

1 *Senate* BILL NO. 310
 2 INTRODUCED BY *Dooley Halliburton Tom Fashbender*
 3 *Turnage Rasmussen Roberts Murphy LYNCH Watt*
 4 A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE FOR A POLICY *Leibel*
 5 OF PRESERVING THE NATURAL OR EXISTING SHAPE, FORM AND COURSE *Levine*
 6 OF STREAMS TO ACTIVITIES OF PRIVATE PERSONS OR *Nealy*
 7 ORGANIZATIONS; AND IN SO DOING TO KEEP SOIL EROSION AND
 8 SEDIMENTATION TO A MINIMUM IN THE STATE OF MONTANA; AND TO
 9 PROVIDE FOR PENALTIES AND ENFORCEMENT."

10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

11 Section 1. Short title. This act may be cited as "The
12 Natural Streambed and Land Preservation Act of 1975".

13 Section 2. Policy of state. It is the policy of the
14 state of Montana that its natural rivers and streams, and
15 the lands and property immediately adjacent to them within
16 the state are to be protected and preserved to be available
17 in their natural, or existing state, and to prohibit
18 unauthorized projects and in so doing to keep soil erosion
19 and sedimentation to a minimum, except as may be necessary
20 and appropriate after due consideration of all factors
21 involved.

22 Section 3. Definitions, as used in this act:

23 (1) "Stream" means any perennial flowing stream, or river,
24 its bed and immediate banks.
25

1 (2) "Person" means any natural person, corporation,
2 firm, partnership, association or other legal entity, not
3 covered under section 26-1502.

4 (3) "District" means a conservation district under
5 Title 76, chapter 1, in which the project will take place; a
6 grass conservation district, under Title 46, chapter 23,
7 where no conservation district exists; or the board of
8 county commissioners where a district does not exist.

9 (4) "Supervisors" means the board of supervisors of a
10 conservation district, the directors of a grass conservation
11 district, or the board of county commissioners where a
12 proposed project is not within a district.

13 (5) "Project" means a physical alteration or
14 modification of a stream in the state of Montana which
15 results in a change in the state of the stream in
16 contravention of section [2 of this act].

17 (6) "Applicant" means any person presenting notice of
18 a project to the supervisors.

19 (7) "Department" means the Montana department of fish
20 and game.

21 (8) "Team" means one (1) representative of the
22 supervisors, one (1) representative of the department, and
23 the applicant or his representative.

24 Section 4. Notice of project. (1) A person planning
25 to engage in a project shall present written notice of the

1 project to the supervisors before any portion of the project
2 takes place.

3 (2) The notice shall include the location, general
4 description, and preliminary plan of the project.

5 Section 5. Procedure for considering projects -- team.

6 (1) The supervisors shall receive all notices for projects
7 within their district and shall send, within five (5) days
8 of receipt, one (1) copy to the department. The department
9 shall notify, within five (5) days of receipt of notice, the
10 supervisors of their interest in the project.

11 (2) The supervisors shall promptly examine and
12 investigate each notice of a proposed project received under
13 the provisions of this act. If the supervisors determine
14 the plans and specifications furnished with the notice to be
15 technically insufficient, the supervisors shall notify the
16 applicant, and they may render aid in preparing other plans
17 and specifications.

18 (3) The supervisors shall call the team together
19 within twenty (20) days of receipt of notice, at their
20 request or at the request of the department or the applicant
21 for an on-site inspection. Any member of the team shall
22 notify the supervisors in writing within five (5) days after
23 notice of the call for an inspection of his waiver of
24 participation in the inspection or the preparation of the
25 plan.

1 (4) Each member of the team shall recommend, in
2 writing, within fifty (50) days of date of application,
3 denial, approval, or modification of the project to the
4 supervisors. The applicant may waive participation in this
5 recommendation.

6 (5) The supervisors shall review the proposed project
7 and affirm, overrule, or modify the individual team
8 recommendations, and notify the applicant and team members
9 within sixty (60) days of the date of application, of their
10 decision.

11 (6) When a member of the team disagrees with the
12 supervisors' action, he may ask, within five (5) days of
13 receipt of the supervisors' decision, that an arbitration
14 panel, as provided in section [6 of this act] be appointed
15 to hear the dispute and make a final written decision
16 thereon.

17 (7) Upon written notice, with any recommendation or
18 alternative plan, by the supervisors to the applicant, the
19 applicant, within fifteen (15) days, shall notify the
20 supervisors in writing if he wishes to proceed with the
21 project in accordance with the recommendations or
22 alternative plans. No work may be commenced on a project
23 prior to the expiration of this fifteen (15) day period
24 unless written permission is given by all team members.

25 (8) The supervisors may extend the request of any team

1 member, the time limits provided in section [5 (4) and (5)
 2 of this act] where, in their determination, the time
 3 provided is not sufficient to carry out the purposes of this
 4 act. The time extension may not, in total, exceed one (1)
 5 year from date of application. The applicant shall be
 6 notified, within sixty (60) days of date of application, of
 7 the initial time extension and shall be notified immediately
 8 of any subsequent time extensions.

9 (9) No work on a project under this act may take place
 10 without the written consent of the supervisors.

11 Section 6. Arbitration panel -- costs. (1) The
 12 arbitration panel shall consist of three (3) nonpartisan
 13 members chosen by the senior judge of the judicial district
 14 in which the dispute takes place. The members shall be
 15 residents of that judicial district at the time of
 16 selection. This panel shall sit for only that period of
 17 time necessary to settle the dispute before it.

18 (2) Cost of the arbitration panel, computed as for
 19 jurors' fees under section 25-401, shall be borne by the
 20 contesting party or parties; all other parties shall bear
 21 their own costs.

22 Section 7. Vested water rights preserved. This act
 23 shall not impair, diminish, divest, or control any existing
 24 or vested water rights under the laws of the state of
 25 Montana or the United States.

1 Section 8. Emergencies -- procedure. (1) The
 2 provisions of this act shall not apply to those actions
 3 which are necessary to safeguard life or property, including
 4 growing crops, during periods of emergency. The person
 5 responsible for any project under this section shall notify
 6 the supervisors in writing within fifteen (15) days of the
 7 action taken as a result of an emergency.

8 (2) The supervisors shall send one (1) copy of the
 9 notice, within five (5) days, to the department.

10 (3) A team, called together as described in section [5
 11 (3) of this act], shall make an on-site inspection and
 12 individual written reports to the supervisors within thirty
 13 (30) days giving their observations and opinions on the
 14 emergency project.

15 (4) If the same or a similar emergency occurs to the
 16 same applicant more than once within any five (5) year
 17 period, the supervisors shall request the team members to
 18 include in their reports a determination of the validity of
 19 the emergency action and to ascertain the feasibility of a
 20 more permanent solution to that emergency action.

21 (5) The supervisors shall determine the feasibility of
 22 the more permanent solution ascertained by each team member,
 23 and select the most feasible. They shall recommend, within
 24 thirty (30) days, that the person put the selected solution
 25 into effect within a reasonable period of time, as

1 determined by the supervisors. Failure of the person to put
2 that solution into effect is not a violation of this act
3 unless a subsequent emergency action results from this
4 failure.

5 (6) When a member of the team or the applicant
6 disagrees with the supervisors' recommendation, he may ask
7 that an arbitration panel, as provided in section [6 of this
8 act], be appointed to hear the dispute and make a final
9 written decision thereon.

10 Section 9. Modification of plan -- cost sharing. If
11 the final decision of the arbitration panel requires
12 modifications or alterations from the original project plan,
13 as approved by the supervisors, then the arbitration panel
14 shall include in its decision any part or percent of these
15 modifications or alterations that is for the direct benefit
16 of the public and it shall assign any costs to the proper
17 participant.

18 Any of the involved entities may withdraw or modify
19 required modification of the project within ten (10) days
20 after the decision.

21 Section 10. Application of flood plain management act.
22 Approval for proposed projects or alternate plans does not
23 relieve the applicant of the responsibility of complying
24 with Title 89, chapter 35, floodway management and
25 regulation where designated flood plains or designated

1 floodways have been established in accordance with that
2 chapter.

3 Section 11. Rules -- minimum standards. (1) By July
4 1, 1975, the board of natural resources and conservation in
5 cooperation with the state fish and game commission shall
6 adopt rules setting minimum standards and guidelines for the
7 purposes of this act.

8 (2) By January 1, 1976, the supervisors shall adopt,
9 by resolution and after a public hearing, rules and
10 standards for the review and approval of a project which
11 shall meet or exceed the minimum standards set by the board
12 under subsection (1) of this section.

13 Section 12. Judicial review. Any final action under
14 this act may be appealed within thirty (30) days to the
15 district court as provided in the Montana Administrative
16 Procedure Act.

17 Section 13. Public nuisance. Except for emergency
18 action, stream channel activity engaged in by any person
19 without prior approval, as prescribed in this act, is
20 declared a public nuisance and subject to proceedings for
21 immediate abatement.

22 Section 14. Penalty -- misdemeanor -- restoration.
23 (1) Any person initiating a project without written consent
24 of the supervisors is guilty of a misdemeanor and upon
25 conviction shall be punished by a fine of not less than

1 twenty-five dollars (\$25) nor more than five hundred dollars
2 (\$500), for each day that person continues to physically
3 alter or modify the stream, and in addition that person
4 shall restore, at the discretion of the court, the damaged
5 stream, as recommended by the team and approved by the
6 supervisors, to as near its prior condition as possible.

7 (2) Any person or entity who violates the time
8 provisions of this act is guilty of a misdemeanor and upon
9 conviction shall be punished by a fine of five dollars (\$5)
10 per day.

11 Section 15. Severability. If a part of this act is
12 invalid, all valid parts that are severable from the invalid
13 part remain in effect. If a part of this act is invalid in
14 one or more of its applications, the part remains in effect
15 in all valid applications that are severable from the
16 invalid applications.

-End-

STATE OF MONTANA

REQUEST NO. 135-75

FISCAL NOTE

Form BD-15

In compliance with a written request received January 31, 19 75, there is hereby submitted a Fiscal Note for Senate Bill 310 pursuant to Chapter 53, Laws of Montana, 1965 - Thirty-Ninth Legislative Assembly.

Background information used in developing this Fiscal Note is available from the Office of Budget and Program Planning, to members of the Legislature upon request.

DESCRIPTION OF PROPOSED LEGISLATION:

Senate Bill 310 provides a policy of preserving the natural or existing slope, form and course of streams to keep soil erosion and sedimentation to a minimum and to provide penalties and enforcement.

ASSUMPTIONS:

1. One and one-half time Fish and Game employees will be needed to administer the requirements of Senate Bill 310. A 10% yearly increase in salaries and benefits is assumed.
2. Additional capital outlays will not be required.

FISCAL IMPACT:

Estimated increase in expenditures by category	FY 76	FY 77
Personal Services	\$ 20,000	\$ 22,000
Operating Expenses	15,000	16,000
Estimated total increase	<u>\$ 35,000</u>	<u>\$ 38,000</u>

CONCLUSION:

Enactment of Senate Bill 310 will result in an estimated increase in expenditures of \$73,000 during the biennium.

Michael H. Bellings
by *Karen Wilson*
BUDGET DIRECTOR

Office of Budget and Program Planning

Date: February 5, 1975

Approved by Committee
on Natural Resources

Approved by Comm.
on Fish and Game

1 SENATE BILL NO. 310
2 INTRODUCED BY GREELY, HAZELBAKER, TOWE, FASBENDER,
3 TURNAGE, REGAN, ROBERTS, MURPHY, LYNCH, WATT,
4 WARDEN, SEIBEL, DEVINE, HEALY
5

6 A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE FOR A POLICY
7 OF PRESERVING THE NATURAL OR EXISTING SHAPE, FORM AND COURSE
8 OF STREAMS TO ACTIVITIES OF PRIVATE PERSONS OR
9 ORGANIZATIONS; AND IN SO DOING TO KEEP SOIL EROSION AND
10 SEDIMENTATION TO A MINIMUM IN THE STATE OF MONTANA; AND TO
11 PROVIDE FOR PENALTIES AND ENFORCEMENT."
12

13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

14 Section 1. Short title. This act may be cited as "The
15 Natural Streambed and Land Preservation Act of 1975".

16 Section 2. Policy of state. It is the policy of the
17 state of Montana that its natural rivers and streams, and
18 the lands and property immediately adjacent to them within
19 the state are to be protected and preserved to be available
20 in their natural, or existing state, and to prohibit
21 unauthorized projects and in so doing to keep soil erosion
22 and sedimentation to a minimum, except as may be necessary
23 and appropriate after due consideration of all factors
24 involved. FURTHER, IT IS THE POLICY OF THIS STATE TO
25 PROTECT LAND AND PROPERTY FROM STREAM MEANDERING AND

1 FLOODING; TO RECOGNIZE THE NEEDS OF IRRIGATION AND
2 AGRICULTURAL USE OF THE RIVERS AND STREAMS OF THE STATE OF
3 MONTANA; AND TO PROTECT THE USE OF WATER FOR ANY USEFUL OR
4 BENEFICIAL PURPOSE AS GUARANTEED BY THE CONSTITUTION OF THE
5 STATE OF MONTANA.

6 Section 3. Definitions, as used in this act: (1)
7 "Stream" means any NATURAL perennial flowing stream, or
8 river, its bed and immediate banks.

9 (2) "Person" means any natural person, corporation,
10 firm, partnership, association or other legal entity, not
11 covered under section 26-1502.

12 (3) "District" means a conservation district under
13 Title 76, chapter 1, in which the project will take place; a
14 grass conservation district, under Title 46, chapter 23,
15 where no conservation district exists; or the board of
16 county commissioners where a district does not exist.

17 (4) "Supervisors" means the board of supervisors of a
18 conservation district, the directors of a grass conservation
19 district, or the board of county commissioners where a
20 proposed project is not within a district.

21 (5) "Project" means a MAJOR physical alteration or
22 modification of a stream in the state of Montana which
23 results in a change in the state of the stream in
24 contravention of section [2 of this act], BUT DOES NOT
25 INCLUDE MINOR ALTERATIONS NECESSARY FOR THE USE AND

1 PROTECTION OF ADJACENT LANDS.

2 (6) "Applicant" means any person presenting notice of
3 a project to the supervisors.

4 (7) "Department" means the Montana department of fish
5 and game.

6 (8) "Team" means one (1) representative of the
7 supervisors, one (1) representative of the department, and
8 the applicant or his representative.

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13 (2) The notice shall include the location, general
14 description, and preliminary plan of the project.

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17 within their district and shall send, within five (5) days
18 of receipt, one (1) copy to the department. The department
19 shall notify, within five (5) days of receipt of notice, the
20 supervisors of their interest in the project.

21 (2) The supervisors shall promptly examine and
22 investigate each notice of a proposed project received under
23 the provisions of this act TO DETERMINE IF THE PROPOSED
24 PROJECT FALLS WITHIN THE PURPOSES SET FORTH IN SECTION 2.
25 If the supervisors determine the plans and specifications

1 furnished with the notice to be technically insufficient,
2 the supervisors shall notify the applicant, and they may
3 render aid in preparing other plans and specifications.

4 (3) The supervisors shall call the team together
5 within twenty (20) days of receipt of notice, at their
6 request or at the request of the department or the applicant
7 for an on-site inspection. Any member of the team shall
8 notify the supervisors in writing within five (5) days after
9 notice of the call for an inspection of his waiver of
10 participation in the inspection or the preparation of the
11 plan.

12 (4) Each member of the team shall recommend, in
13 writing, within fifty (50) days of date of application,
14 denial, approval, or modification of the project to the
15 supervisors. The applicant may waive participation in this
16 recommendation.

17 (5) The supervisors shall review the proposed project
18 and affirm, overrule, or modify the individual team
19 recommendations, and notify the applicant and team members
20 within sixty (60) days of the date of application, of their
21 decision.

22 (6) When a member of the team disagrees with the
23 supervisors' action, he may ask, within five (5) days of
24 receipt of the supervisors' decision, that an arbitration
25 panel, as provided in section [6 of this act] be appointed

1 to hear the dispute and make a final written decision
2 thereon.

3 (7) Upon written notice, with any recommendation or
4 alternative plan, by the supervisors to the applicant, the
5 applicant, within fifteen (15) days, shall notify the
6 supervisors in writing if he wishes to proceed with the
7 project in accordance with the recommendations or
8 alternative plans. No work may be commenced on a project
9 prior to the expiration of this fifteen (15) day period
10 unless written permission is given by all team members.

11 (8) The supervisors may extend the request of any team
12 member, the time limits provided in section [5 (4) and (5)
13 of this act] where, in their determination, the time
14 provided is not sufficient to carry out the purposes of this
15 act. The time extension may not, in total, exceed one (1)
16 year from date of application. The applicant shall be
17 notified, within sixty (60) days of date of application, of
18 the initial time extension and shall be notified immediately
19 of any subsequent time extensions.

20 (9) No work on a project under this act may take place
21 without the written consent of the supervisors.

22 Section 6. Arbitration panel -- costs. (1) The
23 arbitration panel shall consist of three (3) ~~nonpartisan~~
24 members chosen by the senior judge of the judicial district
25 in which the dispute takes place. The members shall be

1 residents of that judicial district at the time of
2 selection. This panel shall sit for only that period of
3 time necessary to settle the dispute before it AND WILL
4 REVIEW THE PROPOSED PROJECT IN LINE WITH THE POLICY SET
5 FORTH IN SECTION 2.

6 (2) Cost of the arbitration panel, computed as for
7 jurors' fees under section 25-401, shall be borne by the
8 contesting party or parties; all other parties shall bear
9 their own costs.

10 Section 7. Vested water rights preserved. This act
11 shall not impair, diminish, divest, or control any existing
12 or vested water rights under the laws of the state of
13 Montana or the United States.

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15 provisions of this act shall not apply to those actions
16 which are necessary to safeguard life or property, including
17 growing crops, during periods of emergency. The person
18 responsible for any project under this section shall notify
19 the supervisors in writing within fifteen (15) days of the
20 action taken as a result of an emergency.

21 (2) The supervisors shall send one (1) copy of the
22 notice, within five (5) days to the department.

23 (3) A team, called together as described in section [5
24 (3) of this act], shall make an on-site inspection and
25 individual written reports to the supervisors within thirty

1 (30) days giving their observations and opinions on the
2 emergency project.

3 (4) If the same or a similar emergency occurs to the
4 same applicant more than once within any five (5) year
5 period, the supervisors shall request the team members to
6 include in their reports a determination of the validity of
7 the emergency action and to ascertain the feasibility of a
8 more permanent solution to that emergency action.

9 (5) The supervisors shall determine the feasibility of
10 the A more permanent solution ~~ascertained--by--each--team~~
11 ~~member, and select-the-most-feasibler--They~~ shall recommend,
12 within thirty (30) days, that the person put the ~~selected~~
13 solution into effect within a reasonable period of time, as
14 determined by the supervisors. Failure of the person to put
15 that solution into effect is not a violation of this act
16 unless a subsequent emergency action results from this
17 failure.

18 (6) When a member of the team or the applicant
19 disagrees with the supervisors' recommendation, he may ask
20 that an arbitration panel, as provided in section [6 of this
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22 written decision thereon.

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24 the final decision of the arbitration panel requires
25 modifications or alterations from the original project plan,

1 as approved by the supervisors, then the arbitration panel
2 shall include in its decision any part or percent of these
3 modifications or alterations that is for the direct benefit
4 of the public and it shall assign any costs to the proper
5 participant.

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7 required modification of the project within ten (10) days
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12 with Title 89, chapter 35, floodway management and
13 regulation where designated flood plains or designated
14 floodways have been established in accordance with that
15 chapter.

16 Section 11. Rules -- minimum standards. (1) By July
17 1, 1975, the board of natural resources and conservation in
18 cooperation with the ~~state--fish--and--game--commission~~
19 ASSOCIATION OF CONSERVATION DISTRICTS shall adopt rules
20 setting minimum standards and guidelines for the purposes of
21 this act.

22 (2) By January 1, 1976, the supervisors shall adopt,
23 by resolution and after a public hearing, rules and
24 standards for the review and approval of a project which
25 shall meet or exceed the minimum standards set by the board

1 under subsection (1) of this section AND SET STANDARDS AND
 2 EXCLUSIONS FOR MINOR ALTERATIONS OF STREAMS SUCH AS
 3 INSTALLATION OF CULVERTS, BRIDGES, MACHINERY CROSSINGS,
 4 SNAGGING AND OTHER SIMILAR MINOR ALTERATIONS AND
 5 MODIFICATIONS WITHIN THEIR DISTRICTS.

6 Section 12. Judicial review. Any final action under
 7 this act may be appealed within thirty (30) days to the
 8 district court as provided in the Montana Administrative
 9 Procedure Act.

10 Section 13. Public nuisance. Except for emergency
 11 action, ~~stream-channel-activity~~ A PROJECT engaged in by any
 12 person without prior approval, as prescribed in this act, is
 13 declared a public nuisance and subject to proceedings for
 14 immediate abatement.

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16 (1) Any person initiating a project without written consent
 17 of the supervisors is guilty of a misdemeanor and upon
 18 conviction shall be punished by a fine of not less than
 19 twenty-five dollars (\$25) nor more than five hundred dollars
 20 (\$500), for each day that person continues to physically
 21 alter or modify the stream, and in addition that person
 22 shall restore, at the discretion of the court, the damaged
 23 stream, as recommended by the team and approved by the
 24 supervisors, to as near its prior condition as possible.

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1 provisions of this act is guilty of a misdemeanor and upon
 2 conviction shall be punished by a fine of five dollars (\$5)
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 5 invalid, all valid parts that are severable from the invalid
 6 part remain in effect. If a part of this act is invalid in
 7 one or more of its applications, the part remains in effect
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 9 invalid applications.

-End-

SENATE BILL NO. 310

INTRODUCED BY GREELY, HAZELBAKER, TOWE, FASBENDER,
TURNAGE, REGAN, ROBERTS, MURPHY, LYNCH, WATT,
WARDEN, SEIBEL, DEVINE, HEALY

A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE FOR A POLICY
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the lands and property immediately adjacent to them within
the state are to be protected and preserved to be available
in their natural, or existing state, and to prohibit
unauthorized projects and in so doing to keep soil erosion
and sedimentation to a minimum, except as may be necessary
and appropriate after due consideration of all factors
involved. FURTHER, IT IS THE POLICY OF THIS STATE TO
PROTECT--LAND--AND--PROPERTY--FROM--STREAM--MEANDERING--AND

FLOODING; TO RECOGNIZE THE NEEDS OF IRRIGATION AND
AGRICULTURAL USE OF THE RIVERS AND STREAMS OF THE STATE OF
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(3) "District" means a conservation district under
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(2) The notice shall include the location, general description and preliminary plan of the project.

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If the supervisors determine the plans and specifications

furnished with the notice to be technically insufficient, the supervisors shall notify the applicant, and they may render aid in preparing other plans and specifications.

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(4) Each member of the team shall recommend, in writing, within fifty (50) days of date of application, denial, approval, or modification of the project to the supervisors. The applicant may waive participation in this recommendation.

(5) The supervisors shall review the proposed project and affirm, overrule, or modify the individual team recommendations, and notify the applicant and team members within sixty (60) days of the date of application, of their decision.

(6) When a member of the team disagrees with the supervisors' action, he may ask, within five (5) days of receipt of the supervisors' decision, that an arbitration panel, as provided in section [6 of this act] be appointed

1 to hear the dispute and make a final written decision
2 thereon.

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4 alternative plan, by the supervisors to the applicant, the
5 applicant, within fifteen (15) days, shall notify the
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8 alternative plans. No work may be commenced on a project
9 prior to the expiration of this fifteen (15) day period
10 unless written permission is given by all team members.

11 (8) The supervisors may extend the request of any team
12 member, the time limits provided in section [5 (4) and (5)
13 of this act] where, in their determination, the time
14 provided is not sufficient to carry out the purposes of this
15 act. The time extension may not, in total, exceed one (1)
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18 the initial time extension and shall be notified immediately
19 of any subsequent time extensions.

20 (9) No work on a project under this act may take place
21 without the written consent of the supervisors.

22 Section 6. Arbitration panel -- costs. (1) The
23 arbitration panel shall consist of three (3) **nonpartisan**
24 members chosen by the senior judge of the judicial district
25 in which the dispute takes place. The members shall be

1 residents of that judicial district at the time of
2 selection. This panel shall sit for only that period of
3 time necessary to settle the dispute before it AND WILL
4 REVIEW THE PROPOSED PROJECT IN LINE WITH THE POLICY SET
5 FORTH IN SECTION 2.

6 (2) Cost of the arbitration panel, computed as for
7 jurors' fees under section 25-401, shall be borne by the
8 contesting party or parties; all other parties shall bear
9 their own costs.

10 Section 7. Vested water rights preserved. This act
11 shall not impair, diminish, divest, or control any existing
12 or vested water rights under the laws of the state of
13 Montana or the United States.

14 Section 8. Emergencies -- procedure. (1) The
15 provisions of this act shall not apply to those actions
16 which are necessary to safeguard life or property, including
17 growing crops, during periods of emergency. The person
18 responsible for any project under this section shall notify
19 the supervisors in writing within fifteen (15) days of the
20 action taken as a result of an emergency.

21 (2) The supervisors shall send one (1) copy of the
22 notice, within five (5) days to the department.

23 (3) A team, called together as described in section [5
24 (3) of this act], shall make an on-site inspection and
25 individual written reports to the supervisors within thirty

1 (30) days giving their observations and opinions on the
2 emergency project.

3 (4) If the same or a similar emergency occurs to the
4 same applicant more than once within any five (5) year
5 period, the supervisors shall request the team members to
6 include in their reports a determination of the validity of
7 the emergency action and to ascertain the feasibility of a
8 more permanent solution to that emergency action.

9 (5) The supervisors shall determine the feasibility of
10 ~~the a more permanent solution ascertained by each team~~
11 ~~members and select the most feasible.~~ They shall recommend,
12 within thirty (30) days, that the person put the selected
13 solution into effect within a reasonable period of time, as
14 determined by the supervisors. Failure of the person to put
15 that solution into effect is not a violation of this act
16 unless a subsequent emergency action results from this
17 failure.

18 (6) When a member of the team or the applicant
19 disagrees with the supervisors' recommendation, he may ask
20 that an arbitration panel, as provided in section [6 of this
21 act], be appointed to hear the dispute and make a final
22 written decision thereon.

23 Section 9. Modification of plan -- cost sharing. If
24 the final decision of the arbitration panel requires
25 modifications or alterations from the original project plan,

1 as approved by the supervisors, then the arbitration panel
2 shall include in its decision any part or percent of these
3 modifications or alterations that is for the direct benefit
4 of the public and it shall assign any costs to the proper
5 participant.

6 Any of the involved entities may withdraw or modify
7 required modification of the project within ten (10) days
8 after the decision.

9 Section 10. Application of flood plain management act.
10 Approval for proposed projects or alternate plans does not
11 relieve the applicant of the responsibility of complying
12 with Title 89, chapter 35, floodway management and
13 regulation where designated flood plains or designated
14 floodways have been established in accordance with that
15 chapter.

16 Section 11. Rules -- minimum standards. (1) By July
17 1, 1975, the board of natural resources and conservation in
18 cooperation with the ~~state--fish--and--game--commission~~
19 ASSOCIATION OF CONSERVATION DISTRICTS shall adopt rules
20 setting minimum standards and guidelines for the purposes of
21 this act.

22 (2) By January 1, 1976, the supervisors shall adopt,
23 by resolution and after a public hearing, rules and
24 standards for the review and approval of a project which
25 shall meet or exceed the minimum standards set by the board

1 under subsection (1) of this section AND SET STANDARDS AND
 2 EXCLUSIONS FOR MINOR ALTERATIONS OF STREAMS SUCH AS
 3 INSTALLATION OF CULVERTS, BRIDGES, MACHINERY CROSSINGS,
 4 SNAGGING AND OTHER SIMILAR MINOR ALTERATIONS AND
 5 MODIFICATIONS WITHIN THEIR DISTRICTS.

6 Section 12. Judicial review. Any final action under
 7 this act may be appealed within thirty (30) days to the
 8 district court, ~~as provided in the Montana Administrative~~
 9 ~~Procedure Act.~~

10 Section 13. Public nuisance. Except for emergency
 11 action, ~~stream-channel-activity~~ A PROJECT engaged in by any
 12 person without prior approval, as prescribed in this act, is
 13 declared a public nuisance and subject to proceedings for
 14 immediate abatement.

15 Section 14. Penalty -- misdemeanor -- restoration.
 16 (1) Any person initiating a project without written consent
 17 of the supervisors is guilty of a misdemeanor and upon
 18 conviction shall be punished by a fine of not less than
 19 twenty-five dollars (\$25) nor more than five hundred dollars
 20 (\$500), for each day that person continues to physically
 21 alter or modify the stream, and in addition that person
 22 shall restore, at the discretion of the court, the damaged
 23 stream, as recommended by the team and approved by the
 24 supervisors, to as near its prior condition as possible.

25 (2) Any person or entity who violates the time

1 provisions of this act is guilty of a misdemeanor and upon
 2 conviction shall be punished by a fine of five dollars (\$5)
 3 per day.

4 Section 15. Severability. If a part of this act is
 5 invalid, all valid parts that are severable from the invalid
 6 part remain in effect. If a part of this act is invalid in
 7 one or more of its applications, the part remains in effect
 8 in all valid applications that are severable from the
 9 invalid applications.

-End-

COMMITTEE ON NATURAL RESOURCES AMENDMENTS TO SENATE BILL NO. 310

1. Amend page 2, section 3, subsection (5), line 21.

Following: "a"

Strike: "MAJOR"

2. Amend page 2, section 3, subsection (5), lines 24 and 25; and on page 3, line 1.

Following: "this act]"

Strike: The remainder of subsection (5) in its entirety.

Insert: "."

3. Amend page 3, section 5, subsections (1), (2), and (3), lines 16 through 25; and on page 4, lines 1 through 11.

Strike: All of subsections (1), (2) and (3).

Insert: The following three new subsections (1), (2) and (3).

"(1) The supervisors shall receive all notices of proposed projects within their district. They shall, within five (5) days of receipt of a notice, examine and investigate the notice and determine whether the proposal is for a project. They shall, within such period, send a copy of their determination to the department and the applicant. If the supervisors determine that the proposal is not a project, the applicant may, ten (10) days after mailing of such determination to the applicant, proceed with the proposed activity unless a team member requests arbitration as provided for in section 6 of this act.

(2) If the supervisors determine that the proposal is for a project, the department shall, within five (5) days of receipt of such determination, notify the supervisors whether the department requests an on-site inspection by a team.

(3) The supervisors shall call a team together within twenty (20) days of receipt of the request of the department for an on-site

COMMITTEE ON NATURAL RESOURCES AMENDMENTS TO SENATE BILL NO. 310, CONTINUED.

inspection. Any member of the team shall notify the supervisors in writing within five (5) days after notice of the call for an inspection of his waiver of participation in the inspection. If the department does not request an on-site inspection within the time specified above, the supervisors may deny or approve the project or may make recommendations for alternative plans."

4. Amend page 5, section 5, subsection (7), line 10.

Following: "members."

Insert: "If the written decision of the supervisors approves the proposed project without recommendation or alternative plan, the applicant may proceed with the project upon the expiration of ten (10) days after receipt of the decision."

5. Amend page 8, section 11, subsection (1), lines 17 and 18.

Following: "conservation"

Strike: "in cooperation"

Insert: "after consultation"

6. Amend page 8, section 11, subsection (2), lines 22 through 25; and on page 9, lines 1 through 5.

Strike: Subsection (2) in its entirety.

Insert: "(2) By January 1, 1976, the supervisors of each district shall adopt by resolution after a public hearing rules setting standards and guidelines for projects within their districts which shall meet or exceed the minimum standards set by the board under subsection (1) of this section."

AS SO AMENDED

BE CONCURRED IN

SENATE BILL NO. 310

INTRODUCED BY GREELY, HAZELBAKER, TOWE, FASBENDER,
TURNAGE, REGAN, ROBERTS, MURPHY, LYNCH, WATT,
WARDEN, SEIBEL, DEVINE, HEALY

A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE FOR A POLICY OF PRESERVING THE NATURAL OR EXISTING SHAPE, FORM AND COURSE OF STREAMS TO ACTIVITIES OF PRIVATE PERSONS OR ORGANIZATIONS; AND IN SO DOING TO KEEP SOIL EROSION AND SEDIMENTATION TO A MINIMUM IN THE STATE OF MONTANA; AND TO PROVIDE FOR PENALTIES AND ENFORCEMENT."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Short title. This act may be cited as "The Natural Streambed and Land Preservation Act of 1975".

Section 2. Policy of state. It is the policy of the state of Montana that its natural rivers and streams, and the lands and property immediately adjacent to them within the state are to be protected and preserved to be available in their natural, or existing state, and to prohibit unauthorized projects and in so doing to keep soil erosion and sedimentation to a minimum, except as may be necessary and appropriate after due consideration of all factors involved. FURTHER, IT IS THE POLICY OF THIS STATE TO PROTECT--LAND--AND--PROPERTY--FROM--STREAM--MEANDERING--AND

FLOODING, TO RECOGNIZE THE NEEDS OF IRRIGATION AND AGRICULTURAL USE OF THE RIVERS AND STREAMS OF THE STATE OF MONTANA; AND TO PROTECT THE USE OF WATER FOR ANY USEFUL OR BENEFICIAL PURPOSE AS GUARANTEED BY THE CONSTITUTION OF THE STATE OF MONTANA.

Section 3. Definitions. ~~as~~ AS used in this act:

(1) "Stream" means any NATURAL perennial flowing stream, or river, its bed and immediate banks.

(2) "Person" means any natural person, corporation, firm, partnership, association or other legal entity, not covered under section 26-1502.

(3) "District" means a conservation district under Title 76, chapter 1, in which the project will take place; a grass conservation district, under Title 46, chapter 23, where no conservation district exists; or the board of county commissioners where a district does not exist.

(4) "Supervisors" means the board of supervisors of a conservation district, the directors of a grass conservation district, or the board of county commissioners where a proposed project is not within a district.

(5) "Project" means a MAJOR physical alteration or modification of a stream in the state of Montana which results in a change in the state of the stream in contravention of section [2 of this act] ~~7-BUT-DONTS-NOT~~ INCLUDE--MINOR--ALTERATIONS--NECESSARY--FOR--THE--USE--AND

PROTECTION OF ADJACENT LANDS.

(6) "Applicant" means any person presenting notice of a project to the supervisors.

(7) "Department" means the Montana department of fish and game.

(8) "Team" means one (1) representative of the supervisors, one (1) representative of the department, and the applicant or his representative.

Section 4. Notice of project. (1) A person planning to engage in a project shall present written notice of the project to the supervisors before any portion of the project takes place.

(2) The notice shall include the location, general description, and preliminary plan of the project.

Section 5. Procedure for considering projects -- team.

~~(1) The supervisors shall receive all notices for projects within their district and shall send, within five (5) days of receipt, one (1) copy to the department. The department shall notify, within five (5) days of receipt of notice, the supervisors of their interest in the project.~~

~~(2) The supervisors shall promptly examine and investigate each notice of a proposed project received under the provisions of this act to determine if the proposed project falls within the purposes set forth in Section 2. If the supervisors determine the plans and specifications~~

~~furnished with the notice to be technically insufficient, the supervisors shall notify the applicant, and they may render aid in preparing other plans and specifications.~~

~~(3) The supervisors shall call the team together within twenty (20) days of receipt of notice, at their request or at the request of the department or the applicant for an on-site inspection. Any member of the team shall notify the supervisors in writing within five (5) days after notice of the call for an inspection of his waiver of participation in the inspection or the preparation of the plan.~~

(1) THE SUPERVISORS SHALL RECEIVE ALL NOTICES OF PROPOSED PROJECTS WITHIN THEIR DISTRICT. THEY SHALL, WITHIN FIVE (5) DAYS OF RECEIPT OF A NOTICE, EXAMINE AND INVESTIGATE THE NOTICE AND DETERMINE WHETHER THE PROPOSAL IS FOR A PROJECT. THEY SHALL, WITHIN SUCH PERIOD, SEND A COPY OF THEIR DETERMINATION TO THE DEPARTMENT AND THE APPLICANT. IF THE SUPERVISORS DETERMINE THAT THE PROPOSAL IS NOT A PROJECT, THE APPLICANT MAY, TEN (10) DAYS AFTER MAILING OF SUCH DETERMINATION TO THE APPLICANT, PROCEED WITH THE PROPOSED ACTIVITY UNLESS A TEAM MEMBER REQUESTS ARBITRATION AS PROVIDED FOR IN SECTION 6 OF THIS ACT.

(2) IF THE SUPERVISORS DETERMINE THAT THE PROPOSAL IS FOR A PROJECT, THE DEPARTMENT SHALL, WITHIN FIVE (5) DAYS OF RECEIPT OF SUCH DETERMINATION, NOTIFY THE SUPERVISORS

1 WHETHER THE DEPARTMENT REQUESTS AN ON-SITE INSPECTION BY A
2 TEAM.

3 (3) THE SUPERVISORS SHALL CALL A TEAM TOGETHER WITHIN
4 TWENTY (20) DAYS OF RECEIPT OF THE REQUEST OF THE DEPARTMENT
5 FOR AN ON-SITE INSPECTION. ANY MEMBER OF THE TEAM SHALL
6 NOTIFY THE SUPERVISORS IN WRITING WITHIN FIVE (5) DAYS AFTER
7 NOTICE OF THE CALL FOR AN INSPECTION OF HIS WAIVER OF
8 PARTICIPATION IN THE INSPECTION. IF THE DEPARTMENT DOES NOT
9 REQUEST AN ON-SITE INSPECTION WITHIN THE TIME SPECIFIED
10 ABOVE, THE SUPERVISORS MAY DENY OR APPROVE THE PROJECT OR
11 MAY MAKE RECOMMENDATIONS FOR ALTERNATIVE PLANS.

12 (4) Each member of the team shall recommend, in
13 writing, within fifty (50) days of date of application,
14 denial, approval, or modification of the project to the
15 supervisors. The applicant may waive participation in this
16 recommendation.

17 (5) The supervisors shall review the proposed project
18 and affirm, overrule, or modify the individual team
19 recommendations, and notify the applicant and team members
20 within sixty (60) days of the date of application, of their
21 decision.

22 (6) When a member of the team disagrees with the
23 supervisors' action, he may ask, within five (5) days of
24 receipt of the supervisors' decision, that an arbitration
25 panel, as provided in section [6 of this act] be appointed

1 to hear the dispute and make a final written decision
2 thereon.

3 (7) Upon written notice, with any recommendation or
4 alternative plan, by the supervisors to the applicant, the
5 applicant, within fifteen (15) days, shall notify the
6 supervisors in writing if he wishes to proceed with the
7 project in accordance with the recommendations or
8 alternative plans. No work may be commenced on a project
9 prior to the expiration of this fifteen (15) day period
10 unless written permission is given by all team members. IF
11 THE WRITTEN DECISION OF THE SUPERVISORS APPROVES THE
12 PROPOSED PROJECT WITHOUT RECOMMENDATION OR ALTERNATIVE PLAN,
13 THE APPLICANT MAY PROCEED WITH THE PROJECT UPON THE
14 EXPIRATION OF TEN (10) DAYS AFTER RECEIPT OF THE DECISION.

15 (8) The supervisors may extend the request of any team
16 member, the time limits provided in section [5 (4) and (5)
17 of this act] where, in their determination, the time
18 provided is not sufficient to carry out the purposes of this
19 act. The time extension may not, in total, exceed one (1)
20 year from date of application. The applicant shall be
21 notified, within sixty (60) days of date of application, of
22 the initial time extension and shall be notified immediately
23 of any subsequent time extensions.

24 (9) No work on a project under this act may take place
25 without the written consent of the supervisors.

1 Section 6. Arbitration panel -- costs. (1) The
 2 arbitration panel shall consist of three (3) ~~nonpartisan~~
 3 members chosen by the senior judge of the judicial district
 4 in which the dispute takes place. The members shall be
 5 residents of that judicial district at the time of
 6 selection. This panel shall sit for only that period of
 7 time necessary to settle the dispute before it AND WILL
 8 REVIEW THE PROPOSED PROJECT IN LINE WITH THE POLICY SET
 9 FORTH IN SECTION 2.

10 (2) Cost of the arbitration panel, computed as for
 11 jurors' fees under section 25-401, shall be borne by the
 12 contesting party or parties; all other parties shall bear
 13 their own costs.

14 Section 7. Vested water rights preserved. This act
 15 shall not impair, diminish, divest, or control any existing
 16 or vested water rights under the laws of the state of
 17 Montana or the United States.

18 Section 8. Emergencies -- procedure. (1) The
 19 provisions of this act shall not apply to those actions
 20 which are necessary to safeguard life or property, including
 21 growing crops, during periods of emergency. The person
 22 responsible for any project under this section shall notify
 23 the supervisors in writing within fifteen (15) days of the
 24 action taken as a result of an emergency.

25 (2) The supervisors shall send one (1) copy of the

1 notice, within five (5) days to the department.

2 (3) A team, called together as described in section [5
 3 (3) of this act], shall make an on-site inspection and
 4 individual written reports to the supervisors within thirty
 5 (30) days giving their observations and opinions on the
 6 emergency project.

7 (4) If the same or a similar emergency occurs to the
 8 same applicant more than once within any five (5) year
 9 period, the supervisors shall request the team members to
 10 include in their reports a determination of the validity of
 11 the emergency action and to ascertain the feasibility of a
 12 more permanent solution to that emergency action.

13 (5) The supervisors shall determine the feasibility of
 14 ~~the~~ A more permanent solution ~~ascertained--by--each--team~~
 15 ~~member,~~ and ~~select--the--most--feasible.~~ ~~They~~ shall recommend,
 16 within thirty (30) days, that the person put the ~~selected~~
 17 solution into effect within a reasonable period of time, as
 18 determined by the supervisors. Failure of the person to put
 19 that solution into effect is not a violation of this act
 20 unless a subsequent emergency action results from this
 21 failure.

22 (6) When a member of the team or the applicant
 23 disagrees with the supervisors' recommendation, he may ask
 24 that an arbitration panel, as provided in section [6 of this
 25 act], be appointed to hear the dispute and make a final

1 written decision thereon.

2 Section 9. Modification of plan -- cost sharing. If
3 the final decision of the arbitration panel requires
4 modifications or alterations from the original project plan,
5 as approved by the supervisors, then the arbitration panel
6 shall include in its decision any part or percent of these
7 modifications or alterations that is for the direct benefit
8 of the public and it shall assign any costs to the proper
9 participant.

10 Any of the involved entities may withdraw or modify
11 required modification of the project within ten (10) days
12 after the decision.

13 Section 10. Application of flood plain management act.
14 Approval for proposed projects or alternate plans does not
15 relieve the applicant of the responsibility of complying
16 with Title 89, chapter 35, floodway management and
17 regulation where designated flood plains or designated
18 floodways have been established in accordance with that
19 chapter.

20 Section 11. Rules -- minimum standards. (1) By July
21 1, 1975, the board of natural resources and conservation in
22 cooperation AFTER CONSULTATION with the ~~state-fish-and-game~~
23 ~~commission~~ ASSOCIATION OF CONSERVATION DISTRICTS shall adopt
24 rules setting minimum standards and guidelines for the
25 purposes of this act.

1 ~~(2) -- By January 1, 1976, the supervisors shall adopt,~~
2 ~~by resolution and after a public hearing, rules and~~
3 ~~standards for the review and approval of a project which~~
4 ~~shall meet or exceed the minimum standards set by the board~~
5 ~~under subsection (1) of this section AND SET STANDARDS AND~~
6 ~~EXCLUSIONS FOR MINOR ALTERATIONS OF STREAMS SUCH AS~~
7 ~~INSTALLATION OF CULVERTS, BRIDGES, MACHINERY, CROSSINGS,~~
8 ~~SNAGGING AND OTHER SIMILAR MINOR ALTERATIONS AND~~
9 ~~MODIFICATIONS WITHIN THEIR DISTRICTS.~~

10 (2) BY JANUARY 1, 1976, THE SUPERVISORS OF EACH
11 DISTRICT SHALL ADOPT BY RESOLUTION AFTER A PUBLIC HEARING
12 RULES SETTING STANDARDS AND GUIDELINES FOR PROJECTS WITHIN
13 THEIR DISTRICTS WHICH SHALL MEET OR EXCEED THE MINIMUM
14 STANDARDS SET BY THE BOARD UNDER SUBSECTION (1) OF THIS
15 SECTION.

16 Section 12. Judicial review. Any final action under
17 this act may be appealed within thirty (30) days to the
18 district court, ~~as provided in the Montana Administrative~~
19 ~~Procedure Act.~~

20 Section 13. Public nuisance. Except for emergency
21 action, ~~stream-channel-activity~~ A PROJECT engaged in by any
22 person without prior approval, as prescribed in this act, is
23 declared a public nuisance and subject to proceedings for
24 immediate abatement.

25 Section 14. Penalty -- misdemeanor -- restoration.

1 (1) Any person initiating a project without written consent
2 of the supervisors is guilty of a misdemeanor and upon
3 conviction shall be punished by a fine of not less than
4 twenty-five dollars (\$25) nor more than five hundred dollars
5 (\$500), for each day that person continues to physically
6 alter or modify the stream, and in addition that person
7 shall restore, at the discretion of the court, the damaged
8 stream, as recommended by the team and approved by the
9 supervisors, to as near its prior condition as possible.

10 (2) Any person or entity who violates the time
11 provisions of this act is guilty of a misdemeanor and upon
12 conviction shall be punished by a fine of five dollars (\$5)
13 per day.

14 Section 15. Severability. If a part of this act is
15 invalid, all valid parts that are severable from the invalid
16 part remain in effect. If a part of this act is invalid in
17 one or more of its applications, the part remains in effect
18 in all valid applications that are severable from the
19 invalid applications.

-End-