H. R.

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

IN THE HOUSE OF REPRESENTATIVES

Mr. Mckean introduced the following bill; which was referred to the Committee on ______________________

A BILL

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

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Soledad Canyon High Desert, California Public Lands Conservation and Management Act of 2009”.

SEC. 2. FINDING AND PURPOSES.

(a) FINDINGS.—The Congress finds the following:
(1) **Soledad Canyon Area.—**

(A) Two valid Federal contracts, privately held, numbered CA–20139 and CA–22901, and issued under the Materials Act of 1947, authorize extraction of approximately 56,000,000 tons of sand and gravel from the Federal mineral estate in lands located in Soledad Canyon adjacent to the city of Santa Clarita, California.

(B) It is in the best interest of the citizens of California and the Federal Government to cancel the Contracts and prohibit future mining in the area that was subject to the two Federal Contracts in the Soledad Canyon area of California.

(C) The holder of the Contracts should receive, as compensation for such cancellation, the fair market value of the Contracts and all costs, fees, and covered liabilities incurred by the Contract Holder in good faith in its efforts to develop the Contracts.

(D) A site-specific solution that is fair to the Contract Holder and that seeks to protect the environment and minimize impacts on local transportation systems is in the best interest of the Nation.
Considerable sums of money have been expended by the Contract Holder and the City of Santa Clarita on legal and other services in trying to ensure their interests are protected with respect to the Contracts CA–20139 and CA–22901.

Facilitation of an open-space corridor between the two arms of the Angeles National Forest that enhances environmental and wildlife values is in the national interest.

(2) VICTORVILLE AREA.—

(A) The Bureau of Land Management has extensive land ownership in small and large parcels interspersed with or adjacent to private land in and around Victorville, California, making many of these parcels difficult to manage and appropriate for disposal.

(B) Certain public lands near Victorville, California, have been previously identified for disposal as a result of the Bureau of Land Management’s West Mojave Land Management Plan which was approved in 2006 with public involvement and participation.

(C) In order to promote responsible and orderly economic development, certain public
lands should be sold at fair market value to the City of Victorville or the County of San Bernardino; both located in California.

(b) PURPOSES.—The purposes of this Act are the following:

(1) To provide to the Bureau of Land Management the authority to cancel Contracts CA–20139 and CA–22901 and prohibit future mining in the area that was subject to the two Federal Contracts in the Soledad Canyon area of California.

(2) To provide a means for the Contract Holder to recover for the cancellation of the Contracts, the fair market value of the Contracts and the Contract Holder’s expenditures and covered liabilities incurred pursuing the development of the Contracts.

(3) To provide the Bureau of Land Management tools to verify expenses incurred by the Contract Holder and provide relief.

(4) To provide timelines for the verification of costs incurred by the Contract Holder and the determination of compensation and to provide a dispute resolution process.

(5) To provide for the orderly disposal of certain Federal lands in San Bernardino County, Cali-
fornia and to provide for the acquisition of environ-
mentally sensitive lands in the State of California.

SEC. 3. DEFINITIONS.

In this Act:

(1) CITY OF SANTA CLARITA.—The term “City
of Santa Clarita” means the City of Santa Clarita,
California.

(2) CITY OF VICTORVILLE.—The term “City of
Victorville” means the City of Victorville, California.

(3) COUNTY OF SAN BERNARDINO.—The term
“County of San Bernardino” means the County of
San Bernardino, California.

(4) CONTRACTS.—The term “Contracts” means
the Bureau of Land Management mineral contracts
numbered CA–20139 and CA–22901.

(5) CONTRACT HOLDER.—The term “Contract
Holder” means the private party to the Contracts
CA–20139 and CA–22901, and its successors that
hold legal interests in such Contracts.

(6) COVERED LIABILITIES.—The term “covered
liabilities” includes any court-ordered or court-ap-
proved payment, settlement, or other liability on the
part of the Contract Holder for damages, costs,
compensation, or reimbursement to any third party
for agreements entered into by the Contract Holder
in good faith prior to January 1, 2008, in order to exercise rights under the Contracts.

(7) ENVIRONMENTALLY SENSITIVE LAND.—The term “environmentally sensitive land” means land or an interest in land, the acquisition of which by the United States would, in the judgment of the Secretary or the Secretary of Agriculture—

(A) promote the preservation of natural, scientific, aesthetic, historical, cultural, watershed, wildlife, and other values contributing to public enjoyment and biological diversity;

(B) enhance recreational opportunities and public access;

(C) provide the opportunity to achieve better management of public land through consolidation of Federal ownership; or

(D) otherwise serve the public interest.


(9) SECRETARY.—The term “Secretary” means the Secretary of the Interior.

(10) SPECIAL ACCOUNT.—The term “special account” means the account in the Treasury of the United States established under subsection 5(i).
SEC. 4. CANCELLATION OF THE CONTRACTS; COMPENSATION TO CONTRACT HOLDER.

(a) CONTRACT CANCELLATIONS.—The Secretary shall cancel Bureau of Land Management mineral Contracts CA–20139 and CA–22901 and withdraw those areas that were subject to the Contracts from further mineral entry under all mineral leasing and sales authorities available to the Secretary, effective on the date of the enactment of this Act.

(b) COMPENSATION.—As compensation for the cancellation of the Contracts, the Contract Holder shall receive the following amounts, whether determined by agreed negotiated value or awarded by judgment of the United States Court of Federal Claims in accordance with the referral provisions of subsection (f)—

1. the fair market value of the cancelled Contracts, determined in accordance with subsection (e);
2. the Contract Holder’s expenditures in trying to bring the Contracts into commercial production, as described in subsection (f);
3. interest on the compensation provided for in paragraphs (1), (2), and (4) from the date of the enactment of this Act until the last day of the month preceding the date on which payment is made, compounded quarterly and computed at the rate applica-
ble to marketable obligations of the United States of
three year maturity for the period involved; and

(4) covered liabilities incurred in trying to bring
the Contracts into commercial production, as de-
scribed in subsection (f); provided, however, that
compensation for covered liabilities may be paid to
Contract Holder under this section for up to 15
years following the effective date of this Act.

(e) MEANS OF PAYMENT; ASSURANCES OF PAY-
MENT.—

(1) FULL FAITH AND CREDIT.—The full faith
and credit of the United States is hereby pledged to
the payment of the compensation provided for in
subsection (b).

(2) MEANS OF PAYMENT.—Compensation paid
to Contract Holder under this Act shall be paid by
means of disbursement of funds from the special ac-
count created in the Treasury of the United States
pursuant to section 5(e) except as otherwise pro-
vided in paragraph (3);

(3) PAYMENT BY DEADLINE.—Notwithstanding
paragraph (2) or any other provision of this Act, in
the event that the Contract Holder has not received
all of the compensation provided for in this section
on or before the third anniversary of the enactment
of this Act, all compensation then remaining to be
paid to Contract Holder shall be paid from the per-
manent judgment appropriation established pursu-
ant to section 1304 of title 31, United States Code.

(4) NEGOTIATED AGREEMENT.—Any negotiated
agreement between the Secretary and the Contract
Holder as to the amount of compensation described
in subsection (b) shall be deemed to be a com-
promise settlement of imminent litigation within the
meaning of section 1304 of title 31, United States
Code, and section 2414 of title 28, United States
Code, and, notwithstanding anything to the contrary
contained in any other provision of law, including
section 2517 of title 28, United States Code, any
final judgment by the United States Court of Fed-
eral Claims determining the fair market value of
Contracts CA–20139 and CA–22901 in accordance
with the referral provisions of subsection (f) shall be
deemed to be a final judgment and award within the
meaning of section 1304 of title 31, United States
Code.

(d) INCREASE IN ADJUSTED BASIS OF CONTRACT
UPON CANCELLATION.—For purposes of the Internal
Revenue Code of 1986, the adjusted basis of any Contract
to which subsection (a) applies shall be increased (imme-
diately before the cancellation of such Contract under such section) by the excess (if any) of—

(1) the fair market value of such Contract (determined immediately before such cancellation), over

(2) the adjusted basis of such Contract (as determined immediately before the application of this section).

(c) DETERMINATION OF FAIR MARKET VALUE.—The Secretary shall, within six months after the date of enactment of this Act, determine by mineral appraisal, utilizing the discounted cash flow method of appraisal (in accordance with the appraisal guidelines for appraisals of large quantities of mineral materials contained in section IV(E) of BLM Mineral Material Appraisal Handbook H–3630), the fair market value of the Contracts and notify the Contract Holder of those determinations. In determining the fair market value of the Contracts, the Secretary shall assume that—

(1) the Contract Holder has obtained all the permits and entitlements necessary to mine, produce, and sell sand and gravel under the Contract; and

(2) mining operations under the Contract have commenced at the time of the determination, with maximum annual production volumes that—
(A) are based on the projected supply and
demand outlook at the time of determination;

and

(B) reflect depletion of the reserves that
are subject to the Contract within the effective
periods of the Contract.

(f) EXPENDITURES AND COVERED LIABILITIES DE-
SCRIBED.—The compensation provided for in subsection
(b)(2) is equal to the sum of the following:

(1) All amounts paid to the United States by
Contract Holder with respect to the cancelled Con-
tract as bonus bids or other prepayments.

(2) Interest on amounts referred to in para-
graph (1), from the date of payment of such
amounts to the United States, at a rate determined
by the Secretary.

(3) Amounts expended by the Contract Holder
in securing the Contract and trying to bring it into
production, including—

(A) all actual costs, including fees, associ-
ated with the engineering and environmental
studies and permitting proceedings that were
incurred in good faith in the Contract Holder’s
efforts to exercise rights granted under the
Contract terms; and
(B) all actual legal costs, including fees and covered liabilities, incurred in good faith in the Contract Holder’s efforts to exercise rights granted in the Contract including all fees and costs associated with securing permits and entitlements, litigation to compel, secure, or defend permits or entitlements, and litigation in connection with disputes relating to mineral and surface estate rights to the property that is the subject of the Contract.

(g) Referral to the United States Court of Federal Claims.—

(1) Referral.—If within 12 months after the date of enactment of this Act, the Secretary and the Contract Holder do not reach agreed negotiated value under subsection (b) regarding the fair market value of Contracts CA–20139 and CA–22901, the Contract Holder shall have 3 months thereafter to notify the Secretary that it disagrees with the Secretary’s determination of such value. In the event of such notification, the Secretary shall refer the issue of fair market value to the United States Court of Federal Claims for determination.

(2) Resolution by Court.—In any referral under this subsection, the court shall determine de
novo the fair market value of Contracts CA–20139
and CA–22901.

(h) Submission of Expenses Incurred.—

(1) In general.—To assist in the verification
of the amounts expended referred to in subsection
(f)(3), the Contract Holder shall submit to the Sec-
retary within 60 days after the date of enactment of
this Act an itemized list of such amounts, with
enough detail and supporting documentation so the
Secretary can determine that the expenses are asso-
ciated with the Contracts.

(2) Arbitration.—The Secretary shall issue
the determination of the amounts expended referred
to in paragraph (f)(3) within 60 days after receipt
of the itemized list required under paragraph (1). If
the Secretary disapproves such list, the Secretary
shall, upon the request of the Contract Holder, de-
determine such amounts through arbitration in accord-
ance with subchapter IV of chapter 5 of title 5,
United States Code.

(i) Assignment.—The Contract Holder may at any
time assign its rights or entitlement under this Act to all
or any part of the compensation provided for in para-
graphs (1) and (2) of subsection (b).
SEC. 5. SALE OF LANDS NEAR VICTORVILLE, CALIFORNIA.

(a) In General.—Notwithstanding the land use planning requirements of sections 202 and 203 and the other provisions of section 203 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1712 and 1713), and subject to subsections (b) and (c), the Secretary shall offer for sale by competitive bidding, for a minimum price not less than fair market value as determined by appraisal by the Secretary under subsection (h), all right, title and interest of the United States in and to those lands identified for disposition on the map entitled “Victorville disposal area, California” dated December 2009. The Secretary shall keep such map on file and available for public inspection in the offices of the Director of the Bureau of Land Management and in the district office of the Bureau located in Barstow, California.

(b) Pre-Emptive Right of the City of Victorville to Purchase Area A Lands.—Prior to any sale of any of the right, title, and interest of the United States as provided in subsection (a), the Secretary shall provide the City of Victorville, California with the primary pre-emptive right to purchase some or all of such right, title, and interest in and to the lands identified as Area A on the map referred to in subsection (a). The terms of such pre-emptive right shall afford the City of Victorville a period of 30 days prior to any phased sale
to be conducted under subsection (g) in which the City may purchase some or all of the right, title, and interest of the United States, as provided in subsection (a), then to be offered for sale at its fair market value as determined by appraisal by the Secretary under subsection (h), by paying to the Secretary in immediately available funds the entire purchase price of the right, title, and interest so purchased by the City. Such period shall commence on the 60th day prior to any phased sale to be conducted under subsection (g), and shall end on the 31st day prior to any such sale. Failure by the City of Victorville to purchase and pay for such right, title, and interest, and to comply with such other terms and conditions of purchase as the Secretary shall prescribe, within such period shall terminate the pre-emptive right of the City of Victorville with respect to the right, title, and interest then offered, but shall not terminate such pre-emptive right with respect to subsequent phased offers of the remaining right, title, and interest identified on the map referred to in subsection (a).

(c) **PRE-EMPTIVE RIGHTS OF THE COUNTY OF SAN BERNARDINO TO PURCHASE AREA A LANDS AND AREA B LANDS.**—Prior to any sale of any of the right, title, and interest of the United States as provided in subsection (a), and after providing the City of Victorville the right
to purchase under subsection (b), the Secretary shall pro-
vide the County of San Bernardino with the secondary
pre-emptive right to purchase some or all of such right,
title, and interest in and to the lands identified as Area
A on the map referred to in subsection (a), and the exclu-
sive preemptive right to purchase all such right, title, and
interest in and to the lands identified as Area B on the
map referred to in subsection (a). The terms of such pre-
emptive rights shall afford the County of San Bernardino
rights with respect to such lands identified as Area A and
lands identified as Area B that are substantially similar
to the pre-emptive right afforded under subsection (b).

(d) SECONDARY RIGHT OF LOCAL LAND USE AU-
THORITY TO PURCHASE AREA C LANDS.—Prior to any
sale of any of the right, title, and interest of the United
States as provided in subsection (a), the Secretary shall
provide the local land use authority with respect to the
lands identified as Area C on the map referred to in sub-
section (a), as determined under the statutes of the State
of California, the exclusive pre-emptive right to purchase
some or all of such right, title, and interest in and to such
lands. The terms of such pre-emptive right shall afford
the local land use authority rights with respect to such
lands identified as Area C that are substantially similar
to the pre-emptive rights afforded under subsections (b) and (e).

(e) **WITHDRAWAL AND RESERVATION.**—Subject to valid existing rights, the minerals in all Federal lands identified in subsection (a) for disposal are withdrawn from settlement, sale, location, or entry under the public land laws, including the mining laws codified at chapter 2 of title 30, United States Code, from leasing under the mineral leasing laws including those codified at chapter 3A of title 30, United States Code, and disposals under the Materials Act of 1947 (30 U.S.C. 601 et seq.). Any sale or other disposal of such lands shall reserve to the United States all minerals in such lands, together with the right to prospect for, mine, and remove such minerals.

(f) **CONSULTATION.**—Before initiating efforts to dispose of land under this section, the Secretary shall consult with the City of Victorville, the County of San Bernardino, and surface owners in the jurisdiction where the lands are located, on the potential impact and other appropriate aspects of the disposal. Consultation under this subsection is in addition to any other consultation required by law.

(g) **PHASING OF SALES.**—

(1) **AREA A LANDS.**—The Secretary shall, not later than 12 months following the enactment of this Act, offer for sale under subsection (a), subject to
the primary pre-emptive right of the City of Victorville under subsection (b) and the secondary pre-emptive right of the County of San Bernardino under subsection (c), those lands depicted as Area A on the map referred to in subsection (a).

(2) AREA B LANDS.—The Secretary shall, not later than 24 months following the enactment of this Act, offer for sale under subsection (a), subject to the exclusive pre-emptive right of the County of San Bernardino, those lands depicted as Area B on the map referred to in subsection (a).

(3) AREA C LANDS.—The Secretary shall, not later than 24 months following the enactment of this Act, offer for sale under subsection (a), subject to the pre-emptive right of the local land use authority under subsection (d), those lands depicted as Area C on the map referred to in subsection (a).

(4) REMAINING LANDS.—The Secretary, after consultations with the City of Victorville, may within 20 years following the enactment of this Act, offer for sale under subsection (a) all the remaining lands identified for disposal in West Mojave Land Management Plan of 2006, except those lands depicted as “Area of Critical Environmental Concern” in the map referred to in subsection (a).
(5) **Compliance with Environmental Requirements.**—Land disposal activities of the Secretary under this subsection shall be consistent with all applicable environmental requirements.

(h) **Determination of Fair Market Value.**—The fair market value of the lands referred to in subsection (g)(1) shall be based on an appraisal of the fair market value thereof as of the date of the enactment of this Act which shall be completed not later than 6 months after the date of the enactment of this Act. The fair market value of the lands referred to in subsection (g)(2) shall be based on an appraisal of the fair market value thereof as of that date that is approximately 6 months prior to the related date of offer as set forth in subsection (g)(2) and shall be completed not later than 6 months prior to the related offer. The fair market value of the lands described in subsection (g)(3) shall be based on an appraisal of each parcel offered for sale as of the date of such offer and such appraisal shall be completed not less than 6 months prior to the related offer.

(i) **Special Account.**—

(1) **Deposit; Availability.**—The gross proceeds of sales of land under subsection (a) shall be deposited in a special account in the Treasury for use under paragraph (2). Amounts in the special account—
count shall be available to the Secretary for purposes of subparagraphs (A) through (E) of paragraph (2) and to the Secretary of Agriculture for purposes of subparagraphs (B) and (C) of paragraph (2) without further appropriation and shall remain available until disbursed.

(2) DISPOSITION OF PROCEEDS.—Proceeds from sales of lands described in subsection (a) shall be disbursed by the Secretary in the following order of priority:

(A) As compensation to the Contract Holder under section 4(b) for cancellation of the Contracts by the Secretary.

(B) For the acquisition of private in holdings and land interests in the Mojave National Preserve.

(C) For the acquisition of holdings and land interests from willing sellers contained within the Conceptual Area Protection Plan as identified in the East Santa Clarita Land Conservation Concept Plan and Implementation Strategy.

(D) For the acquisition of environmentally sensitive land in the State of California in accordance with section 6.
(E) For the reimbursement of costs incurred by the California State Office and the Barstow Field Office of the Bureau of Land Management for preparing for the conveyance of land described in subsection (a) including surveys and appraisals, compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321), and, except as otherwise provided in subsection (a), compliance with sections 201 and 203 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1711, 1712).

(3) LIMITATION ON USE OTHER THAN FOR COMPENSATION.—No funds may be expended under this subsection for purposes of subparagraphs (B) through (E) of paragraph (2) until the date all compensation has been paid to the Contract Holder for cancellation of the Contracts by the Secretary.

(4) SPECIAL ACCOUNT RESERVE FOR CONTRACT HOLDER.—

(A) LIMITATION ON DISBURSEMENTS.—

Notwithstanding paragraphs (2) and (3), funds in the special account referred to in paragraph (1) may be expended for purposes set forth in subparagraphs (B) through (E) of paragraph (2) after compensation has been paid to Con-
tract Holder as provided in paragraphs (1), (2), and (3) of section 4(b), but prior to the date compensation required under section 4(b)(4) has been paid to Contract Holder, if the agreed-upon amount referred to in subparagraph (B) of this paragraph is held as a reserve for payment to Contract Holder under section 4(b)(4).

(B) DETERMINATION OF RESERVE.—For purposes of calculating the reserve provided for in this paragraph, the value of the compensation provided for in section 4(b)(4) is deemed to be such amount as is agreed upon by the Secretary and the Contract Holder: Provided, That such agreed-upon amount shall in no event be less than 15 percent of the sum of the value of the elements of compensation described in paragraphs (1) through (3) of section 4(b): Provided further, That such agreement shall be made prior to the disbursement of any funds from the special account for any matter other than compensation to the Contract Holder. Nothing in this paragraph shall be construed to reduce the amount of the compensation payable to the Contract Holder pursuant to section 4(b)(4).
(5) **INVESTMENT OF SPECIAL ACCOUNT.**—Any amounts deposited in the special account shall earn interest in an amount determined by the Secretary of the Treasury on the basis of the current average market yield on outstanding marketable obligations of the United States with a maturity of three years and shall be expended according to the provisions of this section.

(6) **PROCEDURES.**—Except with respect to the disbursement of funds as compensation to the Contract Holder for cancellation of the Contracts, the Secretary shall coordinate the use of the special account with the Secretary of Agriculture, the State of California, local governments, and other interested persons, to ensure accountability and demonstrated results.

**SEC. 6. ACQUISITIONS.**

(a) **IN GENERAL.**—After the consultation process has been completed in accordance with subsection (b), the Secretary may acquire with the proceeds of the special account referred to in section 5(a) environmentally sensitive land and interests in environmentally sensitive land. Lands may not be acquired under this section without the consent of the owner thereof. Funds made available from the special account may be used for this purpose with any
other funds made available under any other provision of law.

(b) CONSULTATION.—Before initiating efforts to acquire land under this section, the Secretary or the Secretary of Agriculture shall consult with the State of California and with counties and cities affected by such acquisition, including appropriate planning and regulatory agencies, and with other interested persons, concerning the necessity of making the acquisition, the potential impacts on State and local government, and other appropriate aspects of the acquisition. Consultation under this subsection is in addition to any other consultation required by law.

(e) ADMINISTRATION.—On acceptance of title by the United States, land and interests in land acquired under this section that is within the boundaries of a unit of the National Forest System, National Park System, National Wildlife Refuge System, National Wild and Scenic Rivers System, National Trails System, National Wilderness Preservation System, or any other system established by Act of Congress, or any national conservation or national recreation area established by Act of Congress—

(1) shall, notwithstanding any other provision of law, become part of the unit or area without fur-
other action by the Secretary or Secretary of Agriculture; and

(2) shall be managed in accordance with all laws and regulations and land use plans applicable to the unit or area.

(d) Determination of Fair Market Value.—The fair market value of land or an interest in land to be acquired by the Secretary or the Secretary of Agriculture under this section shall be determined under section 206 of the Federal Land Policy and Management Act of 1976 (16 U.S.C. 1716) and shall be consistent with other applicable requirements and standards.