



STATE MINING AND GEOLOGY BOARD

Minerals and Geologic Resources Committee

Robert Tepel, Chair; Brian Baca; John Lane; Charlie Wyatt

EXECUTIVE OFFICER'S REPORT

For Meeting Date: March 10, 2011

Agenda Item No. 3: Consideration of an Administrative Process in Consideration of a Designation Petition.

INTRODUCTION: At its March 11, 2010, regular business meeting, the State Mining and Geology Board (SMGB) accepted California Geological Survey Special (CGS) Special Report 214 for the classification of mineral resource land for Portland Cement Concrete (PCC) - grade aggregate for this project. The SMGB subsequently received a designation petition dated October 12, 2010, pertaining to the proposed Wilson Ranch-Walltown Quarry Project located in the County of Sacramento. This is the first designation petition received by the SMGB since the enactment of the Surface Mining and Reclamation Act (SMARA). The administrative process associated with such a petition request needs to be discussed prior to the SMGB considering this type of petition request. At its February 10, 2011, regular business meeting, the SMGB directed this matter to the Mineral and Geologic Resources Committee (Committee) to consider and discuss an administrative process and program elements associated with the SMGB's consideration of a designation petition.

STATUTORY AUTHORITY: Public Resources Code (PRC) Section 2790 provides the SMGB authority to designate mineral lands and states:

"After receipt of mineral information from the State Geologist pursuant to subdivision (c) of Section 2761, the board may by regulation adopted after a public hearing designate specific geographic areas of the state as areas of statewide or regional significance and specify the boundaries thereof. Such designation shall be included as a part of the state policy and shall indicate the reason for which the particular area designated is of significance to the state or region, the adverse effects that might result from premature development of incompatible land uses, the advantages that might be achieved from extraction of the minerals of the area, and the specific goals and policies to protect against the premature incompatible development of the area."

PRC Section 2726 defines an "Area of regional significance" as:

"means an area designated by the Board pursuant to Section 2790 which is known to contain a deposit of minerals, the extraction of which is judged to be of prime importance in meeting future needs for minerals in a particular region of the state within which the minerals are located and which, if prematurely developed for alternate



Executive Officer's Report

incompatible land uses, could result in the permanent loss of minerals that are of more than local significance.”

PRC Section 2727 defines an “Area of statewide significance” as:

“means an area designated by the board pursuant to Section 2790 which is known to contain a deposit of minerals, the extraction of which is judged to be of prime importance in meeting future needs for minerals in the state and which, if prematurely developed for alternate incompatible land uses, could result in the permanent loss of minerals that are of more than local or regional significance.”

PRC Section 2790 provides the SMGB’s authority to designate mineral lands and states:

“After receipt of mineral information from the State Geologist pursuant to subdivision (c) of Section 2761, the board may by regulation adopt after a public hearing designate specific geographic areas of the state as areas of statewide or regional significance and specify the boundaries thereof. Such designation shall be included as a part of the state policy and shall indicate the reason for which the particular area designated is of significance to the state or region, the adverse effects that might result from premature development of incompatible land uses, the advantages that might be achieved from extraction of the minerals of the area, and the specific goals and policies to protect against the premature incompatible development of the area.”

When considering the designation of mineral lands, PRC Section 2791 states:

“The board shall seek the recommendations of concerned federal, state, and local agencies, educational institutions, civic and public interest organizations, and private organizations and individuals in the identification of areas of statewide and regional significance.”

The SMGB’s “Guidelines for Classification and Designation of Mineral Lands” (Section II. 1.) defines the parameters that the SMGB will consider for designation and states:

“Areas to be considered for designation by the SMGB will contain one or more mineral deposits believed to be of statewide or regional significance. Ordinarily, classification of a mineral deposit as MRZ-2a or MRZ-2b by the State Geologist will constitute adequate evidence that an area contains significant mineral deposits, but other data shall be considered by the SMGB in determining the significance of specific mineral deposits and the desirability of designation.”

The SMGB’s “Guidelines for Classification and Designation of Mineral Lands” also note that:



- *“A. Prior to permitting a use that would threaten the potential to extract minerals classified by the State Geologist as MRZ-2a or MRZ-2b but not yet designated, the lead agency may petition the SMGB for a designation hearing.*
- *Petitions for a designation hearing may also be brought before the SMGB by any other party provided that the SMGB has received and approved land classification information that indicated that the area in question is classified MRZ-2a or MRZ-2b and that the SMGB has not yet considered designation. A petition form is provided in Appendix A.*
- *SMGB shall then forward the data to the State Geologist who will evaluate it as to its accuracy and sufficiency and make a recommendation to the SMGB for or against designation of all or part of the area petitioned for designation.*
- *If the SMGB finds that the petition contains sufficient information and arguments to require a public hearing, then the SMGB shall schedule such a hearing and proceed as outlined in Section II. 1 and 2.”*

BACKGROUND: Designation is the formal recognition by the SMGB, after consultation with lead agencies and other interested parties, of areas containing mineral deposits of regional or statewide significance. Procedures for the designation of lands containing significant mineral deposits are specified in Section II.2 of the Board’s Guidelines for Classification and Designation of Mineral Lands (<http://www.consrv.ca.gov/SMGB/Guidelines/ClassDesig.pdf>).

Historically, the SMGB has designated only construction aggregate resources of regional significance. This action has typically followed closely the acceptance by the Board of a full Mineral Land Classification report, or update report, for the region in question. Such reports contain, in addition to the mineral land classification information, information on historic production/consumption in the region and a projection of the future aggregate needs of the region. There has never been a petition for designation although the possibility of designation petitions is mentioned in the SMGB’s Guidelines for Classification and Designation of Mineral Lands. There is no reference to designation petitions in either the statutes or the regulations.

DISCUSSION: The current form provided for a classification petition, is the same as for a designation petition, even though the type of information required for classification is different from that required for designation. Should the SMGB wish to entertain designation petitions, then the SMGB will need to revise its petition form to 1) reflect the specific needs for such petitions, 2) define the administrative process for considering a designation petition, and 3) consider under what circumstances or scenarios would qualify for a designation petition consideration.



When considering a designation petition, several scenarios for areas in which petitions for designation might occur are possible. These different scenarios impact the ability of the State Geologist to recommend, or the SMGB to designate, areas by petition in each case as well as the type of data potentially needed by the SMGB to make a decision on such a designation. While ordinarily classification of a mineral deposit as MRZ-2a or MRZ-2b by the State Geologist constitutes adequate evidence that an area contains significant mineral deposits which meet the SMGB's economic criteria for classification, the SMGB considers other data in determining the significance of specific mineral deposits and the desirability of designation. Some of this data is collected through public hearings and comment periods as outlined in the Board's guidelines for classification and designation. In considering the regional significance of construction aggregate deposits, knowing the location and magnitude of the available resources in the area, the limits of the market region, and the future needs of the region, provides a framework within which the significance of individual deposits can be evaluated. Environmental concerns and pressures may also play a role. This information is included in the regional mineral land classification studies and updates, but is not a part of the process in classifying individual properties by petition.

When considering a designation petition, several scenarios exists including:

- **Designation petition for inclusion of an area within or immediately adjacent to an area previously classified and designated:** Designation of an individual property in a region previously classified and designated would provide that property/owner the same status of being "*designated by the State to be of regional mineral resource significance*" as other designated properties in the region. It would also carry the same appeal options (Article 4, CCR Sections 3625-3634) as those areas already designated. Finally, it would enable revision of the designated resource base for future comparison/projection.

The information required by the SMGB would vary depending on the elapsed time since prior designation of lands in the region. If the mineral land classification study for the area had been recently updated and the market study and projection of future aggregate demand in the region were reasonably current, then evaluating the significance of a petitioned property within or adjacent to the designated region would be fairly routine. If the classification/designation information for the region were older and in need of updating, it might be necessary to update that information for the region as a whole to properly evaluate the significance of the petitioned property.

In areas previously classified and designated petitions for termination of designated status may also be submitted. The status of mineral lands previously designated to be of statewide or regional significance may be terminated, either partially or wholly, by the SMGB on a finding that the designation status is no longer necessary or appropriate. Possible reasons for petitioning for termination of designation could



include depletion of resources, development that has lead to incompatible land use making the area unavailable for mining, or others. Termination of designated status would relieve local land use authorities form the requirements to notify the SMGB when contemplating land use changes for the property. It would also enable revision of the designated resource base for future comparison / projection.

- **Designation petition for an area or immediately adjacent to areas classified but not designated:** This scenario raises the following question. In a region that has not been previously designated, how can the SMGB evaluate the regional significance of a single property by petition when other deposits in the region (which may be of equal or greater significance) have not been or are not being considered for designation? In this case, mineral land classification of the region has occurred, but designation of areas of regional significance by the SMGB has not. A report on resources, historic production / consumption in the region, and a projection of the future aggregate needs of the region is available, but may need to be updated to adequately support a designation decision.

Designation of an individual property in a classified, but non-designated area would provide the status of being “*designated by the State to be of regional mineral resource significance*” to only one property and not to others of potentially equal or greater importance to the region. Similarly, the appeal options of Article 4, CCR Sections 3625-2634, would apply only to the single designated property and not to other properties of similar, or possibly greater, potential significance in the region. Finally, a designated resource base of only one property is unlikely to adequately represent the resources of the region. In this case, designating a single property could have the effect of giving an advantage, or perceived advantage, to that property/owner compared to other classified, but not designated properties of potentially equal or greater importance to the region.

In this case, potential options are:

1. Deny the petition on the grounds that it is not possible to evaluate the regional significance of a single deposit without also (or concurrently?) knowing or considering the regional significance of other deposits in the area.
2. Proceed with designation through a process that the SMGB deems sufficient (in light of the above concern) which could include designation of just the petitioned property or designation of the entire region.

Option 1 seems the preferred option since it is difficult to conceive of how the regional significance of a single property can be evaluated independently of the evaluation of other deposits of potentially equal or greater significance to the area.



Option 2 seems unworkable. Designation of a single property in an area without consideration (and designation) of other potentially significant deposits in the region, and without a current accurate picture of the market region, resources, and future needs of the region, is not going to give local land use decision makers adequate information to make informed land-use decisions. If the SMGB decided that the entire region needed to be designated, an update to the existing classification report might be needed depending on the age of the existing report (adding considerably to the cost of the petition). In both cases, such designations would require the SMGB to rearrange its (and the State Geologist's) priorities for classification and designation, based on the petition. To justify this, the petitioner would have to make a case that the need for designation of a particular property under petition was greater than the needs of the other regions that the SMGB had already placed at a higher priority. Regional classifications are periodically updated and the SMGB has the option to designate, or modify the existing designation, when the reports are updated.

- **Designation petition for an area that has not been previously classified or designated:** In this scenario designation of a single property, previously classified by petition, in an area with no regional mineral land classification by the State Geologist is requested. However, in this case neither mineral land classification of aggregate resources in the region nor designation of areas of regional significance has occurred. This means that there is no, or limited, background study of the aggregate resources and needs of the region to use as a framework to evaluate the significance of deposits in the region.

EXECUTIVE OFFICER'S RECOMMENDATIONS: The information being provided is for the Committee's discussion and consideration. It is the Executive Officer's recommendation that a draft designation petition form be developed and presented to the Committee for consideration and discussion.

Respectfully submitted:

Stephen M. Testa
Executive Officer