

BEAVERHEAD CONSERVATION DISTRICT

ENFORCEMENT ACTIONS UNDER THE NATURAL STREAMBED AND LAND PRESERVATION ACT OF 1975

I. SCOPE

This document establishes the basis for guidelines for the procedures for facilitating the resolution of complaints of alleged 310 violations and the process the conservation district should follow to seek judicial enforcement under Mont. Code Ann. §§ 75-7-122 and -123. The conservation district will first attempt to negotiate a resolution of a violation. If the district determines that issuance of an Order is appropriate, the district shall send a letter to the violator. The letter will identify the specific violation, the district finding on noncompliance, the required corrective action, time frames for compliance, the date the civil penalty commences, and the district's intent to seek judicial enforcement of the civil penalty if it is not paid. If the violator takes corrective action within the required time frame, the district may waive the order for civil penalty. If a violator fails to respond to the order, or to take corrective action, the district may seek judicial enforcement by turning the matter over to the county attorney or other legal service provider for the district.

II. AUTHORITY

Under Mont. Code Ann. §§ 75-7-122 and -123 the conservation district may impose a penalty and may seek judicial relief upon finding that a person has engaged in one or more of the following:

1. engaged in a project without prior approval;
2. engaged in an activity outside the scope of the written consent of the supervisors;
3. violated the emergency procedures provided for in § 75-7-113; or
4. placed a junked motor vehicle or the body portion of a junked motor vehicles between the channel banks of any stream or has reinforced the banks of a stream with junked motor vehicles or the body portion of junked motor vehicles.

Further, the conservation district may assess a civil penalty on the violator under Mont. Code Ann. § 75-7-123. The civil penalty may not exceed \$500.00 a day for each day of the violation. The conservation district may also request the county attorney to review the matter for prosecution as a misdemeanor subject to a criminal (misdemeanor) penalty not to exceed \$500.00. The conservation district must elect between a criminal (misdemeanor) penalty or a civil penalty.

The conservation district may seek judicial relief to declare a public nuisance and subject the violator to proceedings for immediate abatement and/or petition the court to enforce and collect the civil penalty established by the board of supervisors.

III. VIOLATIONS FOR ENFORCEMENT

When determining which violations will be pursued, the conservation district will consider the magnitude and significance of the violation, its effect on the public health or the impact of pursuing enforcement. Other considerations include the availability of staff and the

existence of a written complaint. A written complaint is always preferred. However, there may be a compelling reason for initiating enforcement without one.

IV. CIVIL PENALTY

The conservation district has the authority to assess a civil penalty of up to \$500.00 a day for violations to the Natural Streambed and Land Preservation Act. When going into court, the conservation district must justify the amount of the civil penalty. Therefore, where the conservation district assesses a civil penalty, all conservation district costs shall be identified and maintained to establish justification in the event judicial proceedings are initiated. All staff associated with the investigation and determination on enforcement shall keep a record of their time and costs. This must include correspondence, other communication costs, field investigation costs, and staff time. When deemed appropriate the conservation district will also consider the economic value of the violation to the violator. If the violator's continued violation will probably net the violator more benefit than the cost of the civil penalty, the conservation district must adjust the civil penalty to take this into consideration.

V. RESOLUTION

When a conservation district receives a complaint alleging a violation, the conservation district will follow the steps below.

Step 1. Written Complaint

Request that the complainant submit a written complaint on Form 274 (*Exhibit A*). The complaint should specify the nature of the alleged violation, who is involved, where it is taking place, and when it occurred.

Step 2. Advice to Complainant

Advise the complainant that enforcement action by the conservation district may depend on the complaining party's willingness to provide testimony. Further advise that enforcement will depend on the facts of the case and the availability of resources.

Step 3. Telephone Contact

Upon receipt of the written complaint, the district should seek to contact the alleged violator by telephone and advise the person of the complaint.

Step 4. Letter 1 - Notice of Alleged Violation

If unsuccessful in resolving the problem by direct telephone contact, send Letter 1 (*Exhibit B*) as soon as possible to the alleged violator. The letter will advise the alleged violator that the conservation district has received a written complaint specifically addressing his/her alleged violation. Although not meant to assert

any conclusion regarding wrongdoing, the letter will notify the alleged violator that a field investigation will be conducted and that if a violation is occurring it must cease immediately. If a violation is documented upon investigation, the conservation district may assess a civil penalty up to \$500.00 per day for each day the violation takes place. It will further explain that the conservation district may seek judicial relief to abate the alleged violation if the violator does not voluntarily agree to a mitigation plan with the conservation district. The letter will encourage the alleged violator to contact the conservation district about trying to resolve the issue immediately. This letter should be sent by certified mail.

Step 5. Field Investigation

Conduct a field investigation as soon as possible if the complaint remains unresolved. Never use more than two supervisors on a field investigation to avoid any issue related to a public meeting. A “team” is not required to conduct an investigation, but the district can invite the alleged violator and a member of the Department of Fish, Wildlife and Parks to be present at the field investigation. The alleged violator is not an investigator and may not file any findings with the Board of Supervisors. At the invitation of the Board, the representative of the Department of Fish, Wildlife and Parks may be an investigator and may file findings. If possible, permission will be obtained from the landowner to conduct the investigation; otherwise the investigation must be conducted from a location that does not require the landowner’s permission. Document such matters as the time, date, location, nature of violation, and person(s) allegedly causing the violation. Photographs, videos, flow records, and observations by witnesses are good sources for documentation. In the course of conducting the investigation, it is essential to acquire convincing documentation affirming that (a) the alleged violation prompted a valid complaint, and (b) there is a violation of the Montana Natural Streambed and Land Preservation Act. Prepare a report that describes the findings of the investigation. Begin documenting the time and costs associated with enforcement.

Step 6. No Violation

If the field investigation does not verify a violation, send a second letter to both the alleged violator and the complainant advising them of the conservation district's findings.

Step 7. Violation Verified

Whenever a field investigation affirms a violation, the board of supervisors must decide whether to issue an Order assessing a civil penalty. To provide documentation, send Letter #2 (*Exhibit C*) setting forth the results of the investigation, the course of action required to rectify the violation, and a deadline date for taking the corrective action. Further, notice shall be included where necessary that the conservation district will follow up this notice with an

investigation within 10 days to confirm whether the violator has corrected the violation. Letter #2 must be sent certified with return-receipt requested.

If the violator acknowledges a violation of the Natural Streambed and Land Preservation Act and is willing to work with the conservation district to correct the violation, issuing an order may be postponed. If the violator was not responsive to Letter #1 and is not cooperative in correcting the violation, the board of supervisors must decide whether to issue an Order for assessing a civil penalty. The investigator should send the investigation report and a recommendation to the board of supervisors. The board of supervisors should consult with the investigator and with the legal service provider. If the decision is to issue an order, then proceed as outlined in section VI.

VI. ORDER FOR CIVIL PENALTY AND NOTICE OF CONSERVATION DISTRICT PETITION FOR JUDICIAL ENFORCEMENT

If the board of supervisors determines that issuance of an Order is appropriate and will be enforced, the board of supervisors shall send Letter #3 (*Exhibit D*). Enclose the Order of the Conservation District (*Exhibit E*) assessing a civil penalty not to exceed \$500.00 per violation per day. The letter shall identify the specific violation, the required corrective action, the conservation district finding on noncompliance, the date the civil penalty commences, and notice of the conservation district's intent to seek judicial enforcement of the civil penalty. Further, advise the violator that an inspection of the violation will be conducted within ten days of receipt of the Order. If the violator takes corrective action before that time he or she should contact the conservation district immediately so they can confirm it. Letter #3 must be mailed certified with return-receipt requested.

VII. PETITION TO COURT

If the violator does not respond to the Order or take the corrective action, the conservation district will seek judicial enforcement. The conservation district must prepare a report documenting the follow-up investigation and the noncompliance. Enforcement action will be initiated with legal service provider preparing the necessary legal documents. The conservation district shall provide the legal service provider with the following affidavits:

- 1) Affidavit of the Conservation District Field Investigator (*Exhibit F*) (prepared by the field investigator identifying what steps have been taken to obtain voluntary compliance with the Natural Streambed and Land Preservation Act, including a copy of the field investigation report),
- 2) Affidavit Regarding Enforcement Costs (*Exhibit G*), and, if this action against a violator was initiated by a complaint.

The legal service provider must keep the conservation district advised of any court actions. Any additional information requested of the conservation district by the legal service provider or the court shall be gathered or prepared by the conservation district.