

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 Horse Creek Controlled Groundwater Area)
)
) NOTICE OF PUBLIC HEARING
ON PROPOSED ADOPTION

To: All Concerned Persons

1. On November 17, 2011, at 6:00 p.m., the Department of Natural Resources and Conservation will hold a public hearing at the Cobblestone Community Center, 242 South Woodard Avenue, Absarokee, 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 November 10, 2011, to advise us of the nature of the accommodation that you need. Please contact Millie Heffner, Montana Department of Natural Resources and Conservation, 1424 Ninth Avenue, Helena, MT 59620, telephone (406) 444-9754, fax (406) 444-0533, e-mail mheffner@mt.gov.

3. The rule as proposed to be adopted provides as follows:

NEW RULE I HORSE CREEK CONTROLLED GROUNDWATER AREA

(1) There is designated a Horse Creek Controlled Groundwater Area. Horse Creek Controlled Groundwater Area (HCCGWA) means an area of approximately 7995 acres or 12 square miles located southwest of Absarokee, Montana, and is generally described as follows:

(a) beginning at intersection of highway S-420 and Lower Grove Creek Road, proceeding southwest along Lower Grove Creek Road to intersection with Grove Creek Road, following Grove Creek Road to bridge over Fishtail Creek, following Fishtail Creek to confluence with West Rosebud Creek, following West Rosebud Creek to Ross-Flannigan Ditch diversion, following Ross-Flannigan Ditch to intermittent tributary to West Rosebud Creek in section 11, following intermittent tributary to its confluence with West Rosebud Creek, following West Rosebud Creek to bridge at highway S-420, following S-420 to starting point;

(b) the legal land descriptions are in the following table:

Quarter Section	Section	Township	Range
S2 SESE	33	3S	18E
S2 S2	36	3S	18E
All	10, 15, 16, 21	4S	18E
Portions of	9, 11, 12, 14, 20, 22, 29	4S	18E
W2	1	4S	18E
E2, E2SW	4	4S	18E

NWNW	23	4S	18E
N2	28	4S	18E
NE, NW NW	29	4S	18E
S2 SW, SW SE	36	4S	18E

(c) a map of the area within the HCCGWA is posted at http://www.dnrc.mt.gov/wrd/water_rts/cgwa/horsecreek/default.asp.

(2) The department shall accept a Notice of Completion of Groundwater Development, Form 602, within the HCCGWA if all of the following are met, otherwise an Application for Beneficial Water Use Permit, Form 600 must be filed.

(a) The groundwater development point of diversion is on a parent tract of land. A parent tract means a tract of land as it exists within the HCCGWA on October 27, 2011.

(b) The purpose is for domestic, multiple domestic, lawn and garden (which includes shelterbelts), or stock.

(c) The maximum appropriation is 35 gallons per minute or less.

(d) The volume used per year is not greater than one acre-foot (325,851 gallons) per year.

(e) The project does not include a reservoir.

(3) An Application for Beneficial Water Use Permit, Form 600 must include the following:

(a) a mitigation plan which will offset the rate, timing, and location of depletion calculated within the HCCGWA; and

(b) an Application to Change, Form 606, if the mitigation plan includes changing an existing water right for mitigation purposes.

(4) The department may also accept the following within the HCCGWA:

(a) Application to Change, Form 606;

(b) Replacement Well Notice, Form 634; or

(c) Redundant Well Construction Notice, Form 635.

(5) All new wells, whether a new appropriation or change of existing appropriation, must install a 0.75-inch access tube (preferably PVC) to within five feet above the pump to allow static water level measurements to be taken.

(a) The appropriator shall measure the static water level quarterly and record it on a form provided by the department.

(b) Records must be submitted to the department annually.

(6) All new wells shall have a department-approved in-line meter installed at a point approved by the department to measure the total volume of water diverted.

(a) Water must not be diverted until the required measuring device is in place and operating.

(b) Water use records shall be submitted annually to the department.

(7) Water use for lawn and garden irrigation under all water rights issued after the effective date of this rule that do not have mitigation will be discontinued when the three-month standard precipitation index (SPI) is less than or equal to -1.

(a) The three-month SPI will be calculated by the department using precipitation data from the National Weather Service station in Fishtail, Montana, which is available at <http://mesowest.utah.edu/index.html>.

(b) The department will post the three-month SPI at the beginning of each of the irrigation season months of May, June, July, August, and September at http://www.dnrc.mt.gov/wrd/water_rts/cgwa/horsecreek/default.asp.

(8) The department may, if circumstances change, propose to amend these rules accordingly after public notice and hearing.

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

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

REASONABLE NECESSITY: 85-2-506, MCA, allows the department to designate temporary or permanent controlled groundwater areas. Data collected within the boundaries of the temporary Horse Creek Controlled Groundwater Area over approximately a four-year time period shows that springs in the Horse Creek drainage could dry up and the average annual flows in Horse Creek could be reduced by 25 percent during dry years if a platted subdivision (Crow Chief Meadows) is completed as intended. A Montana Department of Natural Resources and Conservation hydrogeologist evaluated the data and provided a report in 2009 (*Ground Water Conditions at the Horse Creek Temporary Controlled Ground Water Area*, April 2009), which shows that future water development within the Horse Creek Controlled Groundwater Area must be managed to protect senior water right users. These rules are needed to accomplish that protection.

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, 1424 Ninth Avenue, Helena, MT 59620; fax (406) 444-0533; or e-mail mheffner@mt.gov, and must be postmarked no later than November 25, 2011.

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 sent or delivered to

the contact person in 4 above 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, apply and have been fulfilled. The bill sponsor was contacted by e-mail on October 4, 2011.

DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

/s/ Mary Sexton

MARY SEXTON

Director

Natural Resources and Conservation

/s/ Anne W. Yates

ANNE W. YATES

Rule Reviewer

Certified to the Secretary of State on October 17, 2011.