

Resolution 12-04

CLARIFICATION OF 310 JURISDICTION ON PERENNIAL-FLOWING STREAMS

WHEREAS, the Natural Streambed and Land Preservation Act of 1975 (Act or 310 Law) applies to projects that result in a change in the state of a natural, perennial-flowing stream or river, its bed, or its immediate banks;

WHEREAS, the Act, the Administrative Rules of Montana, nor the Model Rules adopted by the conservation districts define the term "perennial-flowing stream;"

WHEREAS, it is the intent and policy of the Act that the 310 Law apply to natural, perennial-flowing streams which contain year round flow whether portions of a stream channel are naturally dry or are dry as a result of man's activities;

WHEREAS, in a declaratory ruling before the Broadwater Conservation District the petitioner asserted that in determining whether a stream is a perennial-flowing stream, an intermittent-flowing stream, or an ephemeral-flowing stream the Broadwater Conservation District was required to apply the terms as defined by the mine reclamation laws;

WHEREAS, applying the definition of "perennial-flowing stream" under the mine reclamation laws would restrict jurisdiction under the Act in violation of the intent and policy of the Act; and

WHEREAS, the Act, the Administrative Rules of Montana, and the Model Rules should be consistently administered by conservation districts.

THEREFORE, BE IT RESOLVED, that the 310 Committee be directed to review the Administrative Rules of Montana and the Model 310 Rules and determine whether the adoption of an administrative rule and/or model rule to more clearly define the term "natural, perennial-flowing stream," and to define the terms "perennial-flowing stream," "intermittent-flowing stream," and "ephemeral-flowing stream" would help the conservation districts in the administration of the 310 Law, and;

BE IT FURTHER RESOLVED, if a proposed rule is developed by the 310 Committee, that a conservation district's 310 jurisdiction be clarified to include a stream from source to mouth if the stream channel carries water year round in all or portions of the stream's length.

Submitted by: Broadwater CD

Area Meeting Action: Passed Area VI

MACD Committee Assignment: Water Resources

General Session Action: Passed