and reclamation plan are approved by the Authorized Officer. Submission of the mining and reclamation plan must be in accordance with the regulations at 43 CFR 3602.1-1 and 3602.1-2. The plans must include measures to prevent hazards to public health and safety and measures to prevent unnecessary and undue degradation as defined at 43 CFR 3600.0-5(k).
6. Prior to new surface disturbance for pit expansion, an archaeological survey must be completed for the area to be disturbed at the Purchaser's expense. It may be expedient to survey the entire 640 acres at once to avoid future delays. National Register quality properties, should any exist on the sale parcel, must be either avoided or mitigated through data recovery at the Purchaser's expense. Survey, evaluation, and necessary mitigation will meet BLM approval and will be performed in accordance with the provisions of Section 106 of the National Historic Preservation Act and its implementing regulations (36 CFR Part 800).
7. Prior to new surface disturbance for pit expansion, a survey must be completed at the Purchaser's expense on the area below an elevation 2000 feet, approximately 25 acres, to determine whether the plant species or habitat of Nevin's barberry (Mahonia nevinii) is present. Any of the surveyed area found to be habitat for this species must either (1) not be disturbed by any activity associated with the operation, or (2) be mitigated by measures included in the mining and reclamation plan and approved by the Authorized Officer.
8. No portion of unmined material of the contract amount of contract CA-20139 will be applied to contract CA-22901.

EXHIBIT B

BUREAU OF LAND MANAGEMENT
California Desert District
Palm Springs-South Coast Resource Area
400 So. Farrell Drive, Suite B-205
Palm Springs, California 92262

PRODUCTION REPORT FOR MONTH ENDING _____, 19 _____

PURCHASER _____

CONTRACT NUMBER _____

QUANTITY REMOVED _____

TOTAL \$ _____

SIGNED _____ DATE _____

Attach copies of all weight tickets for the reporting period.

The United States Criminal Code (18 U.S.C. 1001) makes it a criminal offense to willfully make a false statement or representation to any Department or Agency of the United States as to any matter within its jurisdiction. Any person or persons making a false statement or representation shall be subject to a fine of up to \$10,000 and imprisonment for up to five years for each offense.

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

OFFICE: PALM SPRINGS-SOUTH COAST
RESOURCE AREA

CONTRACT NO: CA-20139

CONTRACT FOR THE SALE OF UNITS OF MATERIALS

This agreement is made under authority of the act of July 31, 1947 (61 Stat. 681) as amended (30 U.S.C. 601-604) and the regulations thereunder set forth in 43 CFR, Group 3600, between the United States of America (hereinafter called the "Government"), acting through the Authorized Officer of the Bureau of Land Management (hereinafter called the "Authorized Officer"), and Transmix Corporation, (hereinafter called the "Purchaser").

Witnesseth, That the parties hereto mutually agree as follows:

- Sec. 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.
- Sec. 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 the following-described lands situated in the County of Los Angeles, State of California.

Township: 4 North, Range 14 West, SB Meridian,

Section 1: Lot 2, SW1/4 NE1/4, NW1/4 SE1/4, SW 1/4 SE 1/4
Section 9: SE 1/4 NE 1/4, NE 1/4 SW 1/4, S1/2 SW 1/4, SE 1/4
Section 12: NW 1/4 NE 1/4
Section 16: NW 1/4 NE 1/4, N 1/2 NW 1/4

Containing: 640.16 acres more or less.

- Sec. 3. **Amount and price of materials** - The total purchase price shall be determined by multiplying the total quantity of each kind of mineral material designated by the respective unit price as set forth below, or as changed through reappraisal hereunder.

Kind of Materials	Quantity	Price per unit	Total
Sand and Gravel	14,000,000 short tons	\$0.50	\$7,000,000

The contract measure will be based on a truck loaded ton of finished product (at scale).

Determination by the Authorized Officer of the quantity of materials taken shall be by weight and shall be binding on Purchaser subject to appeal only as provided in Sec. 8.

Sec. 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. No part of the materials sold hereunder shall be severed, extracted, or removed by Purchaser until advance payment for such materials has been made in accordance with the following.

- 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.

Each additional installment payment shall become due and payable without prior notice whenever the value of materials severed or extracted hereunder shall equal the sum of the first and subsequent installments already paid by the Purchaser, or on the anniversary date of the previous installment payment, whichever is sooner.

The total purchase price shall equal the sum of the total quantities severed and removed or designated for severance and removal under the terms of this contract, multiplied by the royalty rate in effect at the time advance payment is made. The balance due where less than a full installment remains to be paid upon the "total price," will be the value of material remaining to be severed and removed for which advance payment has not already been made. The total purchase price must be paid prior to sixty (60) days before expiration date of the contract.

If any additional installment payment is not made by the time required under this section, operations under contract shall be suspended immediately and no materials may be removed from contract area during the period of such suspension. Materials severed, extracted, or removed during any such period of suspension shall be deemed taken in trespass and be charged to and paid for by Purchaser at triple the unit contract price therefor, or at triple the reappraised unit price if a reappraisal has been made. Resumption of taking will be authorized in writing, by the Authorized Officer only after such required payments have been made. Any suspension under this section shall not be added to the period of the contract.

- b) Risk of loss - Purchaser shall assume complete risk of loss for all materials, title to which has passed. If material covered by this contract, title to which has not passed, is damaged or destroyed, Purchaser shall be liable for all loss suffered if Purchaser, his contractors, or subcontractors, or employees of any of them, are directly or indirectly responsible for the damage. If such material is damaged or destroyed without fault on their part, Purchaser shall be liable for loss sustained to the extent that it is caused by his failure to sever, extract, or remove the damaged material under the circumstances and terms of this contract except that nothing herein shall be construed to relieve either party from liability for breach of contract or any wrongful or negligent act.
- 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). After the first four years

the royalty will be the higher of either the original royalty bid of 50.50 per short ton or the market value as established by appraisal.

- d) Refunds or credits will be made to the Purchaser as permitted by the regulations set forth in 43 CFR Section 3610.1-4.

Sec. 5. Bonds -

- a) The Purchaser shall within the 30 day period after receipt of this contract file with the Authorized Officer and shall maintain at all times the bonds required under the regulations in 43 CFR 3610.1-5 to be furnished as a condition to the issuance of this contract in the amount of twenty per cent of the fair market value of the total contract amount.
- 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. Upon satisfactory performance of this contract, the bonds shall be canceled, or if cash or United States bonds were furnished in lieu of a surety bond, such cash or securities shall be returned to Purchaser.
- c) Whenever any bond furnished under this contract is found unsatisfactory by the Authorized Officer, he or she may require a new bond which is satisfactory to him or her.

Sec. 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.

Sec. 7 Equal opportunity clause - This permit is subject to the provisions of Executive Order No. 11246 of Sept 24, 1965, as amended, which sets forth the nondiscrimination clauses. A copy of this order may be obtained from the signing officer.

Sec. 8 Appeal - An appeal from a decision by the Authorized Officer may be made pursuant to 43 CFR Part 4 and to the Interior Board of Land Appeals (IBLA).

Sec. 9 Special clauses and reserved items - The rights of Purchaser shall be subject to the regulations in 43 CFR Group 3600 (which are made a part of this contract), and the following stipulations marked Exhibit A, which are attached hereto and made a part hereof. The attached stipulations appear as 1 page hereafter.

Tally weight tickets will be required to be furnished to the Authorized Officer. Weights will be made of finished product at certified scales, at the pit site or another point approved by the Authorized Officer. All tickets must show the material weight, time of weighing and weighmaster's signature, and shall also include gross weight, tare weight and calculated net weight unless another method of the weighing is approved by the Authorized Officer. All weights will be attached to a monthly reporting form (Exhibit B). Each report form and attached weight tickets shall be sent to the Authorized Officer no later than 10 days after the report month.

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.

01-20-00 17:54 FAX 910 00 1000

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 of such municipal, state, federal, or other governmental bodies; 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.

In Witness whereof, the parties hereto have executed this contract as the day first above written.

Purchaser

The United States of America

Transmix Corporation

(Individual or firm name)

4760 Valley Boulevard
Los Angeles, California 90032

(Address)

Daniel G. Keller

(Signature)

March 8, 1990

(Date)

Samuel Kaldenberg

(Authorized Officer)

Anna M. Kaldenberg

(Title)

3/9/90

(Date)

If this contract is executed by a corporation, it must affix its corporate seal.

EXHIBIT A

Special Stipulations CA-20159

1. The Purchaser must comply with the rules and regulations of the South Coast Air Quality Management District.
2. The Purchaser must comply with the rules and regulations of the State of California, Regional Water Quality Control Board, Los Angeles Region.
3. The Purchaser must comply with the State of California Mining and Reclamation Act.
4. The Purchaser must comply with both the Act of June 21, 1949 (30 U.S.C. 54) and Section 9 of the Act of December 29, 1916 (39 Stat. 864 ; 43 U.S.C. 299).
5. In accordance with the regulations at 43 CFR 3602.1-1 and 3602.1-2, a mining and reclamation plan shall be submitted to the Authorized Officer within 90 days of receipt of this contract. Operations will not commence until activities proposed in the mining and reclamation plan are reviewed in accordance with the National Environmental Policy Act and approved by the Authorized Officer. Submission of the mining and reclamation plan must be in accordance with the regulations at 43 CFR 3602.1-1 and 3602.1-2. The plans must include measures to prevent hazards to public health and safety and measures to prevent unnecessary and undue degradation as defined at 43 CFR 3600.0-5(k).
6. Prior to new surface disturbance for pit expansion, an archaeological survey must be completed for the area to be disturbed at the Purchaser's expense. It may be expedient to survey the entire 640 acres at once to avoid future delays. National Register quality properties, should any exist on the sale parcel, must be either avoided or mitigated through data recovery at the Purchaser's expense. Survey, evaluation, and necessary mitigation will meet BLM approval and will be performed in accordance with the provisions of Section 106 of the National Historic Preservation Act and its implementing regulations (36 CFR Part 800).
7. Prior to new surface disturbance for pit expansion, a survey must be completed at the Purchaser's expense on the area below an elevation 2000 feet, approximately 25 acres, to determine whether the plant species or habitat of Nevin's barberry (*Mahonia nevinii*) is present. Any of the surveyed area found to be habitat for this species must either (1) not be disturbed by any activity associated with the operation, or (2) be mitigated by measures included in the mining and reclamation plan and approved by the Authorized Officer.

EXHIBIT B

BUREAU OF LAND MANAGEMENT
California Desert District
Palm Springs-South Coast Resource Area
400 So. Farrell Drive, Suite B-205
Palm Springs, California 92262

PRODUCTION REPORT FOR MONTH ENDING _____, 19_____

PURCHASER _____

CONTRACT NUMBER _____

QUANTITY REMOVED _____

TOTAL \$ _____

SIGNED _____ DATE _____

Attach copies of all weight tickets for the reporting period.

The United States Criminal Code (18 U.S.C. 1001) makes it a criminal offense to willfully make a false statement or representation to any Department or Agency of the United States as to any matter within its jurisdiction. Any person or persons making a false statement or representation shall be subject to a fine of up to \$10,000 and imprisonment for up to five years for each offense.

Appendix C

**Biological Opinion for Transit Mixed Concrete's Application to Mine Sand and Gravel
in Soledad Canyon, Los Angeles County, CA**



United States Department of the Interior

FISH AND WILDLIFE SERVICE

Ventura Fish and Wildlife Office
2493 Portola Road, Suite B
Ventura, California 93003

January 14, 1998

Memorandum

To: State Director, Bureau of Land Management, Sacramento, California

From: *Diane K. Node*
Field Supervisor, Ventura Fish and Wildlife Office, Ventura, California

Subject: Biological Opinion for Transit Mixed Concrete's Application to Mine Sand and Gravel in Soledad Canyon, Los Angeles County, California (6840 CA930.6) (1-8-96-F-41)

This biological opinion responds to your request for formal consultation with the U.S. Fish and Wildlife Service (Service) pursuant to section 7 of the Endangered Species Act of 1973, as amended (Act). Your request for consultation was dated July 30, 1996 and was received by us on August 1, 1996. At issue are the impacts that the approval of a mining and reclamation plan for the proposed operation and reclamation of a sand and gravel mine by Transit Mixed Concrete (TMC) in Soledad Canyon, Los Angeles County, California, may have on the unarmored threespine stickleback (*Gasterosteus aculeatus williamsoni*), a federally endangered species.

This biological opinion was prepared using the following information: the biological assessment for the subject action (Bureau of Land Management [Bureau] 1996); informal consultation among our staffs and TMC; and our files.

Biological Opinion

It is the opinion of the Service that the proposed action is not likely to jeopardize the continued existence of the unarmored threespine stickleback.

Consultation History

The Service provided a draft biological opinion to the Bureau on March 19, 1997. After reviewing the draft document with TMC, the Bureau provided comments to the Service by memorandum dated September 22, 1997. The Bureau's and TMC's comments have been addressed in this final biological opinion.

Description of the Proposed Action

The Bureau may approve a mining and reclamation plan, submitted by TMC for the mining of up to 56 million tons of sand and gravel over a 20-year period from lands adjacent to the Santa Clara River in the lower Soledad Canyon area of Los Angeles County. The proposed mining of a conglomerate rock formation on a ridge adjacent to the river would occur on a site that was previously mined for about 20 years, which has resulted in the disturbance of approximately 45 acres of the hillside. The existing mining site has not been reclaimed. TMC's proposed project calls for the mining of an additional 115 acres, establishing processing facilities, backfilling excess natural fines on the site, and reclaiming the mine site at the termination of mining.

To obtain water for the mining activities, TMC has leased riparian properties and submitted an application to the State Water Resources Control Board, Division of Water Rights to appropriate water from the Santa Clara River underflow. The water would be pumped from wells tapping the underflow of the Santa Clara River.

The proposed mining and reclamation plan may change due to varying market demands, actual geologic conditions encountered, and changing regulations. The mining and reclamation plan is subject to modification by the mine operator to meet these unexpected conditions, provided that applicable regulations are met.

Previous mining operations left a large excavation on the south side of the ridge. TMC plans to mine on the south side of the ridge to minimize surface disturbance and visual impacts. Several excavations are planned on the south side of the ridge starting at higher elevations and sloping downward at angles approaching 45 degrees. Approximately 82.7 million tons of materials would be mined to produce 56.1 million tons of aggregate product and up to 26.1 million tons of backfilled fines. Any remaining fines would be sold. A fill area for excess fines would be established on the north side of the ridge and in the mine cuts on its south side. The area on the north side will be used for fines storage throughout the life of the site; however, revegetation of this area will be sequential as filling proceeds and benches are prepared for reclamation.

If the maximum mining production occurs, the ridge elevation would be lowered from approximately 700 to about 500 feet above Soledad Canyon Road. Several existing ravines on the north side of the ridge would be filled. If mining is discontinued at the end of the contract term, TMC will revegetate disturbed ground surfaces. Funds for the reclamation of the site have already been guaranteed by TMC through posting a bond with the Bureau, State, and the County of Los Angeles (County).

The mining operation would be entirely outside of the floodplain. Permanent watercourses are absent from the mining area. Seven desilting basins would be constructed before subsequent project work or mining commences in the catchment area above each watercourse. A Storm Water Pollution Prevention Plan has been prepared for the project that describes the stormwater

management practices for all phases of operation (West Coast Environmental 1993a in Chambers Group, Inc. 1996).

Clearing of vegetation will occur only prior to the onset of mining in any area to reduce the potential for erosion. As mining and backfilling or storage of fines proceeds, areas will be seeded with a plant mix designed to reduce erosion.

The following facilities would be located at the mine site: aggregate plant, batch plant, fuel island, truck washout, truck scale and scale house, service and maintenance building, stockpile areas, water tanks, dust pallative storage tank, office, and parking area. Construction of the facilities would proceed after the site is graded and the access road is developed. Facilities would be completed in accordance with the standard construction practices and zoning and grading ordinances of the County.

The fuel island would include two 6,000- to 10,000-gallon above ground diesel storage tanks, a propane storage tank, 1,000-gallon waste oil tank, three 250- to 1,000-gallon fresh motor oil tanks, and a 1,000-gallon hydraulic fluid tank. The plans for construction and installation of these tanks have been designed to meet the requirements of the South Coast Air Quality Standards and County fire codes. Two 600,000-gallon water storage tanks would be built in the facilities area. All tanks are addressed in the Spill, Prevention, Control and Counter Measure Plan (West Coast Environmental 1993b in Chambers Group, Inc. 1996). All oil wastes collected onsite will be disposed of at a certified oil recycling center.

Approximately 15 employees would be onsite during Phase 1; approximately 30 would be onsite during Phase 2. The exact number of employees would depend on the market demand for material at any given time.

Water would be used in several aspects of the operations, including aggregate production, dust suppression, compaction of fines, ready-mixed production, and truck washing. The water system proposed for the aggregate production has been designed to conserve water. All of the water used will be recycled onsite. No point source discharge to the river is planned. The solids that are collected during recycling of the water, including the flocculating agent, would be blended with the waste fines for compaction onsite.

The proposed mining operations would require approximately 442 acre-feet of water per year during Phase 1 and 746 acre-feet per year during Phase 2. The water would be supplied from three wells located adjacent to the Santa Clara River with on-demand pumping and an above ground pipeline to the facilities site.

TMC and the Bureau have proposed the following mitigation measures to reduce the adverse effects of the proposed action on the unarmored threespine stickleback:

1. four existing monitoring wells will be maintained to monitor water levels of the Santa Clara River underflow during the life of the project;
2. surface flows of the Santa Clara River will be monitored during the life of the project at locations to be determined in conjunction with responsible agencies prior to the start of mining; and
3. the riparian and aquatic habitat in the immediate vicinity of the site will be monitored as detailed in the proposed habitat protection plan.

Monitoring will begin each season when the reach of the Santa Clara River near P1 dries (Figure 3.2.4-5). TMC would not monitor flows in years with high precipitation and year round flow throughout the reach from Bear Creek to the Pole Canyon Fault because unarmored threespine sticklebacks would not be affected by pumping under these conditions.

In years when surface flow is absent from this reach, aerial photos of this portion of the river will be used to provide the base for mapping. Information on both natural changes to the streambed and man-made streambed alterations at River's End Trailer Park will be recorded, and perennial riparian vegetation will be mapped. The aerial photo and map will be verified by field inspection and perennial riparian vegetation, pool formation, emergent and aquatic vegetation, and the streambed alteration at the River's End Trailer Park will be described or documented by photographs. A survey for unarmored threespine sticklebacks will also occur along this reach.

After the initial description of the monitoring reach, monitoring stations will be established for the remainder of the season. If River's End Trailer Park has not altered the streambed, monitoring stations will be set up every 100 meters (m) along the monitoring reach from the springs near P4 to P6. If River's End Trailer Park has altered the stream, monitoring stations will be established every 50 m from just below the trailer park alteration to P6. Measurements will also be taken at the springs upstream of the inlet to the ponding produced by the streambed alteration and at the outlet from River's End Trailer Park. Monitoring will also occur at the Forest Service campground upstream of the project to serve as a control site.

During the dry season, monthly sampling at the stations will be conducted using transects across the river to measure flow, depth, oxygen levels, and water temperature. TMC would be required to reduce or stop pumping the underflow of the river when certain action levels are reached. Water pumping will be reduced or stopped when any combination of two or more of the average measured parameters for the monitoring reach do not simultaneously occur at the control site upstream of the project area. The parameters and action levels are as follows:

1. Flow: three measures will be taken across the stream from the mid-point and half the distance to the banks of the stream on either side. At each point, three measures will be taken and averaged. The flow measurement will be taken with a pigmy flow meter or other equivalent equipment. The action level would occur when the flow decreases

25 percent or more from the previous measurement and the difference in the change in flow is significantly different (using standard statistical methods at the 0.05 level) from the changes at the control site.

2. Depth: three measures as outlined for the flow measurements above. The action level would occur when the mean water depth of the stream decreases by 25 percent or more compared with the previous measurement.
3. Oxygen: five measures will be taken across the stream from the mid-point, half the distance to the banks and either at the edge of the emergent vegetation or the edge of the streambanks, whichever is found at the monitoring location. The action level would occur when the mean oxygen level falls below 3.0 milligrams/liter.
4. Temperature: three measures as outlined for the flow measurements above. The action level would occur when the mean temperature of the stream exceeds 27°C.

Seven permanent stations have been established on the Santa Clara River in the vicinity of the proposed TMC facility to monitor water quality. Baseline water quality data and general stream conditions have been collected and evaluated on a regular basis by the Chambers Group since July 1990.

The operational adjustments that will occur if the action level is reached include one or more of the following:

- a. seasonal adjustments of sand and gravel production through stockpiling of materials;
- b. seasonal management of concrete production;
- c. stockpiling excess fines temporarily to eliminate water used in the compaction process;
- d. increased use of dust pallatives for dust control;
- e. temporary reduction or cessation of pumping of river underflows; and
- f. cessation of mining operations, if necessary.

TMC has also proposed to remove giant reed (*Arundo donax*) from riparian areas on non-Forest Service land adjacent to and downstream of the mining site. The U.S. Forest Service (USFS) currently removes giant reed on its lands along the Santa Clara River near the mine.

The habitat on non-Forest Service land from just above the junction of Agua Dulce Creek and the Santa Clara River to the permanent unarmored threespine stickleback habitat at Station 6 just below River's End Trailer Park would be evaluated annually to determine where giant reed

occurred. Removal would be contingent on receiving permission from property owners in the area and would be coordinated each year with the USFS.

Plants would be cut and the stumps sprayed immediately with Rodeo. The cut vegetation would be removed from the river corridor and shredded and disposed of at a landfill or burned. The removal would be conducted in late summer or early fall when the plants will be near the end of the growing season and the herbicide will be more likely to be transported to the roots.

Effects of the Proposed Action on the Listed Species

Species Account

The unarmored threespine stickleback was listed as endangered in 1970 (35 *Federal Register* 16047). The following information is summarized from the recovery plan for the unarmored threespine stickleback (Service 1985). Currently, the only recognized populations of unarmored threespine sticklebacks are located in the Santa Clara River and its tributaries, San Antonio and Honda Creeks at Vandenberg Air Force Base, and possibly in San Felipe Creek, San Diego County. Competition with non-native fish, introgression with other subspecies of sticklebacks, and loss of habitat to urbanization were contributing factors that led to the decline of the unarmored threespine stickleback.

The area proposed as critical habitat for the unarmored threespine stickleback consists of two disjunct stream reaches of the Santa Clara River and a short reach of San Francisquito Canyon in Los Angeles County and the lower portion of San Antonio Creek in Santa Barbara County (45 *Federal Register* 76012). Along the Santa Clara River, proposed critical habitat occurs near Del Valle downstream from Interstate 5. The other area is in Soledad Canyon; it is separated from the Del Valle portion by a seasonally dry section of riverbed from Lang to Interstate 5. The proposed critical habitat in Soledad Canyon extends from approximately 1.4 miles upstream from Lang upstream to Arrastre Canyon; during the dry season, portions of this reach of the river are dry. The Soledad Canyon portion of proposed critical habitat is located adjacent to and upstream from the mining operation proposed by TMC; consequently, the Bureau did not request conference on the proposed critical habitat.

An important component of unarmored threespine stickleback habitat is the slowly moving water found in pools and riffles. When in water that is moving rapidly, they seek shelter behind barriers or in algal mats. Unarmored threespine sticklebacks feed on insects, small crustaceans, and snails, and to a lesser degree, on flat worms and nematodes. Unarmored threespine sticklebacks make their nests where ample vegetation and a gentle flow of water are present (Sasaki et al. 1977 in Chambers Group, Inc. 1996). Young fish tend to be found at the shallow edges of streams in areas of dense vegetation (Chambers Group, Inc. 1996).

Analysis of Effects

The proposed mining operation would not occur within habitat of the unarmored threespine stickleback. However, the pumping of water from the underflow of the Santa Clara River has the potential to affect the stream's hydrology, particularly during those times of the year when the flow of water is at a minimum. Therefore, the Bureau and TMC focused their analysis of the potential effects of the proposed action on the stream flow and water withdrawals. The Service concurs with this approach.

The following information on precipitation and river flows is summarized from the biological assessment (Chambers Group, Inc. 1996). The average annual precipitation within the watersheds above the proposed mining operation ranges from approximately 8 to 23 inches; direct precipitation on the property averages approximately 16 inches annually. More than 90 percent of the annual rainfall occurs between November and April, with most of the rainfall occurring from January to March. The lowest amount of rainfall occurs in June, July, and August.

Surface flow in the Santa Clara River in the vicinity of the proposed mining operation is derived from the Acton watershed and from direct precipitation within Soledad Canyon. Both surface and subsurface flows in the Santa Clara River valley are sustained by subsurface flows from the Acton drainage area, groundwater storage within the valley alluvium, and from the drainages of local tributaries. During the winter, surface flow is continuous throughout this reach of the river and the underlying alluvium is fully saturated. During the summer, surface flow ceases along portions of the river. The only portion of the river downstream and in the vicinity of TMC's project site which retained year-round flows is below the pond in the reach near the River's End Trailer Park. During periods of high flow, unarmored threespine sticklebacks may move along the entire reach of river between Soledad Campground and the River's End Trailer Park.

The biological assessment also notes that this reach of the Santa Clara River is highly dynamic, with even moderate flood flows scouring and depositing alluvial materials, modifying the distribution of riparian vegetation, and altering the surface and subsurface flow regimes. The runoff from the storms of early 1993 scoured the streambed to depths as great as 6 to 8 feet in one portion of the river and to a lesser extent along the entire stream reach. The course of the stream within the confines of the alluvial floor was dramatically altered in many locations by these storms.

The following summary of the potential effects of the proposed mining operation on the water resources of the Santa Clara River is derived from the biological assessment (Chambers Group, Inc. 1996). TMC estimates that 442 acre-feet of water per year would be used for the first 10 years of the mining operation. During the second 10 years, total water use is estimated at 746 acre-feet per year. In both cases, the amount of water that would be used would be increased over time to the maximum level predicted for that phase. TMC anticipates that some level of surface and subsurface flow would be maintained in the river downstream of the constriction

point at the site of the Old Lang Gauging Station because of the volume of water in storage in the aquifer.

Approximately 757 acre-feet of water are stored in the Santa Clara River alluvial aquifer in the vicinity of the proposed mine. Approximately 123 acre-feet are stored in the portion of the aquifer downstream of the constriction point near the Old Lang Gauging Station. TMC notes that the aquifer from which it would obtain its water is recharged very rapidly when the rainy season commences and it tends to become quickly and fully recharged with only moderate levels of rain. In the rainy season, aquifer recharge is primarily dependent on infiltration of surface flow into the aquifer although some level of aquifer recharge is continuous as a result of underflow from upstream areas. Monitoring data from test wells indicate that the underflow is at its maximum during the wet season, but is continuous throughout the year at some level.

Measured water levels in the permeable alluvial aquifer at the end of the dry season indicate that the aquifer is often not fully saturated at that time. Throughout the wet season, while surface flows continue in the river, the aquifer is constantly recharged by infiltration of surface flows and the sustained underflow of the river. The surface flow of the river at the proposed mine site often continues for an additional two to three months into the dry season. Surface flows then cease and the river dries upstream from the Pole Canyon Fault. Underflow continues during the dry season although the level of flow decreases to some degree.

TMC anticipates that water withdrawn from the aquifer during the wet season would be wholly replaced by inflow. The downstream flow is expected to continue under normal conditions with a reduction in surface flows of 35 to 65 acre-feet per month (in the first and second phases of the project, respectively). TMC also predicts that the available water in storage in the alluvial aquifer would not be significantly reduced during the wet season.

Surface water flows at the Old Lang Gauging Station between water years 1949-50 and 1969-70 ranged from 432 to 21,231 acre-feet per year; the second highest recorded annual surface flow is 9,232 acre-feet. All months had surface flow recorded (Ground Water Systems, Inc. 1993 in Chambers Group, Inc 1996). TMC estimates that surface flow at the Old Lang Gauging Station would be reduced by approximately 9 and 16 percent during Phase 1 and Phase 2 operations, respectively, and acknowledges that the effects of these reductions on the maintenance of instream habitats cannot be absolutely predicted.

During the dry season, pumping would draw down the aquifer. TMC also assumes that surface flows would continue but diminish during June and July, and during the late summer and fall months, surface flows upstream from the Old Lang Gauging Station would stop. Surface flow at the Old Lang Gauging Station would normally continue at the average amounts shown in the following table.

	Month	Average Measured Flow (acre-feet per year)	TMC Water Use		Downstream Surface Flow After Pumping	
			Phase 1	Phase 2	Phase 1	Phase 2
Dry Season (no surface flow upstream of Pole Canyon Fault)	August	74	-38	-65	36	9
	September	66	-38	-65	28	1
	October	81	-38	-65	43	16

TMC states that surface flow downstream of the Pole Canyon Fault would remain unchanged, if its entire use during August, September, and October is taken from the aquifer. In Phases 1 and 2, the entire drawdown of the aquifer for these months would be 114 and 195 acre-feet each year, respectively. Consequently, if the aquifer upstream of the constriction point at the Old Lang Gauging Station is fully saturated at 634 acre-feet of water, and if the inflow and outflow to the aquifer occur at average rates in a normal rain year, approximately 444 and 309 acre-feet of water would remain in storage in the alluvium at the end of the dry season. TMC notes that recharge of the aquifer would normally begin in November at the beginning of the rainy season. The following chart depicts the expected drawdown throughout the entire dry season.

Phase	Water in Storage at End of Wet Season	TMC Water Use June through October (acre-feet)	+	Inflow Constant (average)	-	Outflow Constant (average)	=	Resultant Storage in Alluvium
1	634	190	+	normal	-	normal	=	444
2	634	325	+	normal	-	normal	=	309

In summary, a bedrock constriction of the alluvial aquifer related to the Pole Canyon Fault forces underflow of the Santa Clara River to the surface in the vicinity of the Old Lang Gauging Station. For some distance downstream of this area, flows are perennial. Upstream of this area, surface flows cease during the drier portions of most years. Further upstream in Soledad Canyon, the Santa Clara River again supports perennial flows.

Under the current situation, unarmored threespine sticklebacks persist downstream of the Old Lang Gauging Station and upstream of the project area in Soledad Canyon throughout the year. During wet periods of the year, unarmored threespine sticklebacks may be found continuously from deep in Soledad Canyon to near Lang (see Figure 3.2.4-5 from the Chambers Group, Inc 1996 [attached]) wherever suitable habitat occurs. As the river from the Old Lang Gauging Station upstream into Soledad Canyon dries, unarmored threespine sticklebacks can become isolated in pools within this reach which will eventually dry. The effects of the proposed water

withdrawals on the rate or timing of the drying of these pools cannot be accurately quantified, although one can reasonably assume that the water withdrawals can cause the pools to dry somewhat earlier in the dry season.

Consequently, TMC has focused its monitoring and mitigation efforts to ensure that pumping of water from the aquifer does not reduce the quality of unarmored threespine stickleback habitat downstream of the Old Lang Gauging Station. As noted in the attached table, TMC has proposed action levels that would trigger cessation or reduction of pumping which are well within habitat parameters of water quality and quantity for the unarmored threespine stickleback. TMC notes that the cessation or reduction of pumping of water from the alluvium would not result in an immediate recharge of the alluvium. However, TMC believes that flows to the downstream habitat of the unarmored threespine stickleback will continue due to discharge of water from storage in the upstream alluvium. The amount of water stored in this alluvium will be regulated by reducing or stopping pumping as necessary to maintain flows to the habitat. Additionally, by monitoring rainfall during the wet season, TMC should be able to plan its water use well in advance of the dry months. When a below average rainfall year occurs, aggregate production would be adjusted as much as practicable to increase yield in the wet season which would allow a reduction in the dry season. Monitoring and use of action levels of water quality and quantity parameters that are above critical requirements of the unarmored threespine stickleback should ensure that the lag time between the reduction or cessation of pumping and the recharge of the alluvium downstream of the Pole Canyon Fault will not result in conditions that are deleterious to the species.

The biological assessment does not provide information on when water withdrawals would cease or be reduced. Under natural conditions, the level of the river would continually drop at some rate throughout the dry season. If TMC's pumping is repeatedly stopped and started, some potential exists that the water level in the river downstream of the Old Lang Gauging Station may rise and fall in response to changes in the amount of pumping. These changes in water level could cause degradation of the stream by causing aquatic vegetation, which is an important component of unarmored threespine stickleback habitat, to dry out. Some potential may also exist for unarmored threespine sticklebacks and their nests to be stranded, particularly in drier years.

The removal of giant reed from the non-Forest Service properties along the river would benefit the unarmored threespine stickleback because this invasive exotic species can reduce the abundance of native vegetation and thereby degrade the overall quality of the riparian habitat upon which the species depends. Removal of the giant reed may also reduce the use of water by streamside vegetation at least temporarily. However, the potential effects of decreased shading and the natural replacement of the giant reed with native riparian vegetation, which would then require water, may reduce the amount of water conserved by removal of the giant reed.

The actual removal of the giant reed, which would involve workers moving through riparian habitat, cutting stems, and treating the cut stumps with herbicide, can be conducted without

adversely affecting the unarmored threespine stickleback if all activities are conducted outside the stream and pools of water. If giant reed that is growing in water needs to be removed, harm to the unarmored threespine stickleback can be avoided by having a biologist familiar with the species inspect the area prior to removal to ensure the fish are not present.

Rodeo, which is the herbicide that TMC plans to use to control giant reed, has been approved for use in and near aquatic habitats. Therefore, its use should reduce the potential that unarmored threespine sticklebacks could be killed if herbicide is spilled and enters the stream.

Cumulative Effects

Cumulative effects are those impacts of future State and private actions that are reasonably certain to occur in the project area. Future Federal actions will be subject to the consultation requirements established in section 7 of the Act and, therefore, are not considered cumulative to the proposed project.

Development in the watershed of the Santa Clara River has probably substantially altered the natural flow regimes of the Santa Clara River, which, in turn, has likely changed the nature of habitat for the unarmored threespine stickleback. Water diversions and pumping of underflow are not controlled by Federal regulations and have likely reduced the annual flow in the Santa Clara River. The discharge of treated effluent into the river returns a portion of this flow; however, this source of water is much more regular and constant than can be expected from the region's natural rain cycles. Unauthorized activities along the river, such as private flood control actions and mining, have also likely contributed to alterations in the river's hydrology. Potential non-native predators of the unarmored threespine stickleback, such as the African clawed frog (*Xenopus laevis*), are known to exist in the Santa Clara River in the vicinity of the proposed action area; the effects of the African clawed frog, which is a voracious predator, on the unarmored threespine stickleback are unknown at this time.

The Service is unaware of any State or private actions which, when considered cumulatively with the proposed action, would be likely to jeopardize the continued existence of the unarmored threespine stickleback.

After reviewing the status of the species, the potential adverse effects of the proposed action, and the cumulative effects, it is the biological opinion of the Service that the proposed action is not likely to jeopardize the continued existence of the unarmored threespine stickleback. We have reached these conclusions because:

1. the reach of the Santa Clara River which would be most affected by the proposed action normally dries during years of low rainfall and this drying has not prevented the unarmored threespine stickleback from recolonizing this area during wetter portions of the year; and

2. the monitoring program proposed by the Bureau and TMC should be able to detect changes in water quality and quantity in a manner that prevents long-term effects to unarmored threespine sticklebacks and their habitat downstream of the Old Lang Gauging Station.

Incidental Take

Section 9 of the Act prohibits the take of listed species without special exemptions. Taking is defined as harassing, harming, pursuing, hunting, shooting, wounding, killing, trapping, capturing, collecting, or attempting to engage in any such conduct. Harm is further defined to include significant habitat modification or degradation that results in death or injury to listed species by significantly impairing essential behavior patterns, including breeding, feeding, or sheltering. Under the terms of section 7(b)(4) and 7(0)(2) of the Act, taking that is incidental to and not intended as part of the agency action is not considered to be prohibited taking under the Act provided that such take is in compliance with this incidental take statement. The stipulations in this biological opinion described as reasonable and prudent measures and terms and conditions are non-discretionary, and must be undertaken by the agency or made a binding condition of any grant or permit, as appropriate.

The Service anticipates that unarmored threespine sticklebacks in the reach of the Santa Clara River from station A1 downstream to monitoring station P3 (the Old Lang Gauging Station) (as shown in Figure 3.2.4-5) may be taken as a result of the withdrawal of water from the alluvium by TMC, which would be additive to some degree to the natural seasonal drying of the stream in this reach.

The actual number of unarmored threespine sticklebacks that would be taken cannot be predicted because the species' small size makes detection difficult and the number of individuals inhabiting the area varies. Additionally, determining if a particular fish was incidentally taken as a result of drying of the stream attributed to TMC's activities or if it dies as a result of natural seasonal drying would not be possible.

Successful implementation of the proposed monitoring program and cessation or reduction of TMC's water withdrawals should prevent mortality of unarmored threespine sticklebacks downstream of monitoring station P3 (Old Lang Gauging Station). Therefore, the Service does not anticipate that the incidental take of unarmored threespine sticklebacks will occur below the Old Lang Gauging Station.

Reasonable and Prudent Measures

The Service believes that the following reasonable and prudent measures are necessary and appropriate to minimize the incidental take anticipated by this biological and conference opinion:

1. The Bureau shall reduce the take of unarmored threespine sticklebacks by including the measures proposed by TMC in the biological assessment and summarized previously in this biological and conference opinion as conditions of the mining and reclamation plan for the proposed action.
2. The Bureau shall require that pumping of water from the underflow of the Santa Clara River cease if the habitat requirements of the unarmored threespine stickleback are not being met.
3. The Bureau shall ensure that TMC does not use herbicides which are toxic to unarmored threespine sticklebacks in proximity to waters of the Santa Clara River.

Terms and Conditions

To be exempt from the prohibitions of section 9 of the Act, the Bureau is responsible for compliance with the following terms and conditions, which implement the reasonable and prudent measures described above.

1. The following term and condition implements reasonable and prudent measure 1:

The measures proposed by TMC in the biological assessment and summarized previously in this biological and conference opinion are hereby incorporated as terms and conditions of this biological opinion and shall be included by the Bureau as conditions of the mining and reclamation plan for the proposed action.
2. The following terms and conditions implement reasonable and prudent measure 2:
 - a. If the water quality and quantity parameters reach the action levels defined in the attached table (Comparison of Unarmored Threespine Stickleback Habitat Requirements and Monitoring Plan Action Levels), the Bureau shall require TMC to notify the appropriate Bureau office and to cease pumping water from the alluvium of the Santa Clara River until the action levels defined in the table are again achieved.
 - b. If pumping has been suspended until at least the water quality and quantity standards defined by the action levels are once again achieved, the Bureau shall limit the amount of water pumped from the alluvium of the Santa Clara River by TMC to a rate and amount that will not result in fluctuations of the water level, water temperature, or oxygen level. This limitation shall remain in effect until the onset of rains during the next wet season.
3. The following term and condition implements reasonable and prudent measure 3:

The Bureau shall ensure that TMC uses only herbicides approved for spraying in and near aquatic sites, such as Rodeo, within 100 feet of the Santa Clara River when water flow is present in the river. Other herbicides may be used, according to their label restrictions, to control giant reed on upper floodplain terraces.

Reporting Requirements

The Bureau shall require TMC to prepare an annual report for its review by December 1 of each year the mine is in operation or reclamation phases. After the Bureau's review, the report shall be forwarded to the Service by January 15. The report shall document the effectiveness of the monitoring plan proposed by TMC and the terms and conditions, a summary of the information that was collected regarding water quality and quantity from the previous year, a summary of the results obtained from the habitat monitoring, and the results of any work to remove exotic species. If appropriate, the report shall also recommend modifications to the monitoring plan and terms and conditions to enhance the protection of unarmored threespine sticklebacks while making them more workable for TMC and the Bureau.

Disposition of Dead Unarmored Threespine Sticklebacks

Upon locating dead unarmored threespine sticklebacks, initial notification must be made in writing to the Service's Division of Law Enforcement in Torrance, California (370 Amapola Avenue, Suite 114, Torrance, California 90501) and by telephone and writing to the Ventura Field Office in Ventura, California, (2493 Portola Road, Suite B, Ventura, California 93003, 805/644-1766) within three working days of its finding. The report shall include the date, time, location of the carcass, a photograph, cause of death, if known, and any other pertinent information.

Care shall be taken in handling dead specimens to preserve biological material in the best possible state for later analysis. The remains of unarmored threespine sticklebacks shall be placed with the Los Angeles County Museum of Natural History. Arrangements regarding proper disposition of potential specimens shall be made with museum by the project monitor prior to implementation of the action.

Conservation Recommendations

Sections 2(c) and 7(a)(1) of the Act mandate Federal agencies to use their authorities to implement programs for the conservation of listed species. Conservation recommendations are defined as discretionary agency actions which further reduce the take of listed species, implement recovery actions, or provide information that would assist in the management of the species. The Service recommends that the Bureau and TMC remove other exotic species from habitat of the unarmored threespine stickleback when possible. In particular, any individuals of the African clawed frog that are encountered should be destroyed.

The Service requests notification of the implementation of any conservation recommendations to keep us informed of actions that either minimize or avoid adverse effects or that benefit listed species or their habitats.

Conclusion

This concludes formal consultation for Transit Mixed Concrete's application to mine sand and gravel in Soledad Canyon, Los Angeles County, California. Re-initiation of formal consultation is required if: (1) incidental take of unarmored threespine sticklebacks occurs; (2) new information reveals effects of the agency action that may adversely affect listed species or critical habitat in a manner or to an extent not considered in this biological and conference opinion; (3) the agency action is subsequently modified in a manner that causes an effect to a listed species or critical habitat that was not considered in this biological and conference opinion; and (4) a new species is listed or critical habitat is designated that may be affected by this action (50 CFR 402.16). Any comments or questions should be directed to Ray Bransfield of my staff at 805/644-1766.

Attachment

Literature Cited

Chambers Group, Inc. 1996. Final Biological Assessment for Soledad Canyon Sand and Gravel Mining project. Prepared for Transit Mixed Concrete. Irvine, California.

U.S. Fish and Wildlife Service. 1985. unarmored Threespine Stickleback Recovery Plan (Revised). U.S. Fish and Wildlife Service, Portland, Oregon.

COMPARISON OF UNARMORED THREESPINE STICKLEBACK HABITAT REQUIREMENTS AND MONITORING PLAN ACTION LEVELS

Habitat Parameter	Observed Habitat Requirement	Action Level
Water Temperature Upper Limit	30.5 - 34.6°C ¹	27.0°C
Oxygen Level Lower Limit	2.0 mg/L ²	3.0 mg/L
Decrease in Stream Depth	15 - 32% ³	25%
Stream flow	<0.1 m/sec ⁴	*
<p>¹ Feldmeth and Baskin 1976; Baskin 1974; Sasaki et al. 1977</p> <p>² Sasaki et al. 1977</p> <p>³ Chambers Group observations of Santa Clara River B4 unarmored threespine stickleback population as recorded in Tables 3.2.4-2 through 3.2.4-8 of the biological assessment.</p> <p>⁴ Joyce 1989</p> <p>* Unarmored threespine sticklebacks nest in vegetation at the edge of shallow pools that have a gentle Stream flow; however, no exact correlation exists between habitat and stream flow. Therefore, the action level for stream flow is a 25-percent decrease in flow that is significantly different (0.05 level) compared to the flow at the upstream control site.</p> <p>All references are from Chambers Group, Inc. 1996.</p>		

Appendix D

Findings and Determinations for Historic Properties



United States Department of the Interior

BUREAU OF LAND MANAGEMENT

California Desert District Office
6221 Box Springs Boulevard
Riverside, CA 92507-0714

IN REPLY REFER TO:
8100(P)
CA 22901
CA 20139
(CA-062.40)

JUL 1 2 2990

FINDINGS AND DETERMINATIONS FOR HISTORIC PROPERTIES

Transit Mixed Concrete Soledad Canyon Sand and Gravel Mineral Project, Los Angeles County, California

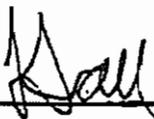
Pursuant to Section V of the State Protocol Agreement (1998) between the Bureau of Land Management - California (BLM), and the California State Historic Preservation Officer, and in accordance with 36 CFR Part 800, the BLM has identified historic properties that may be located within the area of potential effect of this undertaking and assessed the effect of this undertaking on historic properties.

The BLM has found one that (1) historic period archaeological site is present within the Area of Potential Effect of this undertaking. This site has been temporarily designated as RMDM-2 pending assignment of a permanent trinomial reference number by the California Historic Resources Information System.

The BLM has determined that site RMDM-2 is not eligible for inclusion on the National Register of Historic Places.

The BLM has determined that there will be **No Historic Properties Affected** by this undertaking.

In accordance with the Protocol, BLM has satisfied its responsibilities to take into account the effects of this undertaking on historic properties that may be included or eligible for inclusion on the National Register of Historic Places.



District Manager