

State legislation could lift gold mining ban

Will Houston, Eureka Times-Standard, 9-18-15

For a local tribe and environmental groups, recently passed state legislation that would require a certain method of gold mining to comply with the state's clean water regulations could be the key to resolving long-standing environmental concerns and litigation.

"It's big victory because they should have to comply with the Clean Water Act," Karuk Tribe spokesman Craig Tucker said.

For miners, the bill is yet another layer of regulation that would restrict them from what they say is a federal right under a nearly 150-year-old law.

"The regulations have to be reasonable and not prohibitive," mining organization New 49ers' Internal Affairs Director Richard Krimm said.

Caught in the middle is the California Department of Fish and Wildlife, which had adopted and amended rules on suction dredge mining between 1994 and 2012. Under the rules, miners have to obtain a permit from the department before they can start operation.

"Whether this is good news or bad news, I don't know," CDFW senior policy advisor Mark Stopher said of the new state legislation. "It depends on where you're sitting."

Suction dredge mining works by vacuuming gravel from rivers, streams or lakes to sort through the sediment, often through a sluice box, to filter out gold or other precious metal.

This type of mining was a popular practice on North Coast rivers like the Klamath River until 2009 when the state Legislature and then Gov. Arnold Schwarzenegger adopted a moratorium on it.

The moratorium was a result of a lawsuit filed by the Karuk Tribe and environmental organizations against the Department of Fish and Wildlife in 2005 that claimed the department's 1994 regulations on the mining practice were not considering impacts to wildlife species listed under the federal Endangered Species Act, Stopher said.

Other issues raised were that high banking and suction dredge mines were altering stream beds, which caused erosion, impacts to fish spawning grounds and habitat and loosed mercury into the waters. After being ordered by a judge to amend the regulations, Stopher said the state adopted a moratorium in 2009 with the department adopting new mining regulations in 2012.

But the department was again sued by the tribe and environmental groups. This time the mining organizations also sued the department as well, but for entirely different reasons.

"Some miners don't like (the 2012 rules) because they are more restrictive for mining and some of the tribal and environmental interests don't like them because they still allow mining," he said, stating that trial start date was set for the consolidated case in January 2016.

One miner from Plumas County who was convicted of a misdemeanor for violating the state's moratorium challenged the issue all the way to the point where it is now being considered by the state Supreme Court, Stopher said.

The argument is that the state cannot ban mining on federal lands such as those owned by the U.S. Bureau of Land Management and the U.S. Forest Service due to the General Mining Law of 1872, which “declared all valuable mineral deposits in land belonging to the United States to be free and open to exploration and purchase.”

The case has yet to be heard, Stopher said.

But with the moratorium in place, the 2012 rules are not in effect. In order for the moratorium to be lifted, the state required that the Dept. of Fish and Wildlife to mitigate all impacts of suction dredge mining on water quality, sensitive nesting bird species, cultural resources and noise nuisance levels. The problem is the department only has the authority to address the bird nesting issue.

This is where Senate Bill 637 by state Sen. Ben Allen (D-Santa Monica) steps in. Approved by the Legislature on Sept. 11 and now on the desk of Gov. Jerry Brown, the bill would require miners to go to the State Water Resources Control Board or their regional water quality control board to obtain a water discharge permit before they could obtain a mining license from the Department of Fish and Wildlife.

Stopher said this would address the water quality issue relating to the moratorium.

The bill also addresses noise nuisances and cultural resources impacts by allowing the department to require miners to obey local and state laws regarding those topics in order for them to receive and retain their mining permit.

“Then we will have met the requirement to ensure things are fully mitigated,” Stopher said. “That would allow the moratorium to be lifted.”

But Krimm does not think it will be that fast or simple. “And the costs with dealing with water board permits and the time required for it may preclude you from even getting into the water,” he said. “It becomes regulation upon regulation, which is just becoming prohibitive.”

Traveling up from the Bay Area to mine on the Klamath River in California and Oregon for the last decade, Krimm said the issues that still need to be addressed may take so long that he may not get to mine again.

“I don’t think I have enough time in my life that it will be settled,” he said. “It’s a tough thing.”

SB 637 was not the answer sought by the New 49ers, but it’s enough for the Karuk Tribe to consider dropping its 2012 lawsuit.

“This is the middle ground,” Tucker said. “I think this legislation goes a long way to address the issues that are at the heart of our legal claim.”