

Gravel pit charges dropped

BY HAL SPENCE

MORRIS NEWS SERVICE - ALASKA

Charges leveled last year by the state against an Anchor Point gravel pit operator have been dropped. Clif Shafer and the company he has run since 1984, Dibble Creek Rock Limited, were accused of two counts of diverting water without a permit (prohibited water appropriation), two counts of violating a commissioner's order and two counts of disobeying a commissioner's order, all misdemeanors. The charges were filed in May 2005.

Shafer faced a year in jail and fines up to \$10,000 on each count, and Dibble Creek could have been fined up to \$200,000 on each count. His trial was scheduled to begin June 19, but on June 16, the Alaska Office of Special Prosecutions and Appeals announced all charges were dismissed.

Assistant Attorney General Kelly

"They (Clif Shafer and Dibble Creek) are acting as good corporate citizens and responsible gravel pit operators."

— Assistant Attorney General Daniel Cheyette

Gillilan-Gibson, who is no longer with the office, had alleged that Shafer and Dibble Creek had diverted some 160,000 gallons of water from the gravel pit without a state permit. That diversion allegedly affected the water-production ability of a neighbor's well.

The state also said Shafer and the company had failed to comply with an order that he cease diverting water, and that later he had disobeyed an order to cement a culvert and

remove drain rock. Shafer told the Homer News then that he did not agree with the charges, felt he was not guilty and welcomed a chance to clear his name in court.

He never got that chance. Assistant Attorney General Daniel Cheyette, who inherited the case from Gillilan-Gibson in March, said he had worked with Shafer and Shafer's attorney, Charles Tulin, to reach an out-of-court resolution.

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That resolution, he added, came about, in part, because Shafer had recently cemented shut and that Shafer had agreed to post money to sponsor a symposium on gravel pit standards that would be held sometime this fall or winter and include Kenai Peninsula Borough planners, gravel pit operators, DNR officials and the public.

Tulin, however, said the dismissal involved absolutely no conditions and that the symposium would be sponsored by an engineer familiar with the case, Michael Anderson with USKH Engineering, not Shafer.

Anderson said Monday he was providing the \$10,000 independent of USKH Engineering. He said he knew Shafer and was familiar with the case, and that he was doing it as a public service because a full public discussion of gravel pit issues needed to happen.

"We need to educate both sides (of the gravel pit debate). The same kind of thing is happening in Wasilla and I have a lot of friends who own gravel pits — I'm a contractor on the side. I want a benchmark. We need one so we can establish exactly what can go on."

Cheyette confirmed that the dismissal had been issued with no conditions, but that prior to the court order, he had told Shafer and Tulin that the charges would be dismissed when the culvert was cemented and when a check for 10,000 made out to the Kenai Peninsula Borough for the symposium expenses was cashed.

He said he had seen a cashier's check for the amount, but had no way of knowing from whose bank account the

money was drawn. Nothing on the official record required that Shafer pay the money himself, and in any case, it doesn't really matter, Cheyette said.

"If it were me, I'd be getting on a soapbox and telling everyone what a good corporate citizen I was by sponsoring the symposium," Cheyette commented. "I'd be making T-shirts."

Tulin said he had prepared a solid defense for his client that included 20 witnesses under subpoena, and that he was fully confident of a win in court. That the special prosecutions office opted for dismissal was no surprise from that standpoint.

"DNR was run over like a steamroller," Tulin said. The charges stemmed from a situation that developed in 2003 when a Dibble Creek pit neighbor, Melvin Harbort, who no longer lives in Anchor Point, claimed his 25-foot well was affected by Shafer's diversion work. Harbort had secured state water rights to 500 gallons per day in 2002 and so did a DNR hydrologist.

A state-hired contractor evaluated Shafer's pit operation and its impact on the neighboring well, concluding that the diversion had affected Harbort's well, according to the state.

Shafer was directed to restore the well, and Shafer said last year that he'd paid \$800 to inspect and fix it. Shafer said then he believed the problem was Harbort's 11-gallon-per-minute pump that drew down the well, the pump being too powerful for the well.

Shafer attempted to buy Harbort's property, but the par-

ties could not agree on a price.

The state alleged Shafer had submitted no plan to the state and Shafer was ordered to cease any diversions. According to the state, Shafer did stop pumping water, but still used culverts and ditches to divert water. Shafer was alleged to have disobeyed a DNR commissioner's order.

Shafer said last week his reputation had suffered during the ordeal and he had looked forward to "clearing my name" in the public forum of a district court trial. He said in that respect he was frustrated by the dismissal.

Cheyette said, however, that he believed the "outright dismissal" of all charges had indeed cleared Shafer's name.

"They (Shafer and Dibble Creek) are acting as good corporate citizens, and responsible gravel pit operators," he said. The state, pit operators and their neighbors would benefit from the symposium, making it "a win-win all around," he added.

"Hopefully confrontations that gave rise to this litigation won't happen at all or at least won't with as much frequency in the future," Cheyette said.

It will be up to the borough exactly what topics will be covered in the symposium, Cheyette said.

For more than a year, the Kenai Peninsula Borough Assembly has been wrestling with proposals to rewrite borough material site permit regulations. The assembly is to take up that matter again in August.

Homer News reporter Michael Armstrong contributed to this story. Hal Spence is a reporter for the Peninsula Clarion.

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