

## NEW OPPORTUNITIES TO PROTECT AND DEVELOP YOUR MINERAL RESOURCES: DESIGNATION AND SB 375

by Kerry Shapiro

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While it often seems that the deck is stacked against the mining industry in California, some recent developments relating to designated mineral resources offer positive changes. First, the State Mining and Geology Board (SMGB) has recently been considering the designation of mineral resources of statewide or regional significance in the Palm Springs Production-Consumption Legion (Riverside County). This is the first designation of such resources in many years. Second, SB 375, enacted late September 2008, may aid in protecting and preserving designated mineral resources in the state above and beyond those protections already afforded by the Surface Mining and Reclamation Act (SMARA). With these recent developments, it appears that designation under SMARA is getting a boost that can directly benefit the mining industry.

### REDISCOVERING THE IMPORTANCE OF DESIGNATED MINERAL RESOURCES

On April 10, 2008, the SMGB's Mineral and Geologic Resources Committee accepted recommendations set forth by the state geologist for designation of mineral resources lands of regional or statewide economic significance in the Palm Springs Production-Consumption Region. The SMGB has been considering this proposed designation in recent weeks, and action is expected soon. This is notable, because the last designation of mineral resources lands by the SMGB occurred 20 years ago, in 1989. The renewed focus on designation by the SMGB is a welcome development for the mining industry.

Under SMARA, lands containing mineral resources may be formally identified in a process known as classification. Classified lands may further be recognized by SMGB, in consultation with lead agencies and interested parties, as areas containing mineral deposits of

regional or statewide importance. This process is known as designation. SMARA contains certain provisions designed to protect classified and designated lands.

If an area has been classified as containing significant mineral deposits, then within 12 months the county or city in which the classified lands are located is required to establish mineral resource management policies (MRMPs) to be incorporated into its general plan in order to "emphasize the conservation and development of identified mineral deposits." Prior to permitting a use which "would threaten the potential to extract minerals in that area," the lead agency must prepare a statement specifying its reasons for permitting the proposed use, which is forwarded to the state geologist and the SMGB for review.

Designation provides more significant protections. If an area has been designated by the SMGB as an area of regional or statewide significance, then prior to permitting a new use that would threaten the potential to extract minerals in that area, the lead agency must prepare a written statement identifying its reasons for permitting the proposed use. Any decision by the lead agency must be in accordance with the agency's mineral resource management policies, balance mineral values against alternative land uses and consider the importance of the minerals to the market region as a whole for regionally significant areas—and to the state and nation as a whole for areas of statewide significance.

### SB 375 MAY STRENGTHEN THE BENEFITS OF DESIGNATION

SB 375 has been labeled an "anti-sprawl" bill, taking aim at addressing greenhouse gas emissions by requiring regional planning authorities to develop what are essentially

"sustainable" regional growth plans. SB 375 provides for the creation of regional greenhouse gas emission targets, and ties reductions in these targets to regional housing and transportation planning. It requires that regional planning agencies create plans to meet such targets, and directs that regional transportation funding decisions should be consistent with these regional plans. As an incentive to carry out its provisions, SB 375 provides several new exemptions and streamlining under the California Environmental Quality Act (CEQA) for projects that conform to the new regional plans. In the midst of these far-reaching regional transportation and housing provisions, certain provisions of SB 375 provide potential planning and protective measures for mineral resources in the state that have been "designated" as areas of statewide or regional significance. The key to making SB 375 meaningful to the mining industry is ensuring that these far-reaching planning tools result in effective on-the-ground protections for designated mineral resources. SB 375 adds further possible protections for designated mineral resources.

First, the bill amends the government code requiring metropolitan planning organizations to prepare "sustainable communities strategies" which, among other things, are required to "gather and consider the best practically scientific information regarding resource areas . . . in the region." In particular, the bill defines "resource areas" to include "areas of the state designated by the State Mining and Geology Board as areas of statewide or regional significance." Thus, SB 375 specifically includes

designated mineral lands in those, which must be addressed by metropolitan planning organizations.

Second, B 375 further amends the government code to require metropolitan planning organizations or county transportation agencies (whichever is appropriate) to consider financial incentives for cities and counties that have resource areas, for the purpose of transportation investments to protect road systems, transportation needs and the like.

Third, SB 375 amends the government code to provide that in developing regional housing plans, a constraint on such plans will be the existence of lands "preserved or protected from urban development under existing federal or state programs, or both, designed to protect . . . natural resources on a long term basis." This language would appear to protect, among other things, lands designated by the SMGB, thus affording such lands additional protection in the regional housing planning process.

#### DESIGNATION AS A "WIN-WIN" SCENARIO

Designation under SMARA historically has fallen short of its intended goal to meaningfully protect and assist in the development of mineral resources. As such, it has been vastly underutilized. Now, with the SMGB's apparent renewed focus on designation and the recent passage of SB 375, there appears to be both an incentive and a feasible opportunity for mining operators with high-quality minerals to pursue designation.

Kerry Shapiro leads the Government, Land Use & Zoning, Environment and Energy Department as a Partner at Jeffer Mangels Butler & Mitchell in San Francisco. Kerry has a comprehensive government, land use, environment, and natural resources practice, emphasizing permitting, environmental compliance, public land transactions, and related litigation, at federal, state, and local levels. Contact Kerry at 415.398.8080 or KShapiro@JMBM.com.