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Nooksack River Navigability Status Challenged by Lawyer

Is the Nooksack River navigable?

Land Commissioner Bert Cole announced Monday that commercial operators who have been taking gravel from the Nooksack in Whatcom County have agreed to pay the state a royalty on whatever gravel they remove in the future.

Attorney R. B. LeCocq of Lynden, representing one of the firms, is challenging the state's authority to charge a royalty because he maintains the river is not navigable.

He cites several State Supreme Court decisions which, he says, have established that the Nooksack River is not navigable, and points to the fact that the State of Washington itself recognized the non-navigability of the river, through the State Highway Department, when it built a new Nooksack River bridge.

Clearance of the bridge is so low, LeCocq pointed out, that only the smallest boats can pass under it, and none of a size for commercial use.

'QUESTION OF FACT'

He said the Supreme Court has repeatedly held that whether a river is navigable or non-navigable is a question of fact, and that a river is not navigable unless it is "capable of being used practically for carriage of commerce."

Cole on a recent visit to Whatcom County visited five commercial gravel operations on the Nooksack River, all near Lynden, accompanied by State Rep. A. E. Edwards and Shirley R. Daniels, administrative supervisor in this district for the State Department of Natural Resources.

Purpose of Cole's visit was to investigate the commercial removal of state-owned stream gravel without royalty payment which, Cole pointed out, the state is required by statute to collect.

On his return to Olympia Cole announced Monday that the gravel operators in Whatcom County had agreed to pay this royalty, 10 cents per cubic yard. Cole estimated that the state will gain \$10,000 to \$15,000 a year in royalties from the Nooksack gravel operations.

As attorney for one of the gravel operators at Lynden, Bode & Van Werven, LeCocq contests the right of the state to collect such royalty for removal of gravel from a non-navigable stream.

He cites a 1955 law passed by the State Legislature which provides that the commissioner of public lands may enter into a contract, or lease, upon application by any person, firm or corporation, permitting removal and sale of rock, gravel, sand and silt from navigable waters owned by the state, payment to be made therefore by such royalty as the commissioner may fix.

LeCocq contends that the Nooksack River is ruled out under this law for such royalty payments because the river is not navigable.

"It is an indisputable fact that the Nooksack River is not navigable, and the state recognized this fact when it built the new Nooksack bridge," LeCocq said in his statement Thursday.

"The U. S. Department of the Army exercises jurisdiction over the Nooksack River from its mouth to Everson, a distance of 26 miles, for the purpose of protecting the river as to bridges, pipelines, cables or other structures, but this in no way affects the navigability or non-navigability of the river. The jurisdiction of the United States can be

conclusively proved only through the courts of this state.

"But every citizen of Whatcom County knows that the Nooksack River is not navigable. Therefore the state has no right to collect these royalties as the commissioner of public lands proposes to do.

'DISGUISED TAXATION'

"It is actually a way of collecting taxes under the guise of royalties," LeCocq said.

He said that if the state gets 10 cents per cubic yard royalty on gravel removed from the Nooksack, with extra bookkeeping costs to the gravel operators, the costs will be inevitably passed on to the consumer.

"Your paved roads, buildings, farm yards, city streets will all cost just that much more. "It also means that every farmer who gets some gravel from the Nooksack, as well as the commercial gravel firms, will have to get a permit, put up a bond and pay royalty.

"We believe the state has no right to consider the Nooksack River navigable at cost to citizens and taxpayers. The least the state can do for the people is to bring a test case in the courts to ascertain if the river is legally declared navigable. It is unfair to throw the expense of a law suit for this purpose on the small operators and farmers of the district."

Actually, LeCocq declared, in the light of Supreme Court decisions in this state the answer to the question of the navigability of the Nooksack has already been given.

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