

**THE NATURAL STREAMBED AND LAND PRESERVATION ACT OF
1975**

**MISSOULA CONSERVATION DISTRICT
ADMINISTRATIVE RULES**

310 LAW

**ADOPTED
September 12, 2011**

2011

TABLE OF CONTENTS

RULE 1 - TITLE. 3

RULE 2 - PURPOSE. 3

RULE 3 - POLICY.3

RULE 4 - DEFINITIONS. 3

RULE 5 - APPLICABILITY. 5

RULE 6 - DESIGNATION OF NATURAL FLOWING PERENNIAL STREAMS. . .5

RULE 7 - DESIGNATION OF STREAMS NOT IN NEED OF PROTECTION. . .6

RULE 8 - FORMS. 6

RULE 9 - PUBLIC MEETINGS/HEARINGS/AGENDA/MINUTES. 6

RULE 10 - PUBLIC PARTICIPATION. 7

RULE 11 - PUBLIC RECORDS. 8

RULE 12 - PERMIT REQUIREMENTS.8

RULE 13 - SUBMISSION OF APPLICATION AND FORMATION OF
INSPECTION TEAM.8

RULE 14 - REVIEW OF APPLICATION AND DECISION BY BOARD. . . . 10

RULE 15 - CONSTRUCTION STANDARDS AND PROHIBITIONS. 11

RULE 16 - EMERGENCIES. 13

RULE 17 - INSPECTIONS OF COMPLETED PROJECTS. 13

RULE 18 - COMPLIANCE WITH OTHER LAWS.14

RULE 19 - SURETY BONDS OR OTHER GUARANTIES.14

RULE 20 - DISPUTE RESOLUTION.14

RULE 21- DECLARATORY RULING. 15

RULE 22- COMPLAINT PROCEDURE16

RULE 23 - PENALTIES. 17

Rule 24 - ADMINISTRATIVE PENALTIES AND ORDERS TO RESTORE THE
DAMAGED STREAM AND STREAMBANKS 18

RULE 1. TITLE

These rules shall be cited as the Missoula Conservation District Administrative Rules.

RULE 2. PURPOSE

These rules provide for the administration of The Natural Streambed and Land Preservation Act of 1975, commonly referred to as the "310 law", within the portion of Missoula County outside the 1946 city limits of the City of Missoula, as shown in Appendix A.

RULE 3. POLICY

(A) 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.

(B) It is the policy of the Missoula Conservation District that the natural rivers and streams, and the lands and property immediately adjacent to them within this district 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.

(C) Further, it is the policy of the Missoula Conservation District to recognize the needs of irrigation and agricultural uses 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 and laws of the State of Montana.

RULE 4. DEFINITIONS

(A) The following definitions are applicable to these rules:

- (1) "**Act**" means The Natural Streambed and Land Preservation Act;
- (2) "**Activity**" or "**Activities**" means a physical alteration or modification to a natural perennial-flowing stream or river, its bed or its immediate banks;
- (3) "**Applicant**" means the person submitting notice of a project to the Board;
- (4) "**Application**" means a request for review of a project using the form described in Rule 8;
- (5) "**Bed**" means the channel occupied by a stream;
- (6) "**Board**" means the Board of Supervisors;
- (7) "**Channel**" means the area of a stream measured from mean high water mark to mean high water mark;
- (8) "**Declaratory ruling**" means a decision of the Board, after a hearing, to declare the rights and duties, or the status, of a person who may be affected by the applicability, interpretation or implementation of the Act and who disagrees with a determination of the Board;
- (9) "**Directly affected person**" means a person who by means of an affidavit establishes that as a result of the proposed action the person's property or water rights will more likely than not be impacted by soil erosion, sedimentation, flooding, or channel alteration, or the stream flow, turbidity

or water quality will more likely than not be altered at or near the person's property or diversion point, or that the fish or aquatic habitat in the stream in which the person has a management interest will more likely than not be altered by the project. For purposes of this definition, person includes a governmental entity;

(10) "**District**" means the Missoula Conservation District;

(11) "**Emergency**" means an unforeseen event or combination of circumstances that calls for immediate action to safeguard human or animal life or property, including growing crops, without time to obtain a permit;

(12) "**FWP**" means the Montana Department of Fish, Wildlife and Parks;

(13) "**Immediate banks**" means the area above the mean high water mark and adjacent to the stream which supports stream stability and function;

(14) "**Livestock grazing activities**" means grazing animals;

(15) "**Mean high water mark**" means the line that water impresses on the land for sufficient periods to cause physical characteristics that distinguish the area below the line from above it. Characteristics of the area below the line include, when appropriate, deprivation of the soil of substantially all terrestrial vegetation and destruction of its agricultural value;

(16) "**Meeting**" means the convening of a quorum of the Board, whether corporal or by means of electronic equipment, to hear, discuss or act upon any matter over which the Board has supervision, control, jurisdiction or advisory power. A team inspection is not a meeting.

(17) "**Natural perennial-flowing stream**" means a stream, which in the absence of diversion, impoundment, appropriation, or extreme drought, flows continuously at all seasons of the year and during dry as well as wet years;

(18) "**Permit**" means the written consent of the supervisors authorizing a proposed project;

(19) "**Person**" means any individual, corporation, firm, partnership, association or other legal entity other than an agency of state government, county, municipality or other subdivision of the State of Montana;

(20) "**Physical alteration or modification**" means human caused actions resulting in the placement, removal or disturbance of any nature or character;

(21) "**Plan of operation**" means an annual plan for a project of a recurring nature that, if approved by the Board, authorizes a specific activity for a period not to exceed ten (10) years;

(22) "**Project**" means an activity that results in a change in the state of a natural, perennial-flowing stream or river, its bed, or its immediate bank;

(a) "**Project**" does not include:

(i) an activity for which a plan of operation has been submitted to and approved by the Board. Any modification to the plan must have prior approval of the Board;

(ii) customary and historic maintenance and repair of existing irrigation facilities that do not significantly alter or modify the stream in contravention of Section 75-7-102, MCA;

(iii) livestock grazing activities.

(b) "**Project area**" means the area within the jurisdiction of the Act and these rules and includes the area within the mean high water mark on both sides of the stream. The term also includes the immediate banks to a stream as determined by the Board;

(23) "**Stream**" means any natural perennial-flowing stream, or river, its bed and immediate banks. The term does not include a stream or river that has been designated by the Board as not having significant aquatic and riparian attributes in need of protection or preservation under Section 75-7-102, MCA and Rule 7;

(24) "**Supervisors**" means the Missoula Conservation District Board of Supervisors;

(25) "**Team**" means one representative of the Board, one representative of the Montana Department of Fish, Wildlife and Parks and the Applicant or the Applicant's representative;

(26) "**Written consent of the Board**" means a written decision of the Board permitting and approving a project and specifying activities, including any conditions, authorized or required to be performed in completing the project.

RULE 5. APPLICABILITY

(A) The area in which the Missoula Conservation District Board of Supervisors has jurisdiction is defined as the area outside the 1946 Missoula city limits, as shown on Appendix A.

(B) These rules apply to projects on natural perennial-flowing streams, or portions thereof, including the bed and immediate banks, unless a stream has been designated as not having significant aquatic and riparian attributes in need of protection in accordance with Rule 7. The Board may consider a stream to flow perennially if it dries up due to man-made causes or extreme drought.

(C) These rules do not apply to ditches, intermittent streams or wetlands not associated with the bed or banks of a stream.

(D) The Board shall determine the applicability, interpretation, or implementation of any statutory provision or any rule or written consent of the Board under the Act or under these rules.

(E) A person who is directly affected by the Board's determination of the applicability, interpretation or implementation of the law, these rules, a written consent or a designation of a stream or a portion of a stream, may request a declaratory ruling under Rule 21, Declaratory Ruling. A person may not request a declaratory ruling for final action of the Board's approval, modification, or denial of a proposed project of an emergency action.

RULE 6. DESIGNATION OF NATURAL FLOWING PERENNIAL STREAMS

(A) All natural perennial-flowing streams within the Missoula Conservation District's jurisdictional area are subject to these rules.

(B) The Board may use, but is not limited to, any of the following sources, to make a determination required under these rules:

- (1) USGS topographic maps;
- (2) Water Resource Surveys;
- (3) water rights records;
- (4) oral interviews of persons with knowledge of the subject being determined;
- (5) hydrology reports;
- (6) historical information;
- (7) aerial photos;
- (8) streamflow data; or
- (9) any other relevant information it finds to be reliable.

RULE 7. DESIGNATION OF STREAMS NOT IN NEED OF PROTECTION

- (A) The Board may designate natural perennial-flowing streams or rivers as not having significant aquatic and riparian attributes in need of protection or preservation in accordance with Section 75-7-102 MCA.
- (B) The Board may consider whether a stream should be designated as not having significant aquatic and riparian attributes in need of protection at the request of any person or upon its own motion.
- (C) In order to make a determination under this rule, the Board shall hold a public hearing, to gather information about the aquatic and riparian attributes of a stream.
- (D) If after a public hearing, the Board determines that a stream does not have significant aquatic and riparian attributes in need of protection or preservation under the Act, it may adopt a rule excluding the stream, or a portion thereof, from the requirements of the Act and these Rules.

RULE 8. FORMS

The following forms shall be used by the Board and the Applicant.

Form 270 – *Joint Application for Proposed Work in Montana’s Streams, Wetlands, Floodplains, and Other Water Bodies* is to be submitted by the Applicant to the Board for review of the proposed project prior to the initiation of the project.

Form 271 – The *Arbitration Agreement* is to be used by Team Members who are requesting to resolve disputes through arbitration.

Form 272 – The *Team Member Report* is to be used by Team Members to submit recommendations for action on proposed projects to the Board.

Form 273 – The *Supervisors’ Decision Form* is used to convey the Board's decision to the Applicant and Team Members.

Form 274 – *Official Complaint Form* may be used by any person to notify the district of an activity taking place without written consent of the Board. Persons may make complaints without use of this form.

Form 275 – *Notice of Emergency* is to be used by persons to notify the District of projects undertaken during an emergency to safeguard life, property or growing crops. This is not a permit application and the person must take additional steps, outlined in Rule 16, to obtain approval of the emergency action.

RULE 9. PUBLIC MEETINGS/HEARINGS/AGENDAS/MINUTES

- (A) All meetings of the Board shall be open to the public in accordance with Article II, Section 9 of the Montana Constitution and Part 2, Chapter 3, Title 2, Montana Code Annotated, subject to statutory exceptions contained therein.
- (B) Team inspections conducted on private property are not meetings and are not open to the public, unless the landowner consents to the attendance of members of the public. The District will not give notice of the time of the scheduled inspection or secure permission from the landowner for the public

to attend the inspection, provide transportation to or from the site or represent or insure the safety of the public upon private property.

(C) The Board holds a regularly scheduled monthly meeting on the second Monday of every month. Special meetings may be scheduled as needed.

(D) Notice of all regularly scheduled and special meetings or hearings shall be posted with an agenda at the District Office and at the Missoula County Courthouse. Notice may also be published in a local newspaper, on the District's website, or in other locations, publications or media where it can be seen by the public.

(E) Meetings will be conducted by the Chairman of the Board or by the ranking Board Officer, in the event of the Chairman's absence. The Chairman is vested with the authority to manage meetings and hearings to ensure that District business is conducted without disruption.

(F) In accordance with Section 2-3-103(1)(a) MCA, an agenda item allowing public comment on any public matter that is not on the agenda and that is within the jurisdiction of the District will be provided. However, the Board may not take action on any matter raised during public comment unless specific notice of that matter is included on an agenda and public comment has been allowed. All public comment received at a meeting shall be included in the minutes of the meeting.

(G) In accordance with Section 2-3-212 MCA, appropriate minutes of all meetings required by State Law and District Rule to be open shall be kept and shall be available for inspection by the public.

(H) Minutes shall include date and place of meeting; a list of the members of the Board in attendance; the substance of all matter proposed, discussed or decided; and, at the request of any member, a record by individual member of any votes taken.

RULE 10. PUBLIC PARTICIPATION PROCEDURES

(A) In accordance with Section 7-1-4144 MCA, the Board hereby provides the following procedures for permitting and encouraging the public to participate in Conservation District decisions that are of significant interest to the public.

(B) Prior to the adoption, amendment or repeal of an administrative rule or the issuance of a declaratory ruling or a determination to remove a stream from 310 jurisdiction, where the decision is of significant public interest, the Board shall give notice of the pending action and ensure public participation is assisted in accordance with these rules and applicable State Law.

(C) The Board may hold a public information hearing whenever the Board determines it would be beneficial for the general public or for interested citizens' groups for the purpose of disseminating information, providing technical or information assistance or obtaining additional information.

(D) Interested persons may submit comments, data or arguments in person or in written form, for consideration by the Board prior to the final decision that is of significant interest to the public.

(E) Public comment to the Conservation District may be made by use of an electronic mail system. In accordance with Section 2-3-301 MCA, the Conservation District's electronic address shall be provided on the District's website located at www.missoulacd.org.

RULE 11. PUBLIC RECORDS

(A) In accordance with Article II, Section 9 of the Montana Constitution, district documents shall be made available for examination by members of the public, except in cases in which the demand of individual privacy clearly exceeds the merits of public disclosure.

(B) In accordance with Section 2-6-102 MCA, every citizen has a right to inspect and take a copy of any public writing of the District, except as otherwise provided by State Law.

(C) The District may impose a reasonable copying cost for copying documents for members of the public and require payments of the costs before providing the copies.

RULE 12. PERMIT REQUIREMENTS

(A) A person is required to submit an application to and obtain approval from the Board before initiating a project or otherwise physically altering or modifying a natural perennially-flowing stream or river, its bed or immediate banks.

(B) The Board shall review all projects to ensure they are achieved in a manner consistent with the policy set forth in the Act and in these Rules. The Board, in making its decision to deny, modify or approve an application, shall determine the purpose of the project and whether the Applicant is using a reasonable means of accomplishing the project.

(C) An Applicant, if not the owner of the property upon which the project is located, must obtain the consent of the property owner for the project. A permit to conduct a project does not give permission to the Applicant to enter onto another person's property or to construct a project on another person's property without the owner's consent.

RULE 13. SUBMISSION OF APPLICATION AND FORMATION OF INSPECTION TEAM

(A) Application and Supporting Information

(1) To obtain a permit for a project, the Applicant must submit a completed application to the Board, using Form 270. The application may be mailed or personally delivered to the Board at its office, located at 3550 Mullan Road, Suite 106, Missoula, MT, 59808. It is the Applicant's responsibility to provide all necessary credible information for the Board to make its determination to approve, modify, or deny a proposed project. Information to be provided by the Applicant must include, but is not limited to:

- a. the location of the project;
- b. the purpose of the project;
- c. a detailed description of how the project will be accomplished;
- d. project plans and drawings;
- e. maps of the site;
- f. time of construction;

- g. length of time to complete the project;
- h. engineering designs if required by the Board; and
- i. application is signed by the landowner and applicant (if different from landowner).

(2) The Board may request additional information that it determines reasonably necessary to make a decision about the application.

(3) Applications must be submitted to the District Office by 5:00 p.m. on the first Monday of the month. This deadline is necessary so that the District can comply with the notice and agenda requirements of Rule 9.

(4) The Application will be deemed to be officially received by the District at the Board's regularly scheduled monthly meeting (held the second Monday of each month) if the application is complete and if it is for an activity that is subject to these rules. The time frames specified in these rules begin upon official receipt of the application.

(5) Upon receipt of a complete application, the Board will review the application and supporting data and other relevant information and determine whether the proposed activity is a project under the Act and these Rules.

(6) The Board may reject any project application that is incomplete or contains insufficient information for review. The Board may request additional information from the applicant before making a final decision on an application.

(7) If an Applicant is proposing an activity that is conducted annually, such as maintenance on a bridge, culvert, or irrigation structure, he or she may submit an Annual Plan of Operation to the Board with Form 270. The Board may approve the annual activity for a period of up to ten (10) years.

(8) Where a single land use activity involves multiple stream modifications or alterations as part of a single project (such as a placement of several culverts for a road construction project), application for all foreseeable stream alterations may be made on a single application (Form 270). The application shall include a map and legal description of all the multiple locations of the proposed project. The application for multiple location projects may also make provision for necessary but unforeseen stream alterations provided that the stream locations are identified in reasonable detail for purposes of review.

(9) If at any time during the review process, the Board determines that the proposal is not a project or that these rules are otherwise inapplicable to the proposed activity, the Applicant will be notified that written consent of the Board is not necessary.

(B) Formation of Team

(1) Within (10) ten working days of receipt of an application, the District shall send a copy of the application to FWP.

(2) FWP shall inform the District within five (5) working days of receipt of an application whether FWP requests an on-site inspection by a team.

(3) The District shall call a Team together within twenty (20) days of receipt of the request for an on-site inspection. A Team Member may waive participation in the inspection by notifying the Board in writing within five (5) working days after FWP's call for inspection.

(4) An Applicant may waive his or her right to participate in the inspection but the Applicant may not waive his or her status as a Team Member. If FWP does not request an on-site inspection within the time specified in this subsection, the Board may approve, modify or deny the project without further participation from FWP.

(5) Each Team Member shall recommend approval, modification or denial of the project, using the Team Member Report Form (Form 272). Team Member Reports must be submitted within

thirty (30) days of the date of the inspection. An Applicant is not required to submit a Team Member Report.

(6) At the request of any Team Member, the Board may extend the time limits provided herein, when in its determination, the time provided therein is not sufficient to carry out the purposes of the Act and these Rules. Total time extensions may not exceed one (1) year from the date the application was officially accepted. The Applicant must be notified of the initial time extension within sixty (60) days of the official acceptance date and must be notified immediately of any subsequent time extensions.

RULE 14. REVIEW OF APPLICATION AND DECISION BY BOARD

(A) The Board shall provide reasonable notice to an Applicant and property owner (if different from the Applicant), of the date and time of the meeting at which his or her application will be reviewed by the Board.

(B) The Board shall review the proposed project and affirm, overrule, modify or table the individual Team Member recommendations and notify the Applicant and Team Members of its decision within sixty (60) days of that decision of the official acceptance date, unless time is extended.

(C) The Team, in making its recommendations, and the Board, in denying, approving, modifying or tabling a project shall determine:

- (1) the purpose of the project; and
- (2) whether the proposed project is a reasonable means of accomplishing the purpose of the proposed project. To determine if the project is reasonable, the following must be considered:
 - (i) the effects of soil erosion and sedimentation, considering the methods available to complete the project and the nature and economics of the various alternatives;
 - (ii) 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 proposed project;
 - (iii) whether the proposed project will create harmful flooding or erosion problems upstream or downstream;
 - (iv) the effects on stream channel alteration;
 - (v) the effects on streamflow, turbidity and water quality caused by materials used or by removal of ground cover;
 - (vi) the effect on fish and aquatic habitat.

(D) If the Board determines that a proposed project or part of a proposed project should be modified, it may condition its approval upon the modification.

(E) The Board may not approve or modify a proposed project unless the Board determines that the purpose of the proposed project will be accomplished by reasonable means.

(F) The decision of the Board shall be made by a concurrence of a majority of the Board.

(G) Upon written consent of the Board, the Applicant shall notify the Board within fifteen (15) days if the Applicant wishes to proceed with the project in accordance the Board's decision. Work may not be commenced on a project before the 15-day waiting period unless written permission is given by all Team Members and the District.

(H) An Applicant shall complete construction of the project as approved by the Board including all conditions, within one (1) year from the date of issuance of the permit, unless otherwise specified. If a multi-year project is approved, the applicant is responsible for performing all project conditions as approved until fully completed. Failure to comply with all project conditions may subject the Applicant to penalties as provided in Montana law and as provided in these Rules. Permits are not transferable without approval by the Board.

(I) Unless otherwise stated, a permit is valid for one (1) year from the date of Board's decision. An Applicant may apply to the Board for any extension of a permit. The Applicant must submit the request for an extension in writing to the Supervisors before the original permit has expired. An extension may be granted by the Board for a term of up to one (1) year, upon a showing by the Applicant that the conditions under which the permit was originally issued have not changed. The Applicant shall certify that all information on the original application is true and correct.

(J) If the Applicant is requesting written consent for an annual maintenance plan (Plan of Operation), the Board may approve specific activities for a period of up to ten (10) years. No time extensions will be given for annual maintenance permits. A person must submit a new permit application at the end of the permit time period.

RULE 15. CONSTRUCTION STANDARDS AND PROHIBITIONS

The following standards shall apply to all projects:

(A) Projects must be designed and constructed using methods that minimize adverse upstream and downstream impacts and future disturbance to the stream.

(B) All disturbed areas must be managed during construction and reclaimed after construction to minimize erosion.

(C) Temporary structures used during construction must be designed to handle high flows reasonably anticipated during the project construction period. Temporary structures must be completely removed from the stream channel at the conclusion of construction and the area must be restored to a natural and stable condition.

(D) Channel alterations must be designed to retain original stream length or otherwise to provide hydrologic stability.

(E) Streambank vegetation must be protected except where removal is necessary and then removal must be kept to a minimum.

(F) Riprap, rock, or other material used in a project must be of adequate size and shape and must be properly placed to protect the streambank from erosion.

(G) For streambank stabilization projects, the district encourages the use of methods that preserve or enhance natural stream habitat and function.

- (a) Applications proposing the use of rock riprap or other hard streambank stabilization methods shall include information establishing that due consideration has been given to methods that use organic materials (e.g., root wads, riparian vegetation, biodegradable geotextile fabrics, tree revetments) as the primary means of stabilization and that such methods are not practicable because:
 - (i) Sufficient long term durability would not be achievable;
 - (ii) Hydrodynamic considerations make it likely that the project would not meet its intended purpose;
 - (iii) The project would result in the same or greater impact on channel stability, flooding, erosion, and/or aquatic habitat; or
 - (iv) Economical considerations prevent the use of such methods.
- (b) Live vegetation used in a project must remain viable and functional for a minimum of one year after completion of the project. The District may perform follow-up inspections of projects involving live vegetation and may require dead vegetation to be replaced.

(H) Instream woody debris should only be removed from the stream when necessary to complete a project or if significant property damage is imminent. If it is necessary to remove instream woody debris, the amount that is removed must be kept at a minimum.

(I) All permanent stream crossings (e.g., bridges, culverts) should, at a minimum, span the width of the stream at the mean high water mark.

(J) The Applicant must notify the District in writing, either within 15 days of completion of a project, or prior to the end of the permit period, whichever comes first.

(K) The Board may:

- (1) limit the time and duration of construction to minimize impacts to the stream or associated aquatic life;
- (2) require the Applicant to submit designs prepared by a licensed professional engineer, when in the Board's judgment; the project's complexity requires greater assurance of project stability to minimize impacts to the stream;
- (3) require the Applicant to provide project completion documentation, which may include photographs;
- (4) require other reasonably practical conditions which will reduce the disturbance to the stream.

(L) Unless specifically authorized by the Board, the following activities are prohibited:

- (1) the placement of concrete in a stream as rock riprap;
- (2) the placement of road fill material in a stream;
- (3) the placement of debris or other material in a stream where it may erode or otherwise enter the stream;
- (4) projects that permanently prevent fish migration;
- (5) removal of streambank vegetation within the immediate banks of the stream, unless necessary for completion of the permitted project.
- (6) excavation of streambed gravels;
- (7) construction of an in-stream pond.

(M) The Board may require an Applicant to comply with additional construction standards, including, but not limited to compliance with best management practices or construction guides prepared, adopted or endorsed by the Board, and/or requiring the Applicant to obtain and comply with a design prepared by a professional engineer or other qualified technical consultant.

(N) It is unlawful to place junked motor vehicles or the body portion of junked motor vehicles between the channel banks of any stream or to reinforce banks of a stream with junked vehicles or the body portion of junked motor vehicles.

RULE 16. EMERGENCIES

(A) The provisions of these rules shall not apply to actions that are necessary to safeguard life or property, including growing crops, during periods of emergency. The person responsible for taking action under this rule shall notify the Board in writing within fifteen (15) days of the action taken as a result of an emergency.

(B) The emergency notice given under Subsection (1) shall be provided on Form 275 and shall contain the following information:

- (1) the location of the action taken;
- (2) a general description of the action taken;
- (3) the date on which the action was taken;
- (4) an explanation of the emergency causing the need for the action taken.

(C) If the Board determines that the emergency action taken is an activity that requires review under these rules, it shall send one copy of the emergency notice within five (5) working days of receipt to FWP.

(D) A Team, called together as described in Rule 13, shall make an on-site inspection within twenty (20) days of receipt of the emergency notice.

(E) Each member of the Team shall recommend in writing, within thirty (30) days of the date of the emergency notice, approval, modification or denial of the emergency action.

(F) The Board shall review the emergency project and affirm, overrule or modify the individual Team Member recommendations and notify the Applicant and Team Members of their decision within sixty (60) days of receipt of the emergency notice.

(1) If an action is approved, no further action is necessary on the part of the Board or the Applicant.

(2) A person who has undertaken an emergency action that is modified must submit an application to the Board, using Form 270, to mitigate possible damages to the stream caused by the emergency action and to achieve a long-term solution, if feasible, to the emergency solution. Notice under this subsection must be filed within ninety (90) days after the Board's decision.

(3) A person who has undertaken an emergency action that is denied shall submit written notice on Form 270 to obtain approval to remove the project to avoid further damages to the stream caused by the emergency action and to achieve a long-term solution, if feasible to the emergency situation. Notice under this section must be filed within ninety (90) days after the Board's decision.

RULE 17. INSPECTIONS OF COMPLETED PROJECTS

(A) The Board, or its designated representative may inspect any project during or after construction to ensure that permit conditions have been met. The Board shall give reasonable notice to the Applicant prior to inspecting the project. The Board may require the Applicant to provide photographic or other reasonably obtained evidence of the project.

RULE 18. COMPLIANCE WITH OTHER LAWS

(A) Approval for proposed projects or alternative plans does not relieve the Applicant of the responsibility of complying with Title 76, Chapter 5, MCA, floodway management and regulation where designated floodplains or designated floodways have been established in accordance with that Chapter.

(B) These rules shall not impair, diminish, divest or control any existing or vested water rights under the laws of the State of Montana or the United States.

(C) The issuance of written consent of the Board does not relieve the Applicant of the responsibility to obtain any other permits that may be necessary for the proposed project or to obtain permission from the landowner, if the project is not located on the Applicant's property.

RULE 19. PERFORMANCE GUARANTEES

(A) The Board may require an Applicant, as a condition of the permit, to enter into a written performance agreement guaranteeing the completion of the project as permitted within a specified time frame.

(B) The guarantee may include one or more security arrangements acceptable to the Board, including but not limited to cash, a note, a bond or some other instrument readily convertible into cash with the Board or with a financial institution approved by the Board.

(C) The security arrangements, including the amount and type, will be established by the Board, after consultation with the Applicant. The Board may seek information from qualified vendors and other credible sources to determine the cost of completing and maintaining the project in accordance with the permit. The Board may also include an administrative fee in the amount of the performance guarantee.

(D) The agreement may include a provision to release funds to the Applicant as the phases of the project are completed, if appropriate. The agreement must specify that funds cannot be released without approval of the Board and that if the project is not completed as approved within the time specified, the funds become the property of the Board. The Applicant shall bear all costs associated with the guarantee, including the costs for enforcement or interpretation of the agreement.

RULE 20. DISPUTE RESOLUTION

(A) Any permit decision or decision regarding an emergency may be reviewed by an arbitration panel or by judicial review in the Fourth Judicial District. Judicial review of an arbitration panel's

decision may be made under the provisions of MCA, Title 27, Chapter 5, Part 3 of The Uniform Arbitration Act and must be brought in Missoula County.

(B) The Applicant may request arbitration as the method to resolve disputes by signing an arbitration agreement either before the application review process or within 15 days of receipt of the Board's decision.

(a) If an Applicant signs an arbitration agreement prior to the application review process, the Applicant waives his or her right to judicial review.

(C) The Applicant may request judicial review of the Board's decision by filing a petition in District Court within 15 days of receipt of the Board's decision.

(D) Any other Team Members may seek formal dispute resolution only through arbitration by signing an arbitration agreement within 15 days of receipt of the Supervisors' decision.

(E) The arbitration agreement is stated on Form 271 and contains provisions for appointment of arbitrators; the exercise of power by the arbitrators; the hearing process; fees and expenses.

(F) An Applicant's choice of the judicial review remedy prevails over any other Team Member's request for arbitration.

(G) Subsection (A) does not preclude other informal means of dispute resolution, upon agreement of all parties. Informal efforts at resolution will not relieve the disputing Team Member from perfecting his or her request for judicial review or arbitration within the times provided by law.

(H) An appeal of the determination made by judicial review may be made to the Montana Supreme Court.

(I) Judicial review of an arbitration panel's decision may be made to District Court under the Uniform Arbitration Act (Title 27, Chapter 5, Part 3 MCA).

(J) The granting, denying or conditioning of a written consent of a project or an emergency action may not be reviewed by a petition for declaratory ruling. Review of final action by the Board pursuant to Section 75-7-112 or 75-7-113 is exclusively provided in Section 75-7-121 MCA.

RULE 21. DECLARATORY RULINGS

(A) A person who may be directly affected by the applicability, interpretation or implementation of the Act, and who disagrees with a determination made by the Board may petition for a declaratory ruling in accordance with Section 75-7-125 MCA.

(B) Upon receipt of the petition for a declaratory ruling, the Board shall determine if the issue raised is of significant interest to the public. If the Board determines the issue is of significant public interest, the Board shall provide a reasonable opportunity for interested persons and the petitioner to submit data, information or arguments, orally or in written form, prior to making a ruling.

(C) If the Board determines the issue raised in the petition for declaratory ruling is not of significant public interest, the Board shall provide a reasonable opportunity for the petitioner to submit data, information, or arguments, orally or in written form, prior to making a ruling.

(D) Within thirty (30) days of the filing of a petition for declaratory ruling, the Board may appoint a Hearing Officer, who may be a Supervisor, to conduct the declaratory ruling hearing. The Hearing Officer will regulate the course of the hearing, and with a concurrence of the Board, set the time, place and date of the hearing.

(E) Within thirty (30) days of appointment of a Hearing Officer, the Board shall set a date for a hearing to gather information and data, allow public comment, and allow the public to submit written comment. The hearing may be continued if necessary. The Board shall provide notice of the hearings in accordance with Rule 9. A quorum of the Board must be present at the hearing. The Board shall maintain a record of the hearing, including the petition, notices, information and data gathered, and proposed findings of fact and conclusions of law.

(F) The Hearing Officer will make a recommendation to the Board for their approval and adoption within sixty (60) days of the conclusion of the hearings process. The Board may extend this deadline, if necessary.

(G) The Hearing Officer and the Board shall consider information provided by the petitioning party to be persuasive unless the information is overcome by a preponderance of information presented at the hearing.

(H) A written declaratory ruling, consisting of findings of fact and conclusions of law, must be made by a concurrence of a majority of the Supervisors present at the declaratory hearing.

(I) If the Board elects to proceed without a Hearing Officer, it shall consider the information gathered and issue written findings of fact, conclusions of law and ruling.

(J) A proceeding held under this rule is not a contested case proceeding or otherwise subject to the provisions of the Montana Administrative Procedure Act.

(K) This rule may not be interpreted or construed to allow a person to petition for a declaratory ruling for a decision of the Board granting, denying or conditioning a written consent for a project or for review of an emergency action.

(L) A declaratory ruling is subject to judicial review. Judicial review must be conducted by a court without a jury and is limited to the data, information and arguments made before the Supervisors. A court may reverse or modify the Supervisors' ruling if substantial rights of the appellant have been prejudiced because the ruling is:

- (1) in violation of constitutional or statutory provisions;
- (2) in excess of the statutory authority of the Board;
- (3) affected by error of law; or
- (4) arbitrary or capricious; characterized by abuse of discretion, or a clearly unwarranted exercise of discretion.

(M) A final judgment of a District Court under this rule may be appealed as provided in Section 2-4-711 MCA.

RULE 22. COMPLAINT PROCEDURE

(A) Complaints made to the District become part of the public record.

(B) Upon receipt of a complaint, the Board, or its designated representative, will notify the subject of the complaint, as soon as he or she can be identified, by telephone or in person, of the complaint. The Board, or its designated representative, will request access to private property in order to inspect the site of a complaint.

(C) Investigations will be documented with photographs, drawings, interviews, research and written reports, as available and appropriate.

(D) The Board shall review complaints to determine whether a violation of these rules has occurred or is occurring. If the Board determines that no violation has occurred or is occurring, the Board will notify the complainant and the subject of the complaint, in writing, within fifteen (15) days of the date of the determination by the Board.

(E) If the Board verifies a complaint, it may, at its discretion, seek a voluntary correction of the violation, assess an administrative penalty, in accordance with Rule 24 and 75-7-123 Montana Code Annotated, or they may refer the matter to the County Attorney's office with their recommendations for further enforcement action.

(F) The Board may establish written policies and forms to use for the administration of 310 complaints, which may be revised from time to time.

RULE 23. PENALTIES

(A) A person who initiates a project without written consent of the Board, performs activities outside the scope of written consent of the Board, violates the emergency procedures provided for in Section 75-7-113 or violates 75-7-106 is

(1) guilty of a misdemeanor and upon conviction shall be punished by a fine not to exceed \$500; or

(2) subject to a civil penalty not to exceed \$500 for each day that person continues to be in violation.

(B) Each day of a continuing violation constitutes a separate offense. The maximum civil penalty is the jurisdictional amount for purposes of 3-10-301 MCA. The 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 court to collect a civil penalty.

(C) In addition to a fine or a civil penalty under subsection (A), the person 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 is civilly liable for amount necessary to restore the stream. The amount of the liability may be collected in an action instituted pursuant to Section 3-10-301 MCA if the amount of liability does not exceed \$7000. If the amount of liability for restoration does exceed \$7000, then the action must be brought in District Court.

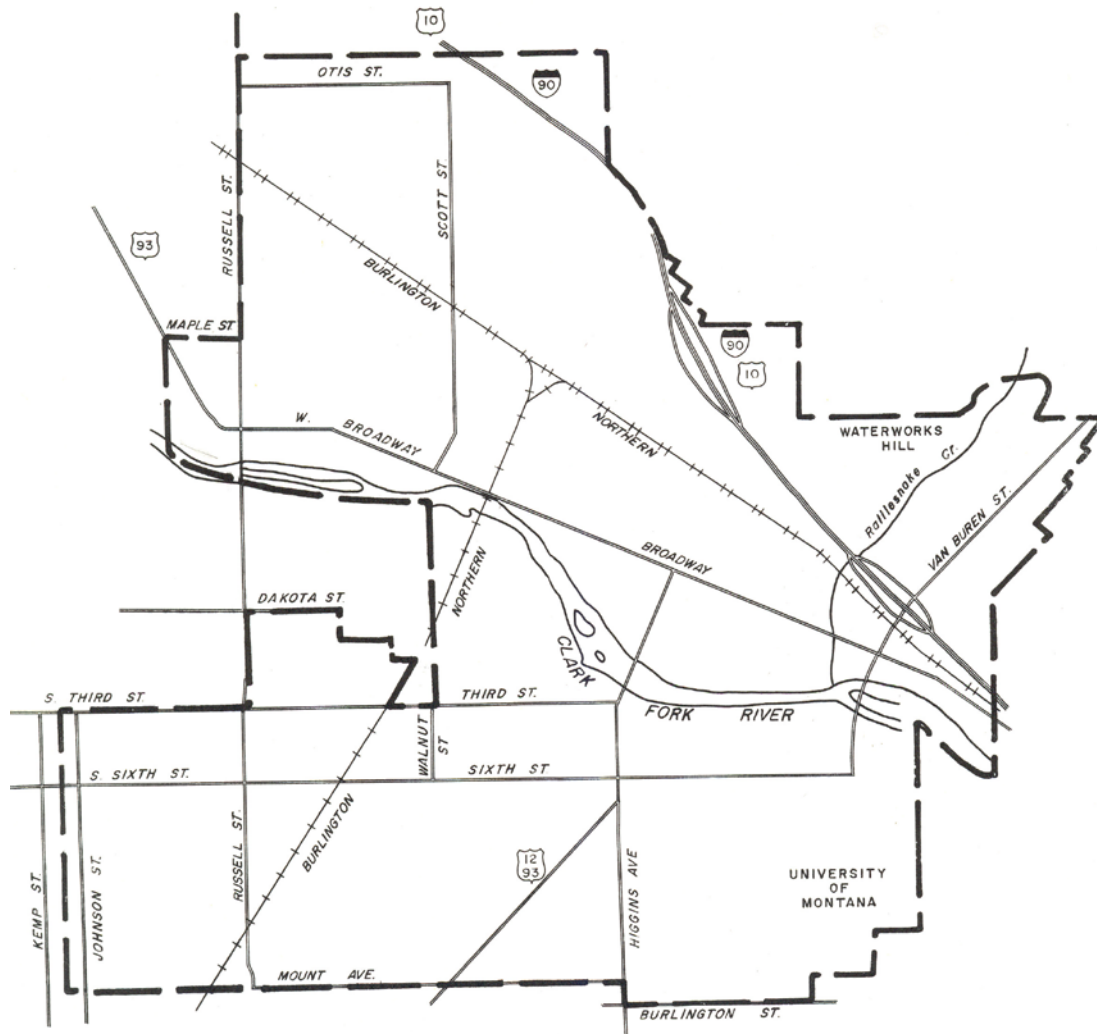
(D) Money recovered by the Board or a County Attorney, whether as a fine or a civil penalty, must be deposited in a depository of funds provided for in Section 76-15-523 MCA, unless upon order of a Justice Court, the money is directed to be deposited pursuant to Section 3-10-601 MCA.

RULE 24. ADMINISTRATIVE PENALTIES AND ORDERS TO RESTORE THE DAMAGED STREAM AND STREAMBANKS

(A) When the Board determines that a person has initiated a project without written consent of the Supervisors, performed activities outside the scope of written consent of the Supervisors, violated emergency procedures provided for in Rule 16 or violated Rule 15, the Board may impose a civil penalty on the person. The Board may also order restoration of the damaged stream to as near its prior condition as possible.

(B) The civil penalty may not exceed \$500 a day for each day of violation under 75-7-123 and Title 75, Chapter 7, Part 1, MCA. If a civil penalty is imposed and fully collected by the Board, the same violation may not be the subject of a misdemeanor penalty.

APPENDIX A
1946 Missoula city limits



MAP 2
MISSOULA'S CITY LIMITS

