HOUSE BILL NO. 888

Introduced: 02/17/83

Referred to Committee on Fish & Game: 02/17/83

Hearing: 2/19/83

Report: 02/19/83, do Pass

2nd Reading: 02/22/83, Do Pass, As Amended

3rd Reading: 02/23/83, Do Pass

Transmitted to Senate: 2/23/83

Referred to Committee on Agriculture, Livestock, & Irrigation:

3/1/83

Hearing: 3/11/83

Died in Senate Committee

1	House BILL NO. 868.
2	AINTRODUCED BY Mark Mussan Vincent Ream
3 /	Owlin Doyle Swither Hacokson
4	A BILL FOR AN ACT ENTITLED: "AN ACT TRANSFERRING TO THE
5	ADJOINING LANDOWNERS TITLE TO THE BED OF A NAVIGABLE STREAM
6	BETWEEN THE LOW WATERMARKS; ALLOWING PUBLIC USE OF NAVIGABLE
7	STREAMS BY CERTAIN CRAFT; LIMITING THE LIABILITY OF CERTAIN
8	LANDONNERS; MAKING USERS OF CERTAIN LAND LIABLE FOR DAMAGES;
9	PROVIDING THAT A PRESCRIPTIVE EASEMENT CANNOT BE ACQUIRED BY
0	RECREATIONAL USE WHEN PERMISSION HAS BEEN GRANTED; AMENDING
11	SECTIONS 70-1-202, 70-16-201, 70-19-405, AND 85-1-112, MCA.
12	
13	BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HONTANA:
14	Section 1. Section 70-1-202, MCA, is amended to read:
15	*70-1-202. Property of the state what included. The
16	state is the owner of:
17	(1) all land below the water of a navigable lake $oldsymbol{e}$
18	stream;
19	(2) all property lawfully appropriated by it to its
20	own use;
21	(3) all property dedicated or granted to the state;
22	and
23	(4) all property of which there is no other owner.
24	Section 2. Section 70-16-201, MCA, is amended to read:

"70-16-201. Owner of land bounded by water. Except

where the grant under which the land is held indicates a different intent, the owner of the land, when it borders upon a navigable lake or-stream, takes to the edge of the lake or-stream at low-water mark; when it borders upon a navigable_stream_or any other water, the owner takes to the middle of the lake or stream."

Section 3. Section 85-1-112, MCA, is amended to read: #85-1-112. Navigable waters. (1) All lakes wholly or partly within this state which have been meandered and returned as navigable by the surveyors employed by the government of the United States and all lakes which are navigable in fact are hereby declared to be navigable and public waters, and all persons shall have the same rights therein and thereto that they have in and to any other navigable or public waters.

(2) All rivers and streams which have been meandered and returned as navigable by the surveyors employed by the government of the United States and all rivers and streams which are navigable in fact are hereby declared navigable.

(31_fal_Members_of_the_public_have_the_right_to

navigate_and_exercise_the_instance_of_navigation_in_a_lawful

manner_at_any__zoint_below_the_ordinary_high_watermark_on

waters_of_the_state_that_are_capable_of_being__navigated_by

nare_paddles_or_motor=propelled_crafts

fbl Eor ourposes of this section. "craft" means a

-2- INTRODUCED BILL HP 8 (6

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canges kayaks inflatable boats skiffs or any other boat
designed to be propelled by oars paddles or motors Craft
does not include a float-fishing tubes inflatable tire tubes
air mattresss or other floatable object not designed for use
as a craft to be propelled by oars paddles or motors

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- ICL_Eor_Durposes_of_this_section: __ordinary_high
 watermark __means_the_line_that_water_impresses_on_the_soil
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 soil_of_its_vegetation_and_destroy_its_value_for
 aggicultural_purposes.
- (\$1_Nothing_in_this_section_authorizes_the_entering_on_or_crossing_over_private_land_at_any_point_other_than_within the_ordinary_bigh_watermark_of_navigable_streams:_except that_where_irrigation_dams_or_other_obstructions_interfere with_the_navigability_in_fact_of_a_stream:_members_of_the public_may_remove_themselves_and_their_craft_from_the_stream and_walk_or_portage_that_craft_around_the_obstruction: reentering_the_stream_immediately_below_the_obstruction_at the_nearest_point_where_it_is_safe_to_do_so.*
- NEW_SECTION: Section 4. Limitation of liability of landowner. (1) An owner or lessee of land bordering or underlying a navigable stream is not required to keep the premises safe for entry by others for recreational purposes or, except as provided in [section 4], to give any warning of a dangerous condition, use, structure, or activity on the

1 premises to persons entering for such purposes.

- 2 (2) An owner or lessee of land bordering or underlying
 3 a navigable stream who either directly or indirectly invites
 4 or permits without charge a person to use the land for
 5 recreational purposes does not thereby:
- (a) extend any assurance that the premises are safe
 for any purpose;
- (b) confer upon that person the legal status of an
 invitee or licensee to whom a duty of care is owed; or
- 10 (c) assume responsibility or incur liability for any
 11 injury to person or property caused by an act or omission of
 12 the person using the land.
- 13 (3) This section does not apply to an owner or lessee 14 of land bordering or underlying a navigable stream who for 15 compensation permits the land to be used for recreational 16 purposes.
- 17 <u>NEW SECTION</u> Section 5. User liability for damages.

 18 A person who uses the land bordering or underlying a

 19 navigable stream for recreational purposes, with or without

 20 permission, is liable for any damage to property, livestock,

 21 or crops that he causes while on the land.
- 22 <u>YEM_SECTION</u> Section 6. Prescriptive easement -23 not acquired by recreational use. (1) Prescriptive easement
 24 means a right to use another's property that is acquired by
 25 open, notorlous, adverse, and continuous use for a period of

instruction.

1 5 years.

 (2) A prescriptive easement cannot be acquired through use of or entry upon land or water for recreational purposes when that use or entry was acquired by permission of the landowner or his agent.

Section 7. Section 70-19-405, MCA, is amended to read:

"70-19-405. Title by prescription. Geoupancy Except as

provided in [Section 7] accupancy for the period prescribed
by this chapter as sufficient to bar an action for the
recovery of the property confers a title thereto,
denominated a title by prescription, which is sufficient
against all."

part of Title 95, chapter 1.

NEW SECTION. Section 9. Severability. If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from

NEW SECTION. Section 8. Codification

the invalid applications.

-End-

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Approved by Comm. on Fish and Game

1	House BILL NO. Ell.
2	AINTRODUCED BY Mark Mussan Vincent Ream
3	Devlin Dogland Switzer Jacobson
4	A BILL FOR AN ACT ENTITLED: "AN ACT TRANSFERRING TO THE
5	AOJDINING LANDOWNERS TITLE TO THE BED OF A NAVIGABLE STREAM
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	BETHEEN THE LOW WATERMARKS; ALLOWING PUBLIC USE OF NAVIGABLE
7	STREAMS BY CERTAIN CRAFT; LIMITING THE LIABILITY OF CERTAIN
8	LANDONNERS; MAKING USERS OF CERTAIN LAND LIABLE FOR DAMAGES;
9	PROVIDING THAT A PRESCRIPTIVE EASEMENT CANNOT BE ACQUIRED BY
0	RECREATIONAL USE WHEN PERMISSION HAS BEEN GRANTED; AMENDING
1	SECTIONS 70-1-202, 70-16-201, 70-19-405, AND 85-1-112, MCA.
12	
13	BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
14	Section 1. Section 70-1-202, MCA, is amended to read:
15	"70-1-202. Property of the state what included. The
16	state is the owner of:
17	(1) all land below the water of a navigable lake or
10	stream;
19	(2) all property lawfully appropriated by it to its
20	own use;
21	(3) all property dedicated or granted to the state;
22	and
23	(4) all property of which there is no other owner.
24	Section 2. Section 70-16-201, MCA, is amended to read:
25	*70-16-201. Owner of land bounded by water. Except

where the grant under which the land is held indicates a different intent, the owner of the land, when it borders upon a navigable lake or-stream, takes to the edge of the lake or-stream at low-water mark; when it borders upon a navigable stream or any other water, the owner takes to the middle of the lake or stream.*

Section 3. Section 85-1-112, MCA, is appended to section 3.

Section 3. Section 85-1-112, MCA, is amended to read:

"85-1-112. Navigable waters. (1) All lakes wholly or
partly within this state which have been meandered and
returned as navigable by the surveyors employed by the
government of the United States and all lakes which are
navigable in fact are hereby declared to be navigable and
public waters, and all persons shall have the same rights
therein and thereto that they have in and to any other
navigable or public waters.

(2) All rivers and streams which have been meandered and returned as navigable by the surveyors employed by the government of the United States and all rivers and streams which are navigable in fact are hereby declared navigable.

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(b) For purposes of this section. "craft" means a

1 cange: kayak. inflatable boat. skiff. or any other boat 2 designed to be propelled by oar anddle or motor. Craft 3 does not include a float-fishing tube, inflatable tire tube. air mattress, or other floatable object not designed for use as a craft to be propelled by para paddles or motor.

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- (c) For purposes of this sections mordinary high watermark" means the line that water impresses on the soil by covering it for sufficient periods of time to deprive the soil of its vegetation and destroy its value for agricultural ourposes.
 - [4] Nothing in this section authorizes the entering on or crossing over private land at any point other than within the ordinary high watermark of navigable streams, except that where irrigation dams or other obstructions interfere with the dayidability in fact of a stream, members of the public may remove themselves and their craft from the stream and walk or pertage that craft around the obstruction. regutering the stream immediately below the obstruction at the nearest point where it is safe to do so."
 - MEN_SECTION. Section 4. Limitation of liability of landowner. (1) An owner or lessee of land bordering or underlying a navigable stream is not required to keep the premises safe for entry by others for recreational purposes or, except as provided in [section 4], to give any warning of a dangerous condition, user structure, or activity on the

1 premises to persons entering for such purposes.

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- 2 (2) An owner or lessee of land bordering or underlying a navigable stream who either directly or indirectly invites 3 or permits without charge a person to use the land for recreational purposes does not thereby:
- (a) extend any assurance that the premises are safe for any purpose:
 - (b) confer upon that person the legal status of an invitee or licensee to whom a duty of care is owed; or
- 10 (c) assume responsibility or incur liability for any 11 injury to person or property caused by an act or omission of 12 the person using the land.
- 13 (3) This section does not apply to an owner or lessee 14 of land bordering or underlying a navigable stream who for 15 compensation permits the land to be used for recreational 16 purposes.
- 17 MEM_SECTION. Section 5. User liability for damages. 18 A person who uses the land bordering or underlying a 19 navigable stream for recreational purposes, with or without permission, is liable for any damage to property, livestock, 20 21 or crops that he causes while on the land.
 - NEW_SECTION. Section 6. Prescriptive easement not acquired by recreational use. (1) Prescriptive easement means a right to use another's property that is acquired by open, notorious, adverse, and continuous use for a period of

5 years.

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(2) A prescriptive easement cannot be acquired through use of or entry upon land or water for recreational purposes when that use or entry was acquired by permission of the landowner or his agent.

Section 7. Section 70-19-405, MCA, is amended to read: *70-19-405. Title by prescription. Becapancy Except as provided in [section 7], occupancy for the period prescribed by this chapter as sufficient to bar an action for the recovery of the property confers a title thereto, denominated a title by prescription, which is sufficient 12 against all."

NEW_SECTION. Section 8. Codification instruction. Sections 4 and 5 are intended to be codified as an integral part of Title 85, chapter 1.

NEW SECTION. Section 9. Severability. If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

-End-

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ı	HOUSE BILL NO. 888
2	INTRODUCED BY MARKS, NEUMAN, VINCENT,
3	REAM, DEVLIN, BOYLAN, GALT, SHITZER, JACOBSON
4	
5	A BILL FOR AN ACT ENTITLED: "AN ACT TRANSFERRENGTHTHE
6	ADJOININGLANDOWNERS CLARIEYING TITLE TO THE BED OF A
7	NAVIGABLE STREAM BETWEEN-THE-LON-WATERMARKS; ALLOWING PUBLIC
8	USE OF NAVIGABLE STREAMS BY CERTAIN CRAFT; LIMITING THE
9	LIABILITY OF CERTAIN LANDOWNERS; MAKING USERS OF CERTAIN
10	LAND LIABLE FOR DAMAGES; PROVIDING THAT A PRESCRIPTIVE
11	EASEMENT CANNOT BE ACQUIRED BY RECREATIONAL USE WHEN
12	PERMISSION HAS BEEN GRANTED; AMENDING SECTIONS 70-1-202,
13	70-16-201, 70-19-405, AND 85-1-112, MCA: AND PROVIDING AN
14	1MMEDIAIE_EEEECIIYE_DAIE • *
15	
16	BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
17	Section 1. Section 70-1-202, MCA, is amended to read:
18	"70-1-202. Property of the state what included. The
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24	(3) all property dedicated or granted to the state;
25	and

48th Legislature

1 (4) all property of which there is no other owner.* Section 2. Section 70-16-201. MCA. is amended to read: 3 "70-16-201. Owner of land bounded by water. Except where the grant under which the land is held indicates a different intent, the owner of the land, when it borders upon a navigable lake or-stream, takes to the edge of the lake or-stream at low-water mark; when it borders upon a navigable stream or any other water, the owner takes to the middle of the take-or stream WHEN_NAVIGABILITY_HAS_BEEN DETERMINED USING THE DEFINITION IN 85-1-112131. TITLE IS NOT 10 11 VESTED WITH THE ADJACENT LANDOWNER WHENEVER THE BODY OF 12 MATER HAS BEEN DECLARED MEANDERED BY GOVERNMENT SURVEY DR DETERMINED AT ANY TIME TO BE NAVIGABLE UNDER THE FEDERAL 13 NAVIGABILITY_DEFINITION." 14

Saction 3. Section 85-1-112, MCA, is amended to read: #85-1-112. Navigable waters. (1) All lakes wholly or partly within this state which have been meandered and returned as navigable by the surveyors employed by the government of the United States and all lakes which are navigable in fact are hereby declared to be navigable and public waters, and all persons shall have the same rights therein and thereto that they have in and to any other navigable or public waters.

(2) All rivers and streams which have been meandered
 and returned as navigable by the surveyors employed by the

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1	government of the United States and all rivers and streams
2	which are navigable in fact are hereby declared navigable.
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8	THE STATE THAT ARE CAPABLE OF BEING NAVIGATED BY A CRAFT AS
9	DEFINED_BY 85-1-112(3)(8) ARE NAVIGABLE IN FACT. MEMBERS DE
10	THE PUBLIC HAVE THE RIGHT TO NAVIGATE AND EXERCISE THE
11	INSTANCE OF NAVIGATION IN A LAWFUL MANNER AT ANY POINT BELOW
12	IHE ORDINARY HIGH WATERMARK ON ALL WATERS OF THE STATE THAT
13	ARE_NAVIGABLE_IN_EACI.
14	(b) For purposes of this section: "craft" means a
15	cange. kayak. inflatable boat. skiff. or any other boat
16	designed to be propelled by para paddles or motors Craft
17	does_not_loclude_a_float-fishing_tube.inflatable_tire_tube.
18	air_mattress.or_orber_floatable_object_oot_designed_for_use
19	as a craft to be propelled by oars paddles or motors
20	(c) for purposes of this section. Fordinary high
21	watermarks means the line that water impresses on the soil
22	by_covering_it_for_sufficient_periods_of_time_to_denrive_the
23	soil_of_its_vegetation_and_destroy_its_value_for
24	agricultural purposes.
25	(4) Nothing in this section authorizes the entering on

1	or crossing over private land at any point other than within
2	the ordinary high watermark of navigable streams. except
3	that where irrigation dams or other obstructions interfere
4	with_the_navigability_in_fact_of_a_stream:_members_of_the
5	public may remove themselves and their craft from the stream
6	and_walk_or_portage_that_craft_around_the_obstruction.
7	reentering_the_stream_immediately_below_the_obstruction_at
8	the gearest point where it is safe to do so."

NEW_SECTION. Section 4. Limitation of liability of landowner. (1) An owner or lessee of land bordering or underlying a navigable stream is not required to keep the premises safe for entry by others for recreational purposes or, except as provided in [section 4], to give any warning of a dangerous condition, use, structure, or activity on the premises to persons entering for such purposes.

- (2) An owner or lessee of land bordering or underlying a navigable stream who either directly or indirectly invites or permits without charge a person to use the land for recreational purposes does not thereby:
- 20 (a) extend any assurance that the premises are safe 21 for any purpose;
- 22 (b) confer upon that person the legal status of an 23 invitee or licensee to whom a duty of care is owed; or
- (c) assume responsibility or incur liability for anyinjury to person or property caused by an act or omission of

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the person using the land.

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(3) This section does not apply to an owner or lessee of land bordering or underlying a navigable stream who for compensation permits the land to be used for recreational purposes OR NHO CREATES AN OBSTRUCTION TO THE NAVIGATION OF THE STREAM FOR THE HARASSMENT OF PERSONS NAVIGATING THE STREAM.

NEW SECTION. Section 5. User liability for damages. A person who uses the land bordering or underlying a navigable stream for recreational purposes, with or without permission, is liable for any damage to property, livestock, or crops that he causes while on the land.

NEW_SECTIONs Section 6. Prescriptive easement—not acquired by recreational use. (1) Prescriptive easement means a right to use another's property that is acquired by open, notorious, adverse, and continuous use for a period of 5 years.

(2) A prescriptive easement <u>EQR_NAVIGATION_UPON_A</u>

<u>SIREAMs_RIVER_UR_LAKE</u> cannot be acquired through use of or
entry upon land or water for recreational purposes when that
use or entry was acquired by permission of the landowner or
his agent <u>QR_QCCURRED_HITHOUT_OBJECTION_BUT_WITH_THE</u>

<u>KYONLEDGE_OF_THE_LANDOWNER_OR_HIS_AGENI</u>

Section 7. Section 70-19-405, NCA, is amended to read:
"70-19-405. Title by prescription. Occupancy Except_as

provided in [section I] accupancy for the period prescribed

by this chapter as sufficient to bar an action for the

recovery of the property confers a title thereto,

denominated a title by prescription, which is sufficient

against all.**

6 NEW_SECTION. Section 8. Codification instruction.
7 Sections 4 and 5 are intended to be codified as an integral
8 part of Title 85, chapter 1.

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

15 SECTION 10. EFFECTIVE DATE. THIS ACT IS FEFECTIVE ON
16 PASSAGE AND APPROVAL.

-End-