

## Tri-Valley Herald (Pleasanton, CA)

October 11, 2002

**Section:** Headline News

### Judge allows quarry lawsuit to move ahead

Opponents of Sunol mining project hope

*Matt Carter, STAFF WRITER*

SUNOL -- Opponents of plans to dig a quarry near downtown Sunol say a judge's ruling puts them one step closer to their goal of putting the project to a countywide vote. Mission Valley Rock Co. plans to expand its quarrying operations near Sunol by digging a new mining pit on a 242-acre patch of farmland northwest of Interstate 680.

Opponents say the gravel quarry will not only take prime agricultural land out of production, but that dust and noise from the operation will threaten residents' health and well-being.

Alameda County officials approved the project in 1994, along with a study of its environmental impacts that withstood a court challenge.

But a second lawsuit, filed May 8 by Sunol activists and environmental groups, claims the project is subject to Measure D -- Alameda County's voter-approved growth control initiative.

If that's the case, the quarry would need the approval of Alameda County voters.

The latest lawsuit, filed on behalf of Save Our Sunol Inc., the Alameda Creek Alliance, and Preserve Area Ridge Lands Committee, alleges that some approvals and permits -- including a 40-year lease between Mission Valley Rock and the city and county of San Francisco -- were not in effect when Measure D became law in December 2000.

In rulings issued Tuesday, an Alameda County Superior Court judge refused to dismiss the lawsuit, saying he was not convinced by arguments that the quarry project is not subject to Measure D.

Lawyers for Mission Valley Rock and the city and county of San Francisco argued that Measure D does not apply, because:

- The project is an expansion of existing quarrying, not a new one.
- State mining laws take precedence over Measure D.
- Property owned by one county -- in this case, San Francisco -- is not subject to building, zoning or General Plan policies in another.
- Measure D's requirement that the quarry be approved by voters improperly prevents Alameda County officials from taking administrative action to implement a legislative decision by the Board of Supervisors.

Judge Kenneth M. Burr ruled against Mission Valley Rock on all but the first point, which will be the subject of further hearings.

"This is a very, very big part of the battle, but it's half the battle," said Morgan D. King, the Dublin lawyer representing quarry opponents. "The other part (of the battle) is developing the facts to prevail on that last issue."

An attorney for Mission Valley Rock, John K. Smith, had no comment on the rulings. A call to San Francisco Deputy City Attorney Josh Milstein late Thursday afternoon was not returned by deadline.

Lawyers for Mission Valley Rock argued that Measure D itself specifies that quarries "adjacent to an existing quarry site and on the same or an adjoining parcel," are not new projects, and that the project is therefore exempt from Measure D.

King said he expects both sides will now spend two to three months researching and interviewing witnesses to bolster their arguments on that issue.

"But as far as I'm concerned, they gave their best shot on that argument (that the proposed quarry is not a new project) and didn't persuade the judge, so somewhere down the line I'm confident we'll get a favorable ruling," King said.

Lawyers for Mission Valley Rock and San Francisco argued that the provisions of Measure D cannot take precedence over the California Surface Mining and Reclamation Act (SMARA). In his rulings, Burr said that although state law institutes "measures that will assist in the development and safe removal of vital mineral resources, SMARA expressly reserves to local government the ultimate decision-making authority on land use issues."

Burr said San Francisco cannot claim that "intergovernmental immunity" exempts it from Alameda County land use policies. That's because the lease between San Francisco and Mission Valley Rock requires that the company abide by the surface mining permit issued by Alameda County. Therefore, San Francisco "appears to have implicitly adopted the regulations of Alameda County as its own," Burr said.

Burr ruled that applying Measure D to the quarry project would not prevent county officials from implementing the will of the Alameda County Board of Supervisors, because the board would have "total control of the regulatory process ... following voter approval."

If Burr's rulings were, in fact, a victory for quarry opponents, it was the first real success they've had in years of battling the project.

After an unsuccessful court challenge of a 1994 Environmental Impact Report approved by Alameda County, Save Our Sunol focussed its efforts on persuading San Francisco officials against entering into a lease with Mission Valley Rock.

But the San Francisco Water Department, which owns the land, is looking for ways to raise billions of dollars to repair to the aging Hetch Hetchy water delivery system. The 40-year lease agreement with Mission Value Rock is projected to bring San Francisco \$50 million to \$62 million in lease revenue.

The San Francisco Board of Supervisors approved the lease, which was signed into law by Mayor Willie Brown on Nov. 23, 2000.

A more liberal board elected into office a month later voted 6-1 to explore the city's options for breaking the lease -- even after a deputy San Francisco city attorney warned one supervisor that Mission Valley Rock would seek \$100 million to \$150 million in damages if the lease isn't honored.

Save Our Sunol founder Pat Stillman is still optimistic that San Francisco officials will have a change of heart, and let the land remain in agriculture.

"This is prime farm land," Stillman said. "I've gotten assurances from a lot of organic farmers and vintners (that they) would love to have that land for crops and vineyards."

Stillman said leasing the land to farmers would provide "revenue for San Francisco, but relief for the people of Sunol."