

Missoulian

Judge stops transport of giant oilfield equipment through western Montana

By KIM BRIGGEMAN of the Missoulian | Posted: Wednesday, July 20, 2011 6:30 am

A District Court judge has upheld a request by Missoula County and three conservation groups to stop the Kearl Module Transportation Project - and its trucking of giant oilfield equipment modules through western Montana.

Judge Ray Dayton of Anaconda issued his decision to partially grant a preliminary injunction against the Montana Department of Transportation and Imperial Oil/Exxon Mobil shortly before 5 p.m. Tuesday.

Dayton ruled that the Transportation Department was out of line in approving Imperial's proposal to transport an unprecedented 200 Korean-made megaloads of processing equipment to the Kearl Oil Sands in Alberta, Canada, via U.S. Highway 12, Highway 200 and other two-lane roads in Montana.

He agreed with the county and its co-plaintiffs - the National Wildlife Federation, the Montana Environmental Information Center and the Montana Chapter of the Sierra Club - that MDT violated the Montana Environmental Policy Act because it approved an insufficient environmental assessment.

The plaintiffs maintained that the Transportation Department "failed to adequately consider impacts of the project and failed to adequately consider reasonable alternatives."

Among his points, Dayton said the impact of turnouts constructed along the route could not be fully determined because MDT couldn't say which ones were permanent and which ones were temporary.

He ruled that the environmental assessment didn't analyze whether construction at a similar cost along an interstate route was a feasible alternative. And he said MDT didn't take a "hard look" at the environmental impacts of the Kearl project because it relied on the work of a private consulting firm, Tetra Tech, which was hired by Imperial Oil.

Dayton said he could not rescind encroachment permits already issued by the Transportation Department.

"The practical effect of this ruling is that ... activity which requires no further permitting or authorization from MDT may legally proceed," Dayton wrote. "However, as issuance of further 32-J permits, and any other permits ... are hereby preliminarily enjoined, construction would be at Imperial Oil's peril, as it may ultimately be determined that such further permitting will be permanently enjoined."

"I think Judge Dayton hit the mark in terms of his reading of the law," said Tom France, a Missoula-based attorney for the National Wildlife Federation. "While we thought we had a strong case all along, the decision certainly affirms our analysis of why the Montana Department of Transportation violated the law and it says Montana isn't open for business unless companies are willing to comply with our laws."

Pius Rolheiser, spokesman for Imperial Oil, said the Calgary-based company was disappointed with Dayton's ruling.

"As we've just received the judge's order, we will need time to assess, understand and determine our next steps," Rolheiser said in an email Tuesday evening.

The decision came two months after a three-day hearing in Missoula District Court in which Imperial Oil project manager Ken Johnson and officials from the Montana Department of Transportation and Tetra Tech argued that the environmental review was thorough and proper.

The plaintiffs countered with testimony from residents along the route, a University of Montana economist and officials from the Missoula County health and roads departments.

Dayton in late June dismissed the charge that MDT violated the state constitution by denying plaintiffs the right to know and the right to participate. At the same time he rejected MDT's claim that the Montana Environmental Policy Act doesn't give the court authority to direct the department to prepare an environmental impact study.

France said the case was complicated and Dayton had to sort through a lot of evidentiary and procedural issues.

"In the end he found that MDT ... failed to really examine the potential for future use of the corridor by examining the turnouts and other infrastructure," he said. "To me that's a very important part of the ruling. Certainly one of our major concerns at the National Wildlife Federation and the other conservation plaintiffs was seeing an industrial corridor developed across Highway 200 and Highway 12."