

State to appeal courtroom gravel-pit permits

By JODI HAUSEN Chronicle Staff Writer

State environmental officials announced Thursday that they will either file appeals or seek reconsideration of two recent court rulings ordering them to issue permits, without conducting environmental assessments, for three controversial gravel pits in Gallatin County.

“Yes, we have decided to appeal,” Montana Department of Environmental Quality Deputy Director Tom Livers said Thursday. “The basic reason is that we got forced into a position to issue these permits without any environmental review or public involvement and that is a major concern.”

At the heart of the matter are two dueling state laws. The Montana Environmental Protection Act states that environmental studies must be conducted on any proposed operation whenever there is potential environmental impact. The Opencut Mining Act, on the other hand, allows only 60 days to conduct such studies.

In the past two weeks, District Court judges ruled in two separate cases in favor of three gravel-pit operators who had sued the DEQ because their permit applications were delayed beyond that 60-day turnaround time.

Operators of the Cameron Springs Pit and Spanish Peaks Pit on Cameron Bridge Road, and the Nistler Pitt near Amsterdam won cases in Lewis and Clark County when District Judges Jeffrey Sherlock and Dorothy McCarter ordered DEQ to issue the pits’ permits immediately.

DEQ officials say the agency’s opencut mining program employs four reclamation specialists and one supervisor to conduct environmental assessments, review applications and regulate about 2,000 active pits. The program’s entire budget is \$540,000, said DEQ Bureau Chief Neil Harrington, who oversees the opencut program.

The program has no means by which to collect additional funding n state legislators defeated bills in the past two sessions that would have allowed DEQ to charge gravel-pit operators annual fees, something the Montana Contractors’ Association, which represents the operators, said it would support.

Jo Stephen, a reclamation specialist for the opencut program, said earlier this week that her workload encompasses 25 counties and she has 15 pending gravel-pit permit applications on her desk from Gallatin County alone.

The more issues that are raised about a particular pit, the more complex and time-consuming the permit process, she said.

“Obviously we need more resources,” Harrington said. “We can’t keep up with the demand as the laws are currently written.”

Still pending before the court is a case for three pits n two existing, one proposed n operated by Three Way Mining and Construction, Inc. which is scheduled to be heard May 13.

Last year, TMC submitted permit-amendment applications to extend operations at Nuss Pit on Cottontail Road near Gallatin Gateway and Storey Pit on Norris Road west of Four Corners. It also applied for a new permit for Morgan Pit on Gallatin Road outside Gallatin Gateway.

All those applications have been significantly delayed, Jerry Rice, TMC's general manager said. Although he received a letter accepting his application in November, the environmental assessments still had to be done. TMC pursued an option to use a DEQ-approved private contractor to do the environmental assessments in an effort to expedite the process.

Despite those efforts TMC still has no permit in hand.

"No response, none," Rice said Thursday.

Meanwhile, Gallatin County commissioners next week will consider adopting emergency zoning to regulate gravel pits in the area where the Cameron Springs, Spanish Peaks and Nistler pits are located.

The three commissioners and State Sen. Gary Perry, R-Manhattan, sent letters to DEQ Thursday urging it to appeal the court rulings.

Perry said Thursday he intends to sponsor an amendment to the Opencut Mining Act in the next legislative session.

After Cameron Springs won its suit last week, TMC opted to file suit, too, "because it is possible to do it," Rice said. "We want our permit so we can go forward with our operations, with our business. We are going to do the EAs; we are going to have public comment."

"The bottom line is the DEQ hasn't done their job. We need some outside people to get the DEQ off their butts."