



AN ACT REVISING AND CLARIFYING THE LAWS RELATED TO THE TREATMENT OF PROPERTY CONSISTING OF THE BED OF NAVIGABLE RIVERS AND STREAMS; PROVIDING FOR A REDUCTION FROM GRAZING LAND BEFORE A REDUCTION FROM CURRENT LAND USE FOR PROPERTY TAX PURPOSES; PROVIDING THAT IN A DISPUTE OVER THE OWNERSHIP OF THE BED OF A RIVER OR STREAM A PRESUMPTION MAY NOT BE MADE BASED UPON THE TAX STATUS OF THE PROPERTY; CLARIFYING THE OWNERSHIP OF STRUCTURES; CLARIFYING THE ABILITY TO CONTROL NOXIOUS WEEDS; AMENDING SECTIONS 61-8-371, 77-1-111, 77-1-126, 77-1-127, 77-1-806, 77-1-809, 77-3-442, 77-6-113, 77-6-115, 77-6-302, 77-6-303, AND 77-6-501, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, the Department of Natural Resources and Conservation has asserted regulatory jurisdiction over the beds of various rivers and streams based on the premise that the streams are navigable and that the state therefore owns the riverbeds and streambeds; and

WHEREAS, very few Montana rivers or streams have been adjudicated as navigable, either in whole or in part; and

WHEREAS, it is not economically feasible for either the Department of Revenue or the Department of Natural Resources and Conservation to obtain judicial determinations of riverbed or streambed ownership by statewide quiet title actions, yet that ownership determination may not be made legally by unilateral administrative decisions; and

WHEREAS, if the Department of Natural Resources and Conservation wishes to assert regulatory control over the bed of a river or stream that has not been adjudicated to be navigable and was not determined navigable at the time of the original federal government surveys of the public land as evidenced by the recorded and monumented surveys of the meander lines of the river, it is required to provide written notice of the claim of state ownership to the affected property owners; and

WHEREAS, because the present claims of state ownership of riverbeds and streambeds is contrary to longstanding administrative practice and because the test for navigability depends upon evidence concerning the

log floating capability of a stream at the time of statehood, there is no presumption of correctness attached to a navigability claim made by any state agency.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Findings. The legislature finds that:

(1) for 120 years since the admission of Montana as a state in 1889, the department of revenue and its predecessor agencies have taxed some landowners whose property abuts a river or stream on the assumption that those riparian landowners owned the property to the middle of the river or stream;

(2) in *Montana v. United States*, 450 U.S. 544 (1981), the United States supreme court recognized that if a river or stream is not navigable, the abutting riparian landowners own the land in the bed of the stream to the middle of the stream, but if a river or stream is navigable, the state owns the bed of the river or stream, having acquired ownership from the United States when the state was admitted to the union, and therefore Montana owns the bed of the Bighorn River where it flows through the Crow reservation;

(3) for the purpose of determining the ownership of a riverbed or streambed, the test of navigability is whether logs could be floated in the stream at the time of statehood as stated in *Montana Coalition for Stream Access v. Curran*, 210 Mont. 38, 682 P.2d 163 (1984), based upon *The Montello*, 87 U.S. 430 (1874), *Sierra Pacific Power Co. v. Federal Energy Regulatory Commission*, 681 F.2d 1134 (9th Cir. 1982), and *State of Oregon v. Riverfront Protection Association*, 672 F.2d 792 (9th Cir. 1982);

(4) beginning with tax assessments that were effective January 1, 2008, the lien date for real property taxes, the department of revenue reassessed the property of riparian landowners whose land abuts various rivers and streams by reducing the amount of land assessed based upon the premise that the landowners did not own to the middle of the river or stream because the river or stream was navigable and these reassessments, if correct, have enormous impact upon the riparian landowners because they affect land titles, acreage owned, qualification for various conservation and price support programs, and ownership of water diversion facilities and other structures that the riparian landowners have constructed for water usage;

(5) the 2008 reassessments were made by simply sending out tax bills without any notice that they were based upon a claim of state ownership of the riverbeds or streambeds and some riparian landowners have paid the first installment of 2008 real property taxes based upon the reassessments without realizing that a claim of

state ownership of the riverbeds and streambeds was the basis for the reassessments;

(6) procedural due process requires that if a claim of change in ownership is involved, the state agency involved shall afford the affected property owners both notice of the claim and the opportunity to be heard;

(7) the 2008 real property tax assessments based upon claims of state ownership did not comply with the constitutional requirement for procedural due process and under that circumstance payment by the property owners of taxes based on the reassessment does not constitute acquiescence in the underlying state ownership claim;

(8) The department of revenue is required to provide written notice to the affected property owners of the state's claim of ownership so that the affected property owners have a fair opportunity to be heard and to dispute the government's claim.

Section 2. Adjustment of taxes for formerly taxed property -- presumption of taxability. (1) If the department reduces the amount of taxable property owned by a person or entity because of a determination that the property consists of the bed of a navigable river or stream, the department shall, as applicable, reduce the amount of tract land that is taxable or grazing land that is taxable before reducing the amount of irrigated land or nonirrigated land that is taxable.

(2) In the absence of adjudication by a court of competent jurisdiction of the ownership of the bed of any river or stream, it is the policy of the state that the department shall assess all land that is part of the bed and banks of a river or stream to the owner of record of the property.

(3) The department shall notify landowners of their right to request and shall provide upon request a revised assessment for tax year 2008 for the bed of any stream:

- (a) not adjudicated to be navigable by a court of competent jurisdiction; or
- (b) not determined navigable at the time of the original federal government surveys of the public land as evidenced by the recorded and monumented surveys of the meander lines of the river.

Section 3. No presumption from tax status of property. In a dispute over the title to the bed of a river or stream, a presumption may not be made based upon whether the department of revenue considers the property to be taxable or nontaxable.

Section 4. Irrigation structures, utility structures, and bridges of formerly taxable land -- water rights. (1) If an irrigation structure, a utility structure, or a bridge was placed on land that consists of the bed of a navigable river or stream, the irrigation structure, utility structure, or bridge remains the property of the original owner or the original owner's successors in interest or assignees. Access to the irrigation structures, utility structures, and bridges described in this section for the purposes of operation, maintenance, repair, enhancement, or improvement may not be impeded by the state.

(2) The change of designation of the bed of a navigable river or stream from a taxable to a nontaxable status may not interfere with or impede the exercise of a water right, including a livestock watering right for which a claim was not required to be filed pursuant to 85-2-212 and 85-2-222.

Section 5. Section 61-8-371, MCA, is amended to read:

"61-8-371. Operation of motor vehicle or off-highway vehicle below high-water mark on certain state or federal lands prohibited -- exceptions. (1) Except as provided in 77-1-111(3), 77-1-806(4), and subsections (2) and (3) of this section, a person may not operate a motor vehicle or an off-highway vehicle below the ordinary high-water mark, as defined in 23-2-301, of class I or class II waters, as defined in 23-2-301, that occurs on state or federal lands or below the ordinary high-water mark of class I waters flowing through private lands, within that portion of the streambed that is covered with water.

(2) A motor vehicle or an off-highway vehicle may be operated below the ordinary high-water mark on state or federal lands on an established road or trail that enters or crosses a stream, but the stream crossing must be by the shortest practical or designated route to the road or trail on the opposite bank.

(3) The prohibition in subsection (1) does not apply to:

(a) off-highway or motor vehicle use that occurs on state or federal land that is designated for off-highway or motor vehicle use below the ordinary high-water mark if the use is in accordance with the requirements of the authorization;

(b) off-highway or motor vehicle use conducted on state or federal land pursuant to and in accordance with a specific written authorization from the appropriate land management agency for that use below the ordinary high-water mark; and

(c) operation of an off-highway vehicle by a nonambulatory person who is using the vehicle for recreational use, as defined in 23-2-301, as long as operation of the vehicle is prudent and minimizes destruction.

(4) The state may authorize the use of a motor vehicle or off-highway vehicle on state property below the ordinary high-water mark only when the state has determined that the use will have a minimal impact on the streambed and on the fish and wildlife ecology of the stream or river. Federal land management agencies are requested to apply the same criteria when authorizing use of federal land."

Section 6. Section 77-1-111, MCA, is amended to read:

"77-1-111. Court actions. (1) All actions for the recovery of money due under this title or for the cancellation of leases or for the cancellation of certificates of purchase or patents or for the recovery of state lands, actions of forcible entry and detainer, actions for ejectment, and all other actions affecting any state lands ~~shall be~~ are controlled, as to venue, by the provisions of the rules of civil procedure relating to the place of trial of civil actions and ~~shall~~ must be conducted by the attorney general.

(2) When ~~so~~ requested by the attorney general, the county attorney of each county in the state shall represent the state in all foreclosure proceedings, collections of delinquent rentals, actions for trespass on state lands, and in all other state land matters that may arise in ~~his~~ the county attorney's county. The county attorney ~~shall~~ is not be entitled to charge the state any compensation for ~~such~~ services beyond ~~his~~ the county attorney's regular salary.

(3) The use of a ford or crossing on a navigable river or stream may not be considered a trespass."

Section 7. Section 77-1-126, MCA, is amended to read:

"77-1-126. Notice of noncompliance. (1) When the department finds that noxious weeds on leased state land or on state land subject to a license or permit have not been controlled as required by 7-22-2116, the lease, the license, or the permit, the department shall contact the lessee, licensee, or permittee and require that a weed management and control program be implemented. The lessee, licensee, or permittee may request that an inspection of the state land be made with department staff. The department shall seek voluntary compliance with a noxious weed management and control program for the state lands prior to issuing a notice of noncompliance. If the lessee, licensee, or permittee fails to implement a weed management and control program when directed by the department, the department shall notify the lessee, licensee, or permittee by mail of the noncompliance. The notice must specify:

(a) the basis for the determination of noncompliance;

- (b) the geographic location of the area of noncompliance by legal description or other reasonably identifiable description;
 - (c) measures to be undertaken in order to comply with the weed control responsibilities of the lease, license, or permit;
 - (d) a reasonable period of time, not less than 15 days, in which compliance measures must be initiated;
 - (e) the right of the person to request, within 15 days, an administrative hearing as provided by 77-1-128;
- and
- (f) the right of the person to request an extension if the measures in subsection (1)(c) cannot be implemented due to climatic or growing conditions.

(2) At least 2 weeks prior to sending a notice of noncompliance, the department shall send by certified mail to the lessee, licensee, or permittee a final notice that the weed management and control program has not been implemented.

(3) This section may not be construed to interfere with the right of the owner of property adjacent to a navigable river or stream to control noxious weeds on the land adjacent to the navigable river or stream."

Section 8. Section 77-1-127, MCA, is amended to read:

"77-1-127. Department authorized to control weeds -- billing for weed control. (1) If the lessee, licensee, or permittee fails to take corrective action or if a request for an administrative hearing is not made within the time specified in the notice, the department may enter state land covered by the lease, license, or permit and institute appropriate weed control measures. The department may enter into an agreement with a commercial applicator, as defined in 80-8-102, or with the appropriate weed management district organized under 7-22-2102 to control the weeds. The commercial applicator or the weed management district shall agree to carry any insurance required by the department.

(2) The department shall submit a bill to the lessee, licensee, or permittee itemizing the hours of labor, material, and equipment time and listing the actual total cost incurred by the department to take the weed control measures, together with a penalty not exceeding 50% of the total cost. The bill must specify and order a payment due date of 30 days from the date the bill is sent. If payment is not received within 30 days, the department may cancel the lease, license, or permit. Money recovered under this section must be placed in the resource development account established in 77-1-604, except that penalties collected must be distributed annually to the

trusts for the lands on which the weed control action was taken.

(3) If a person receiving an order to take corrective action requests an administrative hearing, the department may not institute control measures until the matter is finally resolved, except in case of an emergency. In an emergency, the person is liable for department costs allowed by this section only to the extent determined appropriate by the director or the court that finally resolves the matter.

(4) This section may not be construed to interfere with the right of the owner of property adjacent to a navigable river or stream to control noxious weeds on the land adjacent to the navigable river or stream."

Section 9. Section 77-1-806, MCA, is amended to read:

"77-1-806. Prior notification to lessee of recreational use -- trespass -- penalty. (1) If a lessee of state lands under this part desires to be notified prior to anyone entering upon ~~his~~ the leasehold, the lessee shall post, at customary access points, signs provided or authorized by the department. The signs must set forth the lessee's or ~~his~~ the lessee's agent's name, address, telephone number, and method of notification. The lessee or ~~his~~ the lessee's agent ~~shall make himself~~ must be available to receive notice from recreational users or provide an alternative means for notice as prescribed by rule. When state land is posted, recreational users shall contact and identify themselves to the lessee or ~~his~~ the lessee's agent for the purposes of minimizing impact upon the leasehold interest and learning the specific boundaries of adjacent unfenced private property.

(2) Each recreational user of state lands shall obtain permission of the lessee or ~~his~~ the lessee's agent before entering the adjacent private property owned by the lessee. Entry to private property from adjacent state lands without permission of the landowner or ~~his~~ the landowner's agent is an absolute liability offense. A violator of this subsection is guilty of a misdemeanor and shall be fined not less than \$50 or more than \$500, imprisoned in the county jail for not more than 6 months, or both.

(3) A person may be found guilty of the offense described in subsection (2) regardless of the absence of fencing or failure to post a notice in accordance with 45-6-201.

(4) The use of a ford or crossing on a navigable river or stream by the adjacent landowner may not be considered a trespass for the purposes of this section."

Section 10. Section 77-1-809, MCA, is amended to read:

"77-1-809. Compensation for damage to improvements, growing crops, or livestock. A lessee may

apply to the department for reimbursement of documented costs of repair to or replacement of improvements, growing crops, or livestock damaged by recreational users of state lands. For the purpose of this section, improvements includes the structures described in [section 4]. The application must include an affidavit by the applicant setting forth the nature of the loss, allegations and reasonable proof supporting the involvement of recreational users, and documentation of repair or replacement costs. Upon review of the application and supporting proof and upon additional investigation as required, the department shall grant, modify, or deny the claim. The department, by reason of payment to the lessee for damage to improvements, is entitled to be subrogated to the rights of the lessee to recover the amount paid from the party causing the damage. Payments under this section must be made from appropriations from the state lands recreational use account established by 77-1-808, and the liability of the department for damage payments is limited to the available appropriation. Claim applications are to be considered in the order they are received."

Section 11. Section 77-3-442, MCA, is amended to read:

"77-3-442. Disposition of property of lessee upon termination of lease. (1) Upon the termination for any cause of a lease issued under this part, the former lessee has 6 months after the date of the termination to remove from the premises all machinery, fixtures, improvements, buildings, and equipment belonging to the lessee, except for casing in the wells and other equipment or apparatus necessary for the preservation of any oil or gas well or wells and the structures described in [section 4]. As to the casing, equipment, and apparatus, any succeeding lessee or, in the event there is no succeeding lessee, the state wishing to have the property left upon the premises shall pay a reasonable value for the property to the former lessee.

(2) If the succeeding lessee or the board is unable to agree with the former lessee upon the reasonable cash value of the casing, equipment, and apparatus, the succeeding lessee or, if there is no succeeding lessee, the state shall pay in cash to the former lessee a sum fixed as a reasonable price by a board of three appraisers, one of whom must be chosen by the successful bidder, one by the former lessee, and the third by the two appraisers chosen. If a person refuses to appoint an appraiser within 15 days of a request to do so by the department, the department may appoint an appraiser for that person. The appraisal must be reported to the respective parties in writing and is final and conclusive.

(3) ~~Unless~~ Except as provided in [section 4], unless the department gives written authorization, the former lessee may not remain in possession or manage the land and property formerly covered by the lease.

During the time the former lessee remains in authorized possession, the lessee may retain the same share of the products of the premises as inured to the lessee during the term of the lease. ~~ff~~ Except as provided in [section 4], if the state or other bidder does not desire any of the lessee's property as provided in this section, the lessee shall properly plug all wells and remove all of the lessee's property from the premises."

Section 12. Section 77-6-113, MCA, is amended to read:

"77-6-113. Lease conditions -- cancellation. (1) It ~~shall be~~ is a condition of all leases of agricultural or grazing state lands that:

(a) in the case of agricultural lands, the lessee shall observe the ordinary rules for good management of agricultural lands and shall handle the leased land with the view of maintaining its productivity and minimizing wind and soil erosion and noxious weeds and planting crops with a view of securing the greatest yields of good quality; and

(b) in the case of grazing lands, the lessee shall observe the ordinary rules for good range management and shall manipulate the numbers, class, distribution, and season of the range use and the handling, feeding, breeding, and marketing of grazing livestock with a view of securing the production of the maximum of livestock and livestock products, consistent with the conservation of the land resources and the perpetuation of its productivity, and to these ends the state land lease may not be abused by overgrazing.

(2) For the gross violation of any of these rules, the lease involved ~~shall~~ must be canceled by the department, subject to the appeal procedure provided in 77-6-211.

(3) This section may not be construed to interfere with the right of the owner of property adjacent to a navigable river or stream to control noxious weeds on the land adjacent to the navigable river or stream."

Section 13. Section 77-6-115, MCA, is amended to read:

"77-6-115. Acquisition of water right by lessee -- limitation. (1) ~~The~~ Subject to subsection (4), the lessee of state lands may at any time prior to 1 year before the expiration of ~~his~~ the lease make application to the board for permission to secure a water right to the land under ~~his~~ the lease. ~~Such~~ The application ~~shall~~ must be in writing, ~~shall~~ and must show how much of the land can be irrigated, the permanency of the water supply, and the probable cost of placing the land under irrigation. If the proposed plan meets with the approval of the board, permission ~~shall~~ must be granted the lessee to secure the desired water right for the land and to place the ~~same~~

land under irrigation.

(2) ~~If such~~ Subject to subsection (4), if the water right becomes a permanent and valuable improvement, then in case of the sale or lease of the ~~lands~~ land to other parties, the former lessee ~~shall be~~ is entitled to receive compensation in the amount of the reasonable value ~~thereof~~ of the improvement, as in the case of other improvements, from the new lessee or the purchaser.

(3) These provisions ~~shall~~ may not be ~~so~~ construed ~~as~~ to make the state liable to the lessee for the payment of the cost or value of ~~such~~ irrigation improvements.

(4) A water right acquired under this section may not interfere with a water right used in conjunction with a structure described in [section 4]."

Section 14. Section 77-6-302, MCA, is amended to read:

"77-6-302. Compensation for improvements -- actual costs. (1) ~~Prior~~ Except for the improvements described in [section 4], prior to renewal of a lease, the department shall request from the lessee a listing of improvements on the land associated with the lease, including the reasonable value of the improvements. This information must be provided to any party requesting to bid on the lease. ~~When~~ Except for the improvements described in [section 4], when another person becomes the lessee of the ~~lands~~ land, the person shall pay to the former lessee the reasonable value of the improvements. The reasonable value may not be less than the full market value of the improvements.

(2) If the former lessee is unable to produce records establishing the reasonable value or if the former lessee and the new lessee are unable to agree on the reasonable value of the improvements, the value must be ascertained and fixed as provided in 77-6-306. The former lessee shall initiate this process within 60 days of notification from the department that there is a new lessee. The department notification must include an explanation of the requirements of 77-6-306. Failure to initiate the process within this time period results in all improvements, except those described in [section 4], becoming the property of the state.

(3) Upon the termination of a lease, the department may grant a license to the former lessee to remove the movable improvements from the land. Upon authorization, the movable improvements must be removed within 60 days or they become the property of the state unless the department for good cause grants additional time for the removal. The department shall charge the former lessee for the period of time that the improvements remain on the land after the termination of the lease."

Section 15. Section 77-6-303, MCA, is amended to read:

"77-6-303. Determination of compensation. (1) In determining the value of ~~these~~ the improvements described in 77-6-302, consideration ~~shall~~ must be given to their original cost, their present condition, their ~~suitableness~~ suitability for the uses ordinarily made of the ~~lands~~ land on which they are located, and to the general state of cultivation of the land, its productive capacity as affected by former use, and its condition with reference to the infestation of noxious weeds. Consideration ~~shall~~ must be given to all actual improvements and to all known effects that the use and occupancy of the land have had upon its productive capacity and ~~desirableness~~ desirability for the new lessee.

(2) However, if any of the improvements ~~consists~~ consist of ~~breaking~~ (meaning the original plowing of the land) and 1 year's crops have been raised on the land after the ~~breaking~~ plowing, the compensation for the ~~breaking~~ improvement may not exceed \$2.50 per acre, and if two or more crops have been raised on the land after the ~~breaking~~ original plowing, the ~~breaking~~ original plowing may not be considered as an improvement to the land."

Section 16. Section 77-6-501, MCA, is amended to read:

"77-6-501. Agricultural leases. (1) ~~As to~~ For agricultural ~~lands~~ land, all leases except lease renewals upon which the lessee has made improvements at the lessee's expense, as provided in subsection (3), must be continued or made upon a crop share rental basis of not less than one-fourth of the annual crops to the state or the usual landlord's share prevailing in the district, whichever is greater. The board may, however, approve special crop share rentals of less than one-fourth for high production cost crops, such as but not limited to potatoes and sugar beets, or for high production cost methods when these methods would result in more income to the state. The board may not delegate the authority to approve special crop share rentals.

(2) Except in the case of cash lease renewals under subsection (3), if it is in the best interests of the state, the department may authorize a lease upon other bases than crop share, but in these cases, the rental must at least equal the value of the usual landlord's share prevailing in the district under similar circumstances, and the department shall set forth in the records the conditions of the case and the rental to be charged.

(3) ~~In~~ Subject to [section 4], in a case in which the lessee has made substantial improvements for irrigation purposes to the lease at the lessee's own expense, the department shall authorize a cash lease renewal

at not less than \$15 an acre on the portion of the lease that has been improved.

(4) For all agricultural leases issued through competitive bidding provided for under 77-6-202 or 77-6-205, the department shall require on any competitive bid greater than a one-third crop share a minimum annual guarantee of not less than \$15 an acre."

Section 17. Codification instruction. (1) [Section 2] is intended to be codified as an integral part of Title 15, chapter 24, part 12, and the provisions of Title 15, chapter 24, part 12, apply to [section 2].

(2) [Section 3] is intended to be codified as an integral part of Title 26, chapter 1, part 6, and the provisions of Title 26, chapter 1, part 6, apply to [section 3].

(3) [Section 4] is intended to be codified as an integral part of Title 77, chapter 1, part 1, and the provisions of Title 77, chapter 1, part 1, apply to [section 4].

Section 18. Effective date. [This act] is effective on passage and approval.

- END -

I hereby certify that the within bill,
SB 0465, originated in the Senate.

Secretary of the Senate

President of the Senate

Signed this _____ day
of _____, 2009.

Speaker of the House

Signed this _____ day
of _____, 2009.

SENATE BILL NO. 465

INTRODUCED BY HAMLETT, STORY

AN ACT REVISING AND CLARIFYING THE LAWS RELATED TO THE TREATMENT OF PROPERTY CONSISTING OF THE BED OF NAVIGABLE RIVERS AND STREAMS; PROVIDING FOR A REDUCTION FROM GRAZING LAND BEFORE A REDUCTION FROM CURRENT LAND USE FOR PROPERTY TAX PURPOSES; PROVIDING THAT IN A DISPUTE OVER THE OWNERSHIP OF THE BED OF A RIVER OR STREAM A PRESUMPTION MAY NOT BE MADE BASED UPON THE TAX STATUS OF THE PROPERTY; CLARIFYING THE OWNERSHIP OF STRUCTURES; CLARIFYING THE ABILITY TO CONTROL NOXIOUS WEEDS; AMENDING SECTIONS 61-8-371, 77-1-111, 77-1-126, 77-1-127, 77-1-806, 77-1-809, 77-3-442, 77-6-113, 77-6-115, 77-6-302, 77-6-303, AND 77-6-501, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.