

**NOTICE OF HEARING
TO GROUND WATER USERS AND PROPERTY OWNERS**

BEFORE THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION
ON PETITION FOR A CONTROLLED GROUND WATER AREA
IN THE GREEN MEADOW AREA

A hearing before the Montana Department of Natural Resources and Conservation to consider the establishment of a controlled ground water area (CGWA) will be held at the Department of Health and Human Services Auditorium, 111 N Sanders, Helena, MT (Use the North Entrance). Part 1: April 16, 2007 beginning at 5:30 p.m. will be the hearing for **Limited Parties**. Part 2: April 17, 2007 beginning at 8:30 a.m. will be the hearing for **Full Parties**. Parties may attend and observe either hearing. This hearing will be held pursuant to Mont. Code Ann. §§85-2-506 and -507 (2005). This is a formal evidentiary hearing before a Department Hearing Examiner. The purpose of this hearing is to collect oral and written evidence relevant to the proposed designation of a CGWA in the Green Meadow area.

The proposed area is generally described as south of Silver Creek and north of Sevenmile Creek between Green Meadow Drive and the western edge of the Scratchgravel Hills. The legal land description for the general area is as follows:

Township 10 North, Range 4 West	All of sections 1, 2, 3, 10, 11, 12 NWNWNW of section 13 N2NENE of section 14
Township 11 North, Range 4 West	All of sections 22, 23, 25, 26, 27, 34, 35, 36 SESESE of section 24

See map for more precise proposed boundary.

The following individuals signed the petition: David and Toni Schneider, Margaret Thomas, Carina Zook, Pat Jense, William D West, Christian A Smith, Cindy Vader, Edwin Baum, Giles Walker, Kenneth McElroy, Phoebe Toland & Richard Notkin, Kathy Norris, Robert Balhiser, Lillian Brewster, Ronald Shields, Gilbert & Cheryl Wooden, Beverly Rankin, Charolette Spaulding, Dick Juvik, Michele Crum, Warren Norton, Nettie Harp, Samuel Alvey, William Giles, Christine Morales, Cory R Smith, Nancy Manger, Mary Ellen McDonald, Stephen P Weber, Susan Epstein, Paul D Szczepaniak, Howard Anderson, Bobbie J Elliot, Robert M Morris, Art Butler, James F Brown, Ruth L Anderson, Jay L Armstrong, Ernest O'Dell, Robert Braico, Barbara Ranf, Kenneth E Mitchell, R Scott Barnes, Alice E Gilbert, Joyce M Mahana, Keith E McCallum, Kim C Clark, Jack Wiseman, Susan Engle, Harold P & Marilyn Horn, Janis J Pocius, Kristin Baker, Reinhart H Kurtz, Sharon Henderson, Sandra Fowler, David A Dowling, Peggy Naegele, Etchie L Smith, Gordon Hage, Brad Eckert, Gary Nettleton, R Allan Payne, Margaret Smith, Diana Mercier, Mark S and Capri S Gray, and Marvel and Mark Weggenman.

Pursuant to Mon. Code Ann. §85-2-506(2), the Petitioners must allege facts showing:

- ▶ Ground water withdrawals are in excess of recharge;
- ▶ Excessive ground water withdrawals are very likely to occur in the near future because of consistent and significant increases in withdrawal from within the ground water area;
- ▶ Significant disputes regarding priority of rights, amounts of ground water in use by appropriators, or priority of type of use are in progress;
- ▶ Ground water levels or pressures in the area are declining or have declined excessively;
- ▶ That excessive ground water withdrawals would cause contaminant migration;
- ▶ That ground water withdrawals adversely affecting ground water quality are occurring or are likely to occur; or
- ▶ That water quality within the ground water area is not suited for a specific beneficial use defined by 85-2-102(2)(a).

The issue to be heard is whether the Department shall by order declare the area in question to be a controlled ground water area if it finds on the basis of the hearing that the following circumstances exist in the petition area (MCA § 85-2-507):

- (a) The public health, safety, or welfare requires corrective control; 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 or groundwater by others; or
(iii) the facts alleged in the petition, as required by 85-2-506(2) are true.

The petitioners bases for the controlled ground water area request are: A) Ground water withdrawals are in excess of recharge to the aquifer or aquifers within the area; B) that excessive ground water withdrawals are very likely to occur in the near future because of significant increases in withdrawals from within the ground water area; C) 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 ground water area; and D) that ground water levels or pressures in the area in question are declining or have declined excessively.

At this hearing, all interested persons may present evidence or testimony in person, by attorney or other witness, in support of or opposition to the granting of the petition and may be fully heard. The hearing will be held in two parts to best accommodate public participation. The hearing for **Limited Parties** will start at 5:30 p.m. on April 16, 2007 and the hearing for **Full Parties** will start at 8:30 a.m. on April 17, 2007. **To participate as a Full Party in this proceeding you must file a Notice of Appearance with the Hearing Examiner by October 10, 2006.**

Please see the Notice of Hearing Procedures for a discussion of Full and Limited Parties. The petition file, which includes supporting documentation, the environmental assessment, Notice of Hearing Procedures, and a Notice of Appearance form may be

viewed at the Department of Natural Resources and Conservation, Water Resources Division, Water Rights Bureau, 1424 9th Avenue, Helena, MT. Questions concerning this matter should be directed to Kim Overcast at 406-444-6614.

The Department makes reasonable accommodation for any disability that may interfere with an individual's ability to attend this hearing. For consideration of any such accommodation, please contact Kim Overcast at 406-444-6614 (TTD number 406-444-6873) by October 10, 2006.

GREEN MEADOW CGWA HEARING PROCEDURES
NOTICE OF APPOINTMENT OF HEARING EXAMINER

Notice is hereby given that Charles F. Brasen has been duly appointed as the Hearing Examiner in this matter pursuant to Appointment of Hearing Examiner dated August 21, 2006. All notices, motions, briefs, testimony, and correspondence should be directed to:

Charles F Brasen
Hearing Examiner
Department of Natural
Resources and Conservation
PO Box 201601
Helena, MT 59620-1601

NOTICE OF OPPORTUNITY TO PRESENT PUBLIC TESTIMONY

Any interested person can participate in the hearing on the Green Meadow Controlled Ground Water Area Petition by either filing a Notice of Appearance or by presenting public testimony without filing a Notice of Appearance. Persons filing a Notice of Appearance will be accorded "**Full Party**" status and persons providing public testimony without filing a Notice of Appearance will be considered "**Limited Parties**". Persons wishing to participate as Full Parties must postmark and send a **Notice of Appearance** (a copy of which is attached hereto) to the Hearing Examiner by **October 10, 2006**. A facsimile to Hearing Examiner Brasen received by the deadline will be accepted if the original follows by mail postmarked within 5 business days of the deadline. The form will not be accepted by the DNRC, Helena Water Resources Regional Office.

Questions regarding the Petition or filing a Notice of Appearance should be directed to:

Kim Overcast
Department of Natural Resources and Conservation
Water Rights Bureau
1424 Ninth Avenue
PO Box 201601
Helena, Montana 59620-1601
Phone: (406) 444-6614
Fax: (406) 444-0533

All Full Parties and Petitioners will be required to participate in **all** prehearing conferences, either in person or through their attorneys; to assist in the preparation of the prehearing order; to participate in discovery pursuant to the orders of the Hearing Examiner; to attend the hearing if they wish to present witnesses and evidence at the hearing in support of or opposition to establishment of a controlled ground water area; and to comply with all orders of the Hearing Examiner. All Full Parties and Petitioners will be served with copies of all orders and other documents filed in this matter and shall be considered in the proceedings as parties of record in all respects. An attorney may represent any party, but an attorney is not necessarily required. However, all persons appearing before the Hearing Examiner on behalf of another person or entity such as a corporation must be admitted to practice law in Montana as a result of either Montana Licensure or admission *pro hac vice*. Individuals may represent themselves, but may not speak on behalf of or represent anyone else.

Unless otherwise stipulated by all Full Parties to the proceeding, the common law and statutory rules of evidence shall not apply, except that the Hearing Examiner may exclude irrelevant, immaterial, and redundant testimony and exhibits.

Procedure to Provide Public Testimony – Limited Party

Any affected person may participate in the hearing process by offering public testimony. To offer public testimony during the hearing, a person does not need to file a Notice of Appearance or any other documents in advance of testifying. **Persons only offering public testimony will be considered Limited Parties.** All testimony shall be given under oath or affirmation and is subject to cross-examination by a Full Party. Limited Parties shall not be subject to service of pleadings or other papers, nor to any obligations of Full Parties or Petitioners. A Limited Party may not call other witnesses, examine or cross-examine any other witness, or move to disqualify the Hearing Examiner. The time for public testimony may be limited by the Hearing Examiner. Any person admitted as a Limited Party may be represented by an attorney, but an attorney is not required.

A Limited Party may submit written testimony. In order to be included in the record, written testimony must be accompanied by the following notarized statement: "I AFFIRM THE STATEMENTS APPEARING IN THIS WRITTEN TESTIMONY OR EVIDENCE ARE TRUE AND CORRECT, AND ANY DOCUMENT COPIES USED IN OR ATTACHED TO THE WRITTEN STATEMENT ARE TRUE AND CORRECT COPIES." A notary will be available at the hearing. Limited Parties submitting written testimony must be available for questioning at the Limited Party (Part 1) hearing.

NOTICE OF HEARING AND SCHEDULING CONFERENCE

A hearing before the Montana Department of Natural Resources and Conservation to consider the establishment of a controlled ground water area will be held at the Department of Health and Human Services Auditorium, 111 N Sanders,

Helena, MT (Use the North Entrance). This hearing will be held pursuant to Mont. Code Ann. §§85-2-506 and –507 (2003). The Hearing will be held in two parts for administrative reasons. The hearing for Limited Parties shall commence at 5:30 p.m on April 16, 2007 and the hearing for Full Parties shall commence at 8:30 a.m. on April 17, 2007. Any person may attend and observe either hearing. A Full Party admitted to appear in this proceeding who does not appear at the hearing for Full Parties in this matter, will be judged in default and dismissed from the case. Further details of the hearing and schedule will be discussed at the Scheduling Conference.

The Hearing Examiner will hold a **Scheduling Conference** on **October 18, 2006, at 9:00 a.m.**, at the Department of Justice, Scott Hart Auditorium, 303 N Roberts, Helena, MT (Use the East Entrance), to establish a procedural schedule in this matter.

Persons and entities that have timely filed a Notice of Appearance must attend.

Interested persons and those persons considering submitting testimony as a Limited Party are encouraged to attend. Prior to the date of the Scheduling Conference, the Department will provide persons and entities that have timely filed a Notice of Appearance with a proposed procedural schedule for discussion at the Scheduling Conference. A copy of the Department's proposed procedural schedule will also be posted on its website, <http://dnrc.mt.gov/wrd/default.asp>.

The Department makes reasonable accommodation for any disability that may interfere with an individual's ability to attend this meeting. For consideration of any such accommodation, please contact Kim Overcast at 406-444-6614 (TTD number 406-444-6873) by **October 10, 2006**.

Only evidence that is not already in the Department of Natural Resources and Conservation's possession need be presented at the hearing. A copy of the Department's file for this matter will be available for review at the hearing.

After the hearing, the Hearing Examiner will submit to the Full and Limited Parties, with a copy to interested persons, written findings and a proposed decision based upon the oral and written evidence that is a part of the record. Full Parties will have an opportunity to file exceptions to the proposed decision as further specified in the proposed decision. As required by Mont. Code Ann. §85-2-507, the Department will issue a final order that will designate a controlled ground water area or a temporary controlled ground water area pending further study (with corrective control provisions), or it may deny the petition for a controlled ground water area. The final order will be published and filed and recorded with the county clerk and recorder. It will also be available from the Department upon request.

Dated this 14th day of September 2006.

Charles F Brasen
Hearing Examiner
Department of Natural
Resources and Conservation
PO Box 201601
Helena, MT 59620-1601