



AMERICAN FISHERIES SOCIETY MONTANA CHAPTER

Bill Skinner
Chair, Gallatin Conservation District Board
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Bozeman, MT 59718

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May 15, 2007

Dear Mr. Skinner and members of the Board,

The Montana Chapter of the American Fisheries Society (MCAFS) would like to comment on the issues that sparked the front page article in the April 20, 2007 Big Sky section of the Chronicle, "Project center of contention" that described how the Gallatin County Conservation District (GCD) Board dealt with a 310 violation. The MCAFS is an organization of over 200 professional fisheries scientists and students from multiple agencies, universities, and the private sector across Montana. One of our objectives is the conservation, development, and wise utilization of Montana's fisheries. Discussions among our membership related to the article on a 310 violation on the East Gallatin River focused on several issues and concerns regarding the implementation of the 310 law and its ability to protect fisheries across Montana.

Review of the article indicates that the GCD Board decided not to fine the person accused of the violation, Mr. Billion, despite the ongoing dispute over a previous and related violation. Further, the GCD Board also decided not to fine the contractor who completed work in the stream channel with large equipment without a permit. Although these are two separate issues, both have the capacity to affect fisheries in the East Gallatin and potentially lead to changes in how CDs administer the 310 law across the state.

The photo accompanying the article leaves little doubt that the contractor constructed dams that constituted "a physical alteration or modification that results in a change in the state of a natural, perennial-flowing stream or river, its bed, or its immediate banks" (75-7-103, 5(a), MCA). It is also evident from the photo that the contractor's activities visibly increased the sediment load entering the river downstream of the project. Mr. Billion contests the ability of the GCD Board to regulate his ability to construct steps down to the river, but the photo documents other activities that are clearly within the GCD's jurisdiction and the jurisdiction of other Montana and federal agencies such as the Montana Department of Environmental Quality (318 authorization for short term water

quality standard for turbidity), and the US Army Corps of Engineers (Section 404 of the Federal Clean Water Act).

The Montana Streambed and Land Preservation Act (75-7-1, MCA), also known as the 310 Law, was enacted in 1975. Part of its intent (75-7-102) is:

1). 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.

All of these laws and agencies, as well as the Department of Natural Resources and Conservation (DNRC) and Montana Fish, Wildlife and Parks are tasked with overseeing activities across the state to protect and conserve the resources, including streams and fisheries, which belong to the people of Montana. MCAFS is a professional organization with a membership that has dedicated their professional careers to taking part in this conservation. As such, we believe that the recent article in the Chronicle spotlighted actions that we could not ignore because of their potential impact to aquatic resources in the East Gallatin River.

MCAFS's officers discussed this violation and the GCD Board's action during a recent meeting. During our discussion, a pattern emerged concerning similar violations and Conservation Board actions across the state. Based on our officers' experiences, we decided MCAFS should write a letter expressing our concern regarding the current approach to implementation of the 310 law and other associated laws designed to protect aquatic resources across the State. MCAFS takes the conservation of Montana's fisheries very seriously and we believe that the laws enacted by the Montana and U.S. legislatures to protect these resources should also be taken seriously. We also believe that violations need to be dealt with consistently in order educate users on their rights and responsibilities related to the aquatic resources, which belong to all Montanans (70-1-202, MCA).

In summary, MCAFS believes that the 310 law would apply to Mr. Billion and his contractor's actions, and that he should have obtained a permit. Given that he has been in "dispute with the GCD for two years" (according to the Chronicle story), it is highly unlikely that he was unaware of his need for a permit for the actions captured in the accompanying photo. In addition, the contractor has been in the business of stream

restoration for several years and was professionally obligated to inform his client of permitting needs. Therefore, MCAFS is deeply disappointed in the GCD for not imposing a penalty of some kind for the actions related to this project. While MCAFS would support using the contractor's history of river restoration experience as support for granting a permit, we strongly disagree with GCD Board's citing his past compliance as a reason not to fine the contractor for ignoring permitting requirements. In the current state of rapid development across Gallatin County and across Montana, it is more important than ever for agencies to educate landowners on required permitting and correct them when they disregard the law. The East Gallatin River has many channel controlling projects along its length as do many of the streams and rivers across our state. Changing the nature and character of a stream can help or harm fisheries, and the permitting process' function is to ensure that projects are designed to do the former over the long term without causing the latter in the short term.

As a representative of MCAFS, I hope that the public will join us in holding our agency representatives accountable for whatever course of action they take as this and other permitting violations are processed across the state.

Sincerely,

Leanne Roulson, President
Montana Chapter of the
American Fisheries Society

CC:

Governor Brian Schweitzer
Jeff Ryan, MT DEQ Water Quality Protection Bureau
Glenn Phillips, Montana Fish, Wildlife and Parks
Chris Hunter, Montana Fish, Wildlife and Parks
Alan Steinle, US Army Corps of Engineers
Marcie Murnion, Gallatin County Conservation District
Jodi Fagan, Greater Gallatin Watershed Council
Gallatin County Floodplain Coordinator/ Planner



PHOTO COURTESY OF WEST

An excavator works on two temporary dams installed in the East Gallatin River in late March.

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