

The Herald-Mail

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02/23/2010

Berkeley Co. water board plans to appeal ruling

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MARTINSBURG, W.Va. - A dye test of streams in the vicinity of a proposed quarry mining operation near Gerrardstown revealed a connection to a well used by the Berkeley County Public Service Water District, the utility's executive director said Monday.

"It showed up in our well," said Paul S. Fisher at the water district's board meeting.

Fisher said a report on the "dye trace study" of Mill Creek and a tributary, which was conducted by the district, will be published on the water district's Web site, www.berkeleywater.org, and also provided to the West Virginia Department of Environmental Protection and the Citizens Alliance for a Responsible Environment (CARE), which opposes the proposed mining operation by North Mountain Shale LLC.

Incorporated in January 2008, North Mountain Shale is affiliated with Continental Brick Co., of Martinsburg, W.Va., according to West Virginia Secretary of State Betty Ireland's office.

The company's permit application has yet to be deemed technically complete by the DEP, now more than two years since North Mountain Shale purchased more than 400 acres south of W.Va. 51 and west of Dominion Road.

The proposed quarry site is about two miles from the water district's wells along Goldmiller Road, Fisher has said.

Fisher said dye that was put into a "losing stretch" of Mill Creek and a tributary of the stream appeared in the county's facilities "after a number of days."

Quarterly and monthly monitoring (depending on the season) and on-site water treatment are among recommendations being made to address the potential impact on the utility's water sources, Fisher said.

In other business, board chairman Gregory S. "Greg" Rhoe confirmed that the Water District would appeal a judge's decision that struck down the utility's ability to charge a capacity improvement fee for development of residential lots.

The board authorized Fisher to explore options for retaining additional legal counsel to file the appeal with the West Virginia Supreme Court of Appeals.

Because of the declaratory judgment order signed Jan. 29 by former state Supreme Court of Appeals Justice Elliott E. "Spike" Maynard, Rhoe said the agency would be instituting a formal policy today while the decision is being appealed to the state's high court.

Maynard was appointed by the state supreme court to preside in the civil action filed against the water and sewer districts by Laura Faircloth on behalf of Larry V. Faircloth Realty Inc., after 23rd Judicial Circuit judges recused themselves from hearing the case.

The county's public sewer district board is expected to discuss their legal options this evening in their regular meeting, according to executive director Curtis B. Keller.

In a nine-page ruling, Maynard found that the capacity improvement fees charged by both utilities for each residential building lot are "substantially the same concept" as an "impact fee." Impact fees only can be levied if a

county in West Virginia (like neighboring Jefferson County) operates under the Local Powers Act, according to Maynard's ruling.

Because of the pending legal issue and the current economic situation, the Water District's board decided Monday to delay plans to move forward with constructing a new office-maintenance facility and a water treatment project in the south end of Berkeley County. A preliminary estimated cost for the new office is \$3.6 million, officials said Monday.

Officials have said that Maynard's decision could force the water and sewer districts to institute a substantial rate increase for customers of both the water and sewer district.

Fisher said the water district has about 19,400 "connections," and serves more than 46,000 residents, primarily outside of the City of Martinsburg.

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