- SB 159 INTRODUCED BY BOYLAN, GALT, HOFFMAN, R., ET AL. REDEFINING "SURFACE WATER" FOR THE DETERMINATION OF RECREATIONAL ACCESS
 - 1/20 INTRODUCED
 - 1/20 REFERRED TO NATURAL RESOURCES
 - 2/11 HEARING

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2/18 DIED IN COMMITTEE ON TIE VOTE

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LC 1056/01

Lenate BILL NO. 159 1 2 INTRODUCED BY 3

A BILL FOR AN ACT ENTITLED: "AN ACT TO REDEFINE THE TERM
"SURFACE WATER" FOR THE PURPOSE OF DETERMINING RECREATIONAL
ACCESS TO STATE WATERS; AMENDING SECTION 23-2-301, MCA; AND
PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

Section 1. Section 23-2-301, MCA, is amended to read: "23-2-301. Definitions. For purposes of this part, the following definitions apply:

(1) "Barrier" means an artificial obstruction located 13 in or over a water body, restricting passage on or through 14 15 the water, which totally or effectively obstructs the recreational use of the surface water at the time of use. A 16 barrier may include but is not limited to a bridge or fence 17 or any other manmade obstacle to the natural flow of water. 18 (2) "Class I waters" means surface waters, other than 19 20 lakes, that:

(a) lie within the officially recorded federal
 government survey meander lines thereof;

(b) flow over lands that have been judicially
determined to be owned by the state by reason of application
of the federal navigability test for state streambed

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l ownership;

2 (c) are or have been capable of supporting the 3 Eollowing commercial activities: log floating, transportation of furs and skins, shipping, commercial 4 guiding using multiperson watercraft, public transportation, 5 6 or the transportation of merchandise, as these activities have been defined by published judicial opinion as of April 7 19, 1985; or 8

9 (d) are or have been capable of supporting commercial
10 activity within the meaning of the federal navigability test
11 for state streambed ownership.

12 (3) "Class II waters" means all surface waters that13 are not class I waters, except lakes.

14 (4) "Commission" means the fish and game commission15 provided for in 2-15-3402.

16 (5) "Department" means the department of fish,
17 wildlife, and parks provided for in 2-15-3401.

18 (6) "Diverted away from a natural water body" means a
19 diversion of surface water through a manmade water
20 conveyance system, including but not limited to:

21 (a) an irrigation or drainage canal or ditch;

(b) an industrial, municipal, or domestic water
system, excluding the lake, stream, or reservoir from which
the system obtains water;

25 (c) a flood control channel; or

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1 (d) a hydropower inlet and discharge facility.

2 (7) "Lake" means a body of water where the surface 3 water is retained by either natural or artificial means and 4 the natural flow of water is substantially impeded.

5 (8) "Occupied dwelling" means a building used for a
6 human dwelling at least once a year.

(9) "Ordinary high-water mark" means the line that 7 water impresses on land by covering it for sufficient 8 periods to cause physical characteristics that distinguish 9 area below the line from the area above it. 10 the 11 Characteristics of the area below the line include, when 12 appropriate. but are not limited to deprivation of the soil of substantially all terrestrial vegetation and destruction 13 of its agricultural vegetative value. A flood plain 14 adjacent to surface waters is not considered to lie within 15 the surface waters' high-water marks. 16

17 (10) "Recreational use" means with respect to surface 18 waters: fishing, hunting, swimming, floating in small craft 19 or other flotation devices, boating in motorized craft 20 unless otherwise prohibited or regulated by law, or craft 21 propelled by oar or paddle, other water-related pleasure 22 activities, and related unavoidable or incidental uses.

(11) "Supervisors" means the board of supervisors of a
 soil conservation district, the directors of a grazing
 district, or the board of county commissioners if a request

pursuant to 23-2-311(3)(b) is not within the boundaries of a
 conservation district or if the request is refused by the
 board of supervisors of a soil conservation district or the
 directors of a grazing district.

5 (12) "Surface water" means---for--the--purpose--of б determining-the-publicis--access--for--recreational--use;--a 7 natural--water--body;--its--bed;--and--its--banks--up-to-the ordinary-high-water-mark the surface of a natural body of 8 water and, if such body of water has been adjudicated to be 9 10 navigable by federal standards, the bed and banks of such 11 body of water up to the ordinary high-water mark." 12 NEW SECTION. Section 2. Extension of authority. Any existing authority of the fish and game commission to make 13

14 rules on the subject of the provisions of this act is 15 extended to the provisions of this act.

16 <u>NEW SECTION.</u> Section 3. Effective date. This act is 17 effective on passage and approval.

-End-

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