



AN ACT PROVIDING FOR THE OWNERSHIP OF A CHANNEL AND FORMER CHANNEL OF A NAVIGABLE RIVER OR STREAM FOLLOWING AN AVULSION; CREATING A PROCESS TO CLARIFY OWNERSHIP AFTER AN AVULSION OF ABANDONED BEDS OF RIVERS AND STREAMS NOT ADJUDICATED FOR TITLE; PROVIDING RULEMAKING AUTHORITY; AMENDING SECTION 77-1-102, MCA; REPEALING SECTION 70-18-202, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

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

Section 1. Sudden change in river or stream. (1) If a river or stream abandons its channel and forms a new channel as a result of an avulsion and if the segment of the river or stream where the avulsion occurred has been adjudicated as navigable for title purposes by a court of competent jurisdiction, the land constituting the old channel belongs to the owner of the shores through which the old channel flowed or, if the shores are owned by different owners, to the owners on two sides, divided by an imaginary line drawn through the middle of the old river or stream channel.

(2) An affected owner seeking title to the land described in subsection (1) shall notify the department of natural resources and conservation and describe with particularity the event that resulted in the formation of the new channel. The affected owner shall also provide the department with a survey and any other information the department considers necessary.

(3) Upon receiving the information from the affected owner, the department shall verify the information and determine whether the new channel was created by an avulsion. If the department determines that the new channel was formed by an avulsion and the old channel is abandoned, the department shall recommend to the board of land commissioners that the state and the affected owner exchange quitclaim deeds for the properties affected by the avulsion.

(4) Upon approval by the board and the exchange of quitclaim deeds, the affected owner shall notify the department of revenue and the clerk and recorder of the county in which the affected property is located of the change in ownership and submit any information necessary to update the applicable ownership records.

(5) The land constituting the old channel is subject to property taxation payable by the affected owner from the date the quitclaim deeds are exchanged.

(6) The department of natural resources and conservation and the department of revenue may adopt rules to implement the provisions of this section.

(7) Ownership remains unchanged for land that constituted an island before the avulsion occurred and that is not wholly surrounded by water after the river abandoned the old channel.

(8) (a) If an avulsion occurs on a segment of a river or stream that has not been adjudicated as navigable for title purposes by a court of competent jurisdiction, an owner may seek to clarify title to the property affected by the avulsion.

(b) To seek title clarification, the affected owner shall submit the information to the department as required by subsection (2).

(c) If the department determines that the new channel was formed by an avulsion and that the old channel is abandoned, the department shall recommend to the board that the board issue a disclaimer of interest for the abandoned channel.

(d) Upon approval by the board, the affected owner may cite the disclaimer of interest to support an ownership claim in a quiet title action filed in a district court.

(e) Upon obtaining a quiet title judgment on the abandoned channel, the affected owner shall notify the department of revenue and the clerk and recorder of the county in which the affected property is located of the change in ownership and submit any information necessary to update the applicable ownership records.

(f) The land constituting the old channel is subject to property taxation payable by the affected owner from the date of the quiet title judgement.

(9) For purposes of this section:

(a) "abandoned bed" means a riverbed, streambed, or lakebed with no water over it at the low-water mark;

(b) "avulsion" means a sudden and perceptible change in the course of a river or stream that creates a new river or stream channel and that results in an abandoned bed along the course of the old channel.

Section 2. Section 77-1-102, MCA, is amended to read:

"77-1-102. Ownership of certain islands, ~~abandoned riverbeds,~~ and riverbeds. (1) ~~The~~ The following

lands belong to the state of Montana to be held in trust for the benefit of the public schools of the state:

~~(a) all lands lying and being in and forming a part of the abandoned bed of any navigable stream or lake in this state and lying between the meandered lines of the stream or lake as shown by the United States survey of the stream or lake;~~

~~(b)(a) all islands existing in the navigable streams or lakes in this state that have not been surveyed by the government of the United States; and~~

~~(c)(b) all lands that at any time in the past constituted an island or part of an island in a navigable stream or lake, except those lands that are occupied by and belong to the adjacent landowners as accretions.~~

(2) This section does not apply to lands that are occupied by and belong to riparian landowners if the lands were formed by accretions.

~~(2)(3) State-owned riverbeds are public lands of the state that are held in trust for the people as provided in Article X, section 11, of the Montana constitution."~~

Section 3. Repealer. The following section of the Montana Code Annotated is repealed:

70-18-202. Sudden removal of bank -- right of owner to reclaim.

Section 4. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 70, chapter 18, part 2, and the provisions of Title 70, chapter 18, part 2, apply to [section 1].

Section 5. Effective date. [This act] is effective on passage and approval.

Section 6. Applicability. [This act] applies to avulsions occurring on or after [the effective date of this act].

- END -

I hereby certify that the within bill,
SB 0018, originated in the Senate.

Secretary of the Senate

President of the Senate

Signed this _____ day
of _____, 2013.

Speaker of the House

Signed this _____ day
of _____, 2013.

SENATE BILL NO. 18
INTRODUCED BY B. HAMLETT
BY REQUEST OF THE WATER POLICY COMMITTEE

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