

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. *888*
2 INTRODUCED BY *Mark Dumas Vincent Ream*
3 *David's Ogden Staff Switzer Jackson*
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 LANDOWNERS; MAKING USERS OF CERTAIN LAND LIABLE FOR DAMAGES;
9 PROVIDING THAT A PRESCRIPTIVE EASEMENT CANNOT BE ACQUIRED BY
10 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 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
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:
25 "70-16-201. Owner of land bounded by water. Except

1 where the grant under which the land is held indicates a
2 different intent, the owner of the land, when it borders
3 upon a navigable lake or stream, takes to the edge of the
4 lake or stream at low-water mark; when it borders upon a
5 navigable stream or any other water, the owner takes to the
6 middle of the lake or stream."
7 Section 3. Section 85-1-112, MCA, is amended to read:
8 "85-1-112. Navigable waters. (1) All lakes wholly or
9 partly within this state which have been meandered and
10 returned as navigable by the surveyors employed by the
11 government of the United States and all lakes which are
12 navigable in fact are hereby declared to be navigable and
13 public waters, and all persons shall have the same rights
14 therein and thereto that they have in and to any other
15 navigable or public waters.
16 (2) All rivers and streams which have been meandered
17 and returned as navigable by the surveyors employed by the
18 government of the United States and all rivers and streams
19 which are navigable in fact are hereby declared navigable.
20 All members of the public have the right to
21 navigate and exercise the instance of navigation in a lawful
22 manner at any point below the ordinary high watermark on
23 waters of the state that are capable of being navigated by
24 sails, paddles, or motor-propelled craft.
25 (b) For purposes of this section, "craft" means a

~~canoes, kayak, inflatable boats, skiffs, or any other boat designed to be propelled by oars, paddle, or motor. Craft 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 oars, paddle, or motor.~~

~~(c) For purposes of this section, "ordinary 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 purposes.~~

~~(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 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

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:

(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

(c) assume responsibility or incur liability for any injury to person or property caused by an act or omission of the person using the land.

(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.

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 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

1 5 years.

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

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

7 "70-19-405. Title by prescription. ~~Occupancy Except as~~
8 ~~provided in [section 7], occupancy~~ for the period prescribed
9 by this chapter as sufficient to bar an action for the
10 recovery of the property confers a title thereto,
11 denominated a title by prescription, which is sufficient
12 against all."

13 ~~NEW SECTION.~~ Section 8. Codification instruction.

14 Sections 4 and 5 are intended to be codified as an integral
15 part of Title 85, chapter 1.

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

-End-

Approved by Comm.
on Fish and Game

1 *House* BILL NO. *888*
2 INTRODUCED BY *Mark Hansen Vincent Ream*
3 *Archie Doyle Jeff Switzer Jackson*

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 LANDOWNERS; MAKING USERS OF CERTAIN LAND LIABLE FOR DAMAGES;
9 PROVIDING THAT A PRESCRIPTIVE EASEMENT CANNOT BE ACQUIRED BY
10 RECREATIONAL USE WHEN PERMISSION HAS BEEN GRANTED; AMENDING
11 SECTIONS 70-1-202, 70-16-201, 70-19-405, AND 85-1-112, MCA."

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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:

25 "70-16-201. Owner of land bounded by water. Except

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

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

8 "85-1-112. Navigable waters. (1) All lakes wholly or
9 partly within this state which have been meandered and
10 returned as navigable by the surveyors employed by the
11 government of the United States and all lakes which are
12 navigable in fact are hereby declared to be navigable and
13 public waters, and all persons shall have the same rights
14 therein and thereto that they have in and to any other
15 navigable or public waters.

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

20 ~~(3) All members of the public have the right to~~
21 ~~navigate and exercise the instance of navigation in a lawful~~
22 ~~manner at any point below the ordinary high watermark on~~
23 ~~waters of the state that are capable of being navigated by~~
24 ~~oars, paddle, or motor-propelled craft.~~

25 ~~(b) For purposes of this section, "craft" means a~~

~~canoe, kayak, inflatable boat, skiff, or any other boat designed to be propelled by oar, paddle, or motor. Craft 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 oar, paddle, or motor.~~

~~(c) For purposes of this section, "ordinary 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 purposes.~~

~~(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 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

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:

(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

(c) assume responsibility or incur liability for any injury to person or property caused by an act or omission of the person using the land.

(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.

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 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.

(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. ~~Occupancy 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 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-

HOUSE BILL NO. 888

INTRODUCED BY MARKS, NEUMAN, VINCENT,

REAM, DEVLIN, BOYLAN, GALT, SWITZER, JACOBSON

A BILL FOR AN ACT ENTITLED: "AN ACT TRANSFERRING--TO--THE
 ADJOINING--LANDOWNERS CLARIFYING TITLE TO THE BED OF A
 NAVIGABLE STREAM BETWEEN--THE--LOW-WATERMARKS; ALLOWING PUBLIC
 USE OF NAVIGABLE STREAMS BY CERTAIN CRAFT; LIMITING THE
 LIABILITY OF CERTAIN LANDOWNERS; MAKING USERS OF CERTAIN
 LAND LIABLE FOR DAMAGES; PROVIDING THAT A PRESCRIPTIVE
 EASEMENT CANNOT BE ACQUIRED BY RECREATIONAL USE WHEN
 PERMISSION HAS BEEN GRANTED; AMENDING SECTIONS 70-1-202,
 70-16-201, 70-19-405, AND 85-1-112, MCA; AND PROVIDING AN
 IMMEDIATE EFFECTIVE DATE."

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

Section 1. Section 70-1-202, MCA, is amended to read:

"70-1-202. Property of the state -- what included. The
 state is the owner of:

(1) all land below the water of a navigable lake or
 stream;

(2) all property lawfully appropriated by it to its
 own use;

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(4) all property of which there is no other owner."

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 WHEN NAVIGABILITY HAS BEEN
DETERMINED USING THE DEFINITION IN 85-1-112(3). TITLE IS NOT
VESTED WITH THE ADJACENT LANDOWNER WHENEVER THE BODY OF
WATER HAS BEEN DECLARED MEANDERED BY GOVERNMENT SURVEY OR
DETERMINED AT ANY TIME TO BE NAVIGABLE UNDER THE FEDERAL
NAVIGABILITY DEFINITION."

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.

~~(1) For members of the public have the right to navigate and exercise the instance of navigation in a lawful manner at any point below the ordinary high watermark on waters of the state that are capable of being navigated by oar, paddle, or motor-propelled craft.~~ (A) ALL WATERS OF THE STATE THAT ARE CAPABLE OF BEING NAVIGATED BY A CRAFT AS DEFINED BY RS-1-112(3)(A) ARE NAVIGABLE IN FACT. MEMBERS OF THE PUBLIC HAVE THE RIGHT TO NAVIGATE AND EXERCISE THE INSTANCE OF NAVIGATION IN A LAWFUL MANNER AT ANY POINT BELOW THE ORDINARY HIGH WATERMARK ON ALL WATERS OF THE STATE THAT ARE NAVIGABLE IN FACT.

(b) For purposes of this section, "craft" means a canoe, kayak, inflatable boat, skiff, or any other boat designed to be propelled by oar, paddle, or motor. Craft 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 oar, paddle, or motor.

(c) For purposes of this section, "ordinary 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 purposes.

(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 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 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:

(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

(c) assume responsibility or incur liability for any injury to person or property caused by an act or omission of

the person using the land.

(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 WHO 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 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.

(2) A prescriptive easement ~~FOR NAVIGATION UPON A STREAM, RIVER, OR LAKE~~ 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 ~~OR OCCURRED WITHOUT OBJECTION BUT WITH THE KNOWLEDGE OF THE LANDOWNER OR HIS AGENT.~~

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

"70-19-405. Title by prescription. Occupancy 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 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.

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

-End-