

DECLARATION OF PROTECTED AREAS- SANTURBAN REGIONAL NATURAL PARK

Last January 8, 2013, the Regional Autonomous Corporation for the Defense of the Bucaramanga Plateau-CDMB-, declared the Santurban Regional Natural Park¹ in order to protect 11,700 hectares from any type of mining and agricultural activities, as it is considered an area of great natural richness. Likewise, an area of 600 additional hectares was destined for the creation of an integrated management district-DMI-.

The former minister of environment, Manuel Rodríguez, referred to this decision when stating that *"it should be the beginning of a movement for the creation of new parks to protect unique values that are today in danger²".*

Notwithstanding the above, not everyone who is involved and who may possibly be affected with this decision believe that a good decision was made: *"The Town Hall of Vetás (Santander) launched an SOS to the National Government because it considers that with the declaration of the Santurban Regional Natural Park the rural future of the population will be put under a serious risk³".*

The mayor of Vetás considers that such decision will affect the economic activity of the town, and so it will affect more than 10 thousand inhabitants.

On the other hand, much has been speculated about the fact that many of the mining titles granted in the area are located outside of the limits of the new park. However, it is a fact that at least 29 mining titles are located within the area recently declared as a natural park, and which, according to the ANLA and the CDMB, currently do not have an environmental license. Thus, no exploitation activities are being carried out in the area. It will be necessary for the ANLA to carry out a diligent study regarding these titles to determine their legal status and their applicable laws.

Meanwhile, on this March 21 there will be a political control debate in the Chamber of Representatives to determine the lawfulness of the declaration of the natural park.

Some Legal Considerations about the Natural Parks

It is important to note that article 65 of the Colombian Political Constitution establishes that the natural parks are inalienable, imprescriptible and cannot be judicially attached. In addition, article 13 of Decree 2372 of 2010 defines the regional natural park as a strategic geographic space of a regional scale which reserve, delimitation, establishment of boundaries, declaration and management corresponds to the Autonomous Regional Corporations.

¹ The decision was formalized by means of Agreement of the Directive Council of the CDMB No. 1236 dated January 16, 2013.

² SILVA HERRERA, Javier, *"Santurbán, el parque se le atravesó a una locomotora"*. January 13, 2013 El Tiempo. In: <http://www.eltiempo.com/archivo/documento/CMS-12510172>, visited March 13, 2013.

³ *"Lanzan alerta en pueblo minero por declaratoria de Parque Santurbán"*. EL TIEMPO. January 11, 2013. In: <http://www.eltiempo.com/archivo/documento/CMS-12506106>, visited March 13, 2013.

Furthermore, the Colombian Constitutional Court, regarding the importance of the natural parks, has stated that *“if the significance that these areas have for the protection of the healthy environment is examined, and if it is understood that their existence eases the management and preservation of the natural resources- flora and fauna- that are located there, and that it allows the protection of the water, the generation of oxygen and the preservation of the beauty of the landscape, then the Court finds that from the constitutional perspective there is no reason that justifies the possibility that these protected areas of Regional Parks could be declassified by the Regional Autonomous Corporation or by any other national or local authority⁴”*.

As a consequence, it is understood that the regional natural parks are areas of special ecological importance in the country, in which no production activities may be carried out and which may not be carved-out.

Consequences of the Declaration of the Natural Park

Much has been said about this recent declaration. However, currently there is no clarity about the legal consequences that it will bring to those companies that are carrying out activities in the area or that have mining titles that grant them an interest in the area. Likewise, it seems that not even the ministries involved (Ministry of Environment and Sustainable Development and Ministry of Mines and Energy) have agreed on the real consequences of such declaration.

⁴ Constitutional Court. Ruling C-598 de 2010. M.P.: Mauricio Gonz  les Cuervo.

It is our opinion that with this declaration three different situations are now present:

1. Companies that do not have a mining title in the area. In these cases, we believe that with the declaration of regional natural park every possibility to gain an interest in the area is eliminated.
2. Companies that have a mining title in the area but do not have environmental license. In these cases, we consider that although the mining title grants the companies certain rights, they will not be entitled to carry out exploitation activities because they do not have an environmental license, which will not be granted due to the declaration. As a consequence, these companies will not be able to continue in the area. Regarding this subject, the director of the CDMB has declared the following: *(...) the mining titles that have been granted by the Ministry of Mines for the exploration in the Natural Park lose their term and they will not be able to perform any operation, and they will have to leave their terrains as reserve.⁵* The Minister of Mines and Energy referred about this aspect, and he *“(...) assured that when the licenses expire the exploration*

⁵ CDMB. “En el Parque Natural Santurb  n no habr   explotaci  n minera, reafirma CDMB”. December 13, 2012. In: <http://www.cdm.gov.co/web/index.php/noticias-principales/1-ultimas/1688-en-el-parque-natural-santurban-no-habra-explotacion-minera-reafirma-la-cdm.html>, visited March 13, 2013.

activity must be stopped and no new permits will be issued⁶.

3. Companies that have both, a mining title and an environmental license. In these cases we consider that they are in the field of the acquired rights, so the companies must be allowed to continue with their activities pursuant to what was authorized. Regarding this subject, different authorities have stated the following: (i) *"Colombia will allow the mining companies that already have an environmental license to continue carrying out gold production activities inside the Santurban natural park, but it will not allow any new project, announced the Government on Thursday⁷";* (ii) the Ministry of Mines and Energy declared that *"the rights of those who are exploiting and have an environmental license will be preserved. They may finish carrying out the activity until the license expires"⁸.* However, it seems that there are no companies in this situation inside the new area declared as regional Natural Park.

Notwithstanding the general considerations above, it will be necessary to analyze each case independently in order to take a position and be able to express a conclusive opinion about the possible effects of the declaration. In addition, it is necessary that the

government clearly defines the bases of this declaration and analyzes on a case by case base the situation of each project to determine the real consequences for each project.

⁶ REUTERS. *"Empresas con licencia, únicas con permiso para explotar en Santurbán"*. January 17, 2013. El Tiempo. In: <http://www.eltiempo.com/archivo/documento/CMS-125270454> visited March 13, 2013.

⁷ *Ibíd.*

⁸ *Ibíd.*