76H-S103814

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

FILMED

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In the Matter of the Designation of the Larson Creek Controlled Groundwater Area as Permanent.	)	FINAL ORDER

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On August 9, 1988, pursuant to Section 85-2-507, MCA (1987), the Board held a hearing on the designation of the Larson Creek area as a permanently designated controlled groundwater area. In accordance with the Administrative Procedure Act, Title 2, Chapter 4, Part 6, MCA (1987), the hearing examiner prepared a proposal for decision containing a statement of the reasons therefore, and of each issue of fact or law necessary to the proposed decision. §2-4-621(2), MCA (1987). The proposal and notice of opportunity to present briefs and oral argument were mailed to all persons who attended the hearing. The matter is therefore properly before the Board for adoption of a final order.

The Board in its final order may reject or modify the conclusions of law and interpretation of administrative rules in the proposal for decision but may not reject or modify the findings of fact unless the Board first determines from a review of the complete record and states with particularity in the order that the findings of fact were not based upon competent

substantial evidence, or that the proceedings on which the findings were based did not comply with essential requirements of law. Section 2-4-621(3), MCA (1987).

The Board now being fully advised in the matter, adopts and incorporates herein by this reference, the proposal for decision as the final decision herein.

WHEREFORE, the following Final Order in this matter is hereby issued.

FINAL ORDER

That effective upon adoption of this final order and until presentation of a plan for augmentation as provided below, the Larson Creek controlled groundwater area, is designated as a permanently controlled groundwater area.

The area is the ground surface area above a shallow aquifer approximately 50 - 70 feet below the surface of the ground and under approximately 150 - 200 acres of land along Larson Creek, in about the center of the E½ of Section 19 and the W½ of Section 20, Township 9 North, Range 20 West, Ravalli County, Montana, and further delineated on the attached map.

During the period of designation, the Department shall accept Applications for Beneficial Water Use Permit to appropriate groundwater within the aquifer as follows: the shallow aquifer is closed to further appropriation except: a) by the issuance of a permit for Beneficial Water Use Permit by the Department for uses applied for prior to January 1, 1987, and b) by applicants who prove the criteria of Section 85-2-311, MCA

(1987), by clear and convincing evidence. All applicants except those in category a), shall submit with their application a plan for augmentation or overcome a rebuttable presumption that augmentation is necessary. The Department shall consider the use for augmentation and the use from the Larson Creek controlled groundwater area in the same proceeding.

Each Application for Beneficial Water Use Permit to appropriate by means of a well in the Larson Creek Controlled Groundwater Area shall be submitted to the Missoula Water Rights Bureau field office. No application for Beneficial Water Use Permit to appropriate by means of a well of less than 70 feet deep will be approved for issuance unless the applicant proves the criteria in b) above. Applicants for wells greater than 70 feet shall also be required to apply for and receive a permit. Any wells permitted for a depth of more than 70 feet will be required to be constructed in such a manner that no well has perforations tapping the controlled aquifer, and that the controlled aquifer be sealed off with grout to prohibit leakage from the controlled aquifer to other aquifers. The department will impose such other conditions on a case by case basis.

DATED this 14th day of November, 1988.

William A. Shields

William A. Shields, Chairman
Board of Natural Resources and
Conservation

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attach.