

1 *Senators* BILL NO. *139*
 2 INTRODUCED BY *Manley Salt Flynn*
 3

4 A BILL FOR AN ACT ENTITLED: "AN ACT TO ELIMINATE THE ROLE
 5 OF THE DEPARTMENT OF FISH AND GAME IN THE OPERATION OF THE
 6 NATURAL STREAMBED AND LAND PRESERVATION ACT OF 1975 AND TO
 7 PROVIDE FOR INCREASED CONTROL BY LOCAL OFFICIALS; AMENDING
 8 SECTIONS 26-1512, 26-1514, AND 26-1517, R.C.M. 1947."

9
 10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

11 Section 1. Section 26-1512, R.C.M. 1947, is amended to
 12 read as follows:

13 "26-1512. Definitions. As used in this act:

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

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

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

25 (4) "Supervisors" means the board of supervisors of a

1 conservation district, the directors of a grass conservation
 2 district, or the board of county commissioners where a
 3 proposed project is not within a conservation or grass
 4 conservation district.

5 (5) "Project" means a physical alteration or
 6 modification of a stream in the state of Montana which
 7 results in a change in the state of the stream in
 8 contravention of section 26-1511.

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

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

13 (8) "Team" means ~~one (1) representative of the~~
 14 ~~supervisors, one (1) representative of the department, and~~
 15 ~~the applicant or his representative~~ a group of three
 16 individuals appointed as provided in [section 2 of this
 17 act]."

18 Section 2. There is a new R.C.M. section numbered
 19 26-1512.1 that reads as follows:

20 26-1512.1. Appointment of team. Whenever a team is
 21 required under the provisions of 26-1511 through 26-1523,
 22 the supervisors shall appoint three individuals to act as
 23 such a team. One of the appointees must be the applicant or
 24 his representative. Another of the appointees shall be a
 25 representative of the supervisors. The third appointee may

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1 be any resident of the district.

2 Section 3. Section 26-1514, R.C.M. 1947, is amended to
3 read as follows:

4 "26-1514. Procedure for considering projects — team.

5 (1) The supervisors shall receive all notices of proposed
6 projects within their district. They shall, within ~~five~~ (5)
7 days of receipt of a the applicant's notice, examine and
8 investigate the notice and determine whether the proposal is
9 for a project. They shall, within ~~such~~ the 5-day period,
10 send a copy of their determination to the ~~department and the~~
11 applicant. If the supervisors determine that the proposal
12 is not a project, the applicant may, upon receipt of written
13 notice, proceed with the proposed activity.

14 (2) If the supervisors determine that the proposal is
15 for a project, ~~the department shall, within five (5) days of~~
16 ~~receipt of such determination, notify the supervisors~~
17 ~~whether the department requests an on-site inspection by a~~
18 ~~team they may require on-site inspection by a team, deny or~~
19 ~~approve the project, or make recommendations for alternative~~
20 ~~plans.~~

21 (3) ~~The~~ Whenever an on-site inspection is required,
22 the supervisors shall call a team together within ~~twenty~~
23 ~~(20)~~ 25 days of receipt of the ~~request of the department for~~
24 ~~an on-site inspection~~ applicant's notice. Any member of the
25 team shall notify the supervisors in writing within ~~five~~ (5)

1 days after notice of the call for an inspection of his
2 waiver of participation in the inspection. ~~If the~~
3 ~~department does not request an on-site inspection within the~~
4 ~~time specified above, the supervisors may deny or approve~~
5 ~~the project or may make recommendations for alternative~~
6 ~~plans.~~

7 (4) Each member of the team shall recommend, in
8 writing, within ~~fifty~~ (50) days of ~~date of application~~
9 receipt of the applicant's notice, denial, approval, or
10 modification of the project to the supervisors. The
11 applicant may waive participation in this recommendation.

12 (5) The supervisors shall review the proposed project
13 and affirm, overrule, or modify the individual team
14 recommendations, and notify the applicant and team members
15 of their decision within ~~sixty~~ (60) days of ~~the date of~~
16 ~~application,~~ receipt of the applicant's notice of their
17 decision.

18 (6) When a member of the team disagrees with the
19 supervisors' action, he may ask, within ~~five~~ (5) days of
20 receipt of the supervisors' decision, that an arbitration
21 panel, as provided in ~~section~~ 26-1515 be appointed to hear
22 the dispute and make a final written decision thereon.

23 (7) Upon written notice, with any recommendation or
24 alternative plan, by the supervisors to the applicant, the
25 applicant, within ~~fifteen~~ (15) days, shall notify the

1 supervisors in writing if he wishes to proceed with the
 2 project in accordance with the recommendations or
 3 alternative plans. No work may be commenced on a project
 4 prior to the expiration of this ~~fifteen (15) day~~ 15-day
 5 period unless written permission is given by all team
 6 members. If the written decision of the supervisors approves
 7 the proposed project without recommendation or alternative
 8 plan, the applicant may proceed with the project upon the
 9 expiration of ~~ten (10) days~~ after receipt of the decision.

10 (8) The supervisors may extend, upon the request of
 11 any team member, the time limits provided in ~~section~~ 26-1514
 12 (4) and (5) ~~where whenever~~, in their determination, the time
 13 provided is not sufficient to carry out the purposes of this
 14 act. The time extension may not, in total, exceed ~~one (1)~~
 15 year from date of application receipt of the applicant's
 16 notice. The applicant shall be notified, within ~~sixty (60)~~
 17 days of date of application receipt of the applicant's
 18 notice, of the initial time extension and shall be notified
 19 immediately 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 4. Section 26-1517, R.C.M. 1947, is amended to
 23 read as follows:

24 "26-1517. Emergencies -- procedure. (1) The provisions
 25 of this act shall not apply to those actions which are

1 necessary to safeguard life or property, including growing
 2 crops, during periods of emergency. The person responsible
 3 for any project under this section shall notify the
 4 supervisors in writing within fifteen (15) days of the
 5 action taken as a result of an emergency.

6 ~~(3) The supervisors shall send one (1) copy of the~~
 7 ~~notice, within five (5) days to the department.~~

8 ~~(3) (2)~~ A team, called together as described in section
 9 26-1514(3), shall make an on-site inspection and individual
 10 written reports to the supervisors within thirty (30) days
 11 giving their observations and opinions on the emergency
 12 project.

13 ~~(4) (3)~~ If the same or a similar emergency occurs to
 14 the same applicant more than once within any five (5) year
 15 period, the supervisors shall request the team members to
 16 include in their reports a determination of the validity of
 17 the emergency action and to ascertain the feasibility of a
 18 more permanent solution to that emergency action.

19 ~~(5) (4)~~ The supervisors shall determine the feasibility
 20 of a more permanent solution and shall recommend, within
 21 thirty (30) days, that the person put the solution into
 22 effect within a reasonable period of time, as determined by
 23 the supervisors. Failure of the person to put that solution
 24 into effect is not a violation of this act unless a
 25 subsequent emergency action results from this failure.

1 ~~(6)~~(5) When a member of the team or the applicant
2 disagrees with the supervisors' recommendation, he may ask
3 that an arbitration panel, as provided in section 26-1515,
4 be appointed to hear the dispute and make a final written
5 decision thereon."

-End-

Approved by Committee
on Agriculture Livestock
& Irrigation

SENATE BILL NO. 139

INTRODUCED BY MANLEY, GALT, FLYNN

A BILL FOR AN ACT ENTITLED: "AN ACT TO ELIMINATE THE ROLE OF THE DEPARTMENT OF FISH AND GAME IN THE OPERATION OF THE NATURAL STREAMBED AND LAND PRESERVATION ACT OF 1975 AND TO PROVIDE FOR INCREASED CONTROL BY LOCAL OFFICIALS; AMENDING SECTIONS 26-1512, 26-1514, AND 26-1517, R.C.M. 1947."

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(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 conservation or grass conservation district.

(5) "Project" means a 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 26-1511.

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

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

~~(8) (7) "Team" means one (1) representative of the supervisors, one (1) representative of the department, and the applicant or his representative a group of three individuals appointed as provided in [section 2 of this act]."~~

Section 2. There is a new R.C.M. section numbered 26-1512.1 that reads as follows:

26-1512.1. Appointment of team. Whenever a team is required under the provisions of 26-1511 through 26-1523, the supervisors shall appoint three individuals to act as such a team. One of the appointees must be the applicant or his representative. Another of the appointees shall be a representative of the supervisors. The third appointee may

1 be any resident of the district.

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19 supervisors' action, he may ask, within ~~five~~ (5) days of
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-End-