

1 IN THE MATTER OF THE APPLICATION }  
2 OF DAVID STROBEL, et al. FOR THE }  
3 DESIGNATION OF A CONTROLLED }  
4 GROUND WATER AREA }

FINDINGS OF FACT  
and  
ORDER

5 -----  
6  
7 BE IT REMEMBERED that a petition was filed with this Board on the 11th day  
8 of May, 1967, proposing a controlled ground water area. This petition was filed  
9 pursuant to the procedure established in section 89-2914, R.C.M., 1947. A  
10 hearing on said petition was held on July 6, 1967, at 10:00 o'clock A.M. at the  
11 Custer County Courthouse in Miles City, Montana. Testimony was there offered  
12 by sixteen petitioners, all seeking the creation of a controlled ground water area.  
13 Testimony was also received from four witnesses, all on behalf of Shell Oil Company,  
14 and all in opposition to the creation of a controlled ground water area. Statements  
15 were also received from other interested persons. Numerous exhibits were received,  
16 and a complete transcript of the entire hearing was taken.

17 The Montana Water Resources Board makes the following findings of fact:

18  
19 FINDINGS OF FACT

- 20  
21 1. That the petition herein has been properly executed and filed;  
22 2. That due and adequate notice, including publication and mailing,  
23 has been had, as required by section 89-2914, R. C. M., 1947;  
24 3. That the area designated in the petition is a proper subarea for the  
25 creation of a controlled ground water area as is required by subsection (g) of  
26 section 89-2914, R. C. M., 1947;  
27 4. That there is a sufficient supply of water in the designated area to meet  
28 all requirements as they presently exist;  
29 5. That there is sufficient water pressure to allow economic withdrawal of  
30 only a small fraction of the total supply of water for domestic or agriculture use;  
31  
32

1 6. That there have been increasing withdrawals of water from the area over the  
2 years recent past;

3 7. That there is very likely to occur excessive withdrawals in the near future  
4 due to consistent and significant increases in withdrawals from within the ground  
5 water area;

6 8. That the present withdrawals and their practical effect on the water pressure  
7 are not excessive so as to require a limitation of the present rate of withdrawal;

8 9. That there is no need to determine priorities for the use of ground water  
9 within this area at this time;

10 THEREFORE, the Montana Water Resources Board enters the following order:

11 ORDER

12  
13 1. There is hereby created a controlled ground water area including the  
14 following described lands:

15 Township 12N Range 55E

16 Township 11N Range 55E

17 Township 11N Range 56E

18 That portion of Township 12N Range 56E

19 Which is west of the Cedar Creek Anticline

20 That portion of Township 11N Range 57E

21 which is west of the Cedar Creek Anticline

22 That portion of Township 13N Range 55E

23 which is in Prairie County.

24 2. No new appropriation of ground water shall be made within the above-  
25 described area except by permit request as provided for in section 89-2918, R.C.M.,  
26 1947.

27 3. No presently inactive well shall be used by any person within the controlled  
28 area except by application to, and approval of, the Montana Water Resources Board.

29 4. No presently active well shall be used so as to increase its rate of withdrawal

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32

except by application to, and approval of, the Montana Water Resources Board.

5. The administrator of this controlled ground water area shall, in cooperation with all parties concerned, determine the present rate of withdrawal over any particular time period, so as to allow future supervision and administration of the area.

DATED this 1<sup>ST</sup> day of November, 1967.

The Montana Water Resources Board

*Jim Babcock*  
Governor Jim Babcock

*Wilbur White*  
Wilbur White

*Everett V. Darlington*  
Everett V. Darlington

*H. J. Sawtell*  
H. J. Sawtell

*Clyde Hawks*  
Clyde Hawks

*Sid P. Kurth*  
Sid P. Kurth

*Donald L. Delaney*  
Donald L. Delaney

60768

BEFORE THE MONTANA WATER RESOURCES BOARD  
OF THE STATE OF MONTANA

-----

IN THE MATTER OF THE APPLICATION )	
OF VARIOUS PARTIES FOR THE )	FINDINGS OF FACT
DESIGNATION OF AN AREA FOR )	
CONTROLLED GROUND WATER AND FOR )	and
THE REGULATION OF THE WITHDRAWAL )	
OF WATER FROM THE HELL CREEK )	ORDER
FOX HILLS AQUIFER )	

-----

BE IT REMEMBERED that the Montana Water Resources Board conducted a hearing, upon its own motion, to inquire into the factual situation existing in the controlled ground water area established on November 1, 1967, to determine if any modification of the Order which established said area should be made. The hearing was held on November 13, 1969, at the Custer County Court House in Miles City, Montana, at 10:00 a.m., in accordance with the laws of the State of Montana.

Testimony was offered by numerous property owners (within the present controlled area) known as the Pure Water Control Association, and represented by Mr. Gene Huntly, Attorney at Law, and from Shell Oil Company, represented by Mr. W. H. Bellingham, Attorney at Law, concerning the present status of the area as well as concerning the time period since the first hearing. Exhibits were received and a complete transcript of the hearing was taken. All persons present were allowed to participate and the hearing was not ended until there were no further statements or testimony to be offered.

The Montana Water Resources Board makes the following findings of fact:

FINDINGS OF FACT

1. That there is presently existing a controlled ground water area which includes the following described land:

Township 12N, Range 55 E

Township 11N, Range 55 E

Township 11N, Range 56 E

That portion of Township 12N, Range 56E

which is west of the Cedar Creek Anticline

That portion of Township 11N, Range 57E

which is west of the Cedar Creek Anticline

That portion of Township 13N, Range 55E

which is in Prairie County.

2. That due and adequate notice, including publication has been had, as required by Section 89-2914, R.C.M., 1947.

3. That the conditions within said area have materially changed since the 1st day of November, 1967, when the Order was entered establishing this controlled area.

4. That the withdrawals from the controlled area have increased so as to drop various wells within the area to a point below that contemplated in and projected by Memoir 40 prepared by the United States Geological Survey.

5. That the present levels of the wells create an unreasonable economic burden on the landowner affected and he cannot be reasonably expected to pay for the cost of pumping from a level below the respective water level of each well as of January 1, 1964, plus twenty-five percent (25%).

6. That the withdrawal of water by Shell Oil Company is the proximate and natural cause of the continued falling water level in the wells within the area.

THEREFORE, the Montana Water Resources Board makes the following Order in accordance with Section 89-2915, R.C.M., 1947, which is in the alternative and is directed to Shell Oil Company:

1. Shell Oil Company shall limit its total withdrawals to a maximum of seven thousand (7,000) barrels of water per day.

OR

1. Shell Oil Company shall pay all additional charges for electricity necessary to pump water from any depth below the water level of each well as of January 1, 1964, or as near to this date as the level can be determined, plus twenty-five percent (25%). This will be limited to the amount of increase only, over and above the normal charge for power to pump from the January 1, 1964, level, plus twenty-five percent (25%).

2. This is in addition to the various items of expense that Shell Oil Company has already offered to pay and which are a matter of record.

3. This payment shall be made by Shell Oil Company from the date of this Order until such time as each well returns to within the January 1, 1964, level, plus twenty-five percent (25%), but in no case to last more than the same number of years as Shell Oil Company has made withdrawals from this area, said period to commence on the date said withdrawals cease.

4. The mechanics of this second alternative are to be determined jointly by the Shell Oil Company and the Pure Water Control Association and a copy of this agreement is to be filed with the Montana Water Resources Board within sixty (60) days from the date of this Order. If these two parties should fail to reach agreement within said period, the Water Board shall receive a proposal from each party, if either desires to submit same, and the Board will establish the necessary procedure and detail with an Amendatory Order. Further, if increased use of any well has been made by the owner thereof since January 1, 1964, this shall be taken into consideration and paid for by the user.

Dated this 8<sup>th</sup> day of ~~May~~<sup>June</sup>, 1970.

MONTANA WATER RESOURCES BOARD

  
Director