

## HOUSE BILL NO. 205

INTRODUCED BY EVERETT, BECK, ESSMANN, JACKSON, L. JONES, O'NEIL, SONJU, STAHL

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING CONTROLLED GROUND WATER AREA PROVISIONS; PROVIDING REQUIREMENTS THAT A CONTROLLED GROUND WATER AREA PETITION MUST BE MET CORRECT AND COMPLETE BEFORE THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION MAY ~~ACCEPT A PETITION~~ PROCEED; ~~PROVIDING FOR A BOND~~; PROVIDING FOR PAYMENT OF COSTS ASSOCIATED WITH A CONTROLLED GROUND WATER AREA PETITION, NOTICE, AND ORDER; PROVIDING FOR ADOPTION OF RULES; PROVIDING FOR CONTESTED CASE PROCEEDINGS; AMENDING SECTIONS 85-2-506 AND 85-2-507, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**Section 1.** Section 85-2-506, MCA, is amended to read:

**"85-2-506. Controlled ground water areas -- designation or modification -- payment of costs -- bonding.** (1) The department may designate or modify controlled ground water areas as provided in this part.

(2) (a) ~~Subject to subsection (2)(b), designation~~ Designation or modification of an area of controlled ground water use may be proposed to the department on its own motion, by petition of a state or local public health agency for identified public health risks, or by petition signed by at least ~~20 or one-fourth~~ 70% 51% of the ~~users~~ PERMITHOLDERS, CERTIFICATE HOLDERS, AND CLAIMANTS ~~(whichever is the lesser number)~~ of ground water in a proposed controlled ground water area in which there are alleged to be facts showing:

(~~a~~)(i) that ground water withdrawals are in excess of recharge to the aquifer or aquifers within the proposed controlled ground water area;

(~~b~~)(ii) that excessive ground water withdrawals are very likely to occur in the near future because of consistent and significant increases in withdrawals from within the proposed controlled ground water area RESULTING IN ADVERSE EFFECTS TO A PRIOR APPROPRIATOR'S APPROPRIATION RIGHT;

(~~c~~)(iii) that significant disputes regarding priority of rights, amounts of ground water in use by appropriators, or priority of type of use are in progress within the proposed controlled ground water area;

(~~d~~)(iv) that ground water levels or pressures in the area in question are declining or have declined excessively;

~~(e)(v)~~ that excessive ground water withdrawals would ~~cause~~ INDUCE OR ALTER contaminant migration;

~~(f)(vi)~~ that ground water withdrawals adversely affecting ground water quality within the proposed controlled ground water area are occurring or are likely to occur; or

~~(g)(vii)~~ that water quality within the proposed controlled ground water area is not suited for a specific beneficial use defined by 85-2-102(2)(a).

(b) (i) The department may not ~~accept or consider~~ PROCEED WITH a petition unless:

~~——(i) the department first determines that the petition is correct and complete. A correct and complete petition must be in a form prescribed by the department and must contain substantial credible information and analysis on AND SCIENTIFIC DATA SHOWING THAT one or more of the criteria provided in subsection (2)(a) IS OCCURRING.~~

~~——(ii) a bond of at least \$10,000 has been posted to ensure the petitioner's ability to pay costs associated with a controlled ground water area that are the petitioner's responsibility. Only a single bond may be required for each petition.~~

(ii) THE DEPARTMENT SHALL, WITHIN 60 DAYS, NOTIFY THE PETITIONER IN WRITING REGARDING WHETHER OR NOT THE PETITION IS CORRECT AND COMPLETE. IF A PETITION IS NOT CORRECT AND COMPLETE, THE DEPARTMENT MUST IDENTIFY ANY DEFICIENCIES OR SCIENTIFIC DATA NECESSARY TO MAKE THE PETITION CORRECT AND COMPLETE.

(iii) A PETITION THAT IS NOT MADE CORRECT AND COMPLETE WITHIN 60 DAYS FROM THE DATE OF RECEIPT OF NOTIFICATION BY THE DEPARTMENT OF ANY DEFECT IS TERMINATED AS A MATTER OF LAW.

(c) The department shall adopt rules for the purpose of implementing this section and other controlled ground water area statutes. The rules must include but are not limited to petition requirements, including the definition of correct and complete.

(d) When the department determines that a petition is correct and complete and accepts the petition as a proposal, the petitioners shall send a notice to all landowners within the proposed controlled ground water area providing notice that a controlled ground water area has been proposed. Costs of the notice must be paid as provided in subsection ~~(6)~~ (7). The notice must include:

(i) the name of each entity that signed the petition;

(ii) the address of each entity that signed the petition; and

(iii) the location where the petition was filed and where it may be reviewed by the public.

(3) ~~When a proposal is made~~ WITHIN 90 DAYS FROM THE DATE OF NOTICE THAT THE DEPARTMENT HAS DETERMINED THAT A PETITION IS CORRECT AND COMPLETE and the provisions of subsection (2) have been met, AFFECTED PARTIES MAY OBJECT TO THE PROPOSED CONTROLLED GROUND WATER AREA. ~~the department shall fix a time~~

and place for a hearing, which time may not be less than 90 days from the making of the proposal. The place for the hearing must be within or as close as practical to the controlled ground water area. The cost of the hearing must be paid as provided in subsection (6).

~~———— (4) The Subject to subsection (6); WITHIN 30 DAYS OF DETERMINATION THAT AN APPLICATION IS CORRECT AND COMPLETE, the department shall publish a notice of the hearing OPPORTUNITY TO OBJECT, setting forth:~~

- ~~(a) the names of the petitioners;~~
- ~~(b) the description by legal subdivisions, (section, township, and range,) of all lands included in or proposed to be included in the controlled ground water area or subarea;~~
- ~~(c) the purpose of the hearing OPPORTUNITY TO OBJECT; and~~
- ~~(d) the time and place of the hearing where any interested person may appear, either in person or by attorney, file written objections to the granting of the proposal, and be fully heard LIMIT THAT APPLIES TO FILING OBJECTIONS TO THE PROPOSED CONTROLLED GROUND WATER AREA.~~

~~(5)(4) (a) The notice of hearing THE OPPORTUNITY TO OBJECT must be published at least once in each week month WEEK for ~~3~~ 2 successive weeks months not less than ~~30~~ 90 60 days before the FINAL date of the hearing FOR OBJECTIONS in a newspaper of general circulation in the county or counties in which the proposed controlled ground water area or subarea is located. The department shall also cause a copy SUMMARY of the notice, together with a copy of the entire petition and any exhibits or appendices, to be served by mail, not less than ~~30~~ 60 days before the hearing TERMINATION OF THE TIME ALLOWED FOR OBJECTIONS, upon:~~

- ~~(i) each well driller licensed in Montana whose address is within any county in which any part of the area in question is located; upon~~
- ~~(ii) each person or public agency known from an examination of the records in the department's office to be a claimant or appropriator of ground water in the area in question, (claimant or appropriator meaning one who diverts, impounds, or withdraws ground water and not merely one who uses or obtains ground water from another who diverts, impounds, or withdraws ground water); upon~~
- ~~(iii) the bureau; and upon~~
- ~~(iv) the mayor or presiding officer of the governing body of each incorporated municipality located in whole or in part within the proposed controlled ground water area.~~

~~(b) The department may also serve notice upon any other person, real estate company, or state or federal agency that the department feels may be interested in or affected by the proposed designation or modification of a controlled ground water area.~~

~~(c) The petition NOTICE need not must be served on any petitioner all petitioners.~~

(d) A copy of the notice, together with a copy of the proposal, must be mailed to each owner OF RECORD of a parcel partially or wholly within the boundaries of the proposed controlled ground water area. person at the person's last-known address, and service Service is complete upon depositing it the notice in the post office, postage prepaid, addressed to each person on whom it is to be served. Publication and mailing of the notice as prescribed in this section, when completed, is considered to be sufficient notice of the hearing OPPORTUNITY TO OBJECT to all interested persons.

(5) IF THE DEPARTMENT DOES NOT RECEIVE AN OBJECTION WITHIN THE 90-DAY OBJECTION PERIOD, THE DEPARTMENT SHALL, WITHIN 60 DAYS OF THE TERMINATION OF THE OBJECTION PERIOD, DENY THE PETITION FOR A CONTROLLED GROUND WATER AREA OR GRANT THE CONTROLLED GROUND WATER AREA PETITION. THE DENIAL OR GRANTING OF THE CONTROLLED GROUND WATER AREA IS THE FINAL AGENCY ACTION FOR PETITIONS THAT DID NOT RECEIVE AN OBJECTION.

(6) IF AN OBJECTION IS RECEIVED, THE DEPARTMENT SHALL ASSIGN THE CONTROLLED GROUND WATER AREA PETITION TO A DEPARTMENT LEGAL UNIT HEARINGS OFFICER FOR A CONTESTED CASE PROCEEDING AS PROVIDED IN TITLE 2, CHAPTER 4, PART 6. THE CONTESTED CASE PROCEEDING IS AVAILABLE TO THE APPLICANT AND TO ANY OBJECTOR.

(6)(7) The petitioner shall pay the costs of all notices, publications, public hearings, and other costs, including but not limited to department and other state employee expenses for travel, lodging, and salary; room rental, printing, copying, and research related to a controlled ground water area."

**Section 2.** Section 85-2-507, MCA, is amended to read:

**"85-2-507. Limiting withdrawals -- modification of order.** ~~(1) At the time set for the hearing, the department shall proceed to hear oral and written evidence relevant to the designation or modification of the controlled ground water area presented by the bureau, the department, and any other interested party. A full record must be kept of all evidence taken at the hearing. The procedure must secure a full, fair, and orderly proceeding and permit all relevant evidence to be received. The common-law and statutory rules of evidence apply only upon stipulation of all parties.~~

(2)(1) After the conclusion of the hearing PURSUANT TO THE CONTESTED CASE PROVISIONS OF TITLE 2, CHAPTER 4, PART 6, the department HEARINGS OFFICER shall make written findings and an order. The department HEARINGS OFFICER shall by order declare the area in question to be a controlled ground water area if the department HEARINGS OFFICER finds on the basis of the hearing that:

- (a) the public health, safety, or welfare requires a corrective control to be adopted; 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 water or ground water by others; or

(iii) the facts alleged in the petition, as required by 85-2-506(2), are true.

(3) The order must define the boundary of the controlled ground water area and must indicate which of the ground water aquifers located within the area in question are included within the controlled ground water area. Any number of ground water aquifers that wholly or partially overlie one another may be included in the same controlled ground water area.

(4) The order may include but is not limited to the following corrective control provisions:

(a) a provision closing the controlled ground water area to further appropriation of ground water, in which event the department shall refuse to accept any applications for beneficial water use permits to appropriate ground water located within the controlled area;

(b) a provision determining a permissible total withdrawal of ground water in the controlled area by day, month, or year and permitting the department to apportion the permissible total withdrawal among the appropriators holding valid rights to the ground water in the controlled area in accordance with the relative dates of priority of the rights;

(c) a provision according preference, without reference to relative priorities, to withdrawals of ground water in the controlled area for domestic and livestock purposes first and then to withdrawals for other beneficial purposes, including but not limited to agricultural, industrial, municipal (other than domestic), and recreational purposes, in the order that the department considers advisable under the circumstances;

(d) a provision reducing the permissible withdrawal of ground water by any appropriator or well in the controlled area;

(e) when two or more wells in the controlled area are used by the same appropriator, a provision adjusting the total permissible withdrawal of ground water by the appropriator or a provision forbidding the use of one or more of the wells;

(f) a provision requiring and specifying a system of rotation of use of ground water in the controlled area;

(g) provisions for well spacing requirements, well construction constraints, and prior department approval before well drilling, unless the well is regulated pursuant to Title 82, chapter 11;

(h) provisions making any additional requirements that are necessary to protect the public health, safety, and welfare in accordance with the intent, purposes, and requirements of this part and the laws of the state.

(5) (a) (i) If at the conclusion of the hearing the ~~department~~ HEARINGS OFFICER finds that sufficient facts are not available to designate or modify a permanent controlled ground water area, the ~~department~~ HEARINGS

OFFICER may by order designate the area in question to be a temporary controlled ground water area. The order may include the corrective control provisions contained in subsection (4).

(ii) A temporary controlled ground water area must be designated ~~as such~~ for a period not to exceed 2 years from the date of the order designating the temporary controlled ground water area. ~~The department may, for sufficient cause, extend the time period for an additional 4 years. The time period for an extension must be in 2-year increments. The department shall find sufficient cause for each extension. For each extension in time, all ground water appropriators in the controlled ground water area must be notified of the extension.~~

(b) (i) During the 2-year period ~~and any extensions of the time period~~, studies necessary to obtain the facts needed to assist in the designation or modification of a permanent controlled ground water area must be commenced under the supervision and control of the department. Facts gathered during the study period must be presented ~~at~~ TO THE HEARINGS OFFICER FOR a hearing prior to the designation or modification of a permanent controlled ground water area.

(ii) All parties ~~appearing at the first hearing~~ TO THE CONTESTED CASE must be served notice of this hearing by mail at least 30 days prior to the date set for the hearing. The service is complete upon deposit of the notice at the post office, postage prepaid, addressed to each person on whom service is to be made. Mailing of the notice, when completed, is considered to be sufficient notice of the hearing to all persons directly affected. Costs of the notice must be assessed as provided in 85-2-506(6). The department shall file in its records proof of service by its own affidavit.

(iii) The hearing must be conducted ~~by the department in the manner of the first hearing, and the department shall make written findings of fact and conclusions of law and~~ PURSUANT TO TITLE 2, CHAPTER 4, PART 6. THE HEARINGS OFFICER SHALL issue an order according to the provisions set forth in subsections (1) through (4). ~~In the event that~~ If the department does not complete the necessary study in the 2-year period ~~or extension of the period~~, the temporary controlled ground water area designation will terminate at the end of the 2-year period ~~or extension~~.

(6) The department may enforce the order and bring an action for an injunction in a district court of a district in which all or part of the area affected is located, in addition to all other remedies.

(7) (a) The order of the ~~department~~ HEARINGS OFFICER must be published and mailed by the department in the manner and for the length of time as prescribed by 85-2-506 for the publication and mailing of the notice of hearing THE OPPORTUNITY TO OBJECT, except that a copy of the written findings and order of the ~~department~~ HEARINGS OFFICER must be mailed instead of a copy of the proposal and, ~~except further, that~~ a copy of the order, together with a copy of the written findings, must be mailed to each petitioner at the petitioner's last-known

address and to each owner of a parcel partially or wholly within the boundaries of the proposed controlled ground water area.

(b) The department shall file a copy of the order with the county clerk of each county within which any part of the controlled ground water area lies, and the county clerk shall record the order without fee. The department shall file in its records proof of service by its own affidavit of service. Upon publication and mailing of the order as prescribed in this section, the order is final and conclusive unless an appeal from the order is taken.

~~—(8) The department may by order suspend, modify, or revoke any order made as provided in this section upon the notice and in the manner that is reasonable under the circumstances. A copy of each suspension, modification, or revocation must be served or filed and recorded as provided for orders in subsection (7).~~

~~(9)~~(8) While a matter is pending, the department may restrict further development of the subarea.

~~(10)~~(9) Costs associated with implementing the controlled ground water order must be paid by the petitioner as provided in ~~85-2-506(6)~~ 85-2-506(7)."

NEW SECTION. Section 3. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

NEW SECTION. Section 4. Effective date. [This act] is effective on passage and approval.

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