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GOVERNMENT • Sep. 15, 1998

Fishing Expedition

The Plumas County DA Wants to Prosecute Wildlife Officials Who Poisoned a Lake; That's Not What the State Has in Mind

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SACRAMENTO - Say you're the district attorney in small, rural Plumas County and you're trying to prosecute three state wildlife officials for misdemeanor environmental crimes.

Now imagine the state has agreed to pay \$9 million to your county to settle civil claims arising from the same alleged misconduct.

But the state refuses to hand over the money until you've "resolved" the criminal matter.

Gov. Pete Wilson's administration says this unusual link between civil and criminal liability is necessary for the "global settlement" both sides say they want.

Environmentalists, the plaintiffs' bar and other critics see such a link as "fairly outrageous," as one of them put it, contending it puts undue pressure on the district attorney to drop his case to get the cash.

Plumas County District Attorney James Reichle isn't talking, but he is regarded by friends and foes alike as a fiercely independent prosecutor who is unlikely to back down no matter what's at stake.

And with just two weeks left for the governor to approve a settlement, the people of Plumas County wonder if they'll ever see their money.

All of which makes for a dramatic finale to months of negotiations over how to make this northern Sierra county whole again after state Department of Fish and Game officials dumped chemicals into pristine Lake Davis in a botched attempt to eradicate an unwanted predatory fish. The move left the lake poisoned, threatened the local water supply and upset the county's tourism-based economy.

Environmental attorneys and prosecutors say the settlement terms demanded by the Wilson administration not only set a bad precedent by mixing civil and criminal matters, but also create the possibility that residents and businesses in Plumas County will have to wait years to receive money that was intended to compensate them immediately for economic damages.

"Both the city of Portola and the county of Plumas have made clear their opposition to this provision and think that linking the resolution of a criminal proceeding to money desperately needed by this community to put it back on its feet is inappropriate and overreaching," said Vic Sher, the former president of the Sierra Club Legal Defense Fund who now represents Plumas County as a partner with Miller & Sher in Sacramento. "This is widely viewed as an unfortunate deal with the devil."

Sean Walsh, Wilson's spokesman, said the matter should come to a close and brushed aside criticism that the governor is trying to pressure the district attorney to drop his case.

"Do we want to move forward and provide economic assistance to individuals impacted by this damage to the lake, or do we want to enrich trial lawyers and give ambitious politicians a forum to beat their chests?" Walsh asked.

"Let's get on with our lives, and let's not serve the interests of the selfish and the greedy by keeping this a major irritant."

A Lake Davis settlement agreement was reportedly reached last month, and legislation to appropriate the \$9 million was approved by the Legislature.

But the entire deal is now in jeopardy because the provision requiring the resolution of all outstanding legal matters, both civil and criminal, is still being negotiated. Because of a legislative deadline, the settlement funding will disappear if the agreement isn't finalized with Wilson's signature by the end of the month.

The undersecretary for the California Resources Agency, parent to the fish and game officials charged with criminal negligence by the Plumas district attorney, insists the state is not trying to put any pressure on Reichle.

"We're not suggesting that he drop the charges or anything else. They just have to be resolved," Undersecretary Jim Branham said in an interview. "We can't or wouldn't want to influence him on the duties he has to carry out. They've made it clear they want a 'global settlement.' So do we."

The Plumas district attorney has not been part of the settlement talks between state and local officials. In fact, Reichle told the Daily Journal three weeks ago he was deliberately keeping his distance from the negotiations to avoid any impropriety.

"I have nothing to do with the settlement. It does not affect the criminal case," he said. "Whatever they want to do, it's up to them how they deal with the civil side ... People shouldn't buy their way out of criminal action."

In a brief interview, Reichle acknowledged he had felt "pressures that wanted this to go away," but that no one specifically asked him to drop his criminal case. And he concluded the conversation saying he needed to keep a low profile.

"They have filed a motion to recuse me as a prosecutor because of my big mouth," he said.

Since then, Reichle has not returned phone calls, nor has he made any public statements about the case.

While some local and county officials in Plumas have spoken out about the need to protect the district attorney's independence, Reichle also has his critics who think he's gone overboard pursuing a long-shot case that never should have been brought in the first place.

"The DA would be insane not to drop the charges," said Assemblyman Bernie Richter, a Republican from Chico whose district includes Lake Davis. "The DA is a politician and he wants to get re-elected, I would think. He would not want to screw [the settlement] up for people who have been injured. And for what? For prosecuting people who were just doing their job? Give me a break."

The Lake Davis standoff between state and local officials dates back to 1994, when the lake was found to be inhabited by northern pike, a nonnative, voracious predator that eats salmon, trout and other fish.

State officials wanted to poison the lake to keep the pike population from migrating to other waterways and threatening recreational fisheries throughout California. Locals vehemently fought the eradication plan because they feared chemical treatment would contaminate the lake, which serves as a backup water supply, and hurt the economy, which thrives on visitors who enjoy recreational fishing.

After fending off several lawsuits aimed at blocking the poisoning and winning a court order to block enforcement of two hastily approved county ordinances essentially making it a crime to poison Lake Davis, the Department of Fish and Game treated the lake last October.

The controversial \$2 million project did not go exactly as planned. Instead of dissipating within eight weeks, the chemical lingered in the lake for 10 months, which took a heavy toll on tourist-oriented businesses and forced nearby Portola to adopt emergency water restrictions.

But even before anyone knew how the eradication project would play out, Reichle had made no secret that he was considering a criminal prosecution. He'd said as much in a series of letters exchanged with lawyers in the state attorney general's office in the weeks prior to the start of the poison project.

When the attorney general's office wrote to the district attorney and advised that prosecuting state employees for carrying out their duties to eradicate the northern pike "would be a clear abuse of prosecutorial power," Reichle fired back with a letter saying he was insulted that the attorney general's office was blind to its own conflict of interest.

"I am outraged that you impugn my principles from such a compromised moral position and based on such blatantly one-sided research," he wrote.

Seven months later, disregarding the attorney general's advice, Reichle filed misdemeanor charges against three Department of Fish and Game employees - a regional manager, a pesticide

supervisor and a biologist.

Reichle alleged 12 violations of the California Water Code, namely that the defendants made false statements about the proposed chemical treatment, failed to adequately monitor the lake poisoning and failed to adequately neutralize fish poisons that flowed from the Lake Davis dam into an adjacent creek.

The charges carry sentences of up to one year in jail and fines of \$25,000 per incident.

"I firmly and personally believe that the level of arrogance that was exhibited by these people in handling this project was criminal," Reichle told the Sacramento Bee in May. "It was something they needed to be called on. This county was outraged in how they dealt with us."

The state brought in its own big guns to defend the Fish and Game employees, including Charles Stevens, the former U.S. attorney in Sacramento who's now in private practice, and two other prominent Sacramento firms - Diepenbrock, Wulff, Plant & Hannegan and Blackmon & Snellings.

Several years ago, Hill Snellings successfully defended a Fish and Game regional manager who was charged with misdemeanor criminal violations in Solano County because he issued a permit to build a controversial ferry landing.

The defense already has gone on the attack, seeking to have Reichle's office disqualified from the case because his comments to the media, his letters to the attorney general's office and other alleged posturing show he has an "ax to grind."

"This is not the 'even-handed' or impartial justice that is required of the People's prosecutor," the defense argued in an Aug. 19 brief. "It is a runaway prosecution, and it should not be tolerated."

Prosecutors who know Reichle describe him as a man who lives at the end of a long dirt road and has strong feelings about county independence. He was first elected Plumas district attorney in 1992 and has been re-elected twice without opposition, despite being arrested in Reno on drunken-driving charges in March 1997.

The president of the California District Attorneys Association, Ventura County District Attorney Michael Bradbury, called Reichle "bright and very talented."

"He probably marches to the beat of a different drummer than most of us, more liberal in his philosophies, but he's a person of integrity and determination," Bradbury said. "My guess is that if he wants to see a prosecution through, there's not much that the state of California or anyone else can do to stop him."

Nonetheless, Bradbury said he's troubled by the state's attempt to link the civil and criminal matters in a monetary settlement.

"What it has a tendency to do, of course, is put inappropriate pressure on the prosecutor in that community," he said. "I certainly understand the state's perspective, but it's probably not the wisest public policy, and I certainly hope and trust that it's not going to be a precedent."

It is the same fear that led groups such as the Sierra Club and the plaintiffs bar group Consumer Attorneys of California to lobby legislators to remove the civil-criminal linkage from the \$9 million appropriation bill.

"Civil and criminal issues should be handled separately, and there shouldn't be any restrictions on the criminal case to get the civil damages," said Bonnie Holmes-Gen, lobbyist for the Sierra Club.

CAOC's Nancy Peverini said "it's fairly outrageous for the funds to be held hostage in order to put pressure on the DA."

By conditioning the release of funds on civil and criminal issues that may take years to resolve, she said, "the linkage eviscerates the very purpose of the settlement, which was to get money to the small businesses who were immediately harmed."

The lobbyists claimed a partial victory in getting the linking language stripped from the funding bill before it was approved in the final minutes of the 1997-98 legislative session.

But because the Wilson administration insisted that resolution of the civil and criminal matters be a precondition to any money being disbursed, negotiators are now drafting new language to be added to the settlement document that will be signed by state and Plumas officials.

Both Walsh in the governor's office and a spokesman for Sen. Tim Leslie, R-Roseville, who helped broker the settlement, said they are optimistic everything will be worked out before the Sept. 30 deadline.

Others worry, however, that this won't be the last time the state crosses swords with a local prosecutor and tries to pay its way out of a criminal case.

In this era of ever-expanding enforcement responsibility at the local level, "we are going to see more and more clashes like this," said Michael Endicott, a San Francisco-based environmental attorney who works with the Sierra Club.

Meanwhile, Reichle is gaining a reputation as a hero in some circles and a fool in others.

"There are times when a major disaster takes place, an elected official has to bring the issue to the people," said Gilbert Jensen, former enforcement director at California's Environmental Protection Agency and a recently retired environmental prosecutor in Alameda County. "Oftentimes, the least complicated approach is to use the criminal statutes in this area, because you litigate the actual issue of responsibility as opposed to all the civil and administrative nuances of environmental law. This is simply a matter of a prosecutor doing his job."

But Ron LaForce, president of United Outdoorsmen, a large coalition of sportsmen's groups that supported the poisoning project, said that when the evidence comes out, it will be clear the damage to Lake Davis was strictly an accident and had nothing to do with criminal negligence.

"I just want to put it behind us," he said. "The lake is rejuvenating, the anglers are catching trout, the businesses are back making money and it's a win-win for everyone. If the district attorney pursues this, it will be a lose-lose for everyone."

Fran Roudebush, a Plumas County supervisor, said the best outcome might be for Reichle to accept a "civil compromise" in the form of a plea bargain. The worst result, she said, would be a conviction followed by a lengthy appeal process that delays payment of the \$9 million.

"When I talk to the DA, what he tells me is he wants process change, more accountability at the top," she said. "From our community's standpoint, we don't ever want to see this happen to anybody ... Jim Reichle, if he has his way, he'd like to see them in orange suits working the road. But my feeling is, even if he gets a guilty plea, that's not going to happen."

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