

NewsRelease

*Congressional
Subcommittee Receives
Testimony on Mine
Permitting Process*

MEDIA CONTACT

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TROUTDALE — Dr. Richard Shepard, President of Applied Ecosystem Services, Inc. was asked by the Northwest Mining Association (NWMA) to submit testimony to the U.S. House of Representatives' Committee on Resources, Subcommittee on Energy and Mineral Resources.

The subcommittee held an oversight hearing in Spokane, WA, on Saturday, September 11, 1999. The hearing's purpose was to gather factual information, both pro and con, on proposed changes to the nation's general mining laws and on the mine permitting process.

Dr. Shepard's testimony addressed the reactions and responses of federal agencies to applications to mine. While focusing on sand and gravel mining in the Columbia River, he also described an unfortunate situation for a gold mine in Idaho. His testimony presented to the subcommittee follows.

I appreciate the opportunity to bring three points to your attention regarding federal

regulatory and resource agencies' response to mining applications. I will limit this summary to the U.S. Army Corps of Engineers/Portland District, the National Marine Fisheries Service and the U.S. Fish and Wildlife Service and to mining of sands and gravels from the lower Columbia and Willamette Rivers. However, the three issues I will discuss apply equally to federal land management/regulatory agencies such as the Bureau of Land Management and the Forest Service.

My testimony in this letter addresses the mine permitting process. The three most significant permitting issues we have with federal agency staff are their ignorance, arrogance and isolation from consequences. These three issues consistently affect mine permitting processes for all sectors of the mining industry.

Ignorance

Regulators have a responsibility to understand the industries that they regulate, as well as a responsibility to know the

biology and ecology of the natural resources that agency is charged with managing. Too frequently the individual staffer does not accept this responsibility. A regulatory project manager at the Corps of Engineers told me a few years ago that she “didn’t have the time” to visit a dredging operation. A staff biologist for the Fish and Wildlife Service told me that he, too, “didn’t have the time” to visit an active rock quarry and learn about the wildlife use of the active site. I disagreed with them about the importance of making time to learn about the industry they regulate, but that made no difference.

I can cite many examples of agency staff ignorance of the science they should know. But the most egregious examples are provided by the National Marine Fisheries Service (NMFS) and the Fish and Wildlife Service (FWS). Two of my clients have renewal applications for sand mining permits in the lower Columbia River pending at the Corps of Engineers. Both NMFS and FWS commented with unsubstantiated concerns about two species of fish. Neither species is listed under the Endangered Species Act, nor is either a candidate species for listing. In one case, the fisheries agencies recommended that a clamshell dredge be used rather than a pipeline dredge in order to reduce turbidity in the water. A pipeline dredge is essentially a closed system and a clamshell dredge is essentially an open system.

The latter has a much higher probability of adding turbidity to the water when operating. This recommendation is particularly puzzling because they expressed such concern over more turbidity being added to the water column. My response to the Corps of Engineers about the NMFS and FWS “science” was a 15-page letter documenting every incorrect statement and assumption. Appended to the letter was a 9-page list of the 115 literature citations we used to justify our statements.

The NMFS and FWS staff comments reflect a lack of training, experience and expertise in fish biology, aquatic ecology, river hydraulics, sediment transport (both suspended and bedload) and aquatic mining methods and equipment. The result of all this is the appearance (if not the reality) of a technical staff who are unprepared, technically irresponsible and unwilling to accept help from the private sector. Copies of the permit applications, agency comments and my response letter will be made available to the Committee upon your request.

Arrogance

Federal agency arrogance toward the mining industry and consultants who work for this industry are manifest both individually and institutionally. On the individual level, we are ignored; our requests for regulatory action often are arbitrarily delayed for many months. About three years

ago, I submitted an application to modify an existing dredging permit to the Corps of Engineers. Their project manager refused to process it; she told me consistently that it was “too small and not sufficiently important; every other application takes precedence over it.” It was not until my client asked for assistance from his Congressman that the stalling ended about a year after the application was submitted.

On an institutional level I see two forms of arrogance. One form is holding the private sector (mining companies and their consultants) to a much higher standard of objectivity and scientific integrity than the standard applied to NMFS and FWS. The other form of arrogance is exhibited when the federal agencies ignore the information provided to them by the mining companies in their permit applications. They do not acknowledge that data were provided and they do not address the reliability and appropriateness of those data even when they are specifically asked to do so.

For example, no federal regulatory agency will accept as complete an application for a mining permit which contains no substantiated data. They rightly demand data rather than statements of belief or speculation that the project would have no negative environmental impacts. Yet they accept speculation and unsubstantiated statements of

concern from federal resource agencies. As a highly trained, highly experienced and highly qualified professional scientist, I am deeply bothered by this arrogant attitude. Most importantly, it does not serve to protect plants, animals and habitats which hold high societal values the agencies are charged with protecting.

Isolation from Consequences

Federal agency staffers are isolated from all consequences – both positive and negative – which could arise from their actions. A fisheries biologist who makes it her business to spend time on operating dredges or mines operating in drainages with substantial amounts of salmonid spawning and rearing habitats will not receive a financial bonus or major pay raise for her efforts. Similarly, a NEPA Coordinator whose ignorance of the National Environmental Policy Act causes the lead agency to withdraw a draft Environmental Impact Statement is not demoted or fired.

There is no incentive for an agency staffer to continue his education as this brings no promotion or pay increase over what others receive. Similarly, when regulators refuse to act they do not put their jobs at risk. When resource agency staff distort data for an apparent political agenda, again there is no risk of being fired or demoted. This isolation from consequences leads to bureaucratic inefficiencies,

massive waste of taxpayer money and other Federal resources, as well as the lack of measurable increases in population of plants and animals listed under the Endangered Species Act. In the private sector of the economy, this isolation from consequences costs the mining industry highly significant amounts of money and time.

I know of one situation in Idaho a few years ago where all three issues came together and caused the collapse of a mining project and the bankruptcy of the operating company. The ignorance of the Forest Service NEPA coordinator resulted in preparation of a complete, new Environmental Impact Statement for a mine site expansion rather than a Supplemental document. The agency was arrogant in refusing to allow the mining company to select the most qualified contractor to write the NEPA document. As a result, the Service selected technically unqualified contractors, the NEPA process was performed twice – both very poorly – and the mining company paid out several millions of dollars over several years. The required mining permits were never issued. The delays caused the company to run out of both permitted area to mine and money. The isolation from consequences kept the Federal employees in their same positions despite the harm they did to the mining company.

The most important impacts of Federal mining laws on the permitting process, the mining industry and local economies come from the interpretation and application of those laws in administrative rules. Agency culture too often promotes staff ignorance and arrogance. Our country and all of society will benefit from changing this situation so that agency staff are exposed to the same opportunities for consequences (positive as well as negative) as are those of us in the private sector. I request that you work toward implementing real change by addressing the three issues I describe here.