

Understanding the Montana Natural Streambed and Land Preservation Act

Radley Watkins, Executive Director
Missoula Conservation District



Montana Code Annotated 2021

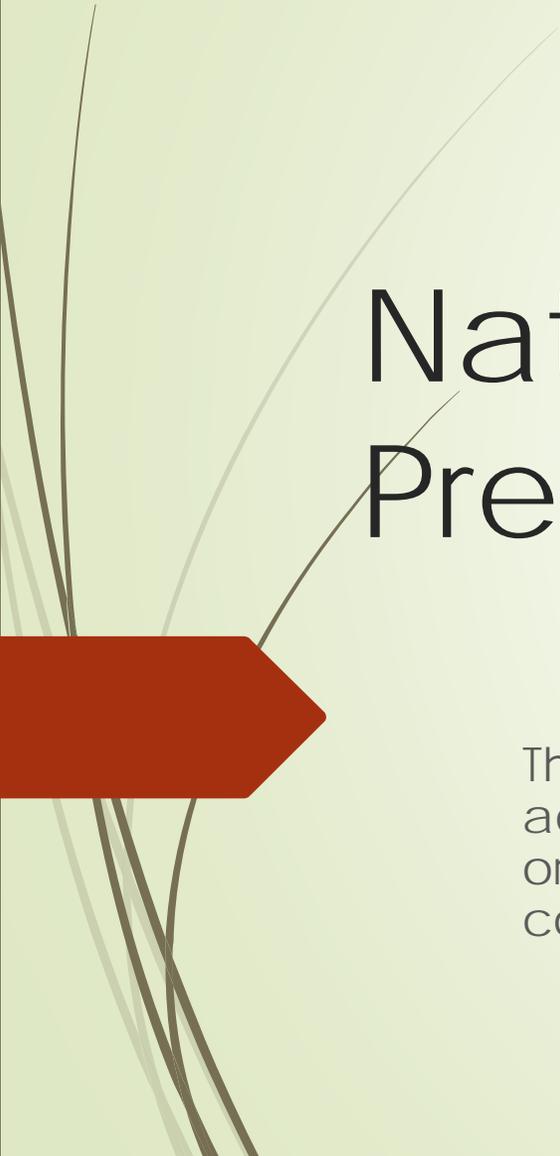
TITLE 75. ENVIRONMENTAL PROTECTION

CHAPTER 7. AQUATIC ECOSYSTEM PROTECTIONS

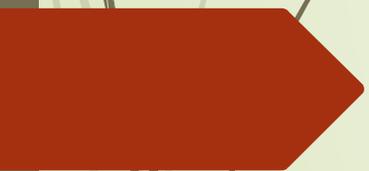
Part 1. Streambeds

Intent -- Policy

- ▶ 75-7-102. Intent -- policy. (1) The legislature, mindful of its constitutional obligations under Article II, section 3, and Article IX of **the Montana constitution, has enacted The Natural Streambed and Land Preservation Act of 1975**. It is the legislature's intent that the requirements of this part provide adequate remedies for the protection of the environmental life support system from degradation and provide adequate remedies to prevent unreasonable depletion and degradation of natural resources.
- ▶ (2) It is the **policy of the state of Montana that its natural rivers and streams and the lands and property immediately adjacent to them within the state are to be protected and preserved to be available in their natural or existing state and to prohibit unauthorized projects** and, in so doing, to keep soil erosion and sedimentation to a minimum, except as may be necessary and appropriate after due consideration of all factors involved. Further, it is the policy of this state to recognize the needs of irrigation and agricultural use of the rivers and streams of the state of Montana and to protect the use of water for any useful or beneficial purpose as guaranteed by The Constitution of the State of Montana.
- ▶ History: En. 26-1511 by Sec. 2, Ch. 463, L. 1975; R.C.M. 1947, 26-1511; amd. Sec. 11, Ch. 361, L. 2003.



Natural Streambed and Land Preservation Act (**310 Law**)



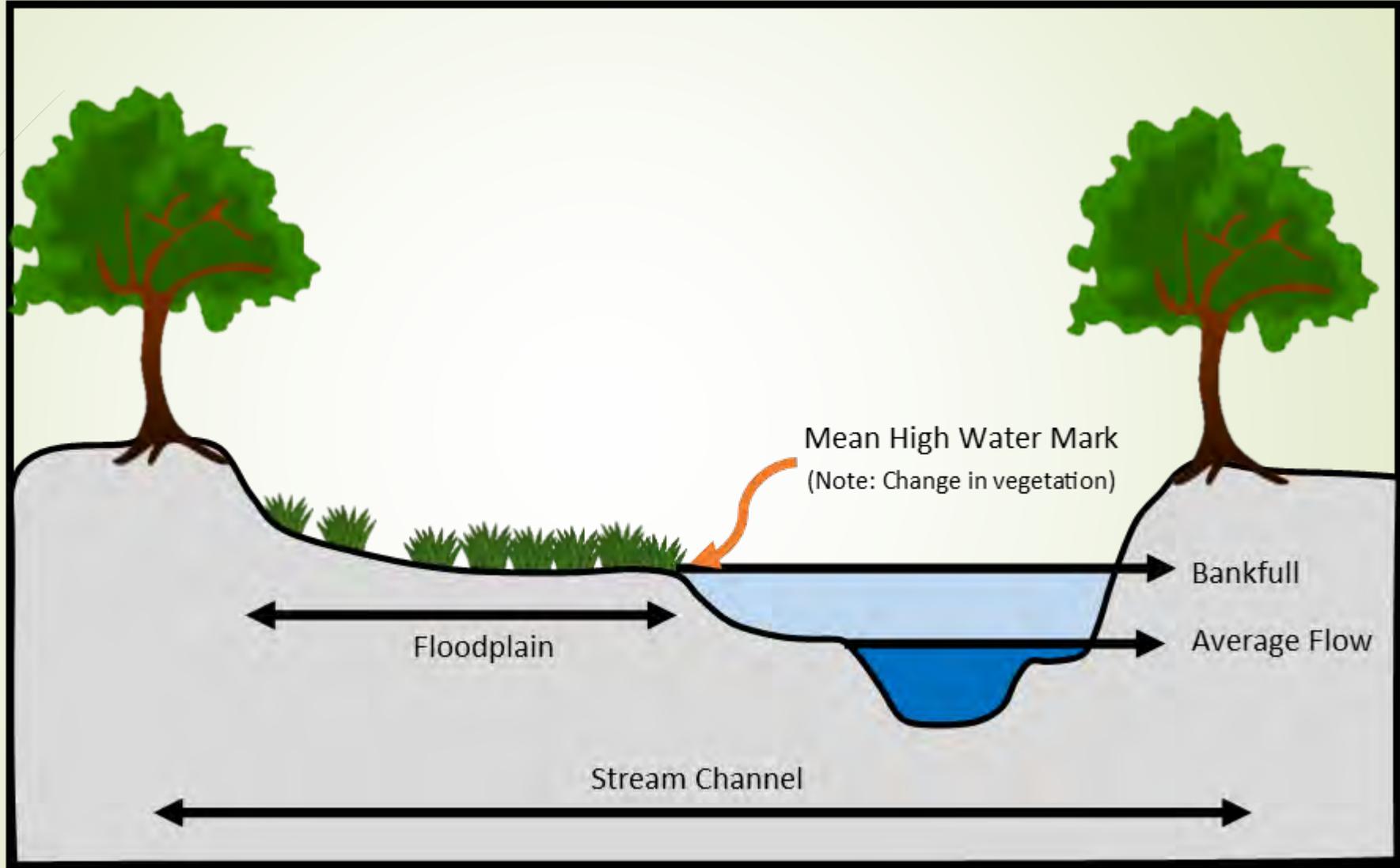
This law is intended to protect and preserve streams and rivers and the lands adjacent to them. The law requires any individual or business proposing work in or near a perennial stream to apply for a 310 permit through their local conservation district.

Missoula Conservation District & the 310 Permitting

The Natural Streambed and Land Preservation Act is intended to protect and preserve streams and rivers and the lands adjacent to them. The law requires any **individual** or **business** proposing work in or near a perennial stream to apply for a 310 permit through their local conservation district.

If you are planning a project in or around a stream, this law pertains to you.

The Missoula Conservation District administers 310 permits on streams within Missoula County (outside of Missoula's 1946 City Limits). Because each of these streams are unique, they require their own special considerations for maintaining health and function. 310 permits are required to ensure wise use of our natural resources and prevent degradation of our streams. Any project that will physically alter or modify the stream, its bed, or immediate banks must have a permit. Since each stream and each project is different, permits are assessed on the ground during a site inspection by District Supervisors and Fish Wildlife and Parks staff.





How Long Does the Permitting Process Take?

The permitting process takes between 30 and 90 days. Once approved, a 310 permit is valid for one year. Permits decisions are made by the Missoula Conservation District Board of Supervisors during the monthly meetings, which occur on the second Monday of each month. Meetings are open to the public.

Annual permits are also available for routine maintenance work, such as opening/clearing ditches, and valid for up to ten years.



1) Application Process

All information requested on the 310 application along with a plan and/or drawing of the proposed project and a site map must be provided. Incomplete applications may be rejected. Applications are reviewed and deemed “projects” at the monthly District meetings. After a 310 application is received, Montana Fish Wildlife and Parks is notified of the proposed project and may request an on-site inspection.





There is no fee for a 310 Permit. Applications can be picked up in the district office or downloaded on our website. Please check the calendar for application deadlines and note that an original signature from both the applicant and the landowner is required with each application. For questions, contact **Missoula**

Conservation District located at the *Gerald W. Marks Exploration Center & Rocky Mountain Gardens, 1075 South Avenue West, Missoula, MT 59801*



2) Site Inspection Process

A team, consisting of the District Resource Conservationist/Director, District Supervisor, a Montana Fish, Wildlife, and Parks representative, and the applicant or applicant's representative will meet to discuss the project on site. The applicant or their representative is entitled to be a team member for the purposes of making recommendations to the district. Team members may waive participation in the on-site inspection.

After an inspection is conducted, team members make recommendations to the District at a regular meeting. The applicant can waive participation, submit a team member report jointly with other team members (if in agreement with their recommendations), or submit a separate report.

If no inspection is required, the District may proceed with the application and the applicant will be notified of the Supervisors' decision.





3) Decision Process

The District will decide whether to approve (AAP), modify (AWM), or deny the project within 60 days of acceptance of the application. However, this time period can be extended if the District determines it necessary to collect further information (or applicant has requested more time). After receiving the Supervisors' decision, the applicant has 15 days to return the permit, signed to indicate agreement with the District's decision. Unless otherwise stated on the Supervisors' decision form, the applicant must wait 15 days before proceeding with the project (although this requirement is often waived in the approval process).



Considerations that must be addressed by the district in making their decision:

- ▶ The effects on soil erosion and sedimentation, considering the methods available to complete the project and the nature and economics of the various alternatives
- ▶ The effects of stream channel alteration
- ▶ The effects on streamflow, turbidity, and water quality caused by materials used or by removal of ground cover
- ▶ The effects on fish and aquatic habitat
- ▶ Whether there are modifications or alternative solutions that are reasonably practical that would reduce the disturbance to the stream and its environment and better accomplish the purpose of the project
- ▶ Whether the proposed project will create harmful flooding or erosion problems upstream or downstream
- ▶ Whether denial of the project would interfere with a legitimate use of a water right (often intended for agricultural use)



What If There Is An Emergency?



There is an emergency provision in the 310 law to handle actions necessary to safeguard life or property, including growing crops, during periods of emergency. If a person takes an emergency action, the Conservation District must be notified within 15 days in writing of the action taken and why. The emergency action will be reviewed by the Conservation District. The district will decide whether the action was appropriate, must be modified, or must be removed and/or replaced.



Examples of Projects Requiring a 310 Permit*:

- ▶ Channel Changes/Dredging
- ▶ New Irrigation Diversions
- ▶ Streambank Protection Projects
- ▶ Culvert Installation/Removal
- ▶ Bridge Installation/Removal
- ▶ Ford Crossings

*A permit may also be required if an existing project needs repair and/or alternations.





















Examples of Prohibited Projects:

Unless specifically authorized by the board through a 310 permit, the following activities are prohibited

- ▶ The placement of concrete in a stream as rock riprap
- ▶ The placement of road fill material in a stream
- ▶ The placement of debris or other material in a stream where it may erode or otherwise enter the stream
- ▶ Projects that permanently prevent fish migration
- ▶ Removal of streambank vegetation within the immediate banks of the stream, unless necessary for completion of the permitted project
- ▶ Excavation of streambed gravels
- ▶ Construction of an in-stream pond



What Happens If I Don't Get A Permit?

It is a misdemeanor to initiate a project without a permit, to conduct activities outside the scope of the permit, to violate emergency procedures or to use prohibited materials in a project. Upon conviction of a misdemeanor, a person may be punished by a fine up to \$500 or by a civil penalty not to exceed \$500 per day for each day the person continues to alter the stream. In addition, the person may be required to restore the damaged stream to a condition as close to its prior condition as possible, as recommended by the District Supervisors.



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Part 1. Streambeds

Penalties -- Restoration

- (2) **Each day of a continuing violation constitutes a separate violation.** The maximum civil penalty is the jurisdictional amount for purposes of 3-10-301. A conservation district may work with a person who is subject to a civil penalty to resolve the amount of the penalty prior to initiating an enforcement action in justice's court to collect a civil penalty.
- (3) In addition to a fine or a civil penalty under subsection (1), the person:
- (a) shall restore, at the discretion of the court, the damaged stream, as recommended by the Supervisors, to as near its prior condition as possible; or
 - (b) is civilly liable for the amount necessary to restore the stream. The amount of the liability may be collected in an action instituted pursuant to 3-10-301 if the amount of liability **does not exceed \$15,000**. If the amount of liability for restoration exceeds \$15,000, then the action must be brought in district court.



















**OTHER STREAM PERMITS ARE OFTEN NEEDED
IN ADDITION TO THE 310 PERMIT.
MORE ABOUT STREAM PERMITTING
REQUIRED BY OTHER AGENCIES.**

B. Montana Stream Protection Act (SPA 124 Permit)

C. City or County Floodplain Development Permit

D. Federal Clean Water Act (404 Permit)

E. Federal Rivers and Harbors Act (Section 10 Permit)

F. Short-Term Water Quality Standard for Turbidity (318 Authorization)

G. Montana Land-Use License or Easement on Navigable Waters

H. Montana Water Use Act (Water Right Permit and Change Authorization)

I. Montana Water Use Act (Water Reservation)

J. Stormwater Discharge General Permits

K. Streamside Management Zone Law

L. Other Laws that May Apply



*“Natural Water Bodies and Land Preservation Disclosure: Buyers of property in the State of Montana should be aware that some properties contain or are adjacent to streams, rivers, wetlands, floodplains and other water bodies. It is the general policy of the State of Montana, **under the Montana Natural Streambed and Land Preservation Act of 1975 (310 Law)**, that natural water bodies and the lands immediately adjacent to them are to be protected and preserved to be available in their natural or existing state, and to prohibit unauthorized projects related thereto. Property owners should consult their local **conservation district**, a land use profession, or other qualified advisor, regarding any applicable local, state or federal regulations, including permitting or other approvals, before working in or around any streams, rivers, wetlands, floodplains or other water bodies, including vegetation removal.”*



Missoula Conservation District

www.missoulacd.org

(406) 258-3430

office@missoulacd.org

Open 8:00 am - 4:00pm

Radley Watkins

406-214-5131

rwatkins@missoulacd.org

