



## Appeals court overturns judge's mine restriction ruling

But the decision likely won't result in less mining pressure in Lee County, area officials say

By CHARLIE WHITEHEAD

Monday, May 26, 2008

---

An appeals court has remanded a federal judge's order that closed thousands of acres of the Lake Belt in Miami-Dade County.

By a 2-1 vote, an Atlanta appeals panel said that U.S. District Judge William Hoeweler substituted his own analysis for that of the U.S. Army Corps of Engineers, and allowed his own feelings to bias his decision.

The ruling states Hoeweler may not substitute his judgment for that of the Corps. What he should have done, the majority said, was determine whether the proper process was followed in applying the National Environmental Policy Act, the Endangered Species Act and the Clean Water Act.

The remand may not matter in southeast Lee County, one of only three spots in peninsular Florida where construction-quality limerock can be mined, because of the narrowness of the ruling.

"It's still not clear exactly where it's going," said local mining executive Richard Friday. "The ruling was very, very narrow in scope. It basically said get your own feelings out of the way and make a decision."

The appeals court refused to send the issue to another judge, however. Hoeweler blasted the Corps of Engineers in his ruling, claiming it failed to abide by its own regulations and that allowing mining near the water supply for more than 1 million Florida east coast residents was clearly contrary to its directives.

Friday said Hoeweler could merely reword his decision and reorder the mines closed.

"I don't know about any effect over here," Friday said. "To gear back up for mining takes a lot of time, effort and money, and with the thin ice of the ruling, they might not."

Nancy Payton, Southwest Florida field representative for the Florida Wildlife Federation, agreed.

"I don't think it's going to result in less mining pressure in Lee County or anywhere else," she said. "I think it was a disappointment to the mining industry to have it go back to the same judge. I think there's some indication we will get the same decision."

The short-term effect on limerock prices will also likely be minimal, if it's affected at all. Debbie Tower, local spokeswoman for the Florida Department of Transportation, said the agency was paying \$17 a ton before the original ruling last July.

The price climbed almost immediately to \$22 a ton, then to \$23. Tower said the agency expects a 50-cent increase every six months or so unless gasoline prices drop.

Friday said the economy has the entire state taking a deep breath. He guessed in Southwest Florida mine production is 20 percent to 30 percent of what it was as recently as 2006.

That doesn't mean there's an immediate shortage.

"The problem is, it takes five years to get additional capacity on line," Friday said. "If we had a turnaround, if it went to '06 levels, what we have would be gone in 60 days."

Friday is sitting on a committee Lee County commissioners created to recommend land use changes in southeast Lee, where thousands of

acres waits to be mined. He said some committee members will see the remand as support for their position that mining isn't needed in the area because of resources available elsewhere.

"They'll say there isn't a shortage," he said. "They'll say the judge is right and these things are bad for the environment."

For now, the Lake Belt decision is back in Hoeveler's court.

---

© Naples News