

NOTICE TO GROUND WATER USERS AND PROPERTY OWNERS

HEARING BEFORE THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION ON PETITION FOR A CONTROLLED GROUND WATER AREA IN THE SMITH VALLEY AREA

A hearing before the Montana Department of Natural Resources and Conservation to consider the establishment of a controlled ground water area (CGWA) will be held at the West Coast Kalispell Center Hotel, Ballroom A, 20 North Main, Kalispell MT 59901, 406-751-5050, on October 25, 2005, in Kalispell, Montana. This hearing will be held pursuant to Mont. Code Ann. §§85-2-506 and -507 (2003). This is a formal evidentiary hearing before a Department Hearing Examiner. The purpose of this hearing is to collect oral and written evidence relevant to the proposed designation of a CGWA in the Smith Valley area.

The proposed area is located generally in Section 16, western half, south border is Hwy 2W; Sections 17, 18, 19; Sections 20, 21, 29, 30 and 31, southeast border is Hwy 2W, all in T28N, R22W, and Sections 13, 24, 25, and 36, T28N, R23W, Flathead County. See map for more precise proposed boundary.

The following individuals signed the petition: Anderson, Kimberly; Ashworth, Pat; Badley, Elaine; Breland, Andrew; Campbell, Bob; Campbell, Beth; Collins, Penelope; Dickson, Robyn W; Dickson, Scott; Ecklund, Victor M; Ericksen, Sara; Floyd, Shawna; Garber, Ed; Glazier, Sandy; Gregerson, Reed; Guthrie, Rick; Harball, Katherine; Huff, Kathleen M; Ivans, Randall; Jensen, Bryant; Johnson, Frank; Kearney, Rhonda; Kidwell, Sharon; Laychak, Mike; Layne, Michael; Levy, Joan; Lipinski, Patricia; Lipinski, Daniel; Lofgren, Don L; Lowndes, Dusti; Mahar, Pat; Managhan, Linda; Managhan, Wilson; Manyx, Sharon; Mena, Tina R; Miller, Jeri L; Mitchell D. Brent; Monnier, Brian; Obermayer, Bill B; Obermayer, Karen; Oxford, James R; Pace, Billy R; Pace, Jean A; Parmenter, Pamela; Phillipson, William M; Rubin, Bruce; Safford, John W; Schiele, Linda; Sherrill, Richard; Smith, Michael R; Smith, M Marie; Sundh, Kay; Sundh, Chuck; and Wilkerson, Marsha.

Pursuant to Mon. Code Ann. §85-2-506(2), the Petitioners must allege facts showing:

- ▶ Ground water withdrawals are in excess of recharge;
- ▶ Excessive ground water withdrawals are very likely to occur in the near future because of consistent and significant increases in withdrawal from within the ground water area;
- ▶ Significant disputes regarding priority of rights, amounts of ground water in use by appropriators, or priority of type of use are in progress;
- ▶ Ground water levels or pressures in the area are declining or have declined excessively;
- ▶ That excessive ground water withdrawals would cause contaminant migration;
- ▶ That ground water withdrawals adversely affecting ground water quality are occurring or are likely to occur; or

- ▶ That water quality within the ground water area is not suited for a specific beneficial use defined by 85-2-102(2)(a).

The issue to be heard is whether the Department shall by order declare the area in question to be a controlled ground water area if it finds on the basis of the hearing that the following circumstances exist in the petition area (MCA § 85-2-507):

- (a) The public health, safety, or welfare requires corrective control; and
- (b) (i) there is a wasteful use of water from existing wells, or undue interference with existing wells;
(ii) any proposed use or well will impair or substantially interfere with existing rights to appropriate surface or groundwater by others; or
(iii) the facts alleged in the petition, as required by 85-2-506(2) are true.

The petitioners bases for the controlled ground water area request are: A) Ground water is limited and may already be over allocated in the proposed area; B) Flathead county has experienced a population increase of 25.8% in the past decade with a 29% increase in the rural areas of the county and the growth is expected to continue; C) A 1984 study suggests that ground water appropriations were approaching average annual recharge and further study was needed to understand local aquifer characteristics; and D) Two monitoring wells exhibit significant drawdown over the past 8 years.

Designation as a temporary controlled ground water area may be considered to provide interim controls while studies are conducted. The petitioners requested the following corrective controls or provisions as part of their petition: 1) Closure of the identified area to further appropriation of ground water unless a permit is issued by DNRC with the exception for replacement wells. 2) Include a provision that depending on water availability the boundaries of the CGWA can be altered. 3) New ground water appropriators must obtain a license for drilling and testing purposes to allow data collection. 4) Lower yields and dropping static water levels experienced by water rights owners should be stabilized at current conditions. 5) During review of this petition, DNRC no longer accepts water right applications or ground water completion notices within the proposed CGWA area. 6) Well drillers must obtain an "Application for Beneficial Water Use Permit, Form no. 600 prior to drilling within the proposed CGWA area. 7) If the petition is granted, that the petition is made retroactive to the date of the petition submission. 8) All aquifers within the CGWA boundaries are protected from the surface down.

At this hearing, all interested persons may present evidence or testimony in person, by attorney or other witness, in support of or opposition to the granting of the petition and may be fully heard. The hearing will be October 25, 2005. The hearing will be held in two parts to best accommodate public participation. The hearing for **Full Parties** will start at 8:30 a.m., and the hearing for **Limited Parties** will start at 5:30 p.m. To participate as a Full Party in this proceeding you must file a Notice of Appearance with the Hearing Examiner by June 22, 2005.

Please see the Notice of Hearing Procedures for a discussion of Full and Limited Parties. The petition file, which includes supporting documentation, the environmental assessment, Notice of Hearing Procedures, and a Notice of Appearance form may be viewed at the Department's, Kalispell Water Resources Regional Office (109 Cooperative Way, Suite 110, Kalispell, Montana 59903-0860); the Department's Water Rights Central Office (1424 Ninth Avenue, Helena Montana 59620-1601); and at website <http://www.dnrc.state.mt.us/wrd/home.htm>. Questions concerning this matter should be directed to Kim Overcast at 406-444-6614.

The Department makes reasonable accommodation for any disability that may interfere with an individual's ability to attend this hearing. For consideration of any such accommodation, please contact Kim Overcast at 406-444-6614 (TTD number 406-444-6873) by October 1, 2005.