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OPERATION UNDER MONTANA'S STREAM PRESERVATION LAW IN 1965  
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The original Stream Preservation Law enacted in 1963 was reviewed and given permanent status by the 1965 legislature. The passing of this bill, with only one dissenting vote in both houses, gave stream preservation overwhelming approval. The new law differed from the old by changing the method of selecting the board of arbitration. More important, biennial legislative renewal was no longer required.

This report refers to our activities during the 1965 calendar year and includes operating under both the original 1963 law and our law that became effective July 1, 1965. A summary of our activities prior to 1965, information on how the law was obtained, and details on how we operated under the first law are found in Whitney (1964). Peters and Alvord (1963) summarized the data from a statewide inventory of channel alterations in 13 Montana streams and rivers and described the problem confronting fisheries biologists in documenting habitat losses from stream alterations.

After the new law was passed, there were no longer suggestions that we were "holding up" all road building projects. During the first 18 months under the old law, decisions were not reached on three projects. This year we were able to obtain satisfactory agreements on two of these projects. The controversial Rainbow Bend Project is the only one not yet resolved. Just recently we reopened negotiations with the Highway Department on this project.

During 1965, the Fish and Game Department received 53 legal notices of projects affecting fishing waters. We found it necessary to ask for special consideration on 16 of these projects, roughly 3 of every 10. On certain projects we asked that length of roadway be moved to avoid irreplaceable damage to streams. On other projects we requested that meanders be built to replace those cut off from the natural stream. In other situations we asked that channels with pools and riffles be built to replace those eliminated and that brushy streambank vegetation be replanted to replace some which had been destroyed. Apparently our requests were considered reasonable for not one was denied. It was not necessary, therefore, to submit any project for arbitration.

Of the 53 legal notices received and reviewed, 45 came from the State Highway Department. The remaining 8 were sent in by cities or counties scattered throughout the state.

In 1965 we obtained a written agreement with the State Highway Department Maintenance Section spelling out a workable procedure for reviewing highway maintenance projects affecting streams. Since maintenance projects are initiated in a State Highway district office, initial contact is made with the Fish and Game district office by district highway personnel.

Two important procedures were worked out with the Preconstruction Section of the State Highway Department. First, we were allowed to attend and participate in preliminary route inspections. These "P-Line" inspections are made before any costly design has been initiated or right-of-way purchased. At this time, line or route changes can be made with great facility. Secondly, a special provision was incorporated in construction methods used by all road contractors. It specifies that when channel changes or alterations are being constructed, the contractor will confine his work and equipment within staked limits of such construction. Removal of existing vegetation and ground cover will not be permitted adjacent to construction limits. Penalties are assessed for accidental "slip-ups".

Between the time the formal agreement was reached and construction was started, we asked for additional habitat mitigation measures on two State Highway Department projects. This involved working closely with the Construction Section of the State Highway Department. They approved both of our requests as reasonable, but part of one request was turned down by the Bureau of Public Roads. Construction often takes two years or more from the time we give approval to a project. If during this period we find that certain things work better than others, we can make appropriate changes. This type of liaison allows us a chance to do the best possible job for fish habitat.

Ravalli County questioned whether or not it is legally necessary for counties to notify us of projects around bridges because of a previous law. The Attorney General ruled that "the Stream Preservation Law does place upon the County Commissioners the additional obligation to notify the State Fish and Game Commission of any plans for construction of any projects." Since this ruling we have been notified of county projects throughout the state as a matter of routine.

We have been able to establish liaison with the Bureau of Public Roads. We are now able, because of written agreement, to attend "P-Line" inspections and make written recommendations. Although the Bureau is not required to send a legal notice, they now follow the intent of our Stream Preservation Law. This is an important breakthrough because this Bureau designs, locates, and builds many miles of road each year on federal lands in Montana.

Under a cooperative agreement with the U. S. Forest Service, we are notified of Forest Highway Projects as though they actually came under the provisions of the Stream Preservation Law. We are working to evolve a satisfactory procedure whereby we can review other forest road construction projects as well.

We signed a cooperative agreement with the Soil Conservation Service this year. It provides that the Fish and Game Department will be consulted on projects affecting streams prior to approval of Federal cost sharing under the Agricultural Conservation Program. By working with the SCS we believe a good start has been made toward controlling indiscriminate channel work by individual landowners. Channel straightening and pushing stream gravels into dikes ruins fish habitat and at best stops bank erosion only temporarily. We try to suggest more practical alternatives.

We have also established liaison with the railroad companies in Montana. Although we are not consulted on all projects, we have been notified on some and our recommendations on these have been incorporated into the final plans.

We have started to evaluate some of the habitat mitigation measures which construction agencies have installed on our recommendations to see if these are working out as intended. This work is being done by fisheries personnel in the districts.

Literature Cited

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