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ENVIRONMENTAL PROTECTION AGENCY

DEC - 4 2001

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

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IN THE MATTER OF PETITION NO. 41H-114172 TO THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION FOR DESIGNATION OF A CONTROLLED GROUNDWATER AREA IN GALLATIN COUNTY	)	**FINAL ORDER**

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An Amended Proposal for Decision in the above matter was issued March 13, 2001. Copies of the Proposal were mailed to all interested parties. The Amended Proposal recommended designation of the Idaho Pole Company Site as a controlled ground water area.

No objections to the Amended Proposal were received by the Department of Natural Resources and Conservation. Therefore, the Director of the Department of Natural Resources and Conservation, having given the matter full consideration, finds, concludes, and orders as follows:

FINDINGS OF FACT

1. A Petition for Controlled Groundwater Area (Petition) was filed with the Department on September 28, 2000. The Petition was submitted by the Gallatin City-County Board of Health and signed by the Chairperson, Dr. Warren Jones. The Petition alleges water quality within the alluvial aquifer underlying the proposed controlled groundwater area is not suitable for domestic or municipal use insofar as groundwater would be used as a drinking water supply and groundwater withdrawals for industrial or agricultural use from the proposed area may cause contaminant migration.

2. Pentachlorophenol (PCP) is the primary contaminant of concern to human health at the Idaho Pole Company site. The plume of dissolved PCP extends several hundred feet laterally downgradient of the Idaho Pole Company site. (Petition)

3. A Notice to Groundwater Users was published in the *Bozeman Chronicle* on December 6, December 13, and December 20, 2000, setting forth the Petitioner, the alleged cause for the Petition, the legal description of the proposed controlled groundwater area, and the time, place, and purpose of the hearing. Additionally, the Department served notice by first-class mail on approximately 38 individuals

and public agencies which the Department determined might be interested in or affected by the proposed controlled groundwater area. The notice also stated any interested person could appear, either in person or by attorney, file written objections to the granting of the proposal, and be fully heard. (Department file.)

4. The proposed controlled groundwater area is described as follows: the W½SW¼, W½NW¼ of Section 5 and the SE¼NE¼, SE¼ of Section 6, both in Township 2 South, Range 6 East in Gallatin County, Montana. The proposed controlled area includes all underlying aquifers. (See attached map) (Department file.)

5. The Petitioner proposes total closure for groundwater wells in the proposed controlled groundwater area with exceptions for remediation/monitoring wells and replacement wells for existing appropriations as authorized by the Department.

6. The boundary includes all of the Idaho Pole Company property and a buffer zone extending 320 feet from the contaminate plume. The buffer zone is based on a capture zone analysis using 500 gpm as a conservative maximum amount available from the aquifer.

7. Based on the information in the Petition and the evidence presented at the hearing, the Department finds water underlying the PCP plume as shown on the attached map is not suitable for domestic or municipal use and groundwater withdrawals for industrial or agricultural uses may cause contamination migration.

Based upon the foregoing Findings of Fact, the Hearings Examiner makes the following:

CONCLUSIONS OF LAW

1. The Department has jurisdiction over the parties and over the subject matter herein. Mont. Code Ann. §§ 85-2-113, 85-2-506 (1999).

2. The Department gave proper notice of the hearing and all substantive procedural requirements of law or rule have been fulfilled. *See* Findings of Fact 1, 2, and 3.

3. There is sufficient evidence to designate a controlled groundwater which includes all aquifers underlying approximately 62 acres described as follows: the W½SW¼, W½NW¼ of Section 5 and the SE¼NE¼, SE¼ of Section 6, both in Township 2 South, Range 6 East in Gallatin County, Montana. *See* Findings of Fact 1, 2, 4, 5 and 6.

WHEREFORE, based upon the record, the Director makes the following:

ORDER

A controlled groundwater area is designated for the Idaho Pole Company Site generally described as approximately 62 acres in the east half of Section 6 and the west half of Section 5, both in Township 2 South Range 6 East, Gallatin County and more specifically in the W½SW¼, W½NW¼ of Section 5 and the SE¼NE¼, SE¼ of Section 6, both in Township 2 South, Range 6 East in Gallatin County, Montana.

1. Wells for new appropriations are prohibited. Replacement wells for existing appropriations will be allowed as authorized by the Department.

2. This controlled groundwater area does not apply to wells for remedial, response, or restoration actions authorized or undertaken by the United States Environmental Protection Agency or the State of Montana.

3. All new monitoring wells drilled within Controlled Groundwater Area, 41H-114172, shall be installed in accordance with the EPA-approved Standard Operating Procedure (SOP GROUNDWATER-3) for monitoring well design and construction.

4. Upon a showing by **clear and convincing evidence** that any part of the controlled groundwater area is not contaminated and will most likely never be contaminated the designation for that area may be lifted.

NOTICE FROM THE STATE OF MONTANA NATURAL RESOURCES DAMAGES PROGRAM

1. The granting of this petition for a controlled groundwater area does not constitute an irreversible and irretrievable commitment of the groundwater resource, nor does it serve as a permit for the release of hazardous substances into the groundwater aquifer.

2. The controlled groundwater area and groundwater closure is being issued in recognition of existing contaminated conditions and does not relieve any person from liability for contamination of the groundwater.

3. A grant of a controlled groundwater area is not an indication of a finding that the groundwater aquifer should not be remediated or restored.

APPEALS

The Department's Final Order may be appealed in accordance with the Montana Administrative Procedure Act by filing a petition in the appropriate court within 30 days after service of the Final Order. If a petition for judicial review is filed, the Department will transmit a copy of the tape(s) of the oral proceedings to the district court along with documentary evidence in the file. If a party to the proceeding elects to have a written transcription prepared, that party may purchase the tapes and have a transcript prepared.

Dated this 22 day of NOVEMBER, 2001.

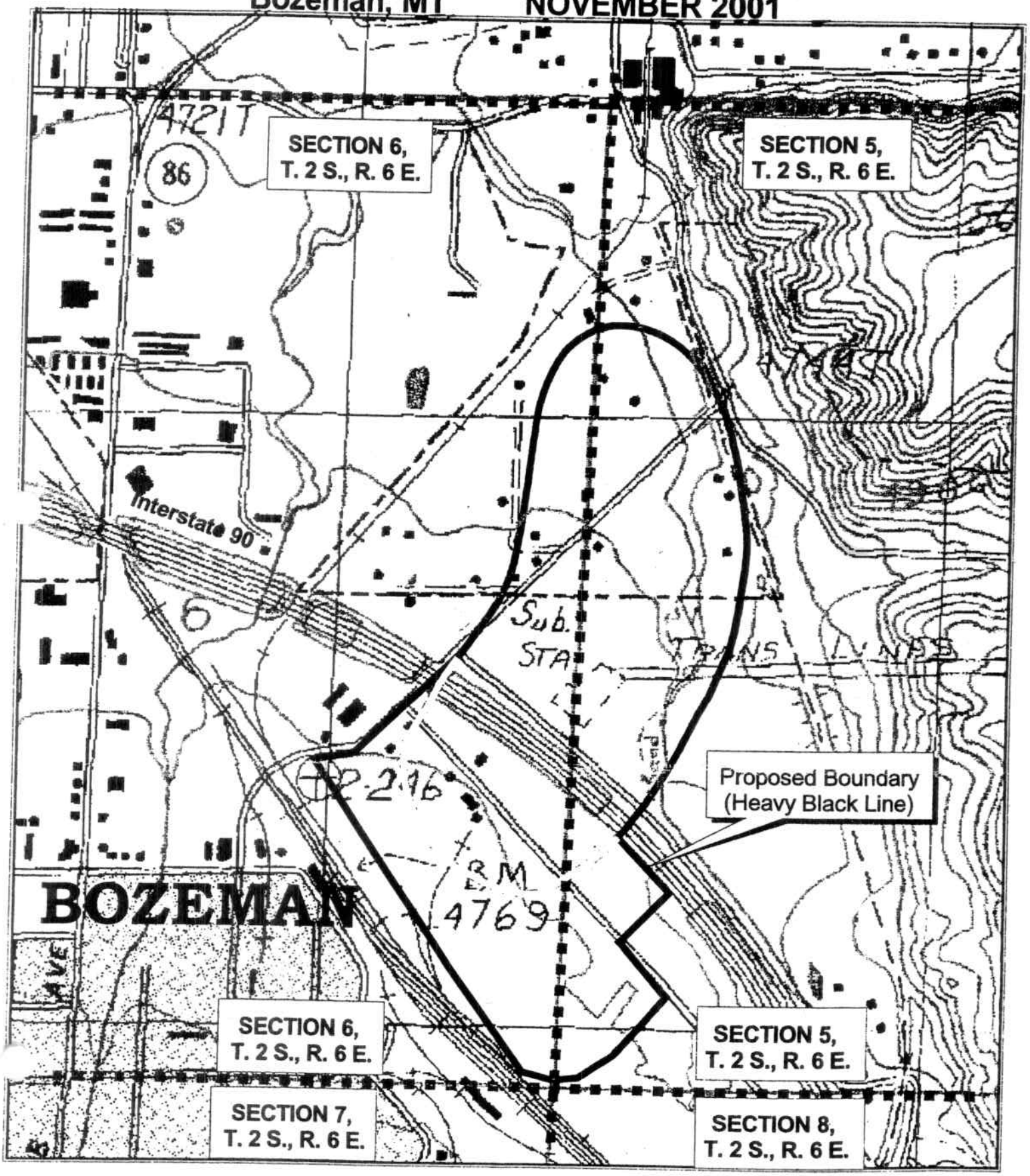
Arthur Clinch, Director
Department of Natural Resources
and Conservation
1625 Eleventh Avenue
Helena, Montana 59620
(406) 444-2074

CERTIFICATE OF SERVICE

This certifies that a true and correct copy of the Final Order was served upon all parties on file for this case, listed at the Water Resources Division on this 30th day of November, 2001.

Jennifer L. Henseley
Water Rights Bureau
Hearings Unit
406-444-6615

ATTACHMENT TO FINAL ORDER FOR 41H-114172

Montana Department of Natural Resources and Conservation

Proposed Idaho Pole Company Controlled Groundwater Area, Bozeman, MT NOVEMBER 2001