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## DEQ to grant permits with no analysis after rulings

By JOHN S. ADAMS Tribune Capitol Bureau

HELENA — A series of Helena district court rulings in favor of Gallatin County gravel pit operators will have broad impacts on the state's environmental permitting process, say those opposed to the decisions.

District judge Jeffrey Sherlock ruled last week that the Montana Department of Environmental Quality must follow state law and issue an open-cut mining permit to Cameron Springs LLC, a gravel-pit operator near Belgrade, despite the fact that the department had not begun to prepare the environmental analysis required under state permitting rules.

Then, on Tuesday, district Judge Dorothy McCarter granted "writ of mandamus" for gravel pits proposed by Spanish Peaks Sand and Gravel and NOG LLC, bringing the number of Gallatin County gravel pits that will be allowed to move forward without environmental analyses to three.

"At this point, we've got this decision which says, 'the permit goes out the door on this date, whether the environmental analysis is done or not,'" said Jeff Barber, water and mining program director for the Montana Environmental Information Center. "They just cannot operate in that fashion, sending the permits out the door without an environmental analysis."

Barber said he plans to comb through the Montana Code for similar permitting laws that might be affected by the Sherlock and McCarter decisions.

"It isn't just gravel pits," Barber said. "I think this could translate into any environmental permit. Subdivisions, feedlots, hard rock mining; wherever there's any environmental activity that requires a permit, this could come into play."

Tom Livers, DEQ's deputy director, said the agency is considering appealing the rulings.

"The way those orders read, we'd have to issue permits without any public involvement or any environmental assessment, and that is of concern to us," Livers said.

In his ruling, Sherlock said he did not fault the DEQ for the agency's inability to complete the environmental analysis, writing that the department has "insufficient personnel and resources" to do so.

Some are worried the court decisions will lead to a rush of similar legal actions since the courts ruled in favor of the gravel pit operators. According to DEQ officials, about 60 gravel pit applications are currently pending agency approval.

"I don't know if we're going to see the floodgates open, but obviously there are a lot of owners and operators out there that want to get their pits permitted," Livers said.

State law does not require an environmental analysis for open cut mining.

The law upon which Sherlock based his ruling contradicts the Montana Environmental Policy Act, which requires an environmental review for any action that "may impact the human environment" and provides opportunities for public involvement in the permitting process. It also contradicts a state administrative rule that requires state agencies to prepare an environmental assessment whenever statutory requirements — like timeframes — do not allow the department sufficient time to prepare a more thorough environmental impact statement.

But Sherlock ruled that "an administrative rule cannot overturn the clear direction of the Legislature," thus the code trumps MEPA and administrative rules.

Sen. Gary Perry, R-Manhattan, said the current state law has major "gaps."

"There are several voids in the law that we have to fill," Perry said during a break in the Water Policy Interim Committee meeting at the Capitol on Wednesday. Perry, a member of the committee, said he asked fellow committee members to "bring people to the table so we can work out these issues and create proper legislation."

Cameron Springs filed its permit application with the agency in October 2007. The department accepted the application in January, but it never issued the permit or began preparing the necessary environmental assessment.

"We've tried in the last two legislative sessions to get a fee-based program established so that we can bring some more resources and get some more people hired," Livers said, adding that currently there are four DEQ employees assigned to work on more than 4,000 gravel pit permits in the state. "The contractors have been willing to work with us on that, but we've had some trouble with the counties. They don't feel it's appropriate that county taxes would be used to pay for a fee for gravel purposes. Both times we've ended up at an impasse."

Gravel pits have been the source of major controversy in Gallatin County, where booming development has led to greater demands for the concrete aggregate. As a result, the Gallatin County Commission was considering instituting interim zoning to regulate gravel pits. A decision on the interim zoning is expected next week.

Kathy Brekke, whose home is in danger of becoming completely surrounded by three gravel pits, is a member of a task force that was working with the Belgrade City/County Planning Board, the county commission, and gravel pit operators through the Montana Contractors Association to work out new rules and planning regulations for gravel pits. She said she was extremely disappointed that the gravel pit operators subverted those efforts and took their case to a Helena district court judge instead.

"We were under the impression that we were working in good faith on this whole process to get everyone's needs met," Brekke said. "Obviously, this has put a stop to that."

"We were working on this at the local level, and now we have judges in Helena pretty much telling us that the DEQ doesn't need to do environmental assessments on gravel pits in Gallatin County," Brekke added.

Attorneys for the gravel pit operators did not immediately return calls, but Cary Hegreberg of the Montana Contractors' Association said there is a misperception about the gravel pit operators' intentions in filing the lawsuit.

"We do not believe that the firms seeking redress through the courts are attempting to skirt regulations or to make political end runs," Hegreberg said. "The companies have been unfairly stalled and delayed by state agencies, and the courts are now agreeing with them. This in no way changes commitments of our members to be responsible, good neighbors."

Hegreberg added that the contractors' association has known for a long time that DEQ was short on staff and that his organization worked with DEQ to pass laws that would have increased permitting fees to help pay for additional resources.

"County governments have circumvented those efforts," Hegreberg said. "County governments have more gravel pits than private entities do ... and they were unwilling to pay any fees."

Meanwhile, Livers said three more writ of mandate applications have been filed in district court, and more could be on the way.

"I think it's going to continue to be a problem," Livers said. "The lawsuits are a new angle and a new overlay to

an already pretty serious problem."

Hegreberg said the courts' rulings "sends message" to other operators that have permit applications pending that DEQ is compelled to issue those permits.

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