



PO BOX 201706
Helena, MT 59620-1706
(406) 444-3064
FAX (406) 444-3036

Montana Legislative Services Division

Legal Services Office

TO: Water Policy Interim Committee Members
FROM: Helen Thigpen, Staff Attorney
RE: Administrative Rule Review Report
DATE: December 16, 2015

On December 10, 2015, the Department of Natural Resources and Conservation (DNRC) held a public hearing to consider adopting the East Valley Controlled Groundwater Area. The area being considered for the controlled groundwater area is in and around the city of East Helena and is approximately 1,924 acres in size. The purpose of the controlled groundwater area is to protect water quality in and around East Helena.

In 2014, the Lewis and Clark County Health Department filed a petition to establish the controlled groundwater area after data collected in the area indicated arsenic and selenium contamination. According to the proposal notice, the city of East Helena established a moratorium zone on all new wells, and "Additional pumping from the aquifer is likely to increase the spread of contaminant plumes." The proposal would establish two separate zones, which are specifically described in the proposal notice. Within the zones, certain monitoring requirements and restrictions on new groundwater appropriations and changes to existing groundwater appropriations will apply.

State law allows the DNRC to designate a permanent or temporary controlled groundwater area by rule. The designation process may be initiated by the DNRC, a state or local public health agency for identified health risks, a municipality, county, conservation district, or local water quality district, or by one-third of the water right holders in a proposed controlled groundwater area. The DNRC may designate a permanent controlled groundwater area through the rulemaking process if it finds by a preponderance of evidence that certain criteria have been met and cannot be mitigated, including if public health, safety, or welfare is or will become at risk. A temporary controlled groundwater area may be designated for study purposes and may only be subject to measuring, water quality testing, and reporting requirements.

The DNRC maintains a list and map of controlled groundwater areas in Montana on its website at: <http://dnrc.mt.gov/divisions/water/water-rights/controlled-ground-water-areas>. According to the DNRC, there are currently 15 permanent controlled groundwater areas in Montana.

CL0099 5352hheb