

June/July 2009—Mining Law Updates

Forest Plans for Angeles, Cleveland, Los Padres and San Bernardino National Forests Deemed Invalid by District Court

On June 8, 2009, the Federal Court for the Northern District of California ruled that the revised forest plans for the Angeles, Cleveland, Los Padres and San Bernardino National Forests are inadequate for failure to include incidental take statements in the supporting biological opinions. Forest plans are generally the programmatic land use plans that provide guidance for implementation of site specific projects in the national forests. Although the forest plans are programmatic documents and do not authorize any site specific projects, the Court ruled that incidental take statements were required by the Endangered Species Act. The forest service will now be required to obtain new biological opinions regarding impacts to 40 listed plants and animals found within the four affected forests. The parties are still awaiting the Judge's determination as to whether the Forest Service's ability to approve projects within the forest will be limited while the new biological opinions are pending.



Superior Court Ruling and California Senate Bill Restrict Suction Dredging

On July 28, 2009, the Alameda Superior Court approved an injunction creating a moratorium on suction dredge mining permits in California. This action stems from a previous lawsuit in which the California Department of Fish & Game was ordered to conduct CEQA analysis on the effects of suction dredging on endangered and threatened species by June 20, 2008. (Kayuk Tribe of California v. California Dept. of Fish & Game). The Plaintiffs in the previous and most recent cases, the Kayuk Tribe (among others), allege now that the required CEQA analysis was not performed in violation of the court order and of CEQA. Moreover, the Plaintiffs allege that the Department of Fish & Game cannot continue to issue dredging permits until CEQA analysis has been properly conducted. The injunction prohibits issuance of suction dredging permits until the dispute is settled.

Also relating to suction dredging, on May 26, 2009, the California State Senate approved SB 670, which creates a statutory Moratorium on dredge mining permits until CEQA review has been completed. This bill would designate the issuance of permits to operate vacuum or suction dredge equipment to be a project under CEQA, and would suspend the issuance of permits, and mining pursuant to a permit, until an EIR has been certified that analyzes the impact of suction dredging, and new regulations have been promulgated regarding the same. This bill is still awaiting signature by Governor Schwarzenegger.

This alert was authored by Christophe Powell, Esq. and the Real Estate/Land Use Department Publication Committee, chaired by Matthew Wm. Nelson. For more information about this article, please contact Mr. Nelson at Matthew.Nelson@GreshamSavage.com. The Real Estate/Land Use Practice Group handles all aspects of real estate and land use, including title, purchase and sale transactions, leasing, entitlement and governmental approvals, and environmental remediation.

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