Natural Perennial Stream

- Perennial stream in need of protection

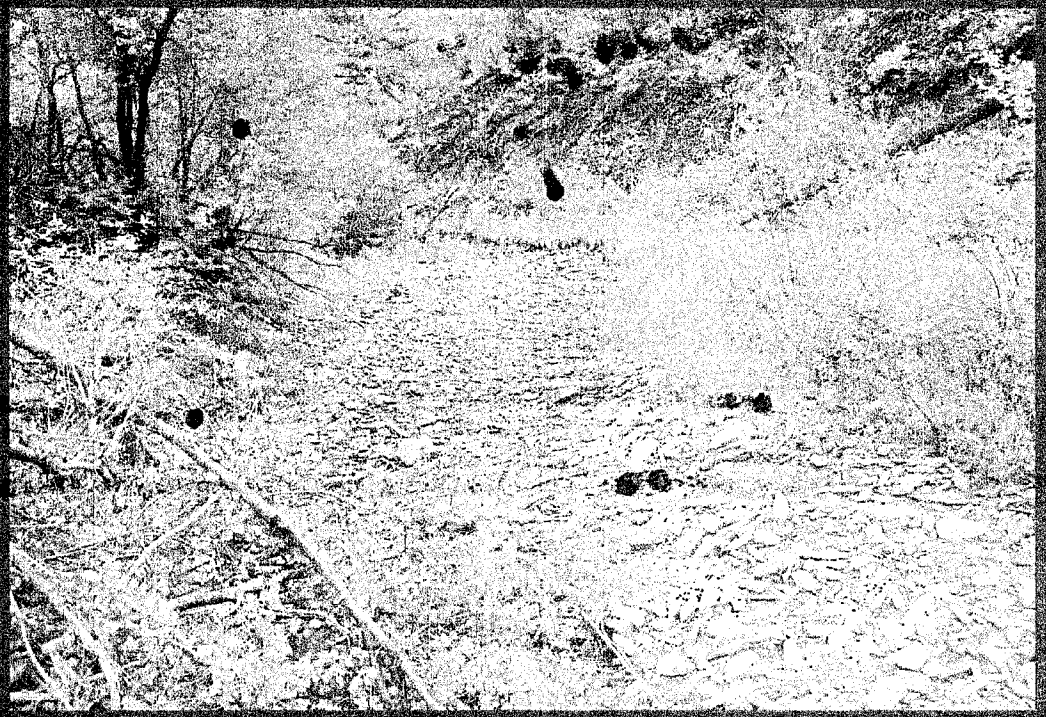
EXHIBIT 8
DATE 2-19-07
HB 708

Ephemeral Stream

- This picture shows an ephemeral draw with no water.

Intermittent Stream

- The following is known as an intermittent stream that is found nearly everywhere in Montana.



Proposed Definition

- "Natural Perennial Flowing Stream" Means a stream [redacted] that flows continuously at all seasons of the year as a result of ground water discharge or surface water runoff [redacted]

[redacted]

[redacted]

Benefits

- With the definition in statute rather than in administrative rules, the act will have full force of the law.
- A clear definition in statute will provide a consistent interpretation for the protection of our natural perennial flowing streams.

Rule Making

- Model Rule Making
  - District supervisors will enjoy the consistent interpretation of what type of streams are covered under the act for the purpose of adopting and administering rules.
    - With A clear definition, supervisors will enjoy what type of streams are under their jurisdiction.

75-7-103 Proposed Definition HB 708

- Natural Perennial Flowing Stream
  - A stream that, in the absence of diversion, impoundment, appropriation, **the placement of water for carriage purposes**, or extreme drought, flows continuously at all seasons of the year in a defined channel as a result of naturally occurring ground water discharge **or naturally occurring surface water runoff.**
    - This definition is not a clear approach to defining streams in Montana that are under the jurisdiction of the act.
- Stream
  - Any natural perennial flowing stream or river, its bed, and its immediate banks 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.**
    - The definition further provides direction to the purpose and policy of the act which is to protect streams in their natural or existing state.

Constitutional Rights

- Montana Constitution guarantees the right to clean water.
- Montana Constitution guarantees the right to use the water for beneficial purposes.
- All citizens of Montana expect their right to clean water for beneficial uses.
- To protect the rights under the Constitution, we must have a clear definition.

Resource Users

- Agriculture
  - Surface water used for irrigation and stock watering must be protected.
  - Administering the Act must be consistent across Montana.
    - The current definition creates further confusion.
- Mining
  - Beneficial use of surface water is guaranteed by the Constitution and Mining laws here in Montana.
  - Protection of the streams and their banks in their **natural or existing** state must be administered consistently under the Act.
    - The proposed definition creates further confusion.
- Housing
  - The construction of homes in Montana near streams must have a clear definition to insure consistent interpretation of 75-7-102.
- Logging
  - The SMZ law has been in effect for several years, and the interpretation of jurisdiction has been inconsistent across Montana.
    - Classes of streams in the SMZ law will benefit with the adoption of a clear definition.

Purpose and Intent of HB 708

- 75-7-102 Intent and 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.

- Defining; "Natural Perennial Flowing Stream" will eliminate the confusion that currently exists in determining which types of streams are covered and will result in a fair and balanced approach to protecting our natural perennial flowing streams

310 Law History

- 1975 legislature enacted the 310 law by adoption of 75-7-102 MCA
  - The legislature with the constitution in mind, adopted the 310 law to protect our perennial flowing streams in their natural or existing state.
- 75-7-103 Definitions has seen the following changes
  - 1979 legislature adopted a change in the law to further define the need to protect the streams in Montana
  - 1987 legislature adopted changes to further define the intent of the act.
  - 1995 legislature adopted changes to further reflect the environmental needs of protecting our streams.
  - 2003 legislature made further adjustments to this section to reflect the ongoing needs of district supervisors and resource users alike.

Montana Streambed Protection Act 75-7-102 MCA 310 Law

Montana Multiple Use Association