

Activists say pollution law omits public

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Environmental groups are launching a two-pronged attack on a law passed last year they said bans public participation in state decisions, such as water pollution permit hearings and appeals.

A lawmaker said she will write a bill that would reverse the restriction and environmental groups said they will petition the federal government to take over state environmental programs.

Some lawmakers said the 2005 bill was sold to legislators as a way to stop competitors from interfering with a rival's attempt to get state licenses. But the change in the law also gives legal standing only to those who would have a "direct financial benefit from issuance" of a license or permit, or those who would be hurt if a license wasn't granted, i.e. businesses or corporations.

That means environmental groups no longer have standing in hearings or appeals related to water and air pollution permits, state lawyers said. Critics said that hands decisions on pollution control over to the polluters, such as mining companies.

"Nobody saw it coming," said Bob Fulkerson, director of the Progressive Leadership Alliance of Nevada. "The (law) monopolizes the control of the mining industry in permit decisions and shuts out the public interest.

"The law is now based on financial interest, but we all have to drink the water and breathe the air. Of course the public has an interest in these things, it may not be financial, but it's vital."

Last week, the new law was used by the Nevada Environmental Commission to dismiss a challenge by Great Basin Mine Watch to the way the Big Springs gold mine in Elko County manages its wastewater. Mine Watch and other public interest groups say their participation is necessary to stop pollution from the mine from reaching the north fork of the Humboldt River.

The state panel cited a Nevada attorney general opinion in June that the law applies to public interest groups. Previously, environmental groups had standing to take part in decisions involving pollution permits and other state-issued licenses.

Previous appeals successful

Great Basin Mine Watch, for example, filed an appeal three years ago of a wastewater discharge permit that authorized Newmont Mining to discharge water from its Gold Quarry mine into the Humboldt River. The group argued the pollution levels exceeded state water quality standards and violated requirements of the federal Clean Water Act.

Mine Watch lost before the State Environmental Commission but recently won before the Supreme Court of Nevada.

"That appeal and resulting victory would not have been possible under (the law) today," said Nicole Rinke, lawyer for the Western Mining Action Project, which is working with Great Basin Mine Watch on the issue. "In addition, Great Basin Mine Watch has commented on permits issued by the state with some success in the past, even without officially appealing. Absent the recourse of potential legal action, it is doubtful, or at least less likely, that those gains would have been made."

Jim Wadhams, a lobbyist with mining industry clients, said he backed the law change on behalf of independent insurance agents. He said he didn't anticipate environmental groups being blocked from participating in hearings, but he said the law doesn't ban public participation in hearings or appeals.

He said in the case of a water pollution permit, a group that says it represents the public could find a rancher downstream who uses the water for his cattle and that person would have legal standing to take part in permit proceedings.

"That rancher would certainly have a financial interest in the outcome," Wadhams said.

But Rinke said the new law wouldn't allow the rancher to participate either. The law defines someone with a financial interest as a party whose financial situation is likely to improve if the permit or license is granted or a party whose finances would deteriorate if the permit or license was denied.

"So the two classes of people are actually the same," Rinke said.

She said the only people who can appeal the decision are those who will make money if a permit is granted or lose money if it is denied.

Julie Fishel, a project director with the Western Shoshone Defense Project, said the law is another example of big money interests being allowed to control the regulators.

"The legislators got bamboozled by the mining interests," she said. "Who benefits from this? Certainly not the public, and it's not just big environmental groups that

lose. It's local grass-roots people who live here and are directly affected by state decisions on dangerous, toxic operations."

Lawmaker wants changes

Assemblywoman Sheila Leslie, D-Reno, said she will try to ensure public access through changes in the 2007 Legislature. She said the law must be clear and ensure public participation and review of any administrative actions that have far-reaching consequences.

Leslie said she wasn't on the Assembly Government Affairs Committee that heard testimony on the bill, and she voted to approve the measure when it reached the Assembly floor.

"I was not aware of any controversy before casting my yea vote, which I now regret," she said. "Had I known the full impact of this bill, I definitely would not have supported it; nor do I believe the majority of the Legislature would have voted to take away the public's right to appeal a decision."

She said the law "goes against the basic tenets of our democracy and the value we place in an open and transparent government."

Assembly hearings

A review of the Assembly committee hearings shows that Wadhams never mentioned environmental issues when lobbying for the measure, but he said it would affect "a wide range of agencies."

But in a hearing on May 17, 2005, Assemblyman Pete Goicoechea, R-Fallon, saw implications for environmental groups.

"This would exempt, for example, the Sierra Club or some other group that really didn't have standing ... and would preclude them from coming in and having standing in the administrative appeals, which will probably end up in some court of competent jurisdiction," he said.

"It is an attempt to narrow down who can play through the administrative process and judicially."

Wadhams said the law supports due process, but raises questions about who should be allowed to call witnesses and cross-examine witnesses in public hearings.

"Should anybody be able to become an intervener without proving a financial interest?" Wadhams asked. "That's a big public policy question. The Legislature can make that decision."