

## **OWNER WINS GOLDFIELDS SUIT**

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Appeal-Democrat  
December 7, 2006

Yuba County violated the rights of a property owner by allowing Western Aggregates Inc. to mine the Yuba Goldfields without a public hearing, an appeals court has ruled.

While the ruling has no immediate impact, it sets the stage for an environmental review that could limit the scope of Western's massive operations along the Yuba River.

"Yuba County had some odd notion that Western Aggregate's operation didn't need to be permitted because, well, that's a mining area," said Chuck Smith, chairman of Yuba Goldfields Access Coalition. "You can't run a mine without oversight, which is what they've been doing for years."

The Yuba Goldfields east of Marysville contain roughly 10,000 acres of construction-grade sand, rock and gravel.

William Calvert, who owns property adjacent to Western, has pursued lawsuits against the company for years. In a separate case, the same court held in 2002 that Western could not bar the public from using Hammonton Road to reach the Yuba River.

"This whole effort has bought some law and order to the Yuba Goldfields," said Smith. "Now you have access to public lands, and the court saying you have to go to the county for (mining) permits."

That's not necessarily the case, according to Kerry Shapiro, the San Francisco attorney representing Western Aggregates.

"The court did not rule on whether Western has a vested right" to mine its 3,430 acres, Shapiro said. "The court confirmed the process by which the vested right is determined includes a public hearing."

Simply put, vested rights allow landowners to "grandfather" existing property uses that wouldn't pass legal muster otherwise. Because Western's property has been mined for decades, the argument goes, it isn't subject to mining and environmental laws passed in later years.

"Vested rights are constitutional property rights in which mining operators who have historically conducted operations ... are exempt from subsequent provisions of the law," Shapiro explained. A previous lawsuit prompted Yuba County to ask

Western and other mine operators to file documents supporting their vested right claims.

Not enough, the 3rd District Court of Appeal ruled Tuesday. A public hearing must be held to address the concerns of nearby property owners who could be affected by Western's operation.

After the court's decision is formally published, Western will have 30 days to respond.

Shapiro said the company hasn't ruled out appealing the case to the California Supreme Court.

"They want to evaluate the reasoning of the court to see if it's sound or if it's something they should challenge," said Shapiro.

If no further appeal is mounted, he said, Western can ask the state to determine its vested rights or seek a conditional use permit from the county.

Either option poses a big challenge, said Ted Franklin, an Alameda attorney who represents landowner Calvert.

"They're going to have a heck of a time showing vested rights, so they're probably going to be forced into a permit mode," Franklin said.

That would force Western to prepare an environmental impact report that covers issues including dust, noise and traffic, along with proposals to lessen those impacts.

"This is one of the largest aggregate mining operations in the state, if not the largest, so they're going to have a large study to do," Franklin said.