

RECEIVED

MAY - 8 2013

D.N.R.C.

* * * * *

BEFORE THE BOARD OF
NATURAL RESOURCES AND CONSERVATION
OF THE STATE OF MONTANA

* * * * *

IN THE MATTER OF A PETITION TO)	BOARD OF NATURAL RESOURCES
THE BOARD OF NATURAL RESOURCES)	AND CONSERVATION'S FINDINGS
AND CONSERVATION FOR DESIGNATION)	OF FACT, CONCLUSIONS OF LAW,
OF THE WARM SPRINGS PONDS)	AND ORDER
CONTROLLED GROUNDWATER AREA)	

* * * * *

Pursuant to the Montana Water Use Act and the provisions of Mont. Code Ann. §§ 85-2-506 and 85-2-507 and the contested case provisions of the Montana Administrative Procedures Act, Mont. Code Ann. §§ 2-4-601, et. seq., a contested case hearing was held on May 25, 1995, in Helena, Montana, before the Board of Natural Resources and Conservation to consider the designation of a controlled groundwater area referred to as the Warm Springs Ponds Controlled Groundwater Area.

STATEMENT OF CASE

PARTIES

The Atlantic Richfield Company (ARCO) petitioned the Board of Natural Resources and Conservation (Board) for the designation of a controlled ground water area (CGWA) for the Warms Springs Ponds area located in Deer Lodge County, Montana. Notice of the Petition was published in newspapers of local circulation. The Clark Fork Pend-Oreille Coalition (Coalition), a non-profit group interested

1. FINDINGS, CONCLUSIONS AND ORDER

in water resource issues, and the State of Montana, Department of Justice, Natural Resources Damage Litigation Program (NRDL) appeared in opposition to the Petition.

CASE

ARCO filed a Petition with the Board requesting designation of a CGWA under Mont. Code Ann. § 85-2-506, (2)(e)&(g). ARCO requested designation of the CGWA to comply with the directives of the Environmental Protection Agency (EPA) that an institutional control be implemented to regulate the withdrawal of groundwater from the aquifer underlying the Warm Springs Ponds area. The NRDL appeared for the purpose of requesting that if a CGWA was designated, the Board condition the designation to reflect its concerns related to ongoing litigation between NRDL and ARCO. The Coalition appeared for the reasons that it opposed the permanent designation of a CGWA, objected to the boundaries of the proposed CGWA and in support of the conditions requested by the NRDL.

WITNESSES

The following persons were sworn and gave testimony before the Board at the hearing:

Ms. Sandra Stash, P.E. Testified on behalf of ARCO in support of the Petition.

Mr. Roger Hail. Testified on behalf of ARCO in support of the Petition.

2. FINDINGS, CONCLUSIONS AND ORDER

Mr. Kirk Waren. Called as a witness by ARCO and testified as to the Department of Natural Resources and Conservation's review of the Petition.

Mr. Henry Elsen, EPA. Called as a witness by the Coalition and testimony presented by way of deposition as to EPA action in this matter.

EXHIBITS

Exhibits were introduced and admitted into evidence at the hearing. There were no objections to the admission of any of the exhibits listed and all were admitted into the record as noted.

Exhibit-A (ARCO) 1 Verified Petition for Controlled Groundwater Area and supporting exhibits and documents.

Exhibit-A2 Environmental Protection Agency Record of Decision, Warm Springs Ponds Inactive Area Operable Unit and Record of Decision, Warm Springs Ponds Operable Unit and the Explanation of Significant Differences (Portions of both documents relating to the requirement that institutional controls be implemented regarding groundwater withdrawals).

Exhibit-A3 USGS map showing boundaries of proposed CGWA.

Exhibit-A4 Aerial oblique angle photograph of the Warm Springs Ponds area. Introduced and admitted for demonstrative purposes.

Exhibit-A5 Aerial photograph of the Mill-Willow by pass channel. Introduced and admitted for demonstrative purposes.

Exhibit-A6 Curriculum Vitae, Roger Hail

3. FINDINGS, CONCLUSIONS AND ORDER

Exhibit-A7 Schematic of aquifers under proposed CGWA. Introduced and admitted for demonstrative purposes.

Exhibit-A8 Schematic of ponds and aquifers showing general direction of groundwater movement in proposed CGWA. Introduced and admitted for demonstrative purposes.

Exhibit-A9 Schematic of the North-South movement of groundwater. Introduced and admitted for demonstrative purposes.

Exhibit-A10 Schematic of East-West movement of groundwater and the affect of the Mill-Willow by pass channel and interception trench on groundwater movement. Introduced and admitted for demonstrative purposes.

Exhibit-A11 Schematic of well in upper aquifer. Introduced and admitted for demonstrative purposes.

Exhibit-A12 Schematic of well in deeper aquifer showing suggested well drilling and construction techniques. Introduced and admitted for demonstrative purposes.

Exhibit-C (Coalition)1 Map overlay of USGS map shown with red and green boundary outlines of areas referred to in EPA documents.

PROCEDURE

The Board appointed Robert R. Throssell to act as hearing examiner in this matter. His appointment was limited to ruling on preliminary motions, conducting a pre-hearing conference, issuing scheduling and other orders, overseeing discovery and presiding

4. FINDINGS, CONCLUSIONS AND ORDER

over the evidentiary portion of the hearing. The Board heard the evidence in the matter and retained the final decision making authority.

ARCO moved to exclude the comments and objections of the Coalition and the NRDL. The matter was briefed by the parties and the Board asked the Hearing Examiner to rule on the motion. The Hearing Examiner denied the Motion to Exclude and allowed the Coalition and the NRDL to participate in the proceeding. The Hearing Examiner limited the Coalition and NRDL's participation to the issues raised by the petition and by their responsive pleading.

The Board requested, and the parties so stipulated, that the Board would hear this matter in conjunction with its regularly scheduled meeting May 25, 1995. Mont. Code Ann. § 85-2-506 (3), requires the hearing to be held as close as practical to the proposed CGWA. The parties stipulated that the Board could hear this matter in Helena, Montana.

At the hearing the parties submitted by way of stipulation suggested language for the Board to adopt which provides for a review of the designation of the CGWA. With the submission of the stipulation, the Coalition indicated that it would withdraw its objection to the boundaries of the proposed CGWA if the Board adopted the suggested language in its Order.

In its closing arguments, ARCO stated that it would withdraw its objection to the inclusion of the conditions requested by NRDL if the Board were to grant the Petition. ARCO stated that it was

5. FINDINGS, CONCLUSIONS AND ORDER

withdrawing its objections so as to facilitate the granting of the Petition and did not waive its right to fully defend its interests in all other proceedings in which it is a party. ARCO maintained that the statutes governing the designation of CGWA do not allow the imposition of the type of conditions requested by the NRDL. Without waiving any right to contest the conditions in other forums, ARCO withdrew its objection to the imposition of the conditions for the purpose of this proceedings.

This matter having been deemed submitted and from the record before the Board, the Board enters the following Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

1. ARCO filed its Petition for the designation of a CGWA on November 19, 1993. On April 28, 1994, the Board accepted the Petition as correct and complete. Public Notice of the Petition was published in the Butte Montana Standard and the Anaconda Leader on June 29, July 6 and July 13, 1994. Notice was also mailed to local water well drillers, groundwater users, the Montana Bureau of Mines and Geology, mayor or city officials in Butte, Anaconda, Warm Springs and Deer Lodge, the U.S. Geological Survey, the U.S. Environmental Protection Agency, and the Montana Department of Health and Environmental Sciences.

2. The proposed CGWA embraces land owned solely by ARCO in portions of Sections 1, 11 and 12 of Township 4 North, Range 10 West, portions of Sections 17-20 and 29-31, both inclusive, of

6. FINDINGS, CONCLUSIONS AND ORDER

Township 5 North, Range 9 West; and portions of Sections 25 and 36 of Township 5 North, Range 10 West, all in Deer Lodge County, Montana. Figure 2 to the Petition for CGWA is an accurate depiction of the boundaries.

3. The land area within the boundaries of the proposed CGWA is used for water treatment and waste management. In conjunction with these activities, the State of Montana leases the property for use as a wildlife management and recreation area. Most of the area overlying the proposed CGWA is water surface created by two treatment ponds. Metals in Silver Bow Creek precipitate out within these treatment ponds before treated water is discharged to the Mill-Willow Bypass, a channel that routes flood flows of Silver Bow Creek and the discharge of Mill and Willow Creek and the treatment ponds. Waste management areas include both wet and dry closures, where mine tailings and other wastes are either flooded or capped to prevent any subsequent release of these materials. The designation of a CGWA will not interfere or otherwise affect the use of the property for water treatment, waste management, wildlife management, and recreation.

4. There are three aquifers within the proposed CGWA: (1) the Upper Sand and Gravel Aquifer; (2) the East Hills Alluvial Fans Aquifer; and (3) the Lower Sand Aquifer. The Upper Sand and Gravel Aquifer is typically 10 to 15 feet thick, but is as deep as 40 feet below the ground surface in some areas within the boundaries of the proposed CGWA. This aquifer is overlain by floodplain silts and

7. FINDINGS, CONCLUSIONS AND ORDER

gravely silts deposited by Silver Bow Creek except in incised stream channels. At present, mine tailings and bottom pond settlements cover much of these old floodplain soils. The Upper Sand and Gravel Aquifer is predominantly a sand and gravel mixture, with high transmissivity rates, meaning that the aquifer is capable of transmitting water relatively quickly. The Upper Sand and Gravel Aquifer interfingers along the eastern side of the proposed CGWA with the East Hills Alluvial Fans. The East Hills Alluvial Fans Aquifer is created by outwash from the relatively steep east hills adjoining the proposed CGWA on the eastern side.

5. The Lower Sand Aquifer is separated from the Upper Sand and Gravel Aquifer by an aquitard. An aquitard is a relatively impermeable deposit, meaning that only limited amounts of water are able to move through the aquitard. As a result, only limited amounts of water are transmitted from the Lower Sand Aquifer to the Upper Sand and Gravel Aquifer and East Hills Aquifer, or from the Upper Sand and Gravel Aquifer and East Hills Aquifer to the Lower Sand Aquifer.

6. The proposed CGWA encloses a distinct body of groundwater. Hydraulic boundaries of the Upper Sand and Gravel Aquifer and the East Hills Alluvial Fans Aquifer conform closely to the boundaries of the proposed area. To the north, Warm Springs Creek and the Clark Fork River are discharge sinks that form a partial hydraulic barrier whereby groundwater flows will discharge into the surface streams. This natural boundary has been replaced in large part by

8. FINDINGS, CONCLUSIONS AND ORDER

the construction of the Mill-Willow Bypass and a series of groundwater interception trenches that precludes shallow groundwater flow off site to the north. The Mill-Willow Bypass intercepts groundwater flowing in a westerly direction and discharges it to the Upper Clark Fork River. Likewise, water will be pumped from groundwater interception trenches that are designed to capture water flowing in a northerly direction, and this water is pumped into one of the treatment ponds before it is discharged into the Upper Clark Fork River via the Mill-Willow Bypass. The treatment of water flowing in Silver Bow Creek as well as treatment of groundwater captured by the interception trenches will continue so long as the treatment is required.

7. There is a distinct boundary between the proposed CGWA and the groundwater found in the East Hills Alluvial Fan Aquifer. Groundwater flows westerly from the east hills into the Upper aquifers within the proposed CGWA. Because of the hydraulic gradient, groundwater within the proposed CGWA does not flow upslope in an easterly direction. Any groundwater flowing in a westerly direction and into the proposed CGWA will become part of the system described herein and any outflow will be captured by the Mill-Willow Bypass or the interception trenches downstream and to the North.

8. The proposed CGWA has a distinct boundary with the groundwater found downstream or down gradient from the area. Groundwater cannot infiltrate the proposed CGWA from the downstream

9. FINDINGS, CONCLUSIONS AND ORDER

edge of the area, as the hydraulic gradient moves water away from the area in a northerly direction.

9. There is a distinct boundary between the Upper Sand and Gravel Aquifer and the Lower Sand Aquifer. Groundwater within the Lower Sand Aquifer will remain hydrologically distinct by virtue of the relatively impermeable aquitard. To maintain the separation and to prevent accidental contamination of the groundwater in the Lower Sand Aquifer by groundwater in the Upper Sand and Gravel Aquifer, there are drilling methods and construction techniques that can be used to isolate the Lower Sand Aquifer.

10. In the Upper Sand and Gravel Aquifer there is water containing arsenic and cadmium levels that exceeds Maximum Contaminants Levels (MCLs). As Silver Bow Creek flows into the proposed CGWA, the gradient of the topography over which it flows is reduced, and consequently mine tailings precipitated out of the flows of Silver Bow Creek in this area. These mine tailings contain arsenic and cadmium. Some of the mine tailings are now covered by other flood plain deposits. The levels of cadmium and arsenic in the ground water in the Upper Sand and Gravel Aquifer will exceed the MCLs for the foreseeable future.

11. Water that exceeds MCLs for arsenic and cadmium is not suitable for potable or drinking water supplies.

12. Arsenic and cadmium exceedences of MCLs are likely to be localized under the mine tailings containing these elements, unless these tailings or groundwater containing the arsenic and cadmium

10. FINDINGS, CONCLUSIONS AND ORDER

are disturbed. The pumping of wells creates a de-watered area known as a cone of depression, with the apex of the cone being at the level of the pump in the well bore. Water flows down the hydraulic gradient created by the cone of depression to the pump. Consequently, the pumping of wells creates a substantial risk that arsenic and cadmium will be moved down the hydraulic gradient created to areas of groundwater that are not now affected by these elements.

13. The pumping of groundwater within the Upper Sand and Gravel Aquifer will likely cause contaminant migration.

14. The Lower Sand Aquifer has no known contaminants that make that supply unsuitable for use. Between the Lower Sand Aquifer and the Upper Sand and Gravel Aquifer there is an aquitard, or a geologic layer of relatively low permeability. As a consequence, only very limited amounts of water can flow between the Upper Sand and Gravel Aquifer and the Lower Sand Aquifer under natural conditions.

15. Wells drilled through the aquitard will create areas in which water can freely flow from the Upper Sand and Gravel Aquifer, including the East Hills Aquifer, to the Lower Sand Aquifer, unless special construction techniques are employed. If water flows freely from the Upper Sand and Gravel Aquifer, including the East Hills Aquifer, to the Lower Sand Aquifer, there is a substantial risk that contaminants from the Upper Sand and Gravel Aquifer will infiltrate the Lower Sand Aquifer.

11. FINDINGS, CONCLUSIONS AND ORDER

16. Well construction techniques are available to prevent cross-contamination of the Upper Sand and Gravel Aquifer and the Lower Sand Aquifer. The use of grouted conductor casing for a minimum of 40 feet in depth along the well bore terminated and sealed in a clay aquitard, when the thickness of the aquitard is at least 6 feet thick, if properly installed will prevent cross-contamination of the two aquifers. The installation of sealed conductor casing in the manner required by the Board of Water Well Contractors rules governing well construction will provide an effective barrier and prevent cross-contamination. To be effective, production well casing and screens for production wells must extend below the sealed conductor casing. The foregoing standards and all other applicable well construction standards should be applicable to all production wells.

17. Monitoring wells within the boundaries of the proposed CGWA that penetrate the Upper Sand and Gravel Aquifer should be installed in accordance with EPA-approved standard operating procedures for monitoring well design and construction.

18. Developing wells in the Lower Sand Aquifer in accordance with these particulars will not create groundwater withdrawals that would cause contaminant migration. Conversely, groundwater withdrawals developed without these particulars will likely cause contaminant migration.

19. Water quality within the groundwater area is not suited for a drinking water supply.

12. FINDINGS, CONCLUSIONS AND ORDER

20. Any groundwater withdrawals could cause contaminant migration. Withdrawals from the Upper Sand and Gravel Aquifer, will cause contaminant migration. Unless special construction techniques are employed for wells drilled into the Lower Sand Aquifer, there will be contaminant migration.

21. The area within the proposed CGWA boundaries has been extensively studied. No additional data or information on the aquifers are required to make determinations of their characteristics.

22. The designation of the CGWA is sought by ARCO to comply with the EPA requirement that institutional controls on groundwater use be imposed to protect against the withdrawal of contaminated groundwater and to help prevent the spread of contamination now present in the Upper Sand and Gravel Aquifer.

CONCLUSIONS OF LAW

1. The Board has jurisdiction over this subject matter and this Petition for CGWA, and jurisdiction over the parties hereto. Mont. Code Ann. §85-2-506.

2. In accordance with the provisions of Mont. Code Ann. § 85-2-506, notice was properly given of the filing of the Petition for the designation of the Warm Springs Ponds CGWA.

3. The parties to this matter executed written waivers allowing the Board to hear this matter in conjunction with its regularly scheduled meeting May 25, 1995, in Helena, Montana. The hearing in this matter was held in accordance with the provisions

13. FINDINGS, CONCLUSIONS AND ORDER

of Mont. Code Ann. §§ 85-2-506 and 85-2-507, and the contested case provisions of the Montana Administrative Procedures Act, Mont. Code Ann. §§ 2-4-601 et seq.

4. Maximum contaminant levels (MCLs) describe standards that protect human health from contaminants in drinking water supplies. The groundwater in the Upper Sand and Gravel Aquifer contains arsenic and cadmium that exceed the MCLs set by the Board of Health and Environmental Sciences.

5. Groundwater withdrawals from the Upper Sand and Gravel Aquifer are likely to cause contaminant migration.

6. Groundwater withdrawals from the Lower Sand Aquifer are likely to cause contaminant migration unless specific construction techniques are employed.

7. The area within the boundaries of the Proposed CGWA encloses distinct bodies of groundwater. That Figure 2 to the Petition for CGWA is an accurate depiction of the boundaries of the Warm Springs Ponds Controlled Groundwater area.

8. Designation of a CGWA in accordance with ARCO's Petition is consistent with the administrative orders issued by the Environmental Protection Agency pursuant to CERCLA, 42 U.S.C. §9601 et. seq., in consultation with the Montana Department of Health and Environmental Sciences. These orders acknowledge that a well ban is appropriate for the area within the boundaries of the proposed CGWA, to prevent residential development in the area and to prevent unnecessary exposure to contaminants in the area.

14. FINDINGS, CONCLUSIONS AND ORDER

9. The public health, safety, or welfare requires corrective controls be adopted for the reason that the withdrawal of water from the Upper Sand and Gravel Aquifer and the East Hills Aquifer will cause contaminant migration. Mont. Code Ann. §85-2-507(2)(a)(b)(iii).

10. The public health, safety, or welfare requires corrective controls be adopted for the reason the water quality in the Upper Sand and Gravel Aquifer and the East Hills Aquifer is not suited for a specific beneficial use, that being a potable or drinking water supply. Mont. Code Ann. §85-2-507(2)(a)(b)(iii).

11. The public health, safety or welfare requires that no new wells be developed in the top 40 feet of the groundwater within the boundaries of the CGWA, other than those wells which are required for remedial action directed and approved by the EPA, in consultation with the Montana Department of Health & Environmental Sciences. Mont. Code Ann. §85-2-507(4)(a).

12. The public health, safety or welfare requires corrective controls for the Lower Sand Aquifer consisting of well construction conditions requiring that a grouted conductor casing be installed to a minimum depth of 40 feet terminated and sealed in a clay aquitard, where the aquitard is at least 6 feet thick. Production well casing and screens must extend below the sealed conductor casing. In addition, all well construction standards and rules otherwise applicable to new production wells should apply to any wells drilled into the Lower Sand Aquifer. All EPA-approved

15. FINDINGS, CONCLUSIONS AND ORDER

standard operating procedures for monitoring well design and construction shall be followed for any such new monitoring wells. Mont. Code Ann. §85-2-507(4)(g).

13. It is unknown whether any new monitoring or production wells will be required for remedial activities. Any such new or additional wells will require the consent of EPA, after consultation with the Montana Department of Health and Environmental Sciences. Because of this continuing public review, it is appropriate to except any such new or additional wells required for remediation from the closure otherwise applicable to all new wells in the Upper Sand and Gravel Aquifer and the East Hills Aquifer. Mont. Code Ann. §85-2-507(4)(g).

14. Those proposed Findings of Fact and Conclusions of Law submitted by the parties either not specifically adopted or rejected, are hereby rejected.

ORDER

WHEREFORE, based on these Findings of Fact and Conclusions of Law, the Board of Natural Resources and Conservation orders that a Controlled Groundwater Area be designated, encompassing the lands now owned by ARCO in portions of Sections 1, 11 and 12 of Township 4 North, Range 10 West, portions of Sections 17-20 and 29-31, both inclusive, of Township 5 North, Range 9 West; and portions of Sections 25 and 36 of Township 5 North, Range 10 West, all in Deer Lodge County, Montana, with boundaries as set forth on Exhibit "A" attached hereto. From and after May 25, 1995, the groundwater

16. FINDINGS, CONCLUSIONS AND ORDER

underlying the land within the boundaries of the Warm Springs Ponds Controlled Groundwater Area shall be closed to any appropriation of groundwater and/or the construction of new wells. The Department of Natural Resources and Conservation shall hereafter refuse to accept any applications for beneficial water use permits to appropriate groundwater within the Warm Springs Ponds Controlled Groundwater Area, to the extent that any such appropriations intend to use or divert water within 40 feet of the ground's surface. Any appropriations of water and/or wells from deeper aquifers (more than 40 feet in depth) must be developed with specific construction requirements. All such wells producing water from the lower aquifers shall be constructed to include a grouted conductor casing to be installed and maintained to a minimum depth of 40 feet and be terminated and sealed in a clay aquitard, the aquitard should be at least 6 feet thick at the point where the casing terminates. All other regulations governing the drilling of wells should also apply. If more restrictive standards are adopted by regulation, any new wells for appropriations from deeper aquifers (more than 40 feet in depth) shall be constructed to those standards. Monitoring wells developed into the Lower Sand Aquifer must be installed in accordance with EPA-approved standard operating procedures for monitoring well design and construction.

The following terms and conditions shall apply to the Order:

1. The grant of the controlled groundwater area does not preempt diversions required for remedial or response actions

17. FINDINGS, CONCLUSIONS AND ORDER

authorized by EPA or remedial or response actions undertaken by the State of Montana, and diversions required for restoration actions undertaken by the State of Montana pursuant to its role as trustee for natural resources.

2. The granting of this petition for a controlled groundwater area in no way limits any claim the State of Montana, as trustee for natural resources, may have for damages to natural resources.

3. The granting of this petition for a controlled groundwater area does not constitute an irreversible and irretrievable commitment of the groundwater resource, nor does it serve as a permit for the release of hazardous substances into the groundwater aquifer.

4. The controlled groundwater area and groundwater closure is being issued in recognition of existing contaminated conditions and does not relieve any person from liability for contamination of the groundwater.

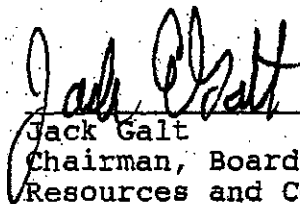
5. A grant of a controlled groundwater area is not an indication of a finding that the groundwater aquifer should not be remediated or restored.

6. In the event that the EPA, pursuant to its authorities under CERCLA, 42 U.S.C. §9601 et. seq., rescinds or otherwise modifies the Warm Springs Ponds Active Area or Inactive Area Unilateral Administrative Orders (EPA Docket No. CERCLA-VIII-91-25 and EPA Docket No. CERCLA-VIII-93-223 respectively) by amending either the Record of Decision (ROD) for the Warm Springs Ponds

18. FINDINGS, CONCLUSIONS AND ORDER

Active Area Operable Unit or the Warm Springs Ponds Inactive Area Operable Unit, or by amending the Explanation of Significant Differences, to modify or delete current requirements for a water well ban; then and in that event the Board of Natural Resources and Conservation, or its successor, shall review such rescission, modification or change in said ROD or ESD and may issue an order modifying, suspending or revoking this designation of controlled groundwater area, upon such notice and in such manner as is reasonable under the circumstances, as provided for by Mont. Code Ann. § 85-2-507(8).

DATED this 27th day of June, 1995.



Jack Galt
Chairman, Board of Natural
Resources and Conservation

MEMORANDUM

The Board's action in adopting the foregoing Findings of Fact, Conclusions of Law and Order, are in a large part the result of positions taken by the parties at the hearing. No party appeared in total opposition to the designation of the proposed CGWA. The parties appearing in opposition to the Petition were concerned that if the Board designated a CGWA that its Order include certain conditions.

The Coalition initially contested the boundaries of the proposed CGWA. The record will reflect that in its opening

19. FINDINGS, CONCLUSIONS AND ORDER

statement, the Coalition indicated that a stipulation was being prepared and it hoped to present it to the Board prior to the close of the hearing. The stipulation suggested language for the Board to adopt regarding future review of the CGWA designation. If the Board incorporated the proposed language in its Order, the Coalition indicated it would withdraw its objections to the boundaries of the proposed CGWA. The stipulation was reduced to writing, signed by the parties and submitted to the Board prior to the close of the hearing.

The NRDL also suggested review language in its Proposed Conclusions of Law. The Board understood that if it included the language in the stipulation in the final Order, that NRDL would withdraw its proposed conclusion on the same subject.

In its deliberations, the Board considered the inclusion of the language in the Stipulation. The language was agreed upon by the parties and the Board has the authority to place additional requirements as it deems necessary on the designation of a CGWA. Mont. Code Ann. § 85-2-507 (4)(g). The concern expressed by the objectors was that there be some triggering event which would cause the Board (The Board notes that as of July 1, 1995, any review of its Order is assigned to the Director of the newly created Department of Natural Resources and Conservation to review the designation. The Board believes that the parties or possible other interested persons could petition for such a review without the specific reference in the Order. Mont. Code Ann. § 85-2-507 (8),

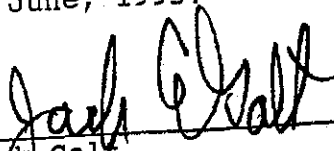
20. FINDINGS, CONCLUSIONS AND ORDER

allows the Board to suspend, modify or revoke any order it may issue designating a CGWA. By including the language in the stipulation, the Board believes that it has addressed the concerns expressed by the parties at the hearing and that the objection of the Coalition as to the boundaries is withdrawn and the Proposed Conclusion of Law submitted by the NRDL has been addressed as indicated in the record. The Board therefore adopted the boundaries of the CGWA as requested in the Petition.

The NRDL submitted an additional five proposed Conclusions of Law. The Board did not adopt them as conclusions of law. There was no evidence in the record to support the adoption of the proposed NRDL language as either fact or law. The Board was not asked to take notice of pending legal proceedings. As the proposed NRDL language is not cited as case or statutory law, the Board did not include them as conclusion of law. The Board did adopt the proposed language, however, as conditions in the Order creating the CGWA. Based on the wording of the NRDL proposed conclusions of law and their intent, this is the best location for them in the format provided by this document. The Board adopted the proposed language as conditions to clarify its action in designating the CGWA. The Board does not believe its action in designating the CGWA creates a precedent or in any fashion binds other tribunals in deciding legal actions which may be brought against ARCO. If the conditions help clarify the narrow scope of the Board's action in designating the CGWA, they may be of help in the future.

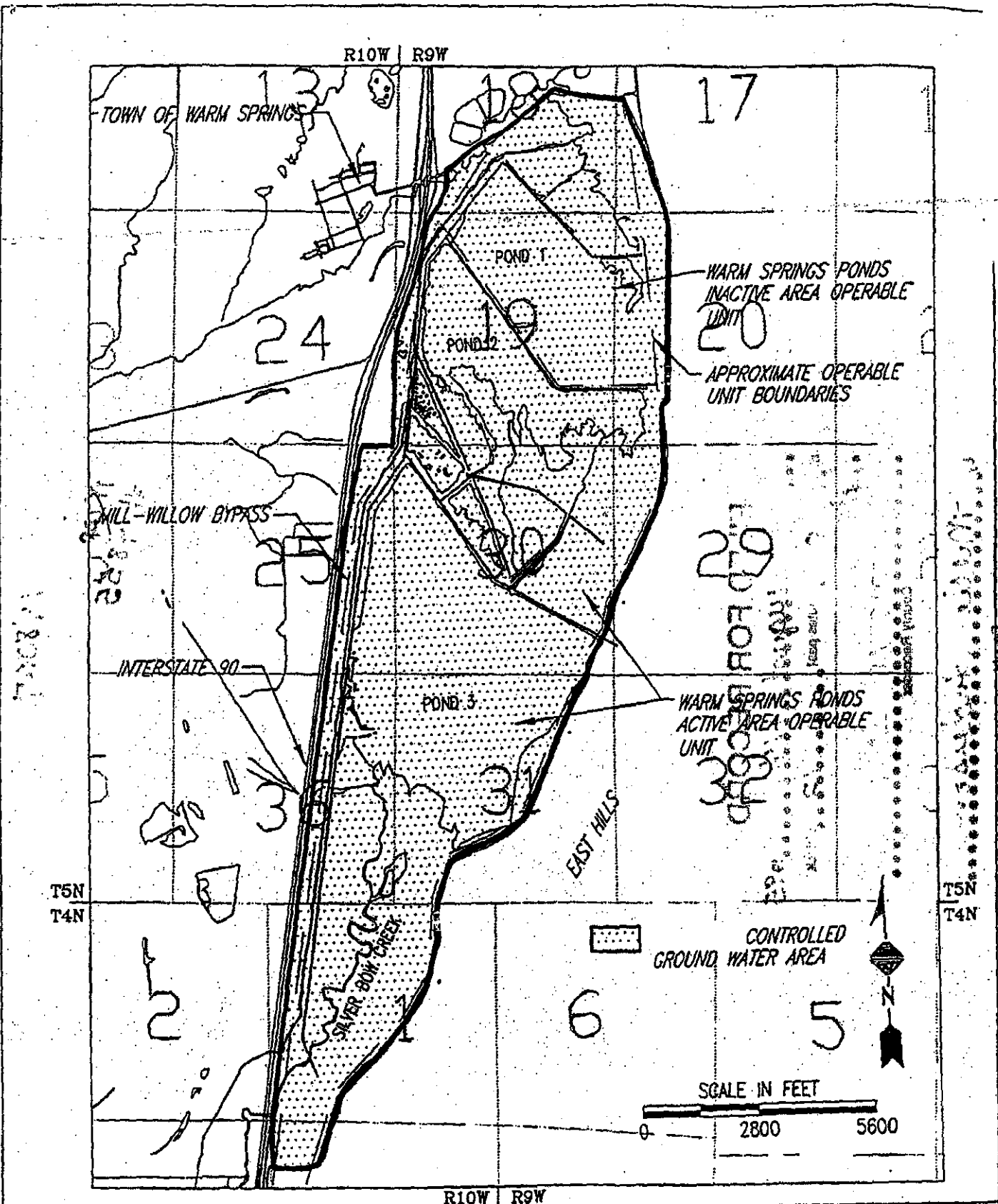
21. FINDINGS, CONCLUSIONS AND ORDER

DATED this 29th day of June, 1995.



Jack Galt
Chairman, Board of Natural
Resources and Conservation

22. FINDINGS, CONCLUSIONS AND ORDER



WARM SPRINGS PONDS
 CONTROLLED GROUNDWATER AREA
 EXHIBIT A

ROGER

148027

MUSE
4855

FILED FOR RECORD

August 14 1995

at 9 minutes past 12 o'clock

P.M.

TRACEY SWEENEY
County Recorder

By: Miller, Davidson
Deputy

N/C