

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

In the matter of proposed new) NOTICE OF PROPOSED
rules for the administration) ADOPTION
of the Yellowstone Controlled)
Groundwater Area) NO PUBLIC HEARING
) CONTEMPLATED

TO: All Interested Persons.

1. On February 24, 1997, the Department of Natural Resources and Conservation proposes to adopt new Rule I through Rule XII establishing procedures for the Yellowstone Controlled Groundwater Area established by the United States National Park Service-Montana Compact.

2. The proposed rules provide as follows:

Rule I. PURPOSE AND SCOPE (1) The purpose of these rules and the goal of the department is to provide for the preservation of the hydrothermal system and features by allowing no impact to them within the reserved land of Yellowstone National Park. These rules are necessary to effectuate the Compact and to establish criteria which are necessary to implement Article IV of the Compact.

(2) All groundwater appropriations (wells or developed springs) with a priority date after January 31, 1994, are subject to the following rule provisions. A permit application must be filed with the department of natural resources and conservation if the development will be located within the boundaries of the Yellowstone Controlled Groundwater Area. A map of the boundaries is available from the department upon request.

AUTH: 85-20-401, MCA, Article IV

IMP: 85-20-401, MCA, Article IV.I.5.

Rule II. DEFINITIONS As used in these rules, the following definitions apply:

(1) "Application" means Form No. 600, Application for Beneficial Water Use Permit, submitted to the department by an applicant for a provisional permit to appropriate groundwater.

(2) "Appropriate" means to divert, impound or withdraw a quantity of water for beneficial use.

(3) "Appropriator" means a person who has a legal water right to divert, impound, or withdraw a quantity of water for beneficial use.

(4) "Beneficial use" means the use of water for the benefit of the appropriator, other persons, or the public, including but not limited to agricultural, domestic, fish and wildlife, industrial, irrigation, mining, municipal, power, recreational, and stock uses.

(5) "Bozeman water resources regional office (BWRRO)" means the Montana water resources regional office of the department of natural resources and conservation, responsible

for processing all applications under the Yellowstone Controlled Groundwater Area, Article IV of the Compact.

(6) "Category 3 or 4 streams" means streams with special importance as defined in the Compact.

(7) "Change application" means a Form 606, Application to Change a Water Right filed pursuant to 85-2-402, MCA.

(8) "Compact" means the United States National Park Service-Montana Water Rights Compact, effective January 31, 1994 as provided in 85-20-401, et.seq., MCA.

(9) "Correct and complete" means that the information required to be submitted conforms to the standard of substantial credible information and that all the necessary parts of the form requiring the information have been filled in with the required information.

(10) "Credible information or evidence" means evidence sufficient to support a prima facie basis for the theory asserted.

(11) "Department" means the Montana department of natural resources and conservation in Helena and Bozeman, Montana provided for in Title 2, chapter 15, part 33.

(12) "Developed spring" means groundwater if some physical alteration of its natural state occurs at its point of discharge from the ground, such as simple excavation, cement encasement, or rock cribbing. An undeveloped spring is surface water if no development occurs at its point of discharge and the appropriation is made from the unenhanced natural surface flow.

(13) "Extension of time" means Form No. 607, Application for Extension of Time, that can be filed by a permittee with the BWRRO for the purpose of obtaining approval for additional time to complete the groundwater development.

(14) "Groundwater" means any water that is beneath the ground surface.

(15) "Hydrologically connected" for the purposes of Article IV of the Compact, means groundwater that is considered to be connected to the hydrothermal system within the reserved land of Yellowstone National Park based on scientific evidence according to the procedures in Article IV.

(16) "Hydrothermal feature" means a surface manifestation of a hydrothermal system, including but not limited to: hot springs, geysers, mud pots, and fumaroles.

(17) "Hydrothermal system" means the groundwater system, including cold water recharge, transmission and warm water discharge that is hydrologically connected to the hydrothermal features within the reserved land of Yellowstone National Park.

(18) "Meter" means a device provided by the department that must be installed and maintained by the permittee to record the volume of water appropriated and used by the permittee.

(19) "Montana bureau of mines and geology (MBM&G)" means the Montana bureau of mines and geology located at Butte, Montana.

(20) "National park service" means the U.S. department of the interior, national park service.

(21) "Notice of completion" means Form No. 617, Notice of Completion of Permitted Water Development, filed by permittee after completion of the groundwater well or spring and beneficial use of the water granted under a provisional permit.

(22) "Objection" means Form No. 611, Objection to Application that may be filed with the department by the national park service or other persons opposing a permit application.

(23) "Permit" means the provisional permit to appropriate groundwater as issued by the department.

(24) "Replacement well" means a new well to replace an old existing well with an established water right prior to January 31, 1994 or an issued provisional permit granted by the department after January 31, 1994 that is in the same source and the rate and volume have not increased.

(25) "Scientific evidence" means geologic, geophysical, geochemical and hydrologic information.

(26) "Specific conductance" means the unit of measurement of water to conduct an electrical current, expressed in mhos (pronounced mose) and reported in millionths of mhos or micromhos. Chemically pure water has a very low electrical conductance, meaning that it is a good insulator. Dissolved chemical constituents increase the conductance of water.

(27) "Substantial credible information" means probable, believable facts sufficient to support a reasonable legal theory upon which the department should proceed with the action requested by the person providing the information.

(28) "Supplement" means a form provided by the BWRRO on which additional information is recorded concerning the development of a well or spring as required by Article IV.

(29) "Well" means any artificial opening or excavation in the ground, however made, by which groundwater is sought or can be obtained or through which it flows under natural pressures or is artificially withdrawn.

(30) "Well log report" means Form No. 603, Well Log Report, that is completed by a licensed water well driller or contractor, detailing required information about the completed well.

(31) "Yellowstone Controlled Groundwater Area" means the land area around Yellowstone National Park that lies within the state of Montana and within the boundaries identified in Appendix 3 of the Compact or as modified pursuant to Article IV, section J.

AUTH: 85-20-401, MCA, Article IV

IMP: 85-20-401, MCA, Article IV.I.5.

Rule III. APPLICATION TYPES (1) Type "A" groundwater permit applications are for appropriations of 35 gpm or less, not to exceed 10 AF/yr. An applicant for an appropriation of water with a proposed use that does not require water with a temperature of 60°F or more, may drill the proposed well subject to state law and the terms of the Compact, but shall not put the water to beneficial use until receipt of a provisional permit. These applications follow an abbreviated

application and notice process.

(2) Type "B" groundwater permit applications are for appropriations of greater than 35 gpm or 10 AF/yr. An applicant for an appropriation of water with a proposed use that does not require water with a temperature of 60°F or more, may drill the proposed well subject to state law and the terms of the Compact, but shall not put the water to beneficial use until receipt of a permit. These applications must follow state law permit processing requirements in addition to certain Compact requirements.

AUTH: 85-20-401, MCA, Article IV

IMP: 85-20-401, MCA, Article IV.I.5.

Rule IV. APPLICATION FILING REQUIREMENTS (1) All permit applications must be filed with the department's Bozeman water resources regional office. Form No. 600, Application for Beneficial Water Use Permit must be used and the appropriate fee must accompany the application.

(2) All applications must include a statement of whether the proposed use requires water with a temperature of 60°F or more.

(3) A type "A" permit applicant is not required to prove the 85-2-311, MCA, permit issuance criteria.

(4) A type "B" permit applicant shall prove the criteria in 85-2-311, MCA, prior to issuance.

(5) If an application, its corresponding well log or other verification indicates water of 60°F or more, the application must follow additional requirements set out in Article IV, section G.2.c.

(6) If an application is located in a basin tributary to a Category 3 or 4 stream, the applicant must meet additional requirements set out in Article II, section B.2.b.

(7) Failure to meet the requirements in (2), (4), (5) or (6) renders the application defective and the application must be returned for completion according to state law.

AUTH: 85-20-401, MCA, Article IV

IMP: 85-20-401, MCA, Article IV.I.5.

Rule V. PROCESSING - NOTICE (1) The BWRRO shall review each type of permit application and determine if it is correct and complete.

(2) A copy of an "incorrect and incomplete" application must be returned to the applicant with a letter explaining the deficiencies. The BWRRO letter must contain a deadline for the applicant to correct the deficiencies and return the application copy.

(3) For type "A" permit applications no notice pursuant to 85-2-307, MCA is required. The BWRRO shall only send notice to the national park service by means of a letter within 30 days after receipt of a correct and complete permit application. Enclosed with each letter must be a copy of the correct and complete permit application, a well location map, and a copy of the drillers well log report and supplement. A copy of each BWRRO letter must be sent to the following:

- (a) the applicant;
- (b) the MBM&G in Butte, Montana along with a copy of the well log report form.
- (4) For type "B" permit applications the BWRRO shall send notice as in (3) and a copy of the general notice provided under 85-2-307, MCA.

AUTH: 85-20-401, MCA, Article IV

IMP: 85-20-401, MCA, Article IV.I.5.

Rule VI. WELL LOG REPORT AND SUPPLEMENT (1) An applicant shall provide a well log report and supplement no later than 60 days after drilling the well.

(2) All applicants, when filing a well log report and supplement, shall provide the following information:

(a) 2½ acre land description (¼¼¼, Section, Township & Range);

(b) ground elevation at well head;

(c) well depth;

(d) groundwater level in well (static);

(e) flow rate or maximum pump rate;

(f) groundwater temperature measured at well head; and

(g) specific conductance of the well's groundwater.

(3) The Compact requires that with each groundwater development the specific conductance and temperature of the water encountered be measured and recorded on the well log report form, or supplement provided by the BWRRO.

(4) The temperature that must be reported on the well log report form is of the water produced when the well is completed. This should be taken at the end of an air test or pumping period and only after the temperature of the water has remained constant for several minutes. The water sample for specific conductance must be collected and recorded using the same procedure. The temperature of the water could increase during an air test if the air is hot and especially if the yield of the well is low. Therefore, if the water temperature is 60°F or more during an air test, it is recommended that the well be pumped to more accurately determine the water temperature.

(5) Water samples taken for the purpose of testing specific conductance should be placed in a clean plastic or glass container that holds at least 8 fluid ounces (250 ml). The BWRRO has sample bottles available and will provide the sample bottles to water well drillers who operate in the area on a regular basis. The sample bottle must be filled and capped with as little air in the container as possible. The container must be labeled with a name and address, department permit application number, date collected, and who collected the sample. The samples should be delivered to the BWRRO or make other arrangements to get the sample tested.

AUTH: 85-20-401, MCA, Article IV

IMP: 85-20-401, MCA, Article IV.I.5.

Rule VII. OBJECTIONS (1) Objections to type "A" permit applications must comply with the following procedures:

(a) The national park service may within 60 days from the date of the BWRRO's mailing of the well log report form, file an objection providing credible information that the proposed appropriation is of groundwater with characteristics to which the Compact restrictions concerning temperatures of 60° or more apply.

(b) No other objection may be filed by any person or entity.

(c) An objection must be filed on Form No. 611, Objection to Application. The objection must be received or postmarked on or before the 60 day time limit provided in the Compact to constitute a timely objection, along with the proper filing fee. An untimely objection may not be considered.

(d) Any national park service objection must set forth credible information that the appropriation is of groundwater with characteristics to which restrictions established pursuant to Article IV of the compact apply, or must provide credible information that the groundwater proposed to be appropriated is hydrologically connected to the hydrothermal system within the reserved land of Yellowstone National Park based on scientific evidence according to the procedures in Article IV of the Compact.

(2) Objections to type "B" permit applications must comply with the following procedures:

(a) Any objection filed by the national park service must be filed on Form No. 611, Objection to Application. The objection must be postmarked on or before the deadline date specified in the public notice or received within 60 days from the date of mailing a well log report to be timely. The objection must be accompanied by the proper filing fee. An untimely objection may not be considered.

(b) Any national park service objection must set forth credible information as described in (1)(d).

(c) When the national park service files a proper objection, the applicant shall provide credible information addressing the issue identified in the objection and the requirements in Article IV, section G.2.c.

AUTH: 85-20-401, MCA, Article IV

IMP: 85-20-401, MCA, Article IV.I.5.

Rule VIII. HEARINGS (1) All objections to permit applications, if correct and complete, timely filed, and unsettled between the parties, must proceed to a hearing following the department's administrative procedural rules for water right contested case hearings as provided in ARM 36.12.201 through 36.12.234.

AUTH: 85-20-401, MCA, Article IV

IMP: 85-20-401, MCA, Article IV.I.5.

Rule IX. PERMIT CONDITIONS (1) All permits issued by the department must contain at a minimum the following specific conditions:

(a) U.S. National Park Service - Montana Compact requires this right be issued in accordance with the Yellowstone

Controlled Groundwater Area provisions of the January 31, 1994, U.S. National Park Service - Montana Compact. The department may modify or revoke this permit if the provisions of the Compact are not met; the character of the groundwater produced changes such that a restriction applies pursuant to Article IV; or new restrictions are imposed as a result of Article IV, section J. Further modification may occur to limit the total withdrawal by day, month or year; to require a system of rotation of use within the controlled area; or adjust the total withdrawal from two or more wells in the area used by the same appropriator. The appropriator shall allow access to the well by the Montana bureau of mines and geology for water sampling as provided by the Compact. Further, this right is subject to the condition that the appropriator install an adequate metering device to allow the volume of water diverted to be recorded. The type and location of the meter must be determined by the department. The appropriator shall keep a written record of the volume of all waters diverted including the period of time, and shall submit said records by January 15th of each year and upon request to the Montana Bureau of Mines and Geology, Montana Tech, 1300 W. Park St., Butte, MT 59701-8997.

(b) The deadline to complete this permit and file a Notice of Completion of Permitted Water Development (Form No. 617) is December 31, (specify year). If you cannot meet the deadline, file Form No. 607, Application for Extension of Time, at least 30 days before the above deadline, otherwise the permit is void.

(c) This permit is subject to all prior existing water rights in the source of supply. Further, this permit is subject to any final determination of existing water rights, as provided by Montana law.

(d) Pursuant to 85-2-505, MCA, to prevent groundwater contamination, an operational back flow preventor must be installed and maintained by the appropriator if a chemical or fertilizer distribution system is connected to the well.

(e) This right is subject to 85-2-505, MCA, requiring a well to be constructed so it will not allow water to be wasted or contaminate other water supplies or sources, and a flowing well must be capped or equipped so the flow of the water may be stopped when not being put to beneficial use. The final completion of the well(s) must include an access port of at least .50 inch so the static level of the well may be accurately measured.

(f) This permit is subject to the authority of the department to revoke the permit in accordance with 85-2-314, MCA, and to enter onto the premises for investigative purposes in accordance with 85-2-115, MCA. Further, the United States may accompany the department for the purposes of confirming well log information pursuant to Article IV, section G.2.b.v. of the Compact.

(g) Upon a change in ownership of all or any portion of this permit, the parties to the transfer shall file with the department a Water Right Transfer Certificate, Form 608,

pursuant to 85-2-424, MCA.

(2) Additional permit conditions may be placed on the permit as agreed upon by the parties and approved by the department, as required by the department, the hearing examiner, or Article IV of the Compact.

AUTH: 85-20-401, MCA, Article IV

IMP: 85-20-401, MCA, Article IV.I.5.

Rule X. FILING OF NOTICE OF COMPLETION (1) Permittee shall file a notice of completion on Form No. 617 with the department pursuant to state law and Article IV of the Compact.

(2) A photograph or legible sketch of the actual flow meter installation must accompany Form No. 617.

AUTH: 85-20-401, MCA, Article IV

IMP: 85-20-401, MCA, Article IV.I.5.

Rule XI. METERS (1) Each groundwater use must be metered to record the total volume of water used.

(2) The department will provide the meter to be used at no cost to the permittee, but it is the responsibility of the permittee to properly install and maintain the meter. A meter will be provided after a provisional permit is issued.

(3) A permittee may upon prior approval from the department purchase, install, and maintain a different type of meter than provided by the department, but only if the meter records the total volume of water used.

(4) The following general guidelines should be followed to properly install a meter:

(a) install meter in a frost free location;

(b) place in a horizontal position for optimum performance;

(c) use leak tight connections;

(d) install shut-off valves before and after the meter to prevent excessive water loss during servicing;

(e) locate the meter in a supply line with a diameter as near to the meter size as possible;

(f) provide access to meter for reading and service;

(g) maintain a continuous electrical connection around the meter;

(h) locate meter after any sand traps in the system; and

(i) any hydrants or outside faucets should be located after the meter to allow for total water use recording.

(5) The department shall determine the size of the meter and connections depending on water use in gallons per minute (gpm) and size of supply line into and from the pressure tank.

(a) Commonly used meter sizes are:

(i) 5/8" meter will accept up to a 3/4" pipe and a 20 gpm intermittent flow or 10 gpm continuous flow;

(ii) 3/4" meter will accept up to a 1" pipe and a 30 gpm intermittent flow or 15 gpm continuous flow;

(iii) 1" meter will accept up to a 1 1/4" pipe and a 50 gpm intermittent flow or 25 gpm continuous flow; and

(iv) 1 1/2" meter will accept up to a 2" pipe and 100 gpm intermittent flow or 50 gpm continuous flow.

(6) In cases where the meter is not installed to prevent freezing the meter, internal parts, or the base, the water meter must be removed, drained and later reinstalled. Gravity draining of the water lines is not sufficient to drain all the water from the bottom of the meter. Using air to blow out the water lines and meter, if done properly, may be sufficient to protect the meter from freezing.

(7) On or before January 15 of each year and upon request, the permittee shall report the annual metered water use to the MBM&G. The water use must be recorded on a form provided by the MBM&G.

AUTH: 85-20-401, MCA, Article IV

IMP: 85-20-401, MCA, Article IV.I.5.

Rule XII. REPLACEMENT WELLS (1) All groundwater appropriators shall file with the department a change application and obtain approval from the department prior to replacing an existing well or spring development.

(2) Approval to replace a well or spring development may only be to change the point of diversion, place of use, place of storage, or the use.

(3) Any well or spring development change must be from the same source and the rate and volume of water use may not increase.

(4) An increase in rate or volume of water used, period of appropriation or use, or change in source requires a new permit application and approval from the department in accordance with state law and the Compact provisions."

AUTH: 85-20-401, MCA, Article IV

IMP: 85-20-401, MCA, Article IV.I.5.

3. For the purposes of applying for water use permits for groundwater within Yellowstone National Park, Article IV of the United States National Park Service-Montana Compact requires the Department to adopt rules to carry out the purpose of the Yellowstone Controlled Groundwater Area.

4. Persons with disabilities who need an alternative accessible format of this information, or who require some other reasonable accommodation in order to participate in this public hearing, should contact the Department of Natural Resources and Conservation, Attn: Teresa McLaughlin, PO Box 201601, Helena, MT 59620-1601, telephone number (406)444-6611.

5. Interested persons may submit their data, views or arguments concerning the proposed rules in writing to Teresa McLaughlin, Department of Natural Resources and Conservation, PO Box 201601, Helena, MT 59620-1601 and must be received no later than February 20, 1997.


6. If a person who is directly affected by the proposed adoption wishes to express his data, views and arguments orally or in writing at a public hearing, he must submit a written request for a hearing along with any written comments he has to the above address and be received no later than February 20, 1997.

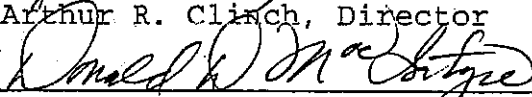
7. If the agency receives requests for a public hearing

on the proposed adoption from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed action; from the administrative code committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of the affected population would exceed 25.

DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION

BY:



Arthur R. Clinch, Director


Donald D. MacIntyre, Rule
Reviewer

Certified to the Secretary of State January 2, 1997.

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