

## DEQ ordered by judge to issue gravel pit permit

By JODI HAUSEN Chronicle Staff Writer

Efforts to institute interim zoning for gravel pits in Gallatin County were thwarted this week when a Lewis and Clark County judge ruled that the state must issue an opencut mining permit within 30 days to the gravel-pit operator who sued the Department of Environmental Quality.

The company that filed the suit, Cameron Springs LLC, and the nearby proposed Spanish Peaks pit, on Cameron Bridge Road outside Belgrade, have become the subject of intense controversy, drawing more than 100 people to public hearings on the subject.

In response, the Gallatin County Commission was on the road to instituting interim zoning to regulate, though not necessarily prohibit, gravel pits. The controversy also prompted the Montana Contractors' Association to propose a good-neighbor policy in lieu of regulations.

Commissioners were hoping to adopt the regulations by early May.

Lewis and Clark District Court Judge Jeffrey M. Sherlock's decision raised the hackles of County Commissioner Bill Murdock, who called Cameron Springs "thieves in the night."

"I'm upset that these guys circumvented the process," Murdock said Friday. "We are trying to operate in good faith. We're not trying to ban gravel pits. All of them, under our process, would have been permitted."

Attempts to reach principals of Cameron Springs on Friday were unsuccessful.

Cameron Springs applied for a DEQ permit for an 80-acre gravel pit on Oct. 19. In January, the department sent an e-mail to Jesse Chase, a principal with Cameron Springs, saying that the application "was acceptable," according to court documents.

DEQ staff typically complete an environmental assessment before issuing any gravel pit permit. However, department officials have said repeatedly that they do not have sufficient staff to process the more than 100 pending applications within a 30-day notification period, as required by Montana's Opencut Mining Act. The law does provide for a 30-day extension.

Although more than 60 days has passed since the receipt of an acceptable application, DEQ has been unable to issue the permit or begin the environmental assessment because the department has insufficient personnel and resources, Sherlock wrote in his judgment.

Furthermore, "if the zoning district is enacted as requested before the department issues (a permit) to (Cameron Springs), it is possible that (the) proposed operation will be subject to additional restrictions and may even be zoned out of existence before it can begin," he wrote.

He ordered DEQ to issue a permit for the pit within 30 days.

Sherlock continued, "The court recognizes that the department is overworked and understaffed. In addition it is faced with statutory deadlines that appear not to be realistic. ... The burgeoning growth of Montana has put unusual demands on the department."

The state's opencut mining law "is now conceivably outdated," Sherlock wrote, "as the timelines contained in the statute do not allow (DEQ) to do an adequate job of reviewing applications."

In a written statement, the Montana Contractors' Association said it was "pleased that the court recognized and addressed the gridlock situation at DEQ," and agreed "with the judge's observation that DEQ lacks adequate resources to address the number and complexity of permit applications."

"This decision also sheds light on a perennial problem with Montana's environmental permitting process, which leads to analysis paralysis," the MCA statement said. "The DEQ is constantly under siege by opponents of projects to look under every pebble and to hold endless meetings until every potential problem is identified and mitigated, regardless of its significance."

On Friday, DEQ officials Neil Harrington and Chris Cronin said they will not be conducting an environmental assessment on the Cameron Springs pit. The department is tasked, under the Montana Environmental Protection Act, to do so, but the judge's order does not provide enough time to accomplish that, they said during a conference call Friday.

"DEQ presented arguments that made the best case for trying to represent MEPA and the need for public review, but the judge didn't agree based on the Opencut Act," Harrington said. "The crux of the matter is that the Opencut Mining Act prevails (beyond MEPA). We're obligated to comply with the judge's order."

"It's amazing how hard it is to do the right thing," Kathy Brekke, a neighborhood activist opposing the pits said. "How many people in this county have to say that we want opencut mines put in appropriate places so it doesn't damage a community?"

And, she added, "In the spirit of open and honest communication that we've all requested, it seems odd that they filed this lawsuit in Lewis and Clark County rather than Gallatin County where the residents would know about it."

Murdock said commissioners discussed adopting a 48-hour emergency zoning notice, but he was outvoted by Commissioners Joe Skinner and Steve White.

"I'm sure we'd get sued if we did that," Skinner said.

In addition to pointing out problems at DEQ, Murdock said the lawsuit proved another point.

"They're damaging other gravel pit operators that are trying to work with their neighbors," Murdock said. "This is why we need rules and it's called county-wide zoning. They've hurt everybody in the county who believes in property rights by not playing ball."