Legal opinion retracted to give OK for dredging

By BOB ANDERSON
Environmental editor

The attorney general's office has retracted an opinion it wrote earlier this month and now says it's not a violation of state law for a sand and gravel operation to dredge the West Pearl River, which until now has been protected by the Scenic River Act.

The previous opinion, written three weeks ago, said the dredging would be "clearly in violation" of the act, and several environmental officials say the proposed operation will damage a very important and unique recreational water body.

An attorney involved in the fight to protect the recreational and scenic value of the river says the attorney general is playing politics with the matter and using the new opinion to help in his budget fight with the Legislature, because big-money interests want the river dredged.

Ellis Magee, Executive Assistant Attorney General, said that is "absolutely not the case."

Magee, who wrote the second opinion, confirmed that he met with Sen. B.B. "Sixty" Rayburn, D-Bogalusa, who wanted the opinion changed, but Magee said he had already made up his mind to do that when he reviewed the facts presented by the Washington Development Group Inc., which is pushing the project.

"We received neither threats nor promises from Senator Rayburn," Magee said.

He said he did not review the first opinion, which was written by a new attorney on the staff, before it was released.

Under further questioning, however, Magee said that the first opinion was approved by the senior staff member who normally reviews opinions.

One company wants to dredge the river, which has previously been protected by the Scenic Rivers Act, for sand and gravel, and other firms are pushing the action so that they may open industries on the river and use it for barge traffic.

Dredging the West Pearl River would cause adverse impacts to a unique and important scenic stream that is important from both a wildlife and recreational standpoint, said one state environmental official, who asked not to be identified for fear of political repercussions.

Another state environmental official said the action will "seriously alter" the scenic beauty and recreational use of the river and will result in it being a thoroughfare for barge traffic. He also asked not to be identified, saying, "There are some heavy politics involved."

Sandy Tucker of the U.S. Fish and Wildlife Service said that agency has a "serious concern" about any proposals to dredge the West Pearl. The damage to the scenic stream will come not only from the dredging itself, but from the numerous fill developments that have indicated an interest to move in if dredging takes place, she said.

In addition to the damage to the recreational value of the river, the Wildlife Service is concerned about the effect the operations will have on the two wildlife management areas adjacent to the river, she said.

"That whole system, including Honey Island Swamp, is interwined," said one of the state environmental officials interviewed. The river can't be affected without affecting the adjacent wetlands, he said.

"No other Riverine system that large has escaped man's impact," in Louisiana, he said, adding that if the river-swamp system is one of the state's most important unspoiled areas.

Several groups pushing the dredging of the river say it is important to the economic development of Bogalusa and Washington Parish.

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The opening of barge traffic on the Pearl Waterways would offer a new concept for various cargo movements and should offer to the steamship lines and vessel owners four options to divert cargoes from one port to another," according to a letter from the Atlantic and Gulf Stevedors Inc. to the U.S. Army Corps of Engineers.

"The importance of this waterway for barge movements of cargoes and bulk products is that it will open new industries to the City of Bogalusa," the letter continues.

Barge traffic would not exclude boating, camping and fishing on the river, says Pearl River Navigation Inc., which is also supporting dredging.

In his opinion, Magee says the river does not meet the definition of a scenic river and that dredging must be permitted if the U.S. Army Corps of Engineers issues a permit allowing it, because of the supremacy clause of the U.S. Constitution.

Harrette Merrell, an attorney involved in the fight to protect the river, said that opinion is not legally sound.

The stream is not subject to any specific criteria, because it was included in the state law by name, she says.

The supremacy question does not come into play because it is not the Corps that wants to dredge, but a private individual, she said.

The earlier attorney general's opinion, written by William G. Davis, also made that point.

The Corps could do such work, but that exception "would not clearly apply to dredging activities by the present applicant," the previous opinion stated.

Magee conceded that dredging by a private firm is not as clear cut an issue as the right of the Corps to dredge, but said he feels his opinion will stand up in court.

The Corps did maintain navigation on the stream until 1973 and still operates a set of locks there, Magee said.

While the proposed dredging would be done by a private firm, it would provide navigation without costing the taxpayers money, according to Magee.

He said he was unaware of allegations that the company plans channeling that would be much deeper and more destructive than anything ever done by the Corps. If that is the case, he said, it is a matter that should be taken up in connection with the granting of a Corps permit.

"They want to stay in the river 365 days a year taking sand and gravel," said Ms. Merrell.

The attorney, who lives beside the river, said eagles nest along it, and it provides an important habitat for woodducks, beaver, otter and other animals, as well as being an important bass fishing area.

In addition to sport fishing, it is also important to commercial fishermen, she said.

Several years ago, hundreds of residents of that area thwarted an attempt by Sildell to pipe sewage to the river.

Now the river is being threatened because Bogalusa wants to be a port and because "Sixty" Rayburn wants to give Bogalusa what it wants," Ms. Merrell said.

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