

## MONTANA DEPARTMENT OF FISH, WILDLIFE AND PARKS

FISHERIES DIVISION  
JOB PROGRESS REPORTState: MontanaProject Number: F46-R-1Job Number: VI-bProject Title: Statewide Fisheries InvestigationsStudy Title: Statewide Surveys and InventoriesJob Title: Stream Habitat PreservationPeriod Covered: July 1, 1987 to June 30, 1988

## ABSTRACT

During this report period, 288 statewide 310 applications were received and reviewed. Of these, 271 were declared projects, 10 non-projects, 6 violations and one an emergency. One violation was prosecuted and the violator was ordered to pay a \$250 fine. Amendment to the 310 law by HB 661 resulted in little additional work load during this report period. Several conservation districts implemented the 661 amendments to their 310 rules, but compliance by irrigators was low.

## OBJECTIVES

The objectives of this job are (1) to administer and coordinate the department efforts on the Natural Streambed and Land Preservation Act (SB 310), an act to ensure the preservation of Montana streams in their natural or existing state; and (2) to maintain interagency communication and division representation within the agricultural community in an effort to promote proper stream management. Objective 2 will be accomplished with state funding.

## TECHNIQUES USED

A private individual, corporation, firm, partnership, association, or other legal entity not covered under the Stream Protection Act must, before altering or modifying the bed or banks of a stream, comply with the Natural Streambed and Land Preservation Act (310). This act is administered by County Conservation Districts who issue permits for authorized activities. Fisheries personnel are required, as part of the permitting process, to review plans and make recommendations for reducing or eliminating impacts to the streambed or banks and thereby protect fish habitat. The permitting process normally includes on-site inspections and takes less than 60 days to process. If a dispute occurs, there is a provision for arbitration or further litigation.

Action taken under this job to insure smooth administrative involvement with the 310 Act is a complex process. Following is a list of activities aimed at accomplishing this purpose:

- a. Review all 310 applications in an attempt to maintain a consistent statewide approach in Department involvement and recommendations with projects;
- b. Direct division activities in connection with all 310 violations and arbitration proceedings;
- c. Coordinate technical assistance for regional biologists when unusual, difficult or hard to solve hydrologic problems occur;
- d. Train all fisheries biologists newly assigned to 310 duties;
- e. Act as the Department liaison with other state and federal agencies involved in the 310 permitting process;
- f. Attend conservation district meetings, Montana Association of Conservation District (MACD) area meetings and the MACD state convention;
- g. Meet and correspond with the Department of Health and Environmental Sciences, State Lands Department, U.S. Forest Service, Soil Conservation Service, Corps of Engineers, U.S. Fish and Wildlife Service, and Environmental Protection Agency in regards to 310 activities and permit requirements;
- h. Represent the department on Montana's Resource Conservation Advisory Committee and the annual planning meeting of the Agricultural Conservation Program State Council;
- i. Attend the state Executive Committee meetings for Rural Area Development;
- j. Direct implementation and coordinate department actions relative to portage issues as described in the Stream Access Act (HB 265).

#### FINDINGS

A total of 288 statewide 310 applications were received by the project leader. Of this total, 271 were declared projects, 10 non-projects, 6 violations and one emergency. Violations with potential for litigation were coordinated with regional fisheries personnel. Some difficult projects required additional expertise. This expertise in the field of hydrology was coordinated between fisheries personnel and contracted hydrologists.

A 310 violation in Cascade County was prosecuted by the County Attorney. The alleged violator was found guilty of offenses to the 310 Act and fined \$250. The violator is appealing in District Court but no trial date has been set.

The project leader testified in a 310 arbitration case in Broadwater County. The applicant initiated arbitration when the Conservation District denied his application to mine in the Missouri River upstream of Toston Dam. The decision by the arbitration panel is still pending.

The second volume of A Landowner's Guide for Managing Streams was written and sent to several individuals and agencies for review. Comments were received and the final copy is near completion.

Several Conservation District meetings were attended, as well as the six area meetings and the MACD State Convention.

The 1987 Legislature passed House Bill 661 which modified the 310 Act to exclude customary and historic maintenance of irrigation facilities if the activity does not significantly alter or modify the stream, or if a plan of annual operation is submitted to and approved by the Conservation District. HB 661 was passed in response to the Attorney General's opinion stating all maintenance activity required a 310 permit.

Full implementation of HB 661 could result in a substantial increase in workload for the districts and the department. As of this report, several districts amended their model rules to include proposed language of HB 661, but compliance by irrigators has been low. Activity with annual plans is expected to increase as districts become more familiar and comfortable with administration of the law.

During this report period, river mechanics training sessions were conducted in cooperation with Sweetgrass, Park, Gallatin, Bitterroot and Cascade Conservation Districts. No new portage actions were needed.

### RECOMMENDATIONS

Reorganization of the Helena fisheries staff (creation of a Habitat Bureau) resulted in combining duties of the Stream Protection Coordinator and the Stream Habitat Preservation Coordinator. Therefore, project F-46-R, Job VI-b was recommended to be terminated. All stream protection activities associated with SPA and 310 for fiscal 1988-89 will be covered under project F-46-R-2, job number VI-a. The objectives for this job were prepared and submitted with the Montana application for Federal Aid project "Statewide Fisheries Investigations".

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