

Preface

The Legislature hereby finds and declares that the extraction of minerals is essential to the continued economic well-being of the state and to the needs of the society. . . .

Pub. Res. Code § 2711(a)

With the words that begin SMARA, California's Surface Mining and Reclamation Act, the legislature recognized more than 30 years ago just how dependent we are on mining. Today these words are equally, if not more, true. Nearly everything we use is derived from one mineral or another—highways, roads, houses, hospitals, schools, airports, cars, airplanes, computers, and televisions are just a few examples.

Yet, while mining is so essential to our standard of living, it is hardly a benign activity. Mining is noisy and dusty and can adversely affect its surroundings. Rumbling from heavy trucks and the vibration caused by explosives can be annoying. Ecologically, mining can degrade air and water quality, damage wetlands, and impair sensitive habitat. And, after operations are complete, mined-out land is usually not reusable, safe, and aesthetically pleasing, requiring significant restoration.

Because of these and other impacts, mining, while one of society's most important industries, is also one of its most heavily regulated. A multitude of federal, state, regional, and local laws address its land use and environmental impacts.

This book discusses these subjects and attempts to speak to every audience. Attorneys—whether for mining operators, public agencies, or neighborhood or environmental organizations—will find the book most useful. It is clearly a legal text that covers the laws, regulations, and relevant cases, providing comprehensive citations to guide lawyers in their research and analysis.

But while that audience may be sizeable, the book is not a treatise. Nor was it written strictly for the legal profession. Instead, the author has tried to keep all audiences in mind, attorneys as well as planners, consultants, government officials, professionals, and interested members of the public.

To serve this broad readership, the text does not simply recite the law with strings of citations. Instead, each subject is put in context, describing what the law is and why. And because the surface mining industry may be unfamiliar to some readers, mining-specific concepts are explained. The book offers practical advice on a number of important subjects in an attempt to provide an understanding of the law, as well as guidance on how to comply.

Particular attention has been given to the book's organization. The myriad of regulations affecting surface mining can make the subject seem complex and uninviting. As the adjacent chart shows, as many as twelve authorizations from seven separate federal, state, regional, and local agencies may be required to authorize a new surface mine. To help with what thus may appear a daunting subject, the book is divided into four logical parts, with each chapter covering a discrete set of topics. This organization offers an overview of surface mining while allowing readers looking for specific topics to quickly identify chapters pertinent to their research.

Part One is introductory, directed mainly to readers with minimal understanding of surface mining. Chapter 1, which explains surface mining in its various forms and how it typically operates, may be particularly useful. Chapter 2 describes its uses and applications, touching nearly every facet of our lives and creating an enormous demand with significant land use implications.

Part Two discusses the State Surface Mining and Reclamation Act of 1975, or SMARA. Chapter 3 discusses SMARA's functions and the agencies responsible for enforcement. Chapter 4 addresses the Act's mineral conservation provisions, describing California's scheme for identifying and conserving significant mineral resources. In chapter 5, SMARA's mine reclamation function is discussed, with a description of the mandatory process by which mined-out land must be reclaimed to productive post-mining land use. Chapter 6 covers SMARA's enforcement provisions, focusing on specific enforcement responsibilities the Act imposes on cities and counties and its remedies to ensure compliance.

Part Three addresses city and county regulation. Chapter 7 reviews specific local authorizations a mining operator must obtain, the type of regulations embodied in the authorizations, and the process cities and counties must follow in considering mining applications. How the California Environmental Quality Act, known as CEQA, shapes the permitting process is addressed in chapter 8. Chapter 9 covers the special rules and doctrines afforded to pre-existing or nonconforming surface mines that are not required to comply with local land use regulations.

Part Four covers environmental regulation. Chapter 10 addresses air quality, focusing particularly on how air quality districts regulate particulate matter emissions

Authorizations Potentially Required for a New Surface Mine

Authorization	Responsible Agency	Description	Chapters
Reclamation Plan	City or county	Plan for converting mining operation to post-mining use	3, 5, 6
Financial Assurance	City or county	Financial mechanism to guarantee reclamation	3, 5, 6
General Plan Amendment	City or county	Changes site's general plan designation to allow mining	7
Zoning District Change or Text Amendment	City or county	Changes zoning district or regulations to allow mining	7
Conditional Use Permit	City or county	Regulates mine operations (hours, dust, noise, etc.)	7
Authority to Construct	AQMD	Governs construction of plants and equipment	10
Permit to Operate	AQMD	Regulates PM ₁₀ (dust) emission	10
Waste Discharge Requirements/ NPDES Permit	RWB	Regulates impacts to surface and groundwater	11
Dredge and Fill ("404") Permit	USCOE	Regulates dredging or filling of wetlands	12
Streambed Alteration Agreement	CDFG	Regulates impact to lakes and streams from debris, sediment	12
Incidental Take Permit/ Habitat Conservation Plan	USFWS	Governs takings of endangered or threatened species	13
Hazardous Materials Business Plan	CUPA	Inventory and emergency plan for handling and storage of hazardous materials	14

AQMD = Air Quality Management District
 CDFG = California Department of Fish & Game

CUPA = Certified Unified Program Agency
 RWB = Regional Water Quality Control Board

USCOE = United States Army Corps of Engineers
 USFWS = United States Fish & Wildlife Service

from surface mines. Chapter 11 discusses mining and water quality through waste discharge requirements and NPDES permits mandated by the federal Clean Water Act. Chapters 12 and 13 address federal and state laws related to wetlands, streams, lakes, and endangered species. And, finally, chapter 14 discusses the handling of hazardous materials that may be used as part of a mining operation.

One final note—from the title, readers will understand that this book only covers regulation of surface mining. Underground gold mines were once commonplace in California, but few active underground operations are left today. Because such mines do not involve surface mining—the removal of materials from openings in the earth's surface—and are not regulated by SMARA, they are not discussed in this book.

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