

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

In the matter of the adoption of New)
Rule I regarding the East Valley) NOTICE OF PUBLIC HEARING
Controlled Groundwater Area) ON PROPOSED ADOPTION

To: All Concerned Persons

1. On December 10, 2015, at 1:00 p.m., the Department of Natural Resources and Conservation will hold a public hearing in the Fred Buck Conference Room (bottom floor), Water Resources Building, 1424 Ninth Avenue, Helena, Montana, to consider the proposed adoption of the above-stated rule.

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m. on December 3, 2015, to advise us of the nature of the accommodation that you need. Please contact Millie Heffner, Montana Department of Natural Resources and Conservation, P.O. Box 201601, 1424 Ninth Avenue, Helena, MT 59620, telephone (406) 444-0581, fax (406) 444-0533, e-mail mheffner@mt.gov.

3. The department proposes to adopt the following rule:

NEW RULE I EAST VALLEY CONTROLLED GROUNDWATER AREA

(1) There is designated an East Valley Controlled Groundwater Area for purposes of water quality. East Valley Controlled Groundwater Area (EVCGWA) means an area of approximately 1,924 acres or three square miles located in and around East Helena, Montana, consisting of two zones and is generally described as follows:

(a) Zone 1 beginning at the southeast corner of the NESE Section 36 T10N R3W, proceeding north along the section line and Montana Avenue to the alley north of the intersection of King Street and Montana Avenue, then proceeding west to Prickly Pear Creek passing just north of the East Helena Pool, then proceeding northwest along Prickly Pear Creek to the southeast corner of the NWSE of Section 23 T10N R3W, then proceeding north to the Helena Valley Irrigation Canal, then following the canal southwest to the intersection with the western edge of the SWNE of Section 23 T10N R3W, then proceeding south to the southeast corner of the SENW of Section 26 T10N R3W, then proceeding east, then south along the edge of the Seaver Park subdivision to Highway 12, then east along Highway 12 to the edge of section 26, then south to Smelter Road, then following Smelter Road approximately 135 yards southeast to a private driveway and the north edge of Section 36, then proceeding west to the northwest corner of Section 36, then proceeding south to the southwest corner of the NWSW of Section 36 T10N R3W, then proceeding east to the starting point.

(i) Within the lateral boundaries described in (1)(a), there exists vertical boundaries south of the section line between Sections 23 and 26 T10N R3W from the top of the water table to a depth of 200 feet and north of the section line between Sections 23 and 26 T10N R3W from the top of the water table to a depth of 300 feet; and

(b) Zone 2 beginning at the alley north of the intersection of King Street and Montana Avenue in East Helena, then proceeding west to Prickly Pear Creek passing just north of the East Helena Pool, then proceeding northwest along Prickly Pear Creek to the southeast corner of the NWSE of Section 23 T10N R3W, then proceeding north to the Helena Valley Irrigation Canal, then following the canal southwest to the intersection with the western edge of the SWNE of Section 23 T10N R3W, then proceeding south to the southeast corner of the SENW of Section 26 T10N R3W, then proceeding west to the southwest corner of the SENW of Section 26 T10N R3W, then proceeding north to Canyon Ferry Road, then following Canyon Ferry Road east to Wylie Drive, then following Wylie Drive south to the north edge of Section 25, then proceeding east to Valley Drive/Montana Avenue, then following Valley Drive/Montana Avenue south to the starting point.

(2) A map of the area within the EVCGWA described in (1) is posted at <http://dnrc.mt.gov/divisions/water/water-rights/controlled-ground-water-areas/east-valley>.

(3) The following controls apply in Zone 1 of EVCGWA.

(a) Except as provided in (3)(b), no new groundwater developments or changes to existing groundwater appropriations are allowed, and the department may not accept or process any of the following for groundwater:

- (i) a Notice of Completion pursuant to 85-2-306(3), MCA;
- (ii) a Replacement Well Notice, Form 634;
- (iii) an Application for Beneficial Water Use Permit, Form 600; and
- (iv) an Application for Change of Appropriation Right, Form 606.

(b) The department may accept and process the following applications and forms pursuant to 85-2-311 and 85-2-402, MCA, when the application or form is accompanied by documentation of prior written approval from Lewis and Clark County Board of Health, the Lewis and Clark County Water Quality Protection District, the U.S. Environmental Protection Agency, the Montana Department of Environmental Quality, and the Montana Department of Natural Resources and Conservation:

- (i) a Redundant Well Construction Notice, Form 635, for a redundant well;
- (ii) an Application for Change of Appropriation Right, Form 606, for the limited purpose of a replacement well; and
- (iii) an Application for Change of Appropriation Right, Form 606, for the retirement of a well limited to the purpose of mitigation or marketing for mitigation.

(4) The following controls apply in Zone 2 of EVCGWA.

(a) No new groundwater developments pursuant to 85-2-306(3), MCA, are allowed and the department may not accept or process Notices of Completion.

(b) New groundwater developments or changes to existing groundwater appropriations are allowed and the department may accept and process the following applications and forms pursuant to 85-2-311 and 85-2-402, MCA, when the application or form is accompanied by documentation of prior written approval from

Lewis and Clark County Board of Health, the Lewis and Clark County Water Quality Protection District, the U.S. Environmental Protection Agency, the Montana Department of Environmental Quality, and the Montana Department of Natural Resources and Conservation:

- (i) an Application for Beneficial Use Permit, Form 600;
- (ii) an Application for Change of Appropriation Right, Form 606; and
- (iii) a Redundant Well Construction Notice, Form 635.

(5) In addition to conditions necessary to satisfy the criteria in 85-2-311 and 85-2-402, MCA, a department order authorizing a new groundwater development or change to existing groundwater appropriation must include conditions consistent with the recommendations included in the prior written approval from Lewis and Clark County Board of Health, the Lewis and Clark County Water Quality Protection District, the U.S. Environmental Protection Agency, the Montana Department of Environmental Quality, and the Montana Department of Natural Resources and Conservation. The prior written approval pursuant to (3)(b) and (4)(b) must include recommendations for:

- (a) well design and construction requirements necessary to measure the water level and water quality for any new well;
- (b) water level measurement and water quality sample reporting requirements for any new well; and
- (c) any other requirements necessary to ensure new wells can be operated in a manner consistent with the purpose of the EVCGWA.

(6) The Lewis and Clark County Board of Health, the Lewis and Clark County Water Quality Protection District, the U.S. Environmental Protection Agency, the Montana Department of Environmental Quality, and the Montana Department of Natural Resources and Conservation may establish a technical advisory group consisting of delegates from each for purposes of reviewing, monitoring, and making recommendations regarding applications and water use within the boundaries of the EVCGWA. Prior written approval by the technical advisory group satisfies the prior written approval required pursuant to (3)(b) and (4)(b).

AUTH: 85-2-506, 85-2-508, MCA

IMP: 85-2-506, 85-2-508, MCA

REASONABLE NECESSITY: 85-2-506, MCA, authorizes the department to designate temporary or permanent controlled groundwater areas. A petition to designate a controlled groundwater area was filed with the department by Lewis and Clark City-County Health Department on August 25, 2014. Data collected within the boundaries of the East Valley Controlled Groundwater Area indicate arsenic and selenium contamination, primarily from the former smelter, in the groundwater of Helena Valley alluvial aquifer. Concentrations in Zone 1 exceed human health standards. Contaminant concentrations in Zone 2 do not currently exceed human health standards but exceedances may occur due to future groundwater withdrawals or changes in the hydrogeologic system. The city of East Helena has established a moratorium zone on all new wells. Additional pumping from the aquifer is likely to increase the spread of the contaminant plumes. The proposed CGWA controls for Zone 1 and Zone 2 include monitoring requirements and restrictions on new

groundwater appropriations and changes to existing groundwater appropriations necessary to protect human health and safety.

A determination to initiate rulemaking proceedings was issued by the department on July 23, 2015.

4. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted in writing to Millie Heffner, Department of Natural Resources and Conservation, P.O. Box 201601, 1424 Ninth Avenue, Helena, MT 59620; fax (406) 444-0533; or e-mail mheffner@mt.gov, and must be received no later than 5:00 p.m. on December 10, 2015.

5. David Vogler, Department of Natural Resources and Conservation, has been designated to preside over and conduct the public hearing.

6. An electronic copy of this notice of public hearing on proposed adoption is available through the department's web site at <http://www.dnrc.mt.gov>. The department strives to make the electronic copy of this notice of public hearing on proposed adoption conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered.

7. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding conservation districts and resource development, forestry, oil and gas conservation, trust land management, water resources, or a combination thereof. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to Lucy Richards, P.O. Box 201601, 1625 Eleventh Avenue, Helena, MT 59620; fax (406) 444-2684; e-mail lrichards@mt.gov; or may be made by completing a request form at any rules hearing held by the department.

8. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

9. With regard to the requirements of 2-4-111, MCA, the department has determined that the adoption of the above-referenced rule will not significantly impact small businesses.

/s/ John E. Tubbs
John Tubbs
Director, Natural Resources & Conservation

/s/ Brian Bramblett
Brian Bramblett
Rule Reviewer

Certified to the Secretary of State on November 2, 2015.