

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

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IN THE MATTER OF THE BITTERROOT VALLEY)	<u>MODIFICATION TO</u>
SANITARY LANDFILL PETITION 76H-30003426)	ORDER DESIGNATING
FOR DESIGNATION OF A CONTROLLED)	CONTROLLED GROUNDWATER
GROUNDWATER AREA		AREA

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MODIFICATION OF ORDER

Mont. Code Ann. §§ 85-2-507(8) allows the DNRC to modify a controlled groundwater area order upon notice and in the manner that is reasonable under the circumstances. The DNRC has determined that sufficient cause exists to modify the Order designating the Bitterroot Valley Sanitary Landfill controlled groundwater area 76H 30003426, which was effective as of February 9, 2004, in order to allow water rights to be obtained for wells already drilled by the National Institute of Health (NIH) to provide potable water, and in order to make clear remediation is a purpose for which water can be used. The modification is supplemental to the original Order and provides specific exceptions to the original Order.

FINDINGS OF FACT

1. In 1995 through 1997 nineteen wells were drilled within what is now designated as the Bitterroot Valley Sanitary Landfill Controlled Groundwater Area specifically to provide potable water to landowners who were adversely affected by the contaminant plume spreading from the landfill site. These wells were drilled at the expense of the NIH to provide a new and safe water supply for individual homesites. The nineteen wells are referred to hereafter as the NIH wells. (Petition)

2. Specific construction standards were employed in the drilling of the NIH wells to ensure they would provide a potable water source from deeper, uncontaminated aquifers. (DEQ, Well Logs)

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3. Ten of the nineteen NIH wells do not have a water right. The NIH wells without a water right are:

NIH Well #	GWIC #	Date	Legal	Owner	Location / Notes
		Completed			
BR-GW-62DD	150834	2/1/1995	8N 20W 31	Bitterroot Precut	2172 HWY 93N
BR-GW-63DD	150835	2/18/1995	8N 20W 31	Philson, Merlin	120 Pine Dr.
BR-GW-66DD	155797	1/9/1996	8N 20W 31	Olson, Kenneth	125 Pine Dr.
BR-GW-72DD	158862	6/24/1996	8N 20W 31	Rowley, Bobby L.	135 Pine. (Frost free spigot only).
BR-GW-73DD	161914	11/15/1996	8N 20W 31	Kunschke, Duane & Joyce	119 Pine Dr. (3 modular homes.)
BR-GW-74DD	160466	9/20/1996	7N 20W 6	De La O, Janice & Carlos	146 Westview Dr.
BR-GW-75DD	160470	11/1/1996	7N 20W 6	De La O, Janice & Carlos	Next lot east of 146 Westview Dr. Lot 1 LonePine
BR-GW-78DD	160273	11/7/1996	8N 20W 31	Kittel, David & Ellen	166 Pine Dr.
BR-GW-79DD	160287	11/5/1996	8N 20W 31	Widder, Michelle	148 Pine Dr.
BR-GW-80DD	165366	8/12/1997	8N 20W 31	Wilson, Sue (Victor Transfer)	2235 Meridian

(DNRC & Groundwater Information Center (GWIC) Records)

4. Of the ten NIH wells with no water right, two of the wells have not been put to beneficial use. The two not in use are BR-GW-75DD and BR-GW-78DD. (DNRC & DEQ)

5. The ten NIH wells with no water rights are all located within Zone 1 of the controlled groundwater area. The Order as it now reads prohibits granting of a water right for potable wells within Zone 1 after the effective date of the Order. (Petition, DNRC Records & Order)

6. Because the wells have already been properly drilled to provide a potable water supply, the DNRC has determined it is reasonable to allow a timeframe for Certificate of Water Rights to be issued for the NIH wells that did not have a water right at the time the Order was issued.

7. The Order lists the purposes for which a well may be drilled in

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Zone 1 (Paragraph 4). The purposes listed allow contaminants to be volatilized, substantially reducing the contaminant level. Remediation is an additional purpose designed to remove the contaminants from the groundwater. Contaminated groundwater is pumped from the aquifer to an air stripper, treated to non-detectable levels, and discharged to North Channel of Bear Creek. Remediation efforts have been effective in removing contaminants from the groundwater. DNRC has determined it is reasonable to add remediation to the purposes for which wells may be drilled in Zone 1. (Petition & Order)

8. Because of the importance of allowing water rights to be obtained for wells already properly drilled for a new and safe potable water supply, and because remediation is an important beneficial use, the DNRC finds sufficient grounds exist to modify the Order in this matter.

CONCLUSIONS OF LAW

1. The DNRC has jurisdiction over the parties and over the subject matter herein and has authority to modify the Order, and the DNRC has sufficient grounds to modify the Order in this matter. Mont. Code Ann. §§ 85-2-506 and 507.

MODIFICATION TO ORDER

1. The Order is modified to allow the DNRC to accept a Notice of Completion of Groundwater Development (Form 602) from the owners of the NIH wells that lie within the CGWA who have beneficially used the water, but who currently are without a water right, for a period of 12 months from the effective date of this amendment.

2. The Order is modified to allow the DNRC to accept a Notice of Completion of Groundwater Development (Form 602) or equivalent form from the owners of NIH wells that lie within the CGWA who have not beneficially used the water as of the date of signing of this Modification To Order for a period of 12 months from the date of putting the water to beneficial use.
3. Paragraph 4 of the Order is modified to add "remediation" as a purpose for which wells may be drilled in Zone 1.

HEARING and APPEALS

A hearing may be requested regarding this modification. To request a hearing, notify the DNRC at the address below the signature in writing within 30 days after service of this modification. If no hearing is requested within the 30-day time period, the modification of the Order as set out above will thereafter take effect.

Dated this 28th day of May, 2004.

R. Curtis Martin

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