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Sand Dredgers Run Aground – Record Recovery by State and Whistleblower

The State of California will recover millions of dollars from three companies who dredged sand and gravel from publicly-owned lands in the San Francisco bay and delta. The companies involved have agreed to pay \$42.2 million to settle claims based on allegations that they schemed to underpay the State for sand they dredged from State owned sites. The settlement will be paid on top of increased royalty payments of approximately \$6 million that were made in the past few years after the State's lawsuit was filed. \$2.2 million of the settlement was awarded to the whistleblower's counsel for fees and costs for the six-year litigation. The Superior Court for Contra Costa County approved the settlement and the amounts to be received by the State, the whistleblower and his counsel on December 6.

The State prosecuted the action with assistance from the lawyers for the whistleblower, Wayne Lamprey and Francine Radford of the San Francisco law firm of Goodin, MacBride, Squeri, Day & Lamprey, who investigated the underpayments and brought the matter to the State's attention in 2001. Mr. Lamprey is a former federal prosecutor who specialized in white collar crime at the U.S. Attorney's office in San Francisco before returning to private practice in 1999 to specialize in whistleblower cases. "We alleged that the defendants engaged in two schemes to cheat the State," said Mr. Lamprey. "First, we alleged false reporting of the prices for which sand was sold. The defendants' leases required payment of royalties based upon the fair market value of the sand. We alleged that the defendants cheated by paying royalties based on artificially depressed 'prices,' from so-called 'sales' between the defendants' own companies. The actual prices that real third party customers paid were sometimes three to four times higher than the prices the defendants reported to the State when they paid royalties," Lamprey stated.

The lawsuit also alleged that the defendants had brazenly dredged State-owned sand from property where they had no leases and that they had not made any payment to the State for this sand.

Two of the defendants were local family-owned sand companies, whom the lawsuit alleged had been cheating the State for many years. In 1999, both companies were acquired by the third defendant, Hanson Aggregates, for \$44 million each. Hanson is one of the largest suppliers of heavy construction materials in the world, with operations in the U.K., Australia, and Asia as well as the U.S. High-quality sand is a key ingredient of concrete, and is sold by Hanson to the bay area construction market. The San Francisco bay, with its strong currents, yields sand that is prized for its clean quality and uniform consistency.

Whether Hanson knew what the other defendant companies that Hanson acquired were doing before it bought them, and whether Hanson's management team endorsed the practices when it took over, were hotly disputed in the lawsuit. The defendants maintained that their royalty payments were entirely proper under the leases, although the Contra Costa County Superior Court disagreed with many of their contentions in a 2005 ruling that eventually led to the settlement.

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In the end, the defendants collectively agreed to pay \$42.2 million (on top of approximately \$6 million in increased royalty payments made since the whistleblower suit was filed and unsealed). Lamprey explained that if the case went to trial, “There was a risk they could be hit for three times the amount of the State’s damages. And, Hanson wanted to do the right thing, and ensure a good relationship with the State.” (Hanson continues to hold leases for some of the sites involved.) “Hanson was clear that it wanted to be seen as a good corporate citizen, and to its credit, the company backed up these words with cash,” Lamprey concluded.

The action was initiated by a “whistleblower” — an individual who worked for one of the local companies when it was acquired by Hanson, who hired Lamprey’s San Francisco firm. Under California law, the whistleblower will receive a share of the government’s recovery.

The recovery is the largest ever for a case based on the taking of state resources from state lands. It is also the first whistleblower case involving sand. “There’s a lot of money in lowly sand — shave a dollar off a royalty here, hide a cubic yard there — it adds up,” Lamprey observed.

For more information please contact:

Wayne T. Lamprey, Goodin, MacBride, Squeri, Day & Lamprey, LLP, San Francisco, California,
415 392 7900 or wlamprey@goodinmacbride.com.

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