

CONTROLLED GROUND WATER AREAS

Water Policy Interim Committee
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- CGWAs are intended to address local concerns with ground water developments to protect the public, water users and existing water right holders.
- CGWAs can be established based on water quantity or water quality concerns.
- CGWAs can be temporary or permanent
- There are currently 9 CGWAs established for water quality concerns and 6 CGWAs established for water quantity concerns.
- CGWA offers a wide variety of tools and controls to address local ground water concerns.
- The CGWA statutes were revised in 2009 by SB 120 to address problems with the out-dated statutes.

CGWAs PRIOR TO 2009

- §§85-2-506 and 507 MCA
- Originated in the 1961 Ground Water Code
 - Predated 1973 Water Use Act
 - Predated 1971 Montana Administrative Procedure Act.
- Problems
 - Petition Process
 - Lack of defined hearing process
 - Outdated Criteria

Pre-2009: Petition

- Initiated by Petition
 - Department
 - state or local public health agency
 - at least 20 or one-fourth of the users, whichever is the lesser number, of ground water in proposed CGWA
 - No limit of the size of proposed area
- Petition need only “allege” facts; no threshold of supporting data required.
- Once Petition filed, process must begin.

Pre-2009: Procedure

- “Department shall fix a time and place for hearing” and hold a “full, fair, and orderly proceeding and permit all relevant evidence (oral and written) to be received.”
- No specific hearing process defined.
- Parties unknown until hearing.
- Increasingly difficult to balance general public participation with represented interests for the taking of evidence.
 - Four Corners, Smith Valley

SB 120 - Petition

- Rulemaking process under MAPA (like basin closures §85-2-319, MCA).
- Department can initiate on its own.
- Petitions by:
 - state or local public health agency
 - municipality, county, conservation district, or local water quality district formed under Title 7, chapter 13, part 45
 - at least one-third of the water right holders in a proposed controlled ground water area

SB 120 - Petition Requirements

A petition must:

- contain analysis prepared by a hydrogeologist, a qualified scientist, or a qualified licensed professional engineer concluding that one or more of the criteria are met; and
- describe proposed measures, if any, to mitigate effects of the criteria that are alleged in the petition.

SB 120 Criteria

- DNRC may designate CGWA by rule if it finds by a preponderance of the evidence that any of the following criteria have been met and cannot be appropriately mitigated:

(a) current or projected reductions of recharge to the aquifer or aquifers in the proposed controlled ground water area will cause ground water levels to decline to the extent that water right holders cannot reasonably exercise their water rights;

(b) current or projected ground water withdrawals from the aquifer or aquifers in the proposed controlled ground water area have reduced or will reduce ground water levels or surface water availability necessary for water right holders to reasonably exercise their water rights;

- (c) current or projected ground water withdrawals from the aquifer or aquifers in the proposed controlled ground water area have induced or altered or will induce or alter contaminant migration exceeding relevant water quality standards;*
- (d) current or projected ground water withdrawals from the aquifer or aquifers in the proposed controlled ground water area have impaired or will impair ground water quality necessary for water right holders to reasonably exercise their water rights based on relevant water quality standards;*
- (e) ground water within the proposed controlled ground water area is not suited for beneficial use; or*
- (f) public health, safety, or welfare is or will become at risk.*

SB 120 Hearing Procedure

- Rulemaking hearing under MAPA.
- Notice of hearing complies with MAPA requirements and additional requirements similar to pre-2009 CGWA.
 - Notice must include summary of basis for proposed rule.
 - All of the technical information forming the basis for the rule would be available from the Department at the time of proposal.

SB120: TEMPORARY CGWA

- Temporary is set by rule not to exceed 6 years.
- Temporary designation is a study designation.
 - withdrawals are not restricted
 - can require measurement, water quality testing, and reporting requirements
- MBMG may study temporary CGWAs under its Ground Water Investigation Program
- Studies for temporary CGWAs are eligible for funding under renewable resource grant and loan program.

SB 120: Permanent CGWA

Potential Control Provisions:

- closing the controlled ground water area to further appropriation of ground water;
- restricting the development of future ground water appropriations by flow, volume, purpose, aquifer, depth, water temperature, water quality, density, or other criteria that the department determines necessary;
- measurement of future ground water or surface water appropriations;
- filing of notice on land records to inform prospective holders of existence of CGWA;

SB 120 Permanent CGWA

Potential Controls - continued

- well spacing, construction and prior approval requirements;
- mitigation of ground water withdrawals;
- water quality testing and data reporting; and
- other control provisions that the Department determines are appropriate and adopts through rulemaking.

Advantages of SB 120

- Address local ground water concerns.
- Wide variety of regulatory tools available to be tailored to local conditions.
- Defined MAPA rulemaking process.
- Allows for participation of wide array of the public.
- Criteria are updated to reflect today's world.