

Eastgate Village Water and Sewer Association, Inc. v.
Department of Environmental Quality, et al.
BDV-2008-586, 1st Judicial District, Lewis and Clark County
Filed 2008

This was a challenge, filed in July, 2008, to the opencut permit that DEQ issued to Helena Sand and Gravel for its East Helena pit. The grounds for the appeal were that DEQ violated MEPA by issuing an inadequate EA and by failing to prepare an EIS. The case was ultimately dismissed by stipulation of the parties.

1 Gregory A. Van Horssen, Esq.
2 KELLER, REYNOLDS, DRAKE,
3 JOHNSON & GILLESPIE, P.C.
4 Guardian Building, Third Floor
5 50 South Last Chance Gulch
6 P. O. Box 598
7 Helena, Montana 59624
8 406/442-0230 Tele.
9 406/449-2256 Fax
10 gvanhorssen@kellerlawmt.com

11 *Attorneys for Plaintiff*
12 *Eastgate Water & Sewer*
13 *Association, Inc.*

CLERK DISTRICT COURT
FILED BY L. DOWELL
DEPUTY

2008 JUL -3 P 4: 33

14 MONTANA FIRST JUDICIAL DISTRICT COURT, LEWIS AND CLARK COUNTY

15 EASTGATE VILLAGE WATER AND
16 SEWER ASSOCIATION, INC.,

17 **Plaintiff,**

18 v.

19 MONTANA DEPARTMENT OF
20 ENVIRONMENTAL QUALITY and
21 RICHARD OPPER, DIRECTOR, and
22 JOHN DOES, 1 through 10.

23 **Defendants.**

Cause No. BDV-2008-586

COMPLAINT AND REQUEST
FOR DECLARATORY JUDGMENT

24 COMES NOW, Applicant in this matter, Eastgate Village Water and Sewer Association,
25 Inc., (Eastgate) and does hereby file this complaint against the Montana Department of
26 Environmental Quality ("DEQ"), its Director, Richard Opper and John Does 1-10, seeking an
27 order declaring that the DEQ permit issued to Helena Sand & Gravel, Inc. On June 4, 2008 for
28 the project known as "The East Helena Project" be declared void as violating provisions of the
Montana State Constitution, the Montana Environmental Policy Act, the Opencut Mining Act,
and rules promulgated thereunder.

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1 6. This court has subject matter jurisdiction to decide this issue.

2 7. Venue is proper in this Judicial District pursuant to Montana Code Annotated §
3 25-2-125 because this is an action against a public officer and a public agency, and because the
4 cause of action arises in Lewis & Clark County.
5

6 ALLEGATIONS

7 8. The Director has the authority, and indeed, the obligation under the provisions of
8 the Montana State Constitution as well as the Montana Environmental Policy Act, comply with
9 the requirements of the Constitution and to adequately review state actions in order to ensure that
10 environmental attributes of those actions are fully considered.
11

12 9. The Department, in reviewing and issuing permits for opencut mines, is required to
13 follow the statutory requirements of the Montana Environmental Policy Act, the Montana
14 Opencut Mining Act, and all rules promulgate thereunder.
15

16 10. By issuing the subject permit based upon an incomplete and substantially changed
17 application, the DEQ violated the provisions of the Montana Environmental Policy Act.

18 11. Under the provisions of Montana's Open Cut Mining Act, the Montana
19 legislature has specifically stated that the purpose of the Act is, in part, to preserve natural
20 resources, to aid in the protection of wildlife and aquatic resources, and to promote the health,
21 safety, and general welfare of the people of this state. Mont. Code Ann. §§ 84-4-402 (2)(a), (b)
22 and (f).
23

24 12. By issuing the subject permit based upon an incomplete, and substantially
25 changed application, the DEQ violated the provisions of the Montana Opencut Mining Act.

26 13. The Montana State Constitution requires the DEQ to allow for meaningful public
27 participation prior to issuing opencut mining permits. *Mont. Const. Art. II, § 8*. By taking public
28

1 comment on an incomplete application and by closing public comment after substantial changes
2 had been made to that application, the Department did not meet this constitution requirement.

3 14. The Montana State Constitution requires the DEQ to ensure that State actions,
4 including permitting opencut mines, must ensure that Montana citizens are afforded their right to
5 a clean and healthful environment. *Mont. Const. Art. II, § 3.* By issuing the subject permit
6 based upon incomplete or, as yet, undeveloped information, the DEQ did not meet this
7 constitutional requirement.
8

9
10 PRAAYER FOR RELIEF

11 Wherefor, Eastgate prays that this court:

12 1. Issue an order declaring the subject opencut mining permit void as violating the
13 Montana State Constitution, the Montana Environmental Policy Act and/or the Montana Opencut
14 Mining Act, and rules promulgated thereunder

15 2. Require the Department to begin the application process in this matter anew and
16 to allow for complete public notice and input as required by law, together with a complete
17 analysis of all potential environmental impacts of the project together with an interagency
18 approach to the consideration of those impacts and potential mitigation steps or alternatives to
19 the project so as to fully comply with the requirements of the Montana Constitution and Montana
20 law;
21

22 3. Award Plaintiff, herein, its costs and reasonable attorneys fees associated with this
23 action;
24

25 ///

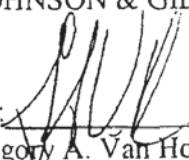
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1 4. Award such other and further relief as the court considers just and proper in the
2 circumstances.

3 DATED this 3rd day of July, 2008.
4

5 KELLER, REYNOLDS, DRAKE,
6 JOHNSON & GILLESPIE, P.C.

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8 BY: 
9 Gregory A. Van Horssen
10 50 South Last Chance Gulch, Third Floor
11 P. O. Box 598
12 Helena, Montana 59624