Filed 8/16/02

CERTIFIED FOR PUBLICATION

COPY

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Yuba)

WESTERN AGGREGATES, INC., Plaintiff and Appellant, v. COUNTY OF YUBA, Defendant and Respondent.	C037523 (Super. Ct. No. CVCS99-0000265) SUPPLEMENTAL OPINION UPON DENIAL OF REHEARING

APPEAL from a judgment of the Superior Court of Yuba County. David E. Wasilenko, J. Affirmed as modified.

Morgenstein & Jubelirer, Jean L. Bertrand and David H. Bromfield; and Stanley A. Coolidge for Plaintiff and Appellant.

Daniel G. Montgomery; Van Bourg, Weinberg, Roger & Rosenfeld, and David A. Rosenfeld for Defendant and Respondent.

Bill Lockyer, Attorney General, Richard M. Frank, Chief Assistant Attorney General, J. Matthew Rodriquez, Senior Assistant Attorney General, and Peter Southworth, Deputy Attorneys General, Amicus Curiae on behalf of Defendant and Respondent.

The public acquired its present right to use Western's haul road because of the movement of the road by Western

and its predecessors and therefore it is the road currently in existence which belongs to the public. In its rehearing petition Western objects that it does not own several discrete portions of the existing road and they were not part of this quiet title action. Western lacks standing to object on behalf of other property owners. If those owners (including the United States) are able to block access to portions of the haul road, Western has the obligation to provide an adequate route through its lands to those portions of the haul road which it does own. This is consistent with the historic movement of the road, as stated in our opinion: Regardless of dredging and so forth, a public access road was always to be provided by Western's predecessors. Upon finality of our decision, Western (or its subsidiaries or agents) cannot block the public from the road.

However, the *County* has the right to set regulations about the use of and access to the road, just as it has the right to regulate the use of other County roads. Nothing in our opinion should be read to authorize an anarchic rush across Western's active mining operations, clogging of the road and so forth.

Contrary to Western's claim in the rehearing petition, the County will not bear the cost of any surveys which may be required. The cost of a survey by court-appointed expert (in the event the parties cannot agree on the route) will become a cost of suit for which the County, as the

prevailing party, may seek recovery in an appropriate cost bill. (Code Civ. Proc., §§ 1032, 1033.5, subd. (a)(8); see *People v. Superior Court (Laff)* (2001) 25 Cal.4th 703, 737-738.) Moreover, it would be inequitable to require the County to pay for Western's decision, as a matter of Western's business convenience, to move the County road. There is no hint in the evidence before the trial court that the County ever had to pay a dime when Western's predecessors dredged up and rerouted the road and the inference is to the contrary, that Western's predecessors had the duty to rebuild the road when it was damaged or moved. The fact that the survey may be expensive because of the passage of time is wholly the fault of Western, which has illegally gated the road for many years, depriving the public of lawful access.

Western's request for a post-opinion settlement conference is denied.

MORRISON, J.

SIMS, Acting P.J.