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

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IN THE MATTER OF A PETITION TO THE BOARD OF NATURAL RESOURCES AND CONSERVATION FOR DESIGNATION OF A CONTROLLED GROUNDWATER AREA	))))	FINAL ORDER

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The time period for filing exceptions and objections to the Proposal for Decision of August 16, 1984, (hereafter, "Proposal") in the above-captioned matter has expired. The Proposal was presented to the Board of Natural Resources and Conservation (hereafter, the "Board") on September 7, 1984, and the Hearing Examiner requested the Board defer final action until the Board's next regularly scheduled meeting. All who attended the June 21, hearing had been served with a copy of the Proposal on August 22, 1984, and the further time was provided to assure that all interested parties could respond before final action was taken.

No requests for oral argument before the Board were received from any of the Petitioners. One written exception was received from James L. Scofield, owner of Ravalli Drilling. Therein, Mr. Scofield reiterated his arguments raised at the hearing. Those issues were responded to in the Proposal.

With the exception of the following modifications, the Board, having received the Proposal and being fully advised hereby adopts and incorporates by reference the Proposal for Decision as the Final Order.

1.) The controlled groundwater area encompasses only a shallow aquifer underlying the area specified in the Proposal and Proposed Order. To assure that wells drilled into any deeper aquifers do not tap the controlled aquifer an additional requirement must be incorporated into the Order. The last sentence of Paragraph (a) as found on page 17 of the Proposed Order is hereby amended to include the following:

> All other permit applications will follow the normal Department permit processing steps prior to issuance or denial, except that any wells permitted to a depth of more than 70 feet within the geographic area of the controlled groundwater area 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 a grout to prohibit leakage from the controlled aquifer to other aquifers.
>
> The Department will impose such other and further conditions on a case by case basis, to assure that wells drilled within the area will not be tapping the aquifer of concern.

2.) While the Temporary Controlled Groundwater Area designation may be designated only for two years, § 85-2-507(5) MCA (1983), the Board may extend the temporary controlled designation for an additional two years for sufficient cause shown § 85-2-507(5)(a) MCA (1983). The Proposed Order paragraph (c) as found on page 17 reads "Facts gathered by the Department will be presented at a hearing before the Board to be held within 90 days after the termination of the temporary controlled status". Should the Board decide to extend the temporary status, or to designate a permanent controlled groundwater area, it should do so prior to the lapse of the temporary designation. Otherwise, the aquifer of concern may be damaged by uncontrolled

drilling during the period between the end of the initial temporary controlled period and the subsequent extension or permanent designation. The decision to extend the study period may be made without a hearing, while a decision to designate or modify a permanent controlled groundwater area must be made after a hearing.

Hence, the paragraph c) of the Final Order will be amended to provide:

> c) Facts gathered by the Department will be presented to the Board prior to the end of the two year study period. Based thereon, the Board will issue its order finding that no further control measures are needed, extending the temporary controlled groundwater area designation for an additional two years, or setting a hearing to designate a permanent controlled groundwater area.

WHEREFORE, based on the foregoing, and having considered the record herein, the Board expressly adopts the Proposal for Decision as its Final Order herein, incorporating the Proposal by reference and based thereon, hereby issues the following:

ORDER

That, effective for two years from the date of the Board's Final Order, a Temporary Controlled Groundwater Area be established for 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 map attached hereto as Exhibit "A".

During the period of temporary controlled designation, the Department shall accept Applications for Beneficial Water Use Permits to appropriate groundwater from the shallow aquifer as follows:

a) Each Application for Beneficial Water Use Permit to appropriate by means of a well shall be submitted to the Missoula Area Water Right Bureau Field Office. Upon receipt, Department personnel shall plot the proposed well site on a prepared map of the controlled area. Around each existing well will be plotted a circle, with the existing well being in the center thereof, and the radius of the circle being 263.3 feet. Such a circle will also be plotted around the proposed well site. No Application for Beneficial Water Use Permit to appropriate by means of a well of less than 70 feet in depth will be approved for issuance of a permit where the circle around the proposed site intersects the circle around any existing well. All other permit applications will follow the normal Department permit processing steps prior to issuance or denial, except that any wells permitted to a depth of more than 70 feet within the geographic area of the Controlled Groundwater Area 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 and further conditions on a case by case basis, to assure that wells drilled within the area will not be tapping the aquifer of concern.

b) The Department will commence studies necessary to obtain the facts needed to assist in the designation of a permanent controlled groundwater area.

c) Facts gathered by the Department will be presented to the Board prior to the end of the two year study period. Based thereon, the Board will issue its order finding that no further control measures are needed, extending the temporary controlled groundwater area designation for an additional two years, or setting a hearing to designate a permanent controlled groundwater area.

d) The Temporary Controlled Groundwater Area designation shall automatically terminate two years from the date of the Board's final action herein, unless the Board, upon a showing of sufficient cause, extends the status for a period not to exceed an additional two years, in which case all petitioners shall be notified of any extension.

e) Petitioners shall pay reasonable costs of conducting investigations and making records, excluding costs for salaries of Department personnel.

f) The Department may enforce this Order by means including, but not limited to, bringing an action for injunction in a district court of a district in which all or a part of the area affected is located.

g) No person may appropriate groundwater in a controlled area except by applying for and receiving a permit to appropriate from the Department. § 85-2-508 MCA (1983).

DONE this 16th day of November, 1984.

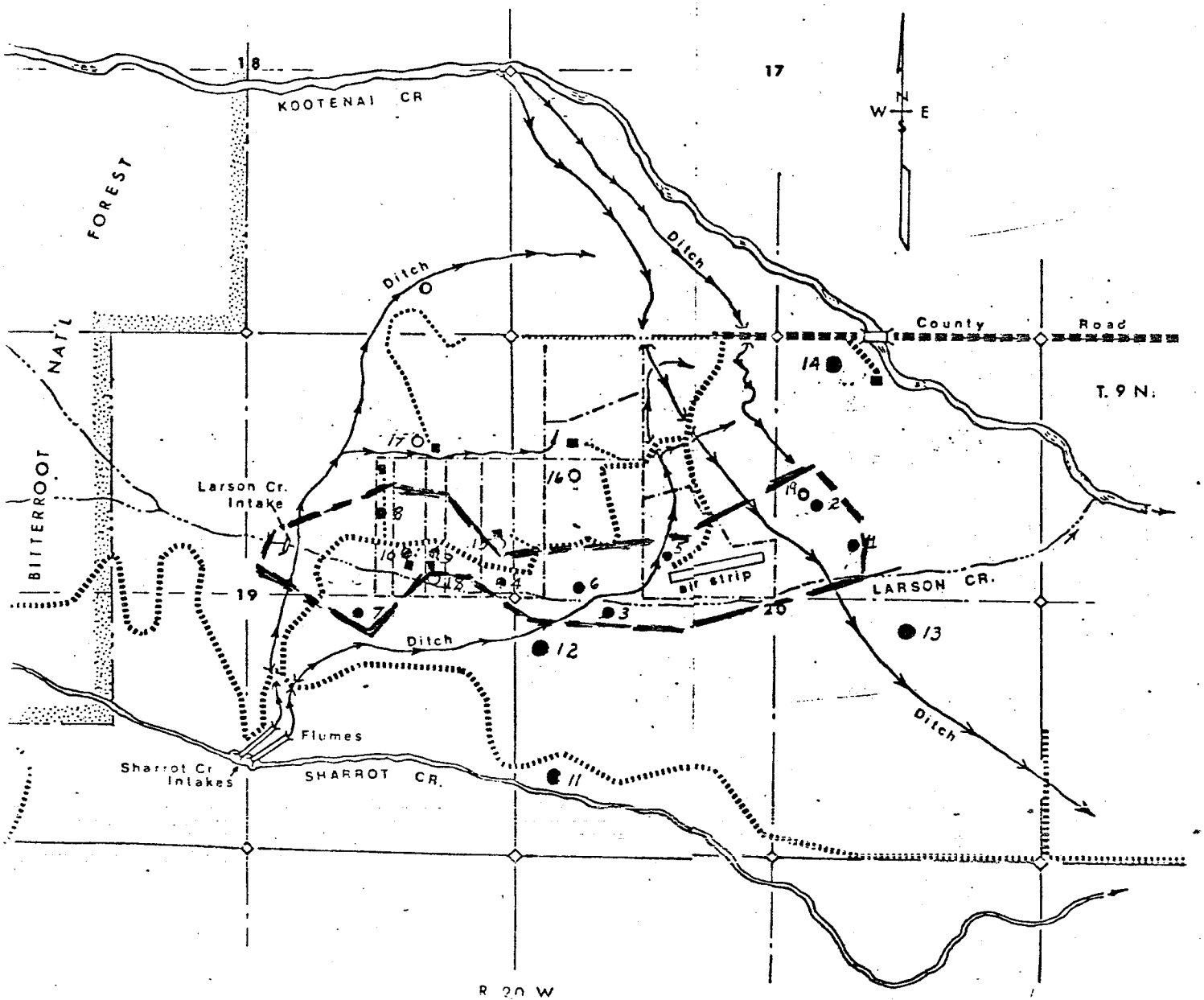
Gordon Holte, Chairman

Board of Natural Resources and Conservation

ATTEST:

Leo Berry, Director

Department of Natural Resources and Conservation



SOUTH KOOTENAI CREEK AR

RAVALLI CO, MONTANA.

1981

Map Prepared by Fred Burnell.

LEGEND

- County road
- Private road
- Lane
- Dwelling
- Wells To Larson Aquifer
- Deep Wells
- Known "Dry Holes"
- Estimated Boundary Of Larson Aquifer

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November 16, 1984

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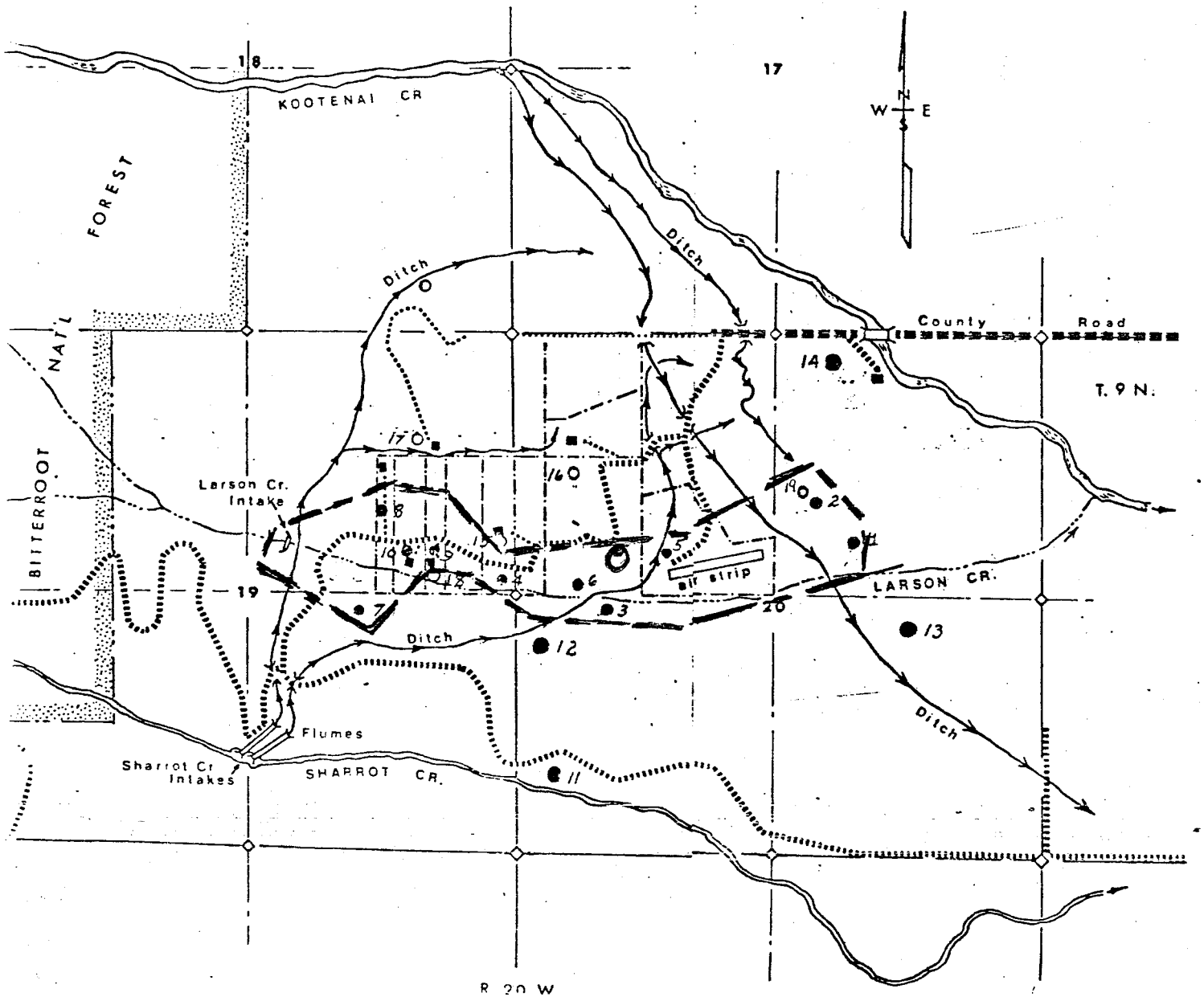

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