

Judge Critical of Rock-Mining Oversight

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By Curtis Morgan, **The Miami Herald**

In the soggy outskirts of Northwest Miami-Dade, miners scoop up millions of tons of limestone with heavy equipment, including the world's largest dragline, a machine so massive it requires its own power plant.

Work goes on around-the-clock in 80-foot-deep quarries bordered by the Everglades and the county's biggest drinking water well field.

But the U.S. Army Corps of Engineers, the agency that is supposed to know, can't say how many acres are being blasted and excavated -- at least not exactly.

To Senior U.S. District Court Judge William Hoeveler, it was only one example of shoddy oversight.

When Hoeveler restricted excavation near the Northwest well field two weeks ago, he hit the industry's bottom line hard. But the brunt of his criticism was aimed at key regulators -- Miami-Dade's Department of Environmental Resource Management, the U.S. Fish and Wildlife Service and the Corps.

He singled out the Corps as the weakest of environmental watchdogs, an agency he found unable to accurately assess fundamental questions from a major mining expansion it approved in 2002: Precisely how much digging was happening and where?

The Corps had agreed to open 5,400 acres of wetlands but federal estimates of impacts have varied by hundreds of acres since, shifting numerous times along with the locations of some quarries. To compound problems, the Corps didn't verify how much land had already been excavated and instead largely relied on miners' reports, the judge wrote, making it "impossible to conduct accurate analysis."

"Unfortunately," Hoeveler wrote, "nothing in the extensive evidentiary hearing demonstrated that the Corps has since

obtained a firm grasp of the number of acres being mined or impacted."

Citing a benzene plume serious enough to shut down wells and risks of bacterial contamination risks from quarries, Hoeveler imposed a new, dramatically expanded no-mining zone until the Corps completes a new environmental assessment he ordered last

year. A draft could be done by next month.

For environmentalists, who sued the federal agencies, the ruling echoes years of complaints that regulators and lawmakers have cut too much slack to a powerful industry that supplies much of the state's concrete and fill -- essential ingredients in Florida's economy.

Miners, who have filed for an emergency stay, argue they fell victim to a biased judge too mindful of his legacy of Everglades protection.

"The judgment was extremist and marked by kind of a zealotry," said Richard Ovelman, an attorney for Tarmac America.

Ovelman said he could not comprehend how Hoeveler could lament the predicted loss of 1.8 endangered woodstork fledglings a year as justification for blocking access to 20 million tons of rock -- an action industry and state transportation officials warn could cost thousands of jobs and delay schools, roads and other projects.

ONLY TEMPORARY

Paul Schwiep, an attorney representing three environmental groups in the suit, said the order amounts to only a temporary restriction on sites that are closest, and pose the highest risk, to the well field.

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"We didn't get everything we wanted," said Schwiep. "It's really a very modest approach."

Federal agencies, citing the pending appeal by miners, declined to comment.

But DERM and Miami-Dade's Water and Sewer Department defended county efforts to protect a well field that supplies more than one million people. Benzene, found in solvents and fuels, still shows up at low levels, but county regulators insist tap water is perfectly safe.

"The only reasons the issues are in there are because the county brought it up from day one," said DERM director Carlos Espinosa. "None of those issues were generated by the Corps, the state or anybody else."

Espinosa and Joe Ruiz, the Water Department's deputy director, said the agencies always make safeguarding the water supply top priority.

That's why the county shut down well field pumps to assess the risk when benzene was detected in 2005, Ruiz said. But the benzene has stayed well within treatment capacity, he said.

"Don't think we're not concerned," said Ruiz. "When we see any kind of pollution, hey, we should be jumping up and down. We did shut down the wells, even though we could handle it."

RISK ASSESSMENT

Though DERM has not completed a planned risk assessment, the county has decided the wells need more protection. But rather than expand the no-mining zone, as environmentalists have sought and the judge ordered, the county wants to upgrade two water treatment plants.

With uncertainty about groundwater flow in the area, Ruiz said the county believes treatment would be more protective and practical. The industry has pledged to bankroll the work, which could be up to \$180 million, and buying mining land could prove legally difficult and staggeringly expensive.

Regulators declined to discuss the "merits" of the case; mining attorneys argue there are none, with Ovelman dismissing the ruling as "something of a travesty."

In papers filed with the 11th U.S. Circuit Court of Appeals in Atlanta, the Miami-Dade Limestone Products Association, a coalition of mining companies, argues the judge improperly overstepped his authority when he forced three companies to stop mining on "nothing more than speculation" of a public health threat that miners argue is all but non-existent.

2003 REMOVAL

The appeal cites Hoeverler's controversial removal in 2003 from an Everglades cleanup case he'd presided over for 15 years. The judge then drew charges of bias from the sugar industry after he criticized an overhaul of pollution laws by the Legislature.

"The district court's conduct in this case similarly creates the appearance -- if not the reality -- of a lack of impartiality," miners argue.

Tom MacVicar, an industry consulting engineer, said many of the judge's concerns are easily explained.

Permit changes, for instance, are common in construction and the miners' requests came mainly because companies and county, state and federal agencies all were sorting through an initial array of conflicting wetland maps. The time it took to get everyone on to the same "footprint," he said, also explained a few inadvertent excavations outside approved areas.

Lake Belt miners, he said, face more scrutiny than any industry in the state.

"Without a doubt," MacVicar said. "Look at the issues we have to deal with. We've got a well field, we've got the Everglades. Look at the big developers, they don't have this kind of attention."

INDUSTRY RHETORIC

Brad Sewell, an attorney with the National Resources Defense Council, credited Hoeverler with cutting through industry rhetoric to reveal a flawed process that often put mining interests before public ones.

"The tough issues keep getting punted down the road, mitigation, drinking water protection," he said. "This is how incredibly important public health decisions are made."