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State to appeal gravel rulings

By Michael Tucker, staff writer

County commissioners, local legislator urge DEQ to take issue up with Supreme Court

At the urging of county officials and one local lawmaker, the Montana Department of Environmental Quality will fire up its legal division and file an appeal today of two recent court rulings that gave the green light to three gravel pits in the Gallatin Valley, DEQ Director Richard Opper confirmed Thursday.

Sen. Gary Perry, R-Manhattan and all three Gallatin County commissioners submitted letters to Opper Thursday, calling on the agency to appeal the recent Helena District Court rulings.

The letters expressed concerns about the ramifications of issuing permits without completing environmental assessments and without including a public process, according to the foursome.

In Gallatin County, the rulings have the potential to tear down bridge-building efforts underway among county officials, residents and the gravel industry, Perry said.

“We were so close to doing something constructive here in this county, with neighbors working together with the operators,” he said. “To have this absolutely shattered at this time just sets us back months and months. It could have been done so amicably. It’s sad.”

Last week, Helena District Court Judge Jeffrey Sherlock ordered DEQ to “forthwith” issue a permit to Cameron Springs, LLC., which sought to mine gravel near the intersection of Alaska South and East Cameron Bridge roads.

According to the order, DEQ lacks manpower to timely review the company’s application and conduct a required environment assessment. He said the Gallatin County Commission’s announced intention to implement emergency interim zoning in the Belgrade and Four Corners planning jurisdictions could result in Cameron Springs’ pit being “zoned out of existence before it can begin.”

Commissioners have said repeatedly they do not intend to ban gravel pits, but that they want to instill regulations using a conditional use permitting process.

A second Helena court ruled Tuesday that two other planned gravel pits in the doughnut area could proceed, and ordered DEQ to issue permits despite not having completed the required environmental assessments. The two pits in question are along Cameron Bridge Road and Highline Road.

After debating the merits of an appeal, the agency decided to pursue legal action based upon two main points, Opper said.

Agency leaders agreed with charges made by local officials that the Helena court rulings will require DEQ to issue permits without the proper environmental studies. Also, he said, doing so would exclude

the concerns of the public.

“We understand the ruling but the consequences of this really puts DEQ in a terrible position,” he said.

As a basis of the appeal, the agency plans to argue that an earlier Montana Supreme Court ruling, cited by gravel industry attorneys as a platform to win permitting, was not interpreted properly by the lower courts. In a nutshell, Opper said, the 1975 *Kadillak v. Anaconda Co.* case relied on by the gravel attorneys determined that specific mining laws trump more general laws, such as the Montana Environmental Policy Act, which directs DEQ to conduct environmental studies before issuing permits.

But DEQ believes the environmental assessments and associated public hearings are too important to circumvent, he said.

“We have statutory deadlines to meet under the opencut (mining) law that really make it very, very difficult to do the kinds of things we have to do before issuing permits, like do adequate environmental review and make sure the public has an opportunity to weigh in,” he said.

Due to rapidly growing areas around the state, land use conflicts are not going away anytime soon, and the department is under duress to complete both mandates, Opper said. Growth requires gravel, and locally, the gravel is where the growth is happening.

“We are seeing a lot more need for gravel and it’s happening in areas were subdivisions have built now,” he said. “The problem has really come to a head here. We’re not trying to slow development or anything like that; we want to issue permits as officially as possible but not until we do (environmental assessments and take public comment).”

Along with the appeal, DEQ also will request a stay of the Helena court orders, stopping them from taking effect until the Supreme Court decides the case, he said.

County commissioners rallied behind the agency’s effort after being contacted by Perry, board members said. But no matter the outcome of the appeal, commissioners still plan to march ahead with emergency interim zoning.

“These lawsuits are going way the other way in that they don’t even need an environmental assessment,” Commissioner Joe Skinner said. “I’m not doing it so much because I want something done before we do interim zoning; I’m doing it more because I think there needs to be environmental assessments to consider all the affects so they can be mitigated.”

All three commissioners said they understand the frustration behind the gravel industry’s suit due to the delay in obtaining state permits.

That delay is ultimately why at least one gravel company is going to court, said Jerry Rice, general manager of TMC., Inc., a Belgrade-based sand and gravel operation that has had two gravel-mining amendments and one new permit request on file since last year.

The company is slated to go before the Helena District Court May 13 on a petition similar to Cameron Springs’ and the other cases, Rice said. Regardless of what happens, the company still plans to complete the environmental assessment being conducted by a private engineering firm in Bozeman.

“We’re not stopping that process,” he said. “There are issues there and we are first to admit it. That’s

what DEQ is for and these EAs are for is to work those out. But the way DEQ has been going at it, we could still be sitting here three years from now. We are and will be good neighbors.”

Rice added that the permitting process has been long and costly.

“We’ve done everything they’ve asked to do from hydrology reports to traffic studies, and we’ve spent a ton of money,” he said. “You hear hearsay that it’s easier to get a gravel permit than it is to get a driver’s license, and I’m here to tell you — it’s not that way.”