

Mining law angers suction dredge miners; opponents say it's needed to keep mercury out of food chain

Alan Riquelmy, Grass Valley Union, 11-14-15

Clark Pearson said he used to suction dredge mine during the moratorium, a risky move considering California had forbidden it.

The Grass Valley resident would take his mining equipment and, as the name suggests, dredge the bottom of rivers looking for gold. The fact that the governor had ordered a halt to such activity didn't bother him.

"I know the law," said Pearson, arguing his federal rights trump the state's restrictions. "I'm willing to fight."

Pearson, northern director of Public Lands for the People, said he doesn't suction dredge anymore, but he intends to push back against a new law that imposes what he calls impossible restrictions on those who do.

At issue is state Senate Bill 637, recently signed into law by Gov. Jerry Brown and effective on Jan. 1. It allows suction dredge mining, but requires miners to obtain permits.

It's a change from the moratorium, in effect since 2009, but one Pearson and other mining supporters say is based on faulty science and meant to stop the mining through a cumbersome bureaucratic process.

The Sierra Fund, a Nevada City-based group focused on protecting and restoring the area's natural resources, supported the bill. Elizabeth "Izzy" Martin, the group's CEO, disagrees with the miners' take on the science of suction dredge mining.

She hails the new law as a means to stop the spread of mercury during the mining process.

"Where we live, you can suck mercury right out of the creek," Martin said. "It's very common to encounter mercury."

Overshadowing the pros and cons of suction dredge mining is a court case about federal pre-emption expected to reach the state Supreme Court case next year.

The question is whether federal mining claims supersede any state law restricting mining.

"Everything is hinging on the California Supreme Court," said Walt Wegner, with Public Lands for the People.

Can regulations co-exist?

Decades ago suction dredge miners faced little government interference. Then came the mid-1990s, and the implementation of several state regulations.

According to Wegner, miners learned to work with the new rules. But then came the 2009 moratorium instituted by Gov. Arnold Schwarzenegger.

The moratorium gave the state Department of Fish and Wildlife time to complete a review of its permitting

program and regulations. Miners, however, saw it as an attack on what they called federally protected mining claims.

That led to years of litigation in the form of *California v. Rinehart*, the case expected to reach the state Supreme Court in 2016.

“It’s a federal supremacy issue,” Pearson said.

A legal brief filed by supporters of the state claims that state regulations can co-exist with federal authority, noting state environmental law has applied to federal mining for more than a century.

“Now, more than a century later, the mining industry once again seeks to shield its activities from California’s attempts to protect the environment,” the brief states.

Specific regulations in the new law that irk miners include the need for suction dredgers to get permits from the Department of Fish and Wildlife, as well as other permits that department may require.

A likely source for one of those additional permits, if applicable, is the State Water Resources Control Board.

The water control board intends to work with Fish and Wildlife to develop a permitting system. It’s unknown how much the permits will cost or how long it would take to obtain one, said Miryam Barajas, public information officer with the water control board.

Miners are skeptical. Rich Krimm, director of internal affairs with the New 49ers, fears it will take years to get a permit, which essentially would make suction dredge mining impossible.

“We’re not convinced the water board would ever give a permit or waiver,” Wegner said. “We just think this is a ruse and a hoop to jump through.”

Disagreement on science

When asked about the science behind Gov. Jerry Brown’s decision to sign SB 637 into law, the governor’s office declined comment.

“We’re going to let the Governor’s signature on the bill speak for itself,” wrote Gareth Lacy, deputy press secretary.

Suction dredge mining supporters are upset with what they call the faulty science propping up the new law.

The bill states that suction dredge mining can discharge mercury and other metals into the water, effect wildlife and make noise.

“They are misrepresenting the true facts,” Pearson said. “They say we are stirring it up. Well, every storm stirs it up.”

Wegner notes that any metals miners suck out of the water are already present in the ecosystem. Additionally, he said, the mining equipment removes 98 percent of mercury and only 2 percent passes back into the river.

Martin, of the Sierra Fund, agrees that suction dredging removes more than 90 percent of mercury during the process.

The problem, however, is that mining pushes the remaining mercury down river, making an otherwise stagnant metal mobile, she said. It then enters the food chain, making its way into animals and, potentially, humans.

Mercury accumulates in the body, causing damage to the nervous system, heart tissue and the brain, Martin added.

“It’s an unusual and very dangerous thing that mercury does,” she said.

Martin also disputes arguments that storms stir up mercury more than miners do. According to Martin, winter storms push mercury deeper into the earth, where she said it should remain undisturbed.

Suction dredging typically happens during the summer, when there’s a reduced level of dissolved oxygen in the water. That’s important, Martin said, because sulfate-reducing bacteria is more likely to bond with mercury in areas of low dissolved oxygen.

That bacteria is essential to the transformation of elemental mercury into methylmercury, the latter of which can enter the food chain and cause problems.

A letter filed in 2007 with the State Water Resources Control Board disputes the alleged dangers of suction dredge mining. Written by Claudia Wise, a retiree of the U.S. Environmental Protection Agency, the letter states suction dredging is an ideal method of safely recovering lead and mercury from streams and rivers.

“The mining community of today is, in my opinion, the only group that are in a position with the technology to help out and at a very economical price to the public,” the letter states.

Miners like Wegner couldn’t agree more. Sludge dredgers remove metals for free, unlike the Sierra Fund, he noted, which is involved in the Combie Reservoir Sediment and Mercury Removal Project.

Martin noted the Combie project belongs to the Nevada Irrigation District, and the Sierra Fund is providing only oversight.

Additionally, Martin said, NID must obtain the same permits a suction dredger miner is required to get under the new law before it starts work.