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INTRODUCED BY House BILL NO. 478
Stacy McLean Knox

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE NATURAL STREAMBED AND LAND PRESERVATION ACT; AMENDING SECTIONS 75-7-103, 75-7-106, 75-7-111, 75-7-112, 75-7-113, 75-7-114, 75-7-117, 75-7-121, 75-7-122, AND 75-7-123, MCA; AND PROVIDING EFFECTIVE DATES."

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

NEW SECTION. Section 1. Entering lands. (1) Except as provided in subsection (2), a supervisor, an employee, or a representative of the district may not enter land without permission of the landowner or the landowner's agent.

(2) (a) A supervisor, an employee, or a representative of the district who is authorized by a supervisor of the district may:

(i) enter land owned or controlled by an applicant to inspect a project or construction of works proposed by the applicant; or

(ii) enter land owned or controlled by an alleged violator to determine compliance with this part.

(b) The district shall give reasonable notice to the landowner of its intention to enter upon the land under the provisions of this subsection (2).

(3) The district is responsible for actual damages to property as a result of carrying out the purpose of this section.

Section 2. Section 75-7-103, MCA, is amended to read:

"75-7-103. Definitions. As used in this part, the following definitions apply:

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

(2) "Department" means the Montana department of fish, wildlife, and parks.

(3) "District" means:

(a) a conservation district under Title 76, chapter 15, in which the project will take place;

(b) a grass conservation district under Title 76, chapter 16, where ~~no~~ a conservation district ~~exists,~~
does not exist; or

1 (c) the board of county commissioners in a county where a district does not exist.

2 (4) "Person" means any ~~natural person~~ individual, corporation, firm, partnership, association, or
3 other legal entity not covered under 87-5-502.

4 (5) (a) "Project" means a physical alteration or modification of a stream in the state of Montana
5 ~~which that~~ results in a significant change in the state of the stream ~~in contravention of 75-7-102~~.

6 (b) Project does not include customary and historic maintenance and repair of existing irrigation
7 facilities:

8 (i) that do not significantly alter or modify the stream ~~in contravention of 75-7-102~~; or

9 (ii) for which a plan of annual operation has been submitted to and approved by the district. The
10 plan is subject to future review and approval by the district at its option. Any modification to the plan must
11 have prior approval of the district.

12 (6) "Stream" means any natural perennial-flowing stream or river, its bed, and its immediate banks.

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

16 (8) "Team" means one representative of the supervisors, one representative of the department,
17 and the applicant or ~~his~~ the applicant's representative.

18 (9) "Written consent of the supervisors" means a written decision of the supervisors approving a
19 project and specifying activities authorized to be performed in completing the project."

20
21 **Section 3.** Section 75-7-106, MCA, is amended to read:

22 **"75-7-106. Junked motor vehicles as reinforcement prohibited -- penalty.** (1) It is unlawful to place
23 junked motor vehicles or the body portion of junked motor vehicles between ~~high water~~ the channel banks
24 of any stream or to reinforce banks of a stream with ~~such~~ junked motor vehicles or the body portion of ~~such~~
25 junked motor vehicles.

26 (2) A person who ~~willfully~~ violates subsection (1) is ~~guilty of a misdemeanor and upon conviction~~
27 ~~shall be fined not to exceed \$250, imprisoned in the county jail for a term not to exceed 30 days, or both~~
28 subject to penalties as provided in 75-7-123.

29 ~~(3) A person who violates subsection (1) shall be subject to a civil penalty of not more than \$50.~~
30 ~~Each day upon which a violation occurs is a separate violation."~~

1 **Section 4.** Section 75-7-111, MCA, is amended to read:

2 **"75-7-111. Notice of project.** (1) A person planning to engage in a project shall present written
3 notice of the project to the supervisors before any portion of the project takes place.

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

6 (3) At the time of filing a notice of the proposed project under subsection (1), the applicant shall
7 sign an arbitration agreement as provided in 75-7-117."

8
9 **Section 5.** Section 75-7-112, MCA, is amended to read:

10 **"75-7-112. Procedure for considering projects -- team.** (1) Upon acceptance of a notice of a
11 project, the district shall, within 10 working days, notify the department of the proposed project. ~~The~~
12 ~~supervisors shall receive all notices of proposed projects within their district. They shall, within 5 days of~~
13 ~~receipt of a notice, examine and investigate the notice and determine whether the proposal is for a project.~~
14 ~~Within the 5 days, they shall send a copy of their determination to the department and the applicant. If the~~
15 ~~supervisors determine that the proposal is not a project, the applicant may, upon receipt of written notice,~~
16 ~~proceed with the proposed activity.~~

17 ~~(2) If the supervisors determine that the proposal is for a project, the~~ The department shall, within
18 5 working days of receipt of the ~~determination notification, notify~~ inform the supervisors whether the
19 department requests an onsite inspection by a team.

20 ~~(3)~~ (2) The supervisors shall call a team together within 20 days of receipt of the request of the
21 department for an onsite inspection. A member of the team shall notify the supervisors in writing, within
22 5 working days after notice of the call for an inspection, of ~~his~~ the team member's waiver of participation
23 in the inspection. If the department does not request an onsite inspection within the time specified ~~above~~
24 in this subsection, the supervisors may deny, approve, or ~~approve~~ modify the project ~~or may make~~
25 ~~recommendations for alternative plans.~~

26 ~~(4)~~ (3) Each member of the team shall recommend in writing, within ~~50~~ 30 days of the date of
27 ~~application~~ inspection, denial, approval, or modification of the project to the supervisors. The applicant may
28 waive participation in this recommendation.

29 ~~(5)~~ (4) The supervisors shall review the proposed project and affirm, overrule, or modify the
30 individual team recommendations and notify the applicant and team members, within 60 days of the date

1 of application, of their decision.

2 ~~(6)~~(5) When a member of the team disagrees with the supervisors' ~~action, he may ask~~ decision,
3 the team member shall request, within 5 working days of receipt of the supervisors' decision, that an
4 arbitration panel as provided in 75-7-114 be appointed to hear the dispute and make a final written decision
5 ~~thereon regarding the dispute.~~

6 ~~(7)~~(6) Upon written ~~notice, with a recommendation or alternative plan, by the supervisors to the~~
7 ~~applicant, the applicant, within 15 days, consent of the supervisors, the applicant~~ shall notify the
8 supervisors in writing within 15 days if he the applicant wishes to proceed with the project in accordance
9 with the ~~recommendations or alternative plans. No work may be commenced on a project before the end~~
10 ~~of this 15 day period unless written permission is given by all team members. If the written decision of the~~
11 ~~supervisors approves the proposed project without recommendation or alternative plan, the applicant may~~
12 ~~proceed with the project upon the expiration of 10 days after receipt of the decision~~ supervisors' decision.
13 Work may not be commenced on a project before the end of the 15-day waiting period unless written
14 permission is given by all team members and the district.

15 ~~(8)~~(7) The supervisors may extend, upon the request of a team member, the time limits provided
16 in subsections ~~(4)~~ (3) and ~~(5)~~ (4) ~~where~~ when, in their determination, the time provided is not sufficient to
17 carry out the purposes of this part. The time extension may not, in total, exceed 1 year from the date of
18 application. The applicant ~~shall~~ must be notified, within 60 days of the date of application, of the initial time
19 extension and ~~shall~~ must be notified immediately of any subsequent time extensions.

20 ~~(9)~~(8) ~~No work~~ Work on a project under this part may not take place without the written consent
21 of the supervisors.

22 (9) The team, in making its recommendation, and the supervisors, in denying, approving, or
23 modifying, a project, shall determine:

24 (a) the purpose of the project; and

25 (b) whether the proposed project is a reasonable means of accomplishing the purpose of the
26 proposed project. To determine if the project is reasonable, the following must be considered:

27 (i) the effects on soil erosion and sedimentation, considering the methods available to complete the
28 project and the nature and economics of the various alternatives;

29 (ii) whether there are modifications or alternative solutions that are reasonably practical that would
30 reduce the disturbance to the stream and its environment and better accomplish the purpose of the

1 proposed project;

2 (iii) whether the proposed project will create harmful flooding or erosion problems upstream or
3 downstream;

4 (iv) the effects on stream channel alteration;

5 (v) the effects on streamflow, turbidity, and water quality caused by materials used or by removal
6 of ground cover; and

7 (vi) the effect on fish and aquatic habitat.

8 (10) If the supervisors determine that a proposed project or part of a proposed project should be
9 modified, they may condition their approval upon the modification.

10 (11) The supervisors may not approve or modify a proposed project unless the supervisors
11 determine that the purpose of the proposed project will be accomplished by reasonable means."

12

13 **Section 6.** Section 75-7-113, MCA, is amended to read:

14 **"75-7-113. Emergencies -- procedure.** (1) The provisions of this part do not apply to those actions
15 ~~which~~ that are necessary to safeguard life or property, including growing crops, during periods of
16 emergency. The person responsible for a ~~project~~ taking action under this section shall notify the supervisors
17 in writing within 15 days of the action taken as a result of an emergency.

18 (2) The emergency notice given under subsection (1) must contain the following information:

19 ~~(i)~~ (a) the location of the action taken;

20 ~~(ii)~~ (b) a general description of the action taken;

21 ~~(iii)~~ (c) the date on which the action was taken; and

22 (d) an explanation of the emergency causing the need for the action taken.

23 ~~(3) The~~ If the supervisors determine that the action taken meets the definition of a project, the
24 supervisors shall send one copy of the notice, within 5 working days of its receipt, to the department.

25 ~~(3)(4)~~ A team, called together as described in ~~75-7-112(3)~~ 75-7-112(2), shall make an onsite
26 inspection and individual written reports to the supervisors within 30 days, giving its observations and
27 opinions on the emergency project within 20 days of receipt of the emergency notice.

28 ~~(4) If the same or a similar emergency occurs to the same applicant more than once within a 5-year~~
29 ~~period, the supervisors shall request the team members to include in their reports a determination of the~~
30 ~~validity of the emergency action and to ascertain the feasibility of a more permanent solution to the~~

1 emergency.

2 ~~(5) The supervisors shall determine the feasibility of a more permanent solution and shall, within~~
3 ~~30 days, recommend that the person put the solution into effect within a reasonable period of time as~~
4 ~~determined by the supervisors. Failure of the person to put that solution into effect is not a violation of this~~
5 ~~part unless a subsequent emergency action results from this failure.~~

6 ~~(6) When a member of the team or the applicant disagrees with the supervisors' recommendation,~~
7 ~~he may ask that an arbitration panel as provided in 75-7-114 be appointed to hear the dispute and make~~
8 ~~a final written decision thereon.~~

9 (5) Each member of the team shall recommend in writing, within 30 days of the date of the
10 emergency notice, denial, approval, or modification of the project.

11 (6) The supervisors shall review the emergency project and affirm, overrule, or modify the
12 individual team recommendations and notify the applicant and team members of their decision within 60
13 days of receipt of the emergency notice.

14 (7) A person who has undertaken an emergency action that is denied or modified shall submit
15 written notice, as provided in 75-7-111, to obtain approval pursuant to 75-7-112 to mitigate the damages
16 to the stream caused by the emergency action and to achieve a long-term solution, if feasible, to the
17 emergency situation. Notice under this subsection must be filed within 90 days after the supervisors'
18 decision.

19 (8) When a member of the team disagrees with the supervisors' decision of an emergency action,
20 the team member shall request that an arbitration panel, as provided for in 75-7-114, be appointed to hear
21 the dispute and to make a final written decision on the dispute.

22 (9) The failure of a person to perform the following subjects the person to civil and criminal
23 penalties under 75-7-123:

24 (a) failure to provide emergency notice under subsection (1);

25 (b) failure to submit a notice of the project under subsection (7); or

26 (c) failure to implement the terms of a supervisors' decision for the purpose of mitigating the
27 damage to the stream caused by the emergency action and of achieving a permanent solution, if feasible,
28 to the emergency situation."

29

30 **Section 7.** Section 75-7-114, MCA, is amended to read:

1 **"75-7-114. Arbitration panel -- selection.** The arbitration panel shall consist of three members
2 chosen by the senior judge of the judicial district in which the dispute takes place. The members ~~shall~~ must
3 be residents of that judicial district at the time of selection. This panel shall sit for only that period of time
4 necessary to settle the dispute before it and will review the proposed project in line with the arbitration
5 agreement and the policy set forth in 75-7-102."

6
7 **Section 8.** Section 75-7-117, MCA, is amended to read:

8 **"75-7-117. Rules -- minimum standards -- arbitration agreement.** (1) The board of natural resources
9 and conservation, after consultation with the association of conservation districts, shall adopt and may ~~from~~
10 ~~time to time~~ revise rules setting minimum standards and guidelines for the purposes of this part.

11 (2) The supervisors of each district shall adopt and may ~~from time to time~~ revise by resolution after
12 a public hearing rules setting standards and guidelines for projects and exclusions within their districts
13 ~~which~~ that meet, exceed, or are not covered by the minimum standards set by the board under subsection
14 (1).

15 (3) The department of natural resources and conservation, after consultation with the association
16 of conservation districts, shall prepare an arbitration agreement for use by the conservation districts. The
17 arbitration agreement must contain provisions for:

18 (a) the appointment of arbitrators;

19 (b) the exercise of power by the arbitrators;

20 (c) an arbitration hearing process, including time and place for hearing, notification, presentation
21 of witnesses and evidence, cross-examination, subpoenas, depositions, and the issuance of the award or
22 change of award; and

23 (d) the fees and expenses of arbitration."

24
25 **Section 9.** Section 75-7-121, MCA, is amended to read:

26 **"75-7-121. ~~Judicial review~~ Review.** (1) Any review of final action under this part may be appealed
27 within 30 days to the district court by the supervisors under 75-7-112 or 75-7-113 must be by arbitration.
28 Judicial review of an arbitration action is under the provisions of Title 27, chapter 5, part 3.

29 (2) A governing body that prevails in either a suit for abatement of a public nuisance or the
30 collection of civil penalties under this chapter is entitled to collect the costs of abating the nuisance or

1 collecting the civil penalties and attorney fees incurred by the governing body in the action."

2

3 **Section 10.** Section 75-7-122, MCA, is amended to read:

4 **"75-7-122. Public nuisance.** Except for emergency action, a project engaged in by any person
5 without prior approval or activities performed outside the scope of written consent of the supervisors, as
6 prescribed in this ~~part~~ chapter, is declared a public nuisance and subject to proceedings for immediate
7 abatement."

8

9 **Section 11.** Section 75-7-123, MCA, is amended to read:

10 **"75-7-123. ~~Initiating project without consent — penalties~~ Penalties -- restoration.** Any A person
11 ~~initiating~~ who initiates a project without written consent of the supervisors, performs activities outside the
12 scope of written consent of the supervisors, violates emergency procedures provided for in 75-7-113, or
13 violates 75-7-106 is guilty of a misdemeanor and upon conviction shall be punished by a fine ~~of not less~~
14 ~~than \$25 or more than~~ not to exceed \$500 or by a civil penalty of not less than \$25 or more than \$500
15 for each day that person continues to physically alter or modify the stream, and in addition, that person
16 shall restore, at the discretion of the court, the damaged stream, as recommended by the ~~team and~~
17 ~~approved by the~~ supervisors, to as near its prior condition as possible."

18

19 **NEW SECTION. Section 12. Codification instruction.** [Section 1] is intended to be codified as an
20 integral part of Title 75, chapter 7, part 1, and the provisions of Title 75, chapter 7, part 1, apply to
21 [section 1].

22

23 **NEW SECTION. Section 13. Effective dates.** (1) [Sections 1 through 3 and 10 through 12 and
24 this section] are effective on passage and approval.

25 (2) [Sections 4 through 9] are effective October 1, 1995.

26

-END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for HB0478, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

This bill generally revises the Natural Streambed and Land Preservation Act.

ASSUMPTIONS:

1. The Conservation Districts Bureau, Department of Natural Resources and Conservation, will work with the conservation districts around the state to prepare new rules, forms, and an arbitration agreement for use by conservation districts.
2. The Conservation Districts Bureau will use existing staff and operating budget to pursue the effort. There should be no fiscal impact.
3. The Department of Fish, Wildlife and Parks' role and responsibilities relative to the Natural Streambed and Land Preservation Act are not changed by this bill. There will be no fiscal impact to the department.

FISCAL IMPACT:


None.

EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:


None. Local conservation districts will have a workload similar to that under the current streambed law.

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

This should allow the 310 permit process to be more efficient.

 2-15-95

DAVE LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

 2-15-95

ROBERT STORY, PRIMARY SPONSOR DATE

Fiscal Note for HB0478, as introduced

HB 478

1 HOUSE BILL NO. 478

2 INTRODUCED BY STORY, MCCANN, KNOX

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE NATURAL STREAMBED AND LAND
5 PRESERVATION ACT; AMENDING SECTIONS 75-7-103, 75-7-106, 75-7-111, 75-7-112, 75-7-113,
6 75-7-114, 75-7-117, 75-7-121, 75-7-122, AND 75-7-123, MCA; AND PROVIDING EFFECTIVE DATES."

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

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10 NEW SECTION. **Section 1. Entering lands.** (1) Except as provided in subsection (2), a supervisor,
11 an employee, or a representative of the district may not enter land without permission of the landowner
12 or the landowner's agent.

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14 supervisor of the district may:

15 (i) enter land owned or controlled by an applicant to inspect a project or construction of works
16 proposed by the applicant; or

17 (ii) enter land owned or controlled by an alleged violator to determine compliance with this part.

18 (b) The district shall give reasonable notice to the landowner of its intention to enter upon the land
19 under the provisions of this subsection (2).

20 (3) The district is responsible for actual damages to property as a result of carrying out the purpose
21 of this section.

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24 **"75-7-103. Definitions.** As used in this part, the following definitions apply:

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

26 (2) "Department" means the Montana department of fish, wildlife, and parks.

27 (3) "District" means:

28 (a) a conservation district under Title 76, chapter 15, in which the project will take place;

29 (b) a grass conservation district under Title 76, chapter 16, ~~where no a conservation district exists,~~
30 does not exist; or

1 (c) the board of county commissioners in a county where a district does not exist.

2 (4) "Person" means any ~~natural person~~ individual, corporation, firm, partnership, association, or
3 other legal entity not covered under 87-5-502.

4 (5) (a) "Project" means a physical alteration or modification of a stream in the state of Montana
5 ~~which that~~ results in ~~a significant~~ AN ADVERSE change in the state of the stream DUE TO SOIL EROSION
6 OR SEDIMENTATION ~~in contravention of 75-7-102.~~

7 (b) Project does not include customary and historic maintenance and repair of existing irrigation
8 facilities:

9 (i) that do not significantly alter or modify the stream ~~in contravention of 75-7-102~~; or

10 (ii) for which a plan of annual operation has been submitted to and approved by the district. The
11 plan is subject to future review and approval by the district at its option. Any modification to the plan must
12 have prior approval of the district.

13 (6) "Stream" means any natural perennial-flowing stream or river, its bed, and its immediate banks.

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

17 (8) "Team" means one representative of the supervisors, one representative of the department,
18 and the applicant or ~~his~~ the applicant's representative.

19 (9) "Written consent of the supervisors" means a written decision of the supervisors approving a
20 project and specifying activities authorized to be performed in completing the project."

21

22 **Section 3.** Section 75-7-106, MCA, is amended to read:

23 **"75-7-106. Junked motor vehicles as reinforcement prohibited -- penalty.** (1) It is unlawful to place
24 junked motor vehicles or the body portion of junked motor vehicles between ~~high water~~ the channel banks
25 of any stream or to reinforce banks of a stream with ~~such~~ junked motor vehicles or the body portion of ~~such~~
26 junked motor vehicles.

27 (2) A person who ~~willfully~~ violates subsection (1) is ~~guilty of a misdemeanor and upon conviction~~
28 ~~shall be fined not to exceed \$250, imprisoned in the county jail for a term not to exceed 30 days, or both~~
29 subject to penalties as provided in 75-7-123.

30 (3) ~~A person who violates subsection (1) shall be subject to a civil penalty of not more than \$50.~~

1 ~~Each day upon which a violation occurs is a separate violation."~~

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3 **Section 4.** Section 75-7-111, MCA, is amended to read:

4 **"75-7-111. Notice of project.** (1) A person planning to engage in a project shall present written
5 notice of the project to the supervisors before any portion of the project takes place.

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

8 (3) At the time of filing a notice of the proposed project under subsection (1), the applicant shall
9 sign an arbitration agreement as provided in 75-7-117."

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12 **"75-7-112. Procedure for considering projects -- team.** (1) Upon acceptance of a notice of a
13 project, the district shall, within 10 working days, notify the department of the proposed project. ~~The~~
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15 ~~receipt of a notice, examine and investigate the notice and determine whether the proposal is for a project.~~
16 ~~Within the 5 days, they shall send a copy of their determination to the department and the applicant. If the~~
17 ~~supervisors determine that the proposal is not a project, the applicant may, upon receipt of written notice,~~
18 ~~proceed with the proposed activity.~~

19 ~~(2) If the supervisors determine that the proposal is for a project, the~~ The department shall, within
20 5 working days of receipt of the ~~determination~~ notification, ~~notify~~ inform the supervisors whether the
21 department requests an onsite inspection by a team.

22 ~~(3)(2)~~ The supervisors shall call a team together within 20 days of receipt of the request of the
23 department for an onsite inspection. A member of the team shall notify the supervisors in writing, within
24 5 working days after notice of the call for an inspection, of ~~his~~ the team member's waiver of participation
25 in the inspection. If the department does not request an onsite inspection within the time specified ~~above~~
26 in this subsection, the supervisors may deny, approve, or ~~approve~~ modify the project ~~or may make~~
27 ~~recommendations for alternative plans.~~

28 ~~(4)(3)~~ Each member of the team shall recommend in writing, within ~~50~~ 30 days of the date of
29 ~~application~~ inspection, denial, approval, or modification of the project to the supervisors. The applicant may
30 waive participation in this recommendation.

1 ~~(5)~~(4) The supervisors shall review the proposed project and affirm, overrule, or modify the
2 individual team recommendations and notify the applicant and team members, within 60 days of the date
3 of application, of their decision.

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5 the team member shall request, within 5 working days of receipt of the supervisors' decision, that an
6 arbitration panel as provided in 75-7-114 be appointed to hear the dispute and make a final written decision
7 ~~thereon~~ regarding the dispute.

8 ~~(7)~~(6) Upon written notice, ~~with a recommendation or alternative plan, by the supervisors to the~~
9 ~~applicant, the applicant, within 15 days,~~ consent of the supervisors, the applicant shall notify the
10 supervisors in writing within 15 days if ~~he~~ the applicant wishes to proceed with the project in accordance
11 with the ~~recommendations or alternative plans. No work may be commenced on a project before the end~~
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13 ~~supervisors approves the proposed project without recommendation or alternative plan, the applicant may~~
14 ~~proceed with the project upon the expiration of 10 days after receipt of the decision~~ supervisors' decision.
15 Work may not be commenced on a project before the end of the 15-day waiting period unless written
16 permission is given by all team members and the district.

17 ~~(8)~~(7) The supervisors may extend, upon the request of a team member, the time limits provided
18 in subsections ~~(4)~~ (3) and ~~(5)~~ (4) ~~where~~ when, in their determination, the time provided is not sufficient to
19 carry out the purposes of this part. The time extension may not, in total, exceed 1 year from the date of
20 application. The applicant ~~shall~~ must be notified, within 60 days of the date of application, of the initial time
21 extension and ~~shall~~ must be notified immediately of any subsequent time extensions.

22 ~~(9)~~(8) ~~No work~~ Work on a project under this part may not take place without the written consent
23 of the supervisors.

24 (9) The team, in making its recommendation, and the supervisors, in denying, approving, or
25 modifying, a project, shall determine:

- 26 (a) the purpose of the project; and
- 27 (b) whether the proposed project is a reasonable means of accomplishing the purpose of the
28 proposed project. To determine if the project is reasonable, the following must be considered:

- 29 (i) the effects on soil erosion and sedimentation, considering the methods available to complete the
30 project and the nature and economics of the various alternatives;

1 (ii) whether there are modifications or alternative solutions that are reasonably practical that would
 2 reduce the disturbance to the stream and its environment and better accomplish the purpose of the
 3 proposed project;

4 (iii) whether the proposed project will create harmful flooding or erosion problems upstream or
 5 downstream;

6 (iv) the effects on stream channel alteration;

7 (v) the effects on streamflow, turbidity, and water quality caused by materials used or by removal
 8 of ground cover; and

9 (vi) the effect on fish and aquatic habitat.

10 (10) If the supervisors determine that a proposed project or part of a proposed project should be
 11 modified, they may condition their approval upon the modification.

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 13 determine that the purpose of the proposed project will be accomplished by reasonable means."

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 15 **Section 6.** Section 75-7-113, MCA, is amended to read:

16 **"75-7-113. Emergencies -- procedure.** (1) The provisions of this part do not apply to those actions
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 18 emergency. The person responsible for a ~~project~~ taking action under this section shall notify the supervisors
 19 in writing within 15 days of the action taken as a result of an emergency.

20 (2) The emergency notice given under subsection (1) must contain the following information:

21 ~~(i)~~ (a) the location of the action taken;

22 ~~(ii)~~ (b) a general description of the action taken;

23 ~~(iii)~~ (c) the date on which the action was taken; and

24 (d) an explanation of the emergency causing the need for the action taken.

25 (3) The If the supervisors determine that the action taken meets the definition of a project, the
 26 supervisors shall send one copy of the notice, within 5 working days of its receipt, to the department.

27 ~~(4)~~ (4) A team, called together as described in 75-7-112(3) 75-7-112(2), shall make an onsite
 28 inspection and individual written reports to the supervisors within 30 days, giving its observations and
 29 opinions on the emergency project within 20 days of receipt of the emergency notice.

30 ~~(4) If the same or a similar emergency occurs to the same applicant more than once within a 5-year~~

1 ~~period, the supervisors shall request the team members to include in their reports a determination of the~~
 2 ~~validity of the emergency action and to ascertain the feasibility of a more permanent solution to the~~
 3 ~~emergency.~~

4 ~~(6) The supervisors shall determine the feasibility of a more permanent solution and shall, within~~
 5 ~~30 days, recommend that the person put the solution into effect within a reasonable period of time as~~
 6 ~~determined by the supervisors. Failure of the person to put that solution into effect is not a violation of this~~
 7 ~~part unless a subsequent emergency action results from this failure.~~

8 ~~(6) When a member of the team or the applicant disagrees with the supervisors' recommendation,~~
 9 ~~he may ask that an arbitration panel as provided in 75-7-114 be appointed to hear the dispute and make~~
 10 ~~a final written decision thereon.~~

11 (5) Each member of the team shall recommend in writing, within 30 days of the date of the
 12 emergency notice, denial, approval, or modification of the project.

13 (6) The supervisors shall review the emergency project and affirm, overrule, or modify the
 14 individual team recommendations and notify the applicant and team members of their decision within 60
 15 days of receipt of the emergency notice.

16 (7) A person who has undertaken an emergency action that is denied or modified shall submit
 17 written notice, as provided in 75-7-111, to obtain approval pursuant to 75-7-112 to mitigate the damages
 18 to the stream caused by the emergency action and to achieve a long-term solution, if feasible, to the
 19 emergency situation. Notice under this subsection must be filed within 90 days after the supervisors'
 20 decision.

21 (8) When a member of the team disagrees with the supervisors' decision of an emergency action,
 22 the team member shall request that an arbitration panel, as provided for in 75-7-114, be appointed to hear
 23 the dispute and to make a final written decision on the dispute.

24 (9) The failure of a person to perform the following subjects the person to civil and criminal
 25 penalties under 75-7-123:

26 (a) failure to provide emergency notice under subsection (1);

27 (b) failure to submit a notice of the project under subsection (7); or

28 (c) failure to implement the terms of a supervisors' decision for the purpose of mitigating the
 29 damage to the stream caused by the emergency action and of achieving a permanent solution, if feasible,
 30 to the emergency situation."

1 **Section 7.** Section 75-7-114, MCA, is amended to read:

2 **"75-7-114. Arbitration panel -- selection.** The arbitration panel shall consist of three members
3 chosen by the senior judge of the judicial district in which the dispute takes place. The members ~~shall~~ must
4 be residents of that judicial district at the time of selection. This panel shall sit for only that period of time
5 necessary to settle the dispute before it and will review the proposed project in line with the arbitration
6 agreement and the policy set forth in 75-7-102."

7
8 **Section 8.** Section 75-7-117, MCA, is amended to read:

9 **"75-7-117. Rules -- minimum standards -- arbitration agreement.** (1) The board of natural resources
10 and conservation, after consultation with the association of conservation districts, shall adopt and may ~~from~~
11 ~~time to time~~ revise rules setting minimum standards and guidelines for the purposes of this part.

12 (2) The supervisors of each district shall adopt and may ~~from time to time~~ revise by resolution after
13 a public hearing rules setting standards and guidelines for projects and exclusions within their districts
14 ~~which~~ that meet, exceed, or are not covered by the minimum standards set by the board under subsection
15 (1).

16 (3) The department of natural resources and conservation, after consultation with the association
17 of conservation districts, shall prepare an arbitration agreement for use by the conservation districts. The
18 arbitration agreement must contain provisions for:

19 (a) the appointment of arbitrators;

20 (b) the exercise of power by the arbitrators;

21 (c) an arbitration hearing process, including time and place for hearing, notification, presentation
22 of witnesses and evidence, cross-examination, subpoenas, depositions, and the issuance of the award or
23 change of award; and

24 (d) the fees and expenses of arbitration."

25
26 **Section 9.** Section 75-7-121, MCA, is amended to read:

27 **"75-7-121. ~~Judicial review~~ Review.** (1) Any review of final action under this part may be appealed
28 within 30 days to the district court by the supervisors under 75-7-112 or 75-7-113 must be by arbitration.
29 Judicial review of an arbitration action is under the provisions of Title 27, chapter 5, part 3.

30 (2) A governing body that prevails in either a suit for abatement of a public nuisance or the

1 collection of civil penalties under this chapter is entitled to collect the costs of abating the nuisance or
 2 collecting the civil penalties and attorney fees incurred by the governing body in the action."

3
 4 **Section 10.** Section 75-7-122, MCA, is amended to read:

5 "75-7-122. **Public nuisance.** Except for emergency action, a project engaged in by any person
 6 without prior approval or activities performed outside the scope of written consent of the supervisors, as
 7 prescribed in this ~~part~~ chapter, is declared a public nuisance and subject to proceedings for immediate
 8 abatement."

9
 10 **Section 11.** Section 75-7-123, MCA, is amended to read:

11 "~~75-7-123. Initiating project without consent — penalties~~ **Penalties** -- restoration. Any A person
 12 ~~initiating who initiates~~ a project without written consent of the supervisors, performs activities outside the
 13 scope of written consent of the supervisors, violates emergency procedures provided for in 75-7-113, or
 14 violates 75-7-106 is guilty of a misdemeanor and upon conviction shall be punished by a fine ~~of not less~~
 15 ~~than \$25 or more than~~ not to exceed \$500 or by a civil penalty ~~of not less than \$25 or more than~~ **NOT**
 16 **TO EXCEED** \$500 for each day that person continues to physically alter or modify the stream, and in
 17 addition, that person shall restore, at the discretion of the court, the damaged stream, as recommended
 18 by the ~~team and approved by the~~ supervisors, to as near its prior condition as possible."

19
 20 **NEW SECTION. Section 12. Codification instruction.** [Section 1] is intended to be codified as an
 21 integral part of Title 75, chapter 7, part 1, and the provisions of Title 75, chapter 7, part 1, apply to
 22 [section 1].

23
 24 **NEW SECTION. Section 13. Effective dates.** (1) [Sections 1 through 3 and 10 through 12 and
 25 this section] are effective on passage and approval.

26 (2) [Sections 4 through 9] are effective October 1, 1995.

27 -END-

HOUSE BILL NO. 478

INTRODUCED BY STORY, MCCANN, KNOX

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE NATURAL STREAMBED AND LAND PRESERVATION ACT; AMENDING SECTIONS 75-7-103, 75-7-106, 75-7-111, 75-7-112, 75-7-113, 75-7-114, 75-7-117, 75-7-121, 75-7-122, AND 75-7-123, MCA; AND PROVIDING EFFECTIVE DATES."

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

~~NEW SECTION. Section 1. Entering lands. (1) Except as provided in subsection (2), a supervisor, an employee, or a representative of the district may not enter land without permission of the landowner or the landowner's agent.~~

~~(2) (a) A supervisor, an employee, or a representative of the district who is authorized by a supervisor of the district may:~~

~~(i) enter land owned or controlled by an applicant to inspect a project or construction of works proposed by the applicant; or~~

~~(ii) enter land owned or controlled by an alleged violator to determine compliance with this part.~~

~~(b) The district shall give reasonable notice to the landowner of its intention to enter upon the land under the provisions of this subsection (2).~~

~~(3) The district is responsible for actual damages to property as a result of carrying out the purpose of this section.~~

Section 1. Section 75-7-103, MCA, is amended to read:

"75-7-103. Definitions. As used in this part, the following definitions apply:

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

(2) "Department" means the Montana department of fish, wildlife, and parks.

(3) "District" means:

(a) a conservation district under Title 76, chapter 15, in which the project will take place;

(b) a grass conservation district under Title 76, chapter 16, where ~~no~~ a conservation district exists, does not exist; or

1 (c) the board of county commissioners in a county where a district does not exist.

2 (4) "Person" means any ~~natural person~~ individual, corporation, firm, partnership, association, or
3 other legal entity not covered under 87-5-502.

4 (5) (a) "Project" means a physical alteration or modification of a stream in the state of Montana
5 ~~which that results in a significant~~ AN ADVERSE change in the state of the stream DUE TO SOIL EROSION
6 OR SEDIMENTATION ~~in contravention of 75-7-102.~~

7 (b) Project does not include customary and historic maintenance and repair of existing irrigation
8 facilities:

9 (i) that do not significantly alter or modify the stream ~~in contravention of 75-7-102~~; or

10 (ii) for which a plan of annual operation has been submitted to and approved by the district. The
11 plan is subject to future review and approval by the district at its option. Any modification to the plan must
12 have prior approval of the district.

13 (6) "Stream" means any natural perennial-flowing stream or river, its bed, and its immediate banks.

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

17 (8) "Team" means one representative of the supervisors, one representative of the department,
18 and the applicant or ~~his~~ the applicant's representative.

19 (9) "Written consent of the supervisors" means a written decision of the supervisors approving a
20 project and specifying activities authorized to be performed in completing the project."

21

22 **Section 2.** Section 75-7-106, MCA, is amended to read:

23 "**75-7-106. Junked motor vehicles as reinforcement prohibited -- penalty.** (1) It is unlawful to place
24 junked motor vehicles or the body portion of junked motor vehicles between ~~high-water~~ the channel banks
25 of any stream or to reinforce banks of a stream with ~~such~~ junked motor vehicles or the body portion of ~~such~~
26 junked motor vehicles.

27 (2) A person who ~~willfully~~ violates subsection (1) is ~~guilty of a misdemeanor and upon conviction~~
28 ~~shall be fined not to exceed \$250, imprisoned in the county jail for a term not to exceed 30 days, or both~~
29 subject to penalties as provided in 75-7-123.

30 (3) ~~A person who violates subsection (1) shall be subject to a civil penalty of not more than \$50.~~

1 ~~Each day upon which a violation occurs is a separate violation."~~

2

3 **Section 3.** Section 75-7-111, MCA, is amended to read:

4 **"75-7-111. Notice of project.** (1) A person planning to engage in a project shall present written
5 notice of the project to the supervisors before any portion of the project takes place.

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

8 (3) At the time of filing a notice of the proposed project under subsection (1), the applicant shall
9 sign an arbitration agreement as provided in 75-7-117."

10

11 **Section 4.** Section 75-7-112, MCA, is amended to read:

12 **"75-7-112. Procedure for considering projects -- team.** (1) Upon acceptance of a notice of a
13 project, the district shall, within 10 working days, notify the department of the proposed project. ~~The~~
14 ~~supervisors shall receive all notices of proposed projects within their district. They shall, within 5 days of~~
15 ~~receipt of a notice, examine and investigate the notice and determine whether the proposal is for a project.~~
16 ~~Within the 5 days, they shall send a copy of their determination to the department and the applicant. If the~~
17 ~~supervisors determine that the proposal is not a project, the applicant may, upon receipt of written notice,~~
18 ~~proceed with the proposed activity.~~

19 ~~(2) If the supervisors determine that the proposal is for a project, the~~ The department shall, within
20 5 working days of receipt of the ~~determination notification, notify~~ inform the supervisors whether the
21 department requests an onsite inspection by a team.

22 ~~(3)(2)~~ The supervisors shall call a team together within 20 days of receipt of the request of the
23 department for an onsite inspection. A member of the team shall notify the supervisors in writing, within
24 5 working days after notice of the call for an inspection, of ~~his~~ the team member's waiver of participation
25 in the inspection. If the department does not request an onsite inspection within the time specified ~~above~~
26 in this subsection, the supervisors may deny, approve, or ~~approve~~ modify the project ~~or may make~~
27 ~~recommendations for alternative plans.~~

28 ~~(4)(3)~~ Each member of the team shall recommend in writing, within ~~50~~ 30 days of the date of
29 ~~application~~ inspection, denial, approval, or modification of the project to the supervisors. The applicant may
30 waive participation in this recommendation.

1 ~~(5)~~(4) The supervisors shall review the proposed project and affirm, overrule, or modify the
2 individual team recommendations and notify the applicant and team members, within 60 days of the date
3 of application, of their decision.

4 ~~(6)~~(5) When a member of the team disagrees with the supervisors' ~~action, he may ask decision,~~
5 the team member shall request, within 5 working days of receipt of the supervisors' decision, that an
6 arbitration panel as provided in 75-7-114 be appointed to hear the dispute and make a final written decision
7 thereon regarding the dispute.

8 ~~(7)~~(6) Upon written ~~notice, with a recommendation or alternative plan, by the supervisors to the~~
9 ~~applicant, the applicant, within 15 days, consent of the supervisors, the applicant~~ shall notify the
10 supervisors in writing within 15 days if he the applicant wishes to proceed with the project in accordance
11 with the ~~recommendations or alternative plans. No work may be commenced on a project before the end~~
12 ~~of this 15 day period unless written permission is given by all team members. If the written decision of the~~
13 ~~supervisors approves the proposed project without recommendation or alternative plan, the applicant may~~
14 ~~proceed with the project upon the expiration of 10 days after receipt of the decision~~ supervisors' decision.
15 Work may not be commenced on a project before the end of the 15-day waiting period unless written
16 permission is given by all team members and the district.

17 ~~(8)~~(7) The supervisors may extend, upon the request of a team member, the time limits provided
18 in subsections ~~(4)~~ (3) and ~~(5)~~ (4) ~~where when~~, in their determination, the time provided is not sufficient to
19 carry out the purposes of this part. The time extension may not, in total, exceed 1 year from the date of
20 application. The applicant ~~shall~~ must be notified, within 60 days of the date of application, of the initial time
21 extension and ~~shall~~ must be notified immediately of any subsequent time extensions.

22 ~~(9)~~(8) ~~No work~~ Work on a project under this part may not take place without the written consent
23 of the supervisors.

24 (9) The team, in making its recommendation, and the supervisors, in denying, approving, or
25 modifying, a project, shall determine:

26 (a) the purpose of the project; and

27 (b) whether the proposed project is a reasonable means of accomplishing the purpose of the
28 proposed project. To determine if the project is reasonable, the following must be considered:

29 (i) the effects on soil erosion and sedimentation, considering the methods available to complete the
30 project and the nature and economics of the various alternatives;

1 (ii) whether there are modifications or alternative solutions that are reasonably practical that would
 2 reduce the disturbance to the stream and its environment and better accomplish the purpose of the
 3 proposed project;

4 (iii) whether the proposed project will create harmful flooding or erosion problems upstream or
 5 downstream;

6 (iv) the effects on stream channel alteration;

7 (v) the effects on streamflow, turbidity, and water quality caused by materials used or by removal
 8 of ground cover; and

9 (vi) the effect on fish and aquatic habitat.

10 (10) If the supervisors determine that a proposed project or part of a proposed project should be
 11 modified, they may condition their approval upon the modification.

12 (11) The supervisors may not approve or modify a proposed project unless the supervisors
 13 determine that the purpose of the proposed project will be accomplished by reasonable means."

14
 15 **Section 5.** Section 75-7-113, MCA, is amended to read:

16 **"75-7-113. Emergencies -- procedure.** (1) The provisions of this part do not apply to those actions
 17 ~~which~~ that are necessary to safeguard life or property, including growing crops, during periods of
 18 emergency. The person responsible for a ~~project~~ taking action under this section shall notify the supervisors
 19 in writing within 15 days of the action taken as a result of an emergency.

20 (2) The emergency notice given under subsection (1) must contain the following information:

21 ~~(i)~~ (a) the location of the action taken;

22 ~~(ii)~~ (b) a general description of the action taken;

23 ~~(iii)~~ (c) the date on which the action was taken; and

24 (d) an explanation of the emergency causing the need for the action taken.

25 ~~(3) The~~ If the supervisors determine that the action taken meets the definition of a project, the
 26 supervisors shall send one copy of the notice, within 5 working days of its receipt, to the department.

27 ~~(3)(4)~~ A team, called together as described in ~~75-7-112(3)~~ 75-7-112(2), shall make an onsite
 28 inspection and individual written reports to the supervisors within 30 days, giving its observations and
 29 opinions on the emergency project within 20 days of receipt of the emergency notice.

30 ~~(4) If the same or a similar emergency occurs to the same applicant more than once within a 5-year~~

1 ~~period, the supervisors shall request the team members to include in their reports a determination of the~~
2 ~~validity of the emergency action and to ascertain the feasibility of a more permanent solution to the~~
3 ~~emergency.~~

4 ~~(5) The supervisors shall determine the feasibility of a more permanent solution and shall, within~~
5 ~~30 days, recommend that the person put the solution into effect within a reasonable period of time as~~
6 ~~determined by the supervisors. Failure of the person to put that solution into effect is not a violation of this~~
7 ~~part unless a subsequent emergency action results from this failure.~~

8 ~~(6) When a member of the team or the applicant disagrees with the supervisors' recommendation,~~
9 ~~he may ask that an arbitration panel as provided in 75-7-114 be appointed to hear the dispute and make~~
10 ~~a final written decision thereon.~~

11 (5) Each member of the team shall recommend in writing, within 30 days of the date of the
12 emergency notice, denial, approval, or modification of the project.

13 (6) The supervisors shall review the emergency project and affirm, overrule, or modify the
14 individual team recommendations and notify the applicant and team members of their decision within 60
15 days of receipt of the emergency notice.

16 (7) A person who has undertaken an emergency action that is denied or modified shall submit
17 written notice, as provided in 75-7-111, to obtain approval pursuant to 75-7-112 to mitigate the damages
18 to the stream caused by the emergency action and to achieve a long-term solution, if feasible, to the
19 emergency situation. Notice under this subsection must be filed within 90 days after the supervisors'
20 decision.

21 (8) When a member of the team disagrees with the supervisors' decision of an emergency action,
22 the team member shall request that an arbitration panel, as provided for in 75-7-114, be appointed to hear
23 the dispute and to make a final written decision on the dispute.

24 (9) The failure of a person to perform the following subjects the person to civil and criminal
25 penalties under 75-7-123:

26 (a) failure to provide emergency notice under subsection (1);

27 (b) failure to submit a notice of the project under subsection (7); or

28 (c) failure to implement the terms of a supervisors' decision for the purpose of mitigating the
29 damage to the stream caused by the emergency action and of achieving a permanent solution, if feasible,
30 to the emergency situation."

1 **Section 6.** Section 75-7-114, MCA, is amended to read:

2 **"75-7-114. Arbitration panel -- selection.** The arbitration panel shall consist of three members
3 chosen by the senior judge of the judicial district in which the dispute takes place. The members ~~shall~~ must
4 be residents of that judicial district at the time of selection. This panel shall sit for only that period of time
5 necessary to settle the dispute before it and will review the proposed project in line with the arbitration
6 agreement and the policy set forth in 75-7-102."

7
8 **Section 7.** Section 75-7-117, MCA, is amended to read:

9 **"75-7-117. Rules -- minimum standards -- arbitration agreement.** (1) The board of natural resources
10 and conservation, after consultation with the association of conservation districts, shall adopt and may ~~from~~
11 ~~time to time~~ revise rules setting minimum standards and guidelines for the purposes of this part.

12 (2) The supervisors of each district shall adopt and may ~~from time to time~~ revise by resolution after
13 a public hearing rules setting standards and guidelines for projects and exclusions within their districts
14 ~~which that~~ meet, exceed, or are not covered by the minimum standards set by the board under subsection
15 (1).

16 (3) The department of natural resources and conservation, after consultation with the association
17 of conservation districts, shall prepare an arbitration agreement for use by the conservation districts. The
18 arbitration agreement must contain provisions for:

19 (a) the appointment of arbitrators;

20 (b) the exercise of power by the arbitrators;

21 (c) an arbitration hearing process, including time and place for hearing, notification, presentation
22 of witnesses and evidence, cross-examination, subpoenas, depositions, and the issuance of the award or
23 change of award; and

24 (d) the fees and expenses of arbitration."

25
26 **Section 8.** Section 75-7-121, MCA, is amended to read:

27 **"75-7-121. Judicial review Review.** ~~(1) Any review of final action under this part may be appealed~~
28 ~~within 30 days to the district court~~ by the supervisors under 75-7-112 or 75-7-113 must be by arbitration.
29 Judicial review of an arbitration action is under the provisions of Title 27, chapter 5, part 3.

30 ~~(2) A governing body that prevails in either a suit for abatement of a public nuisance or the~~

1 ~~collection of civil penalties under this chapter is entitled to collect the costs of abating the nuisance or~~
 2 ~~collecting the civil penalties and attorney fees incurred by the governing body in the action."~~

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 4 **Section 9.** Section 75-7-122, MCA, is amended to read:

5 "75-7-122. **Public nuisance.** Except for emergency action, a project engaged in by any person
 6 without prior approval or activities performed outside the scope of written consent of the supervisors, as
 7 prescribed in this ~~part~~ chapter, is declared a public nuisance and subject to proceedings for immediate
 8 abatement."

9
 10 **Section 10.** Section 75-7-123, MCA, is amended to read:

11 "~~75-7-123. Initiating project without consent — penalties~~ **Penalties** -- restoration. Any A person
 12 ~~initiating who initiates~~ a project without written consent of the supervisors, performs activities outside the
 13 scope of written consent of the supervisors, violates emergency procedures provided for in 75-7-113, or
 14 violates 75-7-106 is guilty of a misdemeanor and upon conviction shall be punished by a fine ~~of not less~~
 15 ~~than \$25 or more than~~ not to exceed \$500 or by a civil penalty ~~of not less than \$25 or more than~~ **NOT**
 16 **TO EXCEED** \$500 for each day that person continues to physically alter or modify the stream, and in
 17 addition, that person shall restore, at the discretion of the court, the damaged stream, as recommended
 18 by the ~~team and approved by the~~ supervisors, to as near its prior condition as possible."

19
 20 ~~**NEW SECTION. Section 12. Codification instruction.** [Section 1] is intended to be codified as an~~
 21 ~~integral part of Title 75, chapter 7, part 1, and the provisions of Title 75, chapter 7, part 1, apply to~~
 22 ~~[section 1].~~

23
 24 ~~**NEW SECTION. Section 11. Effective dates.** (1) [Sections 1 through 3 and 10 through 12, 2, 9~~
 25 ~~**AND 10** and this section] are effective on passage and approval.~~

26 (2) [Sections 4 ~~through 9~~ **3 THROUGH 8**] are effective October 1, 1995.


27 -END-

SENATE STANDING COMMITTEE REPORT

Page 1 of 2
March 18, 1995

MR. PRESIDENT:

We, your committee on Natural Resources having had under consideration HB 478 (third reading copy -- blue), respectfully report that HB 478 be amended as follows and as so amended be concurred in.

Signed: 
Senator Lorents Grosfield, Chair

That such amendments read:

1. Page 2, line 5 and 6.

Strike: "AN ADVERSE" on line 5

Insert: "a"

Strike: "DUE" on line 5 through "SEDIMENTATION" on line 6

2. Page 2, line 7 and 8.

Strike: "customary" on line 7 through "facilities" on line 8

3. Page 2, lines 9 through 12.

Strike: subsections (i) and (ii) in their entirety

Insert: "(i) an activity for which a plan of operation has been submitted to and approved by the district. Any modification to the plan must have prior approval of the district.
(ii) customary and historic maintenance and repair of existing irrigation facilities that do not significantly alter or modify the stream in contravention of 75-7-102."

4. Page 2, line 13.

Following: "banks"

Insert: "except a stream or river that has been designated by district rule as not having significant aquatic and riparian attributes in need of protection or preservation under 75-7-102"

5. Page 3, line 5.

Following: "notice of the"

Insert: "proposed"

6. Page 3.


Following: line 9

Insert: "(4) The district may authorize a representative to accept notices of proposed projects."

7. Page 3, line 12.

Following: "notice of a"

Insert: "proposed"


Amd. Coord.
Sec. of Senate

L. GROSFIELD
Senator Carrying Bill

HB478
SENATE
631159SC.SPV

8. Page 3, line 13.

Following: "district"

Insert: "or the district's authorized representative"

Strike: "proposed"

Following: "project."

Insert: "If at any time during the review process the supervisors determine that provisions of this part do not apply to a notice of the proposed project, the applicant may proceed upon written notice of the supervisors."

-END-

HOUSE BILL NO. 478

INTRODUCED BY STORY, MCCANN, KNOX

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE NATURAL STREAMBED AND LAND PRESERVATION ACT; AMENDING SECTIONS 75-7-103, 75-7-106, 75-7-111, 75-7-112, 75-7-113, 75-7-114, 75-7-117, 75-7-121, 75-7-122, AND 75-7-123, MCA; AND PROVIDING EFFECTIVE DATES."

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

~~NEW SECTION. Section 1. Entering lands. (1) Except as provided in subsection (2), a supervisor, an employee, or a representative of the district may not enter land without permission of the landowner or the landowner's agent.~~

~~(2) (a) A supervisor, an employee, or a representative of the district who is authorized by a supervisor of the district may:~~

~~(i) enter land owned or controlled by an applicant to inspect a project or construction of works proposed by the applicant; or~~

~~(ii) enter land owned or controlled by an alleged violator to determine compliance with this part.~~

~~(b) The district shall give reasonable notice to the landowner of its intention to enter upon the land under the provisions of this subsection (2).~~

~~(3) The district is responsible for actual damages to property as a result of carrying out the purpose of this section.~~

Section 1. Section 75-7-103, MCA, is amended to read:

"75-7-103. Definitions. As used in this part, the following definitions apply:

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

(2) "Department" means the Montana department of fish, wildlife, and parks.

(3) "District" means:

(a) a conservation district under Title 76, chapter 15, in which the project will take place;

(b) a grass conservation district under Title 76, chapter 16, where ~~no~~ a conservation district ~~exists,~~
does not exist; or

1 (c) the board of county commissioners in a county where a district does not exist.

2 (4) "Person" means any ~~natural person~~ individual, corporation, firm, partnership, association, or
3 other legal entity not covered under 87-5-502.

4 (5) (a) "Project" means a physical alteration or modification of a stream in the state of Montana
5 ~~which that~~ results in a ~~significant~~ AN ADVERSE A change in the state of the stream DUE TO SOIL EROSION
6 OR SEDIMENTATION ~~in contravention of 75-7-102.~~

7 (b) Project does not include ~~customary and historic maintenance and repair of existing irrigation~~
8 facilities:

9 ~~(i) that do not significantly alter or modify the stream in contravention of 75-7-102; or~~

10 ~~(ii) for which a plan of annual operation has been submitted to and approved by the district. The~~
11 ~~plan is subject to future review and approval by the district at its option. Any modification to the plan must~~
12 ~~have prior approval of the district.~~

13 (I) AN ACTIVITY FOR WHICH A PLAN OF OPERATION HAS BEEN SUBMITTED TO AND
14 APPROVED BY THE DISTRICT. ANY MODIFICATION TO THE PLAN MUST HAVE PRIOR APPROVAL OF
15 THE DISTRICT.

16 (II) CUSTOMARY AND HISTORIC MAINTENANCE AND REPAIR OF EXISTING IRRIGATION
17 FACILITIES THAT DO NOT SIGNIFICANTLY ALTER OR MODIFY THE STREAM IN CONTRAVENTION OF
18 75-7-102.

19 (6) "Stream" means any natural perennial-flowing stream or river, its bed, and its immediate banks
20 EXCEPT A STREAM OR RIVER THAT HAS BEEN DESIGNATED BY DISTRICT RULE AS NOT HAVING
21 SIGNIFICANT AQUATIC AND RIPARIAN ATTRIBUTES IN NEED OF PROTECTION OR PRESERVATION
22 UNDER 75-7-102.

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

26 (8) "Team" means one representative of the supervisors, one representative of the department,
27 and the applicant or ~~his~~ the applicant's representative.

28 (9) "Written consent of the supervisors" means a written decision of the supervisors approving a
29 project and specifying activities authorized to be performed in completing the project."

30

1 **Section 2.** Section 75-7-106, MCA, is amended to read:

2 **"75-7-106. Junked motor vehicles as reinforcement prohibited -- penalty.** (1) It is unlawful to place
3 junked motor vehicles or the body portion of junked motor vehicles between ~~high water~~ the channel banks
4 of any stream or to reinforce banks of a stream with ~~such~~ junked motor vehicles or the body portion of ~~such~~
5 junked motor vehicles.

6 (2) A person who ~~willfully~~ violates subsection (1) is ~~guilty of a misdemeanor and upon conviction~~
7 ~~shall be fined not to exceed \$250, imprisoned in the county jail for a term not to exceed 30 days, or both~~
8 subject to penalties as provided in 75-7-123.

9 ~~(3) A person who violates subsection (1) shall be subject to a civil penalty of not more than \$50.~~
10 ~~Each day upon which a violation occurs is a separate violation."~~

11
12 **Section 3.** Section 75-7-111, MCA, is amended to read:

13 **"75-7-111. Notice of project.** (1) A person planning to engage in a project shall present written
14 notice of the PROPOSED project to the supervisors before any portion of the project takes place.

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

17 (3) At the time of filing a notice of the proposed project under subsection (1), the applicant shall
18 sign an arbitration agreement as provided in 75-7-117.

19 (4) THE DISTRICT MAY AUTHORIZE A REPRESENTATIVE TO ACCEPT NOTICES OF PROPOSED
20 PROJECTS."

21
22 **Section 4.** Section 75-7-112, MCA, is amended to read:

23 **"75-7-112. Procedure for considering projects -- team.** (1) Upon acceptance of a notice of a
24 PROPOSED project, the district OR THE DISTRICT'S AUTHORIZED REPRESENTATIVE shall, within 10
25 working days, notify the department of the proposed project. IF AT ANY TIME DURING THE REVIEW
26 PROCESS THE SUPERVISORS DETERMINE THAT PROVISIONS OF THIS PART DO NOT APPLY TO A
27 NOTICE OF THE PROPOSED PROJECT, THE APPLICANT MAY PROCEED UPON WRITTEN NOTICE OF THE
28 SUPERVISORS. ~~The supervisors shall receive all notices of proposed projects within their district. They~~
29 ~~shall, within 5 days of receipt of a notice, examine and investigate the notice and determine whether the~~
30 ~~proposal is for a project. Within the 5 days, they shall send a copy of their determination to the department~~

1 and the applicant. If the supervisors determine that the proposal is not a project, the applicant may, upon
 2 receipt of written notice, proceed with the proposed activity.

3 ~~(2)~~ If the supervisors determine that the proposal is for a project, the The department shall, within
 4 5 working days of receipt of the ~~determination~~ notification, ~~notify~~ inform the supervisors whether the
 5 department requests an onsite inspection by a team.

6 ~~(3)~~(2) The supervisors shall call a team together within 20 days of receipt of the request of the
 7 department for an onsite inspection. A member of the team shall notify the supervisors in writing, within
 8 5 working days after notice of the call for an inspection, of ~~his~~ the team member's waiver of participation
 9 in the inspection. If the department does not request an onsite inspection within the time specified ~~above~~
 10 in this subsection, the supervisors may deny, approve, or ~~approve~~ modify the project ~~or may make~~
 11 recommendations for alternative plans.

12 ~~(4)~~(3) Each member of the team shall recommend in writing, within ~~50~~ 30 days of the date of
 13 ~~application~~ inspection, denial, approval, or modification of the project to the supervisors. The applicant may
 14 waive participation in this recommendation.

15 ~~(5)~~(4) The supervisors shall review the proposed project and affirm, overrule, or modify the
 16 individual team recommendations and notify the applicant and team members, within 60 days of the date
 17 of application, of their decision.

18 ~~(6)~~(5) When a member of the team disagrees with the supervisors' ~~action~~, he may ask decision,
 19 the team member shall request, within 5 working days of receipt of the supervisors' decision, that an
 20 arbitration panel as provided in 75-7-114 be appointed to hear the dispute and make a final written decision
 21 ~~thereon~~ regarding the dispute.

22 ~~(7)~~(6) Upon written ~~notice, with a recommendation or alternative plan, by the supervisors to the~~
 23 ~~applicant, the applicant, within 15 days, consent of the supervisors, the applicant~~ shall notify the
 24 supervisors in writing within 15 days if ~~he~~ the applicant wishes to proceed with the project in accordance
 25 with the ~~recommendations or alternative plans. No work may be commenced on a project before the end~~
 26 ~~of this 15-day period unless written permission is given by all team members. If the written decision of the~~
 27 ~~supervisors approves the proposed project without recommendation or alternative plan, the applicant may~~
 28 ~~proceed with the project upon the expiration of 10 days after receipt of the decision~~ supervisors' decision.
 29 Work may not be commenced on a project before the end of the 15-day waiting period unless written
 30 permission is given by all team members and the district.

1 ~~(8)~~(7) The supervisors may extend, upon the request of a team member, the time limits provided
 2 in subsections ~~(4)~~ (3) and ~~(6)~~ (4) ~~where~~ when, in their determination, the time provided is not sufficient to
 3 carry out the purposes of this part. The time extension may not, in total, exceed 1 year from the date of
 4 application. The applicant ~~shall~~ must be notified, within 60 days of the date of application, of the initial time
 5 extension and ~~shall~~ must be notified immediately of any subsequent time extensions.

6 ~~(9)~~(8) ~~No work~~ Work on a project under this part may not take place without the written consent
 7 of the supervisors.

8 (9) The team, in making its recommendation, and the supervisors, in denying, approving, or
 9 modifying, a project, shall determine:

10 (a) the purpose of the project; and

11 (b) whether the proposed project is a reasonable means of accomplishing the purpose of the
 12 proposed project. To determine if the project is reasonable, the following must be considered:

13 (i) the effects on soil erosion and sedimentation, considering the methods available to complete the
 14 project and the nature and economics of the various alternatives;

15 (ii) whether there are modifications or alternative solutions that are reasonably practical that would
 16 reduce the disturbance to the stream and its environment and better accomplish the purpose of the
 17 proposed project;

18 (iii) whether the proposed project will create harmful flooding or erosion problems upstream or
 19 downstream;

20 (iv) the effects on stream channel alteration;

21 (v) the effects on streamflow, turbidity, and water quality caused by materials used or by removal
 22 of ground cover; and

23 (vi) the effect on fish and aquatic habitat.

24 (10) If the supervisors determine that a proposed project or part of a proposed project should be
 25 modified, they may condition their approval upon the modification.

26 (11) The supervisors may not approve or modify a proposed project unless the supervisors
 27 determine that the purpose of the proposed project will be accomplished by reasonable means."

28
 29 **Section 5.** Section 75-7-113, MCA, is amended to read:

30 **"75-7-113. Emergencies -- procedure.** (1) The provisions of this part do not apply to those actions

1 ~~which~~ that are necessary to safeguard life or property, including growing crops, during periods of
2 emergency. The person responsible for a ~~project~~ taking action under this section shall notify the supervisors
3 in writing within 15 days of the action taken as a result of an emergency.

4 (2) The emergency notice given under subsection (1) must contain the following information:

5 ~~(i)~~ (a) the location of the action taken;

6 ~~(ii)~~ (b) a general description of the action taken;

7 ~~(iii)~~ (c) the date on which the action was taken; and

8 (d) an explanation of the emergency causing the need for the action taken.

9 (3) ~~The~~ If the supervisors determine that the action taken meets the definition of a project, the
10 supervisors shall send one copy of the notice, within 5 working days of its receipt, to the department.

11 ~~(3)(4)~~ A team, called together as described in 75-7-112(3) 75-7-112(2), shall make an onsite
12 inspection and individual written reports to the supervisors within 30 days, giving its observations and
13 opinions on the emergency project within 20 days of receipt of the emergency notice.

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

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

22 ~~(6) When a member of the team or the applicant disagrees with the supervisors' recommendation,~~
23 ~~he may ask that an arbitration panel as provided in 75-7-114 be appointed to hear the dispute and make~~
24 ~~a final written decision thereon.~~

25 (5) Each member of the team shall recommend in writing, within 30 days of the date of the
26 emergency notice, denial, approval, or modification of the project.

27 (6) The supervisors shall review the emergency project and affirm, overrule, or modify the
28 individual team recommendations and notify the applicant and team members of their decision within 60
29 days of receipt of the emergency notice.

30 (7) A person who has undertaken an emergency action that is denied or modified shall submit

1 written notice, as provided in 75-7-111, to obtain approval pursuant to 75-7-112 to mitigate the damages
 2 to the stream caused by the emergency action and to achieve a long-term solution, if feasible, to the
 3 emergency situation. Notice under this subsection must be filed within 90 days after the supervisors'
 4 decision.

5 (8) When a member of the team disagrees with the supervisors' decision of an emergency action,
 6 the team member shall request that an arbitration panel, as provided for in 75-7-114, be appointed to hear
 7 the dispute and to make a final written decision on the dispute.

8 (9) The failure of a person to perform the following subjects the person to civil and criminal
 9 penalties under 75-7-123:

10 (a) failure to provide emergency notice under subsection (1);

11 (b) failure to submit a notice of the project under subsection (7); or

12 (c) failure to implement the terms of a supervisors' decision for the purpose of mitigating the
 13 damage to the stream caused by the emergency action and of achieving a permanent solution, if feasible,
 14 to the emergency situation."

15

16 **Section 6.** Section 75-7-114, MCA, is amended to read:

17 **"75-7-114. Arbitration panel -- selection.** The arbitration panel shall consist of three members
 18 chosen by the senior judge of the judicial district in which the dispute takes place. The members ~~shall~~ must
 19 be residents of that judicial district at the time of selection. This panel shall sit for only that period of time
 20 necessary to settle the dispute before it and will review the proposed project in line with the arbitration
 21 agreement and the policy set forth in 75-7-102."

22

23 **Section 7.** Section 75-7-117, MCA, is amended to read:

24 **"75-7-117. Rules -- minimum standards -- arbitration agreement.** (1) The board of natural resources
 25 and conservation, after consultation with the association of conservation districts, shall adopt and may ~~from~~
 26 ~~time to time~~ revise rules setting minimum standards and guidelines for the purposes of this part.

27 (2) The supervisors of each district shall adopt and may ~~from time to time~~ revise by resolution after
 28 a public hearing rules setting standards and guidelines for projects and exclusions within their districts
 29 ~~which~~ that meet, exceed, or are not covered by the minimum standards set by the board under subsection
 30 (1).

1 (3) The department of natural resources and conservation, after consultation with the association
 2 of conservation districts, shall prepare an arbitration agreement for use by the conservation districts. The
 3 arbitration agreement must contain provisions for:

4 (a) the appointment of arbitrators;

5 (b) the exercise of power by the arbitrators;

6 (c) an arbitration hearing process, including time and place for hearing, notification, presentation
 7 of witnesses and evidence, cross-examination, subpoenas, depositions, and the issuance of the award or
 8 change of award; and

9 (d) the fees and expenses of arbitration."

10
 11 **Section 8.** Section 75-7-121, MCA, is amended to read:

12 "**75-7-121. ~~Judicial review~~ Review.** ~~{1} Any review of final action under this part may be appealed~~
 13 ~~within 30 days to the district court by the supervisors under 75-7-112 or 75-7-113 must be by arbitration.~~

14 Judicial review of an arbitration action is under the provisions of Title 27, chapter 5, part 3.

15 ~~(2) A governing body that prevails in either a suit for abatement of a public nuisance or the~~
 16 ~~collection of civil penalties under this chapter is entitled to collect the costs of abating the nuisance or~~
 17 ~~collecting the civil penalties and attorney fees incurred by the governing body in the action."~~

18
 19 **Section 9.** Section 75-7-122, MCA, is amended to read:

20 "**75-7-122. Public nuisance.** Except for emergency action, a project engaged in by any person
 21 without prior approval or activities performed outside the scope of written consent of the supervisors, as
 22 prescribed in this ~~part~~ chapter, is declared a public nuisance and subject to proceedings for immediate
 23 abatement."

24
 25 **Section 10.** Section 75-7-123, MCA, is amended to read:

26 "**75-7-123. ~~Initiating project without consent~~ Penalties** -- restoration. Any A person
 27 ~~initiating~~ who initiates a project without written consent of the supervisors, performs activities outside the
 28 scope of written consent of the supervisors, violates emergency procedures provided for in 75-7-113, or
 29 violates 75-7-106 is guilty of a misdemeanor and upon conviction shall be punished by a fine ~~of not less~~
 30 ~~than \$25 or more than~~ not to exceed \$500 or by a civil penalty ~~of not less than \$25 or more than~~ NOT

1 TO EXCEED \$500 for each day that person continues to physically alter or modify the stream, and in
2 addition, that person shall restore, at the discretion of the court, the damaged stream, as recommended
3 by the team and approved by the supervisors, to as near its prior condition as possible."
4

5 ~~NEW SECTION. Section 12. Codification instruction. [Section 1] is intended to be codified as an~~
6 ~~integral part of Title 75, chapter 7, part 1, and the provisions of Title 75, chapter 7, part 1, apply to~~
7 ~~[section 1].~~

8
9 NEW SECTION. Section 11. Effective dates. (1) [Sections 1 ~~through 3 and 10 through 12, 2, 9~~
10 AND 10 and this section] are effective on passage and approval.

11 (2) [Sections 4 ~~through 9~~ 3 THROUGH 8] are effective October 1, 1995.

12 -END-