

Western Mining Alliance

October 2018

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END OF THE LAWSUIT

End of the road.

After nearly six years of pleading for funding, we've run out of money and had to settle with the State. There are no further active lawsuits regarding dredging in California.

We managed to fund our lawsuit on a mere \$1,500 a month but with everyone now believing there will be legal dredging next year our contributions went from \$1,500 a month to zero.

When the judge ruled our issues were moot back in December he also awarded the State their costs the State claimed their costs for the record exceeded \$200,000 and they had in their hands a judgment which said we owed them that much.

We were willing to go forward if we could have covered even part of that amount – in 9 months of trying to raise money to cover that cost (\$200K) we raised exactly \$900.

In addition to the potential cost liability we still had to come up with at least \$8,000 to pay for the court record costs in order for the appeal to go forward.

Last month we got \$125.00 total in contributions.

We can't run a lawsuit on that. With us dropping the lawsuit there is no hope remaining of defeating the EIR. Both the EIR and the regulations are now final, and in addition to this mess some folks have negotiated you into a Point Source Discharge permit requirement which according to the Water Board will cost you about \$6,000.

We put an awful lot of effort into this, but at some point we had to realize there was no support for what we were trying to do. It appears everyone is satisfied with the regulations as published and \$6,000 permits to run a 4" dredge.

We're out.

Will there be legal dredging next year?

Nope. We'd be shocked if you were dredging next year.

To add insult to injury the Water Board is moving ahead with a requirement for Section 402 point source discharge permits to run any size suction dredge. This is absolutely not what you want and should be fought in federal court.

www.theminingalliance.com

We posted the letter we received from the California Water Board in response to our Public Records Request in which they state the Army Corps of Engineers has agreed to handover jurisdiction to the California Water Board. You can find it on the front page of our website.

Some number of months ago somebody posted a comment online which said they were tired of groups publishing gloom and doom predictions to raise funds.

It's not gloom and doom – it's fact, and we're not even trying to raise funds.

The opposite of gloom and doom predictions is worse—overly optimistic and naïve predictions.

Over the past few years there were damned few things we agreed with PLP on, but on the Water Board we're in 100% agreement: In no way, shape or form should any dredger anywhere agree to a point source discharge permit requirement. People who tell you this Water Board Permitting scheme is a good thing are wrong.

Secondly, as one of the PLP plaintiffs said – there's not enough gold in the hills to cover a \$200,000 potential judgment against us.

We were staring at a pretty hefty cost claim by the State, with no money in the bank. It's not that people didn't donate enough money to the lawsuit – they did. Over \$1.5 million was donated to the lawsuit in the span of 5 years, we, the WMA, just didn't get much of that. In 5 years we managed to raise about \$45,000 which kept our ½ of the lawsuit paid.

We just can't fight a lawsuit with those kind of numbers.

We understand completely we failed to convince enough people of the importance of what we were doing. We've all got a lot on our plates, and if you knew the true time cost of a lawsuit you may understand we have some sense of relief knowing we'll not be spending thousands of hours on research and legal briefs.

The only case we know of with a chance of turning around the dredging bans is the Bohmker case in federal court. With their recent loss in the appeals court they are now petitioning for an en banc hearing with all 11 justices hearing the case, not just 3. Failing a re-hearing they will petition the U.S. Supreme Court.

ISSUES

Here's pending issues someone needs to tackle:

Oregon Bohmker Case

Bohmker lost in federal appeals court providing yet another loss for preemption and the 1872 Mining Law. The Bohmker case is probably the last, best case with any chance to the go to the U.S. Supreme Court. If this case goes forward someone needs to shepherd it through Washington DC and not let radical lawyers write the government briefs. You can find out more information on the Oregon efforts by clicking:

<http://www.waldominingdistrict.org/>

Annual Recording Tax

\$75.00 tax to record documents. We fought this for several years – and lost. That doesn't mean this is over. Depending on what county you're in affects whether they collect the tax. It appears to us that counties can request, and receive, an exemption for this. We know at least two counties aren't requiring miners pay this fee and they received a waiver from the State. If you are in a county which requires the payment – ask them to request a waiver.

CA Water Board

This Water Board issue is a big deal. The recent announcement that there would be dredging in 2019 and the Water Board would be issuing a simple de

minimis permit is wrong. The Water Board is going to require a Section 402 point source discharge permit – you can read their response to our Public Records Request on the front page of our website.

The Section 402 is the absolute worst possible outcome you could have for suction dredging, and we believe it is legally wrong. We also believe the US Army Corps of Engineers can't waive jurisdiction of something which Congress gave them jurisdiction over – however, seeing as how we just bounced our last check at the bank, we don't have the money to pursue this, other groups are much better funded, they just need to focus on what's important.

2012 Regulations

The regulations are based on the 2012 SEIR. The environmental report is final but that doesn't mean someone couldn't challenge the regulations individually. The most likely scenario is when someone is denied a permit for their mining claim simply because the State hit their 1,500 cap. That may open the door to challenging all the regulations.

The 2012 Regulations are a really bad deal. Couple that with the Water Board and the future looks bleak unless someone who is funded steps up and starts filing some lawsuits.

The Big Conspiracy

For a long time some of us in the lawsuit have discussed the apparent conspiracy to stop suction dredging. We had put together a pretty fair amount of evidence. We had a documents dating back to 1995 where CDFW stated they were trying to stop dredging for political reasons. We had court documents where a CDFW biologist testified dredging caused no harm, then turned around six months later and said it did cause harm.

We have a letter from the USFS and CDFW which said they could find no evidence of harm to by dredging to endangered salmon, and in fact, dredging appeared to provide the only habitat for them.

We have an Inspector General report in which the lead scientist for the mercury study admitted the California Water Board told him how they wanted the study to come out. We showed evidence this same scientist was also on the Board of Advisors of the Sierra Fund and he was also a donor to the Sierra Fund.

We have seen the person who was the single Water Board employee responsible for the production of the Water Quality section of the dredging EIR retire and go to work for the Sierra Fund, the same organization which wrote every piece of legislation to ban dredging.

There's an awful lot there – if a group was even marginally well funded they could tackle this in federal court. Look at the Hardesty case. They lost 7 times in California court and won \$32 million in federal court on just such a conspiracy.

WHO SHOULD YOU SUPPORT?

With all the suction dredge mining cases in California now finished – should you continue to support any effort?

Yes, by all means, you should support the **Waldo Mining District** and the Bohmker case. Of anyone these guys have put together the best arguments, pursued the right legal direction and are in need of financial support. We don't recommend throwing any further money away in California. Our experience with the California court system forces us to recognize the futility of seeking justice under the California regime. Our view of the court system is actually reflected in one of the Oregon suction dredging opinions and is quoted in the September Waldo Mining District newsletter – it sums up our feeling with the justice system:

“From their perspective, this is another one of a series of decisions which, to quote Judge Milan Smith’s dissent in another suction dredge mining case, “undermine public support for the independence of the judiciary, and cause many to despair of the promise of the rule of law”. (emphasis added)”

If you're going to support anyone, please support the Oregon efforts to obtain a re-hearing “en banc” or to petition the U.S. Supreme Court. If the Oregon miners can get this issue in front of the Supreme Court then it's likely we'd win.



PLEASE SUPPORT OUR EFFORTS TO SAVE SMALL-SCALE INSTREAM PLACER MINING IN OREGON – AND BEYOND. Information on How to Make a Donation is on our website at: www.waldominingdistrict.org along with copies of all the court briefs & decisions, and more.

ANYONE wishing to make a Donation to our SB 3/ DEQ Legal Fund (or General Fund) can send it directly to the **WMD at our P.O. Box...** or left for us at the **Armadillo Mining Shop** in Grants Pass.

We have also set up a PayPal account on our WMD website where you can make online Donations.

DRAWING COMING SOON: We will be launching a new Fund Raising Drawing this fall, with the possibility of several mining claims as prizes! ALL that have donated since last March will be entered in the Drawing! We are currently soliciting and arranging prizes, and should have the Drawing up and running by the time the next WMD News comes out. Donations of prizes are needed and more than welcome! (Contact us at the WMD P.O. Box).

FOLKS: All this litigation costs \$1000's of dollars. Our case is currently the only real hope to save mining.





WALDO MINING DISTRICT - 2018 MEMBERSHIP, RENEWAL & DONATION FORM

DUES DUE DATE IS PRINTED NEXT TO YOUR NAME ON THE MAILING ENVELOPE, AND SHOWS THE MO/YR YOUR DUES ARE DUE NEXT.
The WMD shares Member Contact information with NO ONE.

PLEASE CHECK

NEW MEMBERSHIP
 RENEWAL

DONATION
 AMOUNT ... \$ _____

INDIVIDUAL ... \$15.00 FAMILY ... \$17.50

_____ name (print) _____ date _____ phone

_____ address _____ city _____ state _____ zip

_____ EMAIL (PLEASE PRINT CLEARLY!) Please check for Email Newsletter only.

TOTAL AMOUNT ENCLOSED: \$ _____

PLEASE SEND YOUR DUES AND/OR GENEROUS DONATIONS TO:
WALDO MINING DISTRICT P.O. BOX 1574, CAVE JUNCTION, OR 97523

FOR ADDITIONAL INFORMATION, WRITE THE WMD AT THE ABOVE ADDRESS, OR EMAIL US AT: waldominingdistrict@gmail.com
 OR VISIT US ON THE WEB AT www.waldominingdistrict.org

“Never doubt that a small group of thoughtful, committed people can change the world.
 Indeed, it's the only thing that ever has!” Margaret Mead

1st Glance at 2019 Claim Abandonments

Every year, about this time, we take a look at claim abandonments and new filings. You can find this article linked on the front page of our web site if you you'd rather read it online. www.theminingalliance.com

California

California is a small miner's state. California has about 7,700 individual claim owners. There are very few large holdings and virtually no holdings by the big mining companies. In California 56% of claim owners hold only a single mining claim. In Nevada 75% of claim owners hold more than 1 mining claim and the average number of claims held is about 64. The average number of claims per claim owner in California is 4. 90% of California claim owners own 5 or less mining claims.

Usually in October we see about 3,000 to 3,500 claims on our pending action list. This year we're looking at 5,200 which is a significant increase from previous years. Of that number about 60% are placer claims and nearly 100 of these claims were located prior to 1960, so we're looking at a pretty good collection of very old placer claims which may be available.

We expected to see a lot of placers pending action this year due to the increased filing fees at the recorder (\$75), but we're seeing a lot more lodes on the list than we normally see. A lot of those lodes are very old mines, so we're not sure how to interpret that.

Nevada

A normal year in Nevada sees about 20,000 claims pending abandonment. For 2019 we're seeing about normal numbers. Last year we had 21,000 on the list this time of year and we ended up with 10,984 which were officially closed. While that may not seem like a good percentage, it's actually not bad for this early in the year. In other words we know months in advance of the public if a claim is going to be forfeited. As the months go by our accuracy increases. Usually by December we're around 85% accuracy.

Abandonments for Nevada are about normal for 2018 and it looks about the same for 2019 based on our current list. We are seeing an increase in new filings for Nevada with new filings about double abandonments. Over the past 12 months there were over 26,000 new claims filed. The leader in new filings was Newmont with 2,384 claims filed but there were also six other

mining companies which filed over 1,000 claims in 2018. 148 companies filed at least 100 new mining claims in Nevada last year and 258 filed 10 or less.

In Nevada we typically see a pretty wide dispersion of filings. A single company may concentrate a large number of claims in an area, but in general we see large numbers filed throughout the state so a high density in a particular area isn't a great indicator of a huge new strike. That being said the area around Goldfield has been seeing the highest number of new filings in 2018.

Arizona

Arizona always has good opportunity for the small scale miner, as well as larger concerns. About 90% of Arizona claim owners have 10 or fewer claims indicating a lot of the claims on our watch list would be suitable for the small miner. While Arizona doesn't have the number of large claim holders Nevada does, it still has 137 claim owners who own more than 100 mining claims.

Last year in Arizona we had about 2,700 mining claims forfeited. About 500 of those were placer claims and a handful of those placer claims were very old claims dating back to the 1920's and 1940's. Last October we were tracking about 3800 claims so the accuracy rate for Arizona was about 90%.

We're seeing an increase in new locations in Arizona and a net increase in claims overall. While last year we had a little under 3,000 mining claims abandoned, over the same time period we saw 6,600 new filings.

At the start of 2018 Arizona had 46,120 mining claims. During the year about 2,700 were abandoned and about 6,600 claims were located. We're currently watching about 3,300 claims and expect slightly higher closures than last year, but in general we think it will be a normal year.

Summary

Your best bet is still Nevada. More than likely we'll be filing some Nevada claims this year. We spent some time last summer prospecting areas and we've narrowed our choices down to just a couple of high potential areas. What we particularly like is the opportunity to mine without looking over our shoulders.

It's about environmental law – not mining law!

“The trouble ain't that there is too many fools, but that the lightning ain't distributed right.” Mark Twain



Over the years the fight for suction dredging has been plagued by so-called experts on mining law, water law and environmental law. Although none of them had a degree in law, we've always seemed to have an abundance of would be lawyers.

We've lost every fight on mining law, and now we've lost the fight on environmental but we're still not short on experts.

We've previously cautioned about trying to fight environmental law with mining law. Two different approaches to the problem. Every adverse ruling we've received, to include the latest Bohmker ruling has centered on the environmental issues – not the mining law.

It's a hard thing to send guys with GEDs up against Harvard lawyers. It's like watching the movie Galipoli.

If you're going to win a game you better know what field your playing on. We showed up on a football field armed with a soccer ball and got our tail kicked.

The worst part about it is by putting the 1872 Mining Law on the table we lost the protection of the 1872 Mining Law for all miners. The only way to salvage it now is the U.S. Supreme Court, but who's going to get it there? They accept less than 1% of cases submitted, we got really close with Rinehart, but without lobbyists in Washington DC we had no way to engage the Solicitor General and we allowed a radical environmental lawyer to write the opinion.

Lane McFadden. Please remember the name, whoever has the bucks to carry this on. He's the one who wrote the opinion which stopped Rinehart.

The guys up in Oregon are now the last chance of turning around this dredging ban. At least they're in federal court and not in a state court which is indistinguishable from the legal advice branch of the legislature. What ever happened to an independent and fair judiciary?

I can tell you, in my opinion, where it all began to go wrong. This idea that the courts "are not equipped to argue science." We've heard that time and again, the court's willingness to accept the opinion of the agency as if it was handed down from Mt. Sinai on a tablet of stone.

Once a judge refuses to evaluate what we presented as corruption, because they aren't "equipped" to evaluate science, then we've lost the independent judiciary. Of course the courts should evaluate bullshit science which cheats a whole class of people out of their rights. When plaintiffs raise the issue of conspiracy they should take a hard look at our claims – we didn't get that look.

We've known for some time the water quality permitting was going to be an issue which is why we worked for two years to try to force the Army Corps of Engineers to issue a regional general permit as we had back in 1994.

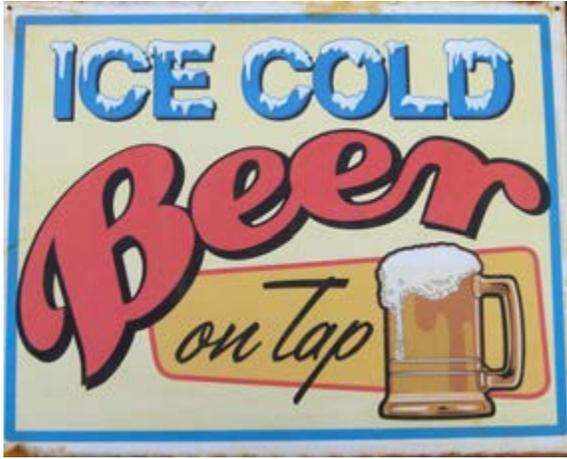
This California Water Board permitting is a big deal. If you want to talk to someone who really knows how this works then talk to the guys running the Bohmker suit. They've been suing the state of Oregon since 2005 over the exact same issue.

The best paper I've seen on the national clean water permitting system as it applies to suction dredging was written by Tom Kitchner up in Oregon. He looked at both sides of the issue, and was able to present the arguments for and against. If you want someone who could possibly win, it's someone who understands both arguments.

The Water Board lawsuit needs to be filed – and soon. Our opinion is you sue in federal court by going after both the US EPA and the US Army Corps of Engineers – NEVER sue in state court again. If possible sue outside the 9th but whatever happens this issue shouldn't be handled by amateurs.

The fight goes on.

MURPHY'S BAR – The Electric Chipmunk



Flanagan is more of a nature lover than I am. That's not a real tall hurdle though.

Some of you may recall Bob Flanagan is the claim owner downstream from me on Starvation Creek. He owns the Biscuit, a marginal gold producing claim, but a claim which is hidden from the prying eyes of regulators.

The Biscuit is one of two sanctuary claims on Starvation Creek; my claim being the other which means we can dredge without fear of law enforcement asking about our permit status, which of course we don't have, but I've found it to be a source of endless amusement to watch people apply for permits which the government says you must have, but they don't actually have a permitting system.

We're at the tail end of dredging season on Starvation Creek which is pretty high in the Sierras. When you spend a summer camping relatively close to someone you begin to notice certain eccentricities.

It didn't surprise me when early in the summer he brought a bird feeder to our camp at Murphy's Bar. The bar, not the saloon. Bar being a place where gravel accumulates, not a place where empty beer bottles accumulate.

I've always been a let nature takes its course kind of guy. Start feeding them and you've got a whole bunch of dependents you didn't need.

It doesn't take long and he's got a mob of these little black headed birds catching a free meal. So many, in fact, they're going through the seed faster than he expected. He goes to refill the feeder and finds a raccoon has discovered how to chew through the bag and there's not a whole lot left for the birds.

He returns the next day with a new bag of feed, and one of those action packer containers to put it in and sees a puff ball of feathers under the feeder. I don't know a lot about birds but I do know they don't normally explode from overeating. I figure this bird feeder project is beginning to get interesting.

Usually Flanagan is the first one to pull the starter handle of a dredge. He's up before me, dredging before me, and comes back to camp after me. This day he decides he's going to watch the bird feeder and see where the feathers came from. The normal crew of black-headed birds arrive at the feeder, enjoying a free meal when a hawk swoops in, grabs a bird and leaves behind a few feathers where the bird used to be. They drift slowly to the ground as Flanagan watches.

The next day I see the bird feeder is gone.

That didn't stop Flanagan from feeding the birds. He just started throwing the seed on the ground around the rocks so the birds could eat, and hide.

This seemed to frustrate the hawk for a while, but presented another problem.

It appears chipmunks are big fans of a free meal and a chipmunk with a full belly will have nothing else to do than think about finding a girl, settling down, and starting a large family. Within a few weeks we found ourselves overrun with chipmunks.

Flanagan, being a nature lover kind of guy, tolerated the chipmunks for a while but soon found the chipmunks were far more plentiful and crafty, than the little black headed birds and would wipe out his bird seed as soon as he spread it.

Sitting around the bar after a day of dredging, I happened to mention to Flanagan that I had read somewhere chipmunks carry some type of plague.

A few days later Flanagan comes walking down the trail with a .22 rifle and scope.

Those fat chipmunks were pretty easy pickings for a few days and he discovered the blue jays would take the carcasses away so everything was working out pretty good. We had the little black headed birds eating their food again. The hawk had discovered the chipmunks were pretty easy meals and had quit eating little birds and we had the blue jays cleaning up the mess.

Ahh, nature was in balance again.

MURPHY'S BAR

A few days later I woke to the sounds of Flanagan shooting.

"Chipmunks?" I asked him.

"Blue jays." He replied. "Damned things come in every morning to eat the dead chipmunks, making a hell of a racket and I can't get any sleep, so I've got to thin them out a bit."

By 'thin them out' he meant he was going to shoot everyone he could see. It wasn't long before the blue jay and chipmunk carcasses started piling up which presented yet another problem.

Yellow Jackets. Or as some call them - meat bees. With an abundance of dead chipmunks laying around it wasn't long before clouds of yellow jackets descended on the camp.

One night I mentioned to Flanagan that the yellow jackets seemed to be worse this year and wondered whether all the chipmunk carcasses might be drawing more yellow jackets than normal.

"Nope," he says, "yellow jackets are always thick in August."

"It's July." I reminded him.

A few days later I come back to camp and there's yellow jacket traps hanging from the trees. Flanagan tells me there's a little pheromone bottle in them which the yellow jackets think is a queen bee looking for a good time. The yellow jackets fly into the trap but can't figure how to get back out and according to Flanagan - yellow jacket problem solved.

That pheromone lure will draw yellow jackets from the next county if the wind is right. It wasn't long before we were just overrun with them. The bottle was full of them and the camp was full of them. There seemed to be a waiting line to get into the trap, so some would veer off and have a snack of chipmunk carcass while they were waiting.

Flanagan continued to deny a pile of dead chipmunks was the cause of our yellow jacket problems. Instead he said he'd look into some ways to get knock them back a bit.

This led to a week of Flanagan getting very little dredging in, but spending an awful lot of time sitting in a chair with a can of hornet spray.

That didn't solve the problem, but Flanagan, being a nature lover kind of guy, was determined to come up with a solution.

Once Flanagan sets his mind to figuring out a problem you can count on a pretty interesting solution. Flanagan disappears for a few days and when he comes back he's carrying what looks like a shrimp trap.

"Going to start trapping the chipmunks now?"

"Nope, this is for the yellow jackets." He replies.

He sets it on the ground and begins to explain its a homemade yellow jacket zapper. Kind of like the ones you buy at the store, except he's modified it to increase the voltage by using a transformer which is wired to some screen which surrounds a hook hanging from the wooden top.

"Since those yellow jackets seem to like chipmunks so much I decided to make a bug zapper where I could hang a chipmunk up. Then when the yellow jackets tried to get to the chipmunk they get fried."

Sounds OK to me, I guess. The only problem is you have to run the generator all day to provide the juice to fry them, but it's Flanagan's generator, and his gas, so what do I care?

Flanagan takes one of his chipmunk carcasses, hangs it up, plugs in the zapper and sets it out in the sun. Sure enough the zapper is killing mounds of yellow jackets and I'm hopeful we've got the problem under control.

A few days later Flanagan returns from dredging to discover the little black headed birds are more attracted to the pile of yellow jackets than they are to the food but with the increased voltage of the bug zapper it appears quite a few of them are frying themselves trying to get at the yellow jackets. Which, of course, provides a whole new food source for the remaining yellow jackets outside the bug zapper.

Flanagan, being a nature kind of guy, is mortified to find the little black headed bird population is down to about 2, one with a limp, and the other suffering from PTSD.

He grabs his bird feed bag, heads to the creek and dumps it in. No more feeding birds. No more chipmunks.

A week later the yellow jackets were scarcely noticeable.

Flanagan says they always thin out this time of year, he also says the little black-headed birds are migratory and that explains why there are so few of them late in the season.

And nature is back in balance once again.

Prospecting Nevada

With over 20,000 claims on our pending action list we decided to take a trip to Nevada and check out some potential mining sites. If you're looking at Nevada what you'll find is the vast majority of mining claims (over 90%) are remote. Our definition of remote is they are located at least 20 miles from the nearest town. That being said we found that actually accessing the mining areas was easier than California because the access roads were better and you didn't have the extreme terrain you have in the Sierras. We also found the abandoned mines were in a lot better shape than you find in the Sierras due to the lack of rain. We also found some canyons which actually had trees.



Mining History in California

The past summer I spent some time looking for a quartz vein which was supposed to be in a steep canyon. If you've been out in the mother lode country then you've seen the miles and miles of water ditches which supported the hydraulic operations. Ever wonder what they did when they came to a canyon? They built trestles and carried the flues across the ravines. The below pictures are the remnants of what must have been a real piece of engineering. There's about a 300 foot drop from the level of the flume to the bottom of the canyon. They blasted straight through a fingerboard ridge, then carried the flume on across to the other side. It's pretty amazing to still find remnants of this after so many years.

