

# ENVIRONMENTAL QUALITY COUNCIL

Friday, September 11, 2009:

State Capitol, Room 172

2:15 p.m. SB 465/SB 507 Update: Implementation of navigable streambed legislation

## ***Background***

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The State of Montana holds ownership of the land and minerals located below navigable rivers, streams and lakes and related acreage as established in the Equal Footing Doctrine and Montana statutes. The Montana Department of Natural Resources and Conservation, Trust Land Management Division administers these lands on behalf of the state.

In the 2009 legislative session, Senate Bill 507 was passed, which stated that the DNRC's permitting of uses of navigable rivers was limited to those rivers that had a meander survey on the original General Land Office (GLO) survey and/or were determined navigable by a court of law.

That list of navigable rivers that have historical documentation of commercial use that are meandered and/or determined navigable by a court of law on the DNRC's web site.

- <http://www.dnrc.mt.gov/trust/MMB/NavigableWaterways/SB507NavigableWaterwayMap.pdf>
- <http://www.dnrc.mt.gov/trust/MMB/NavigableWaterways/SB507NavigableWaterwaysList.pdf>

## ***SB507 Rules Development Timeline:***

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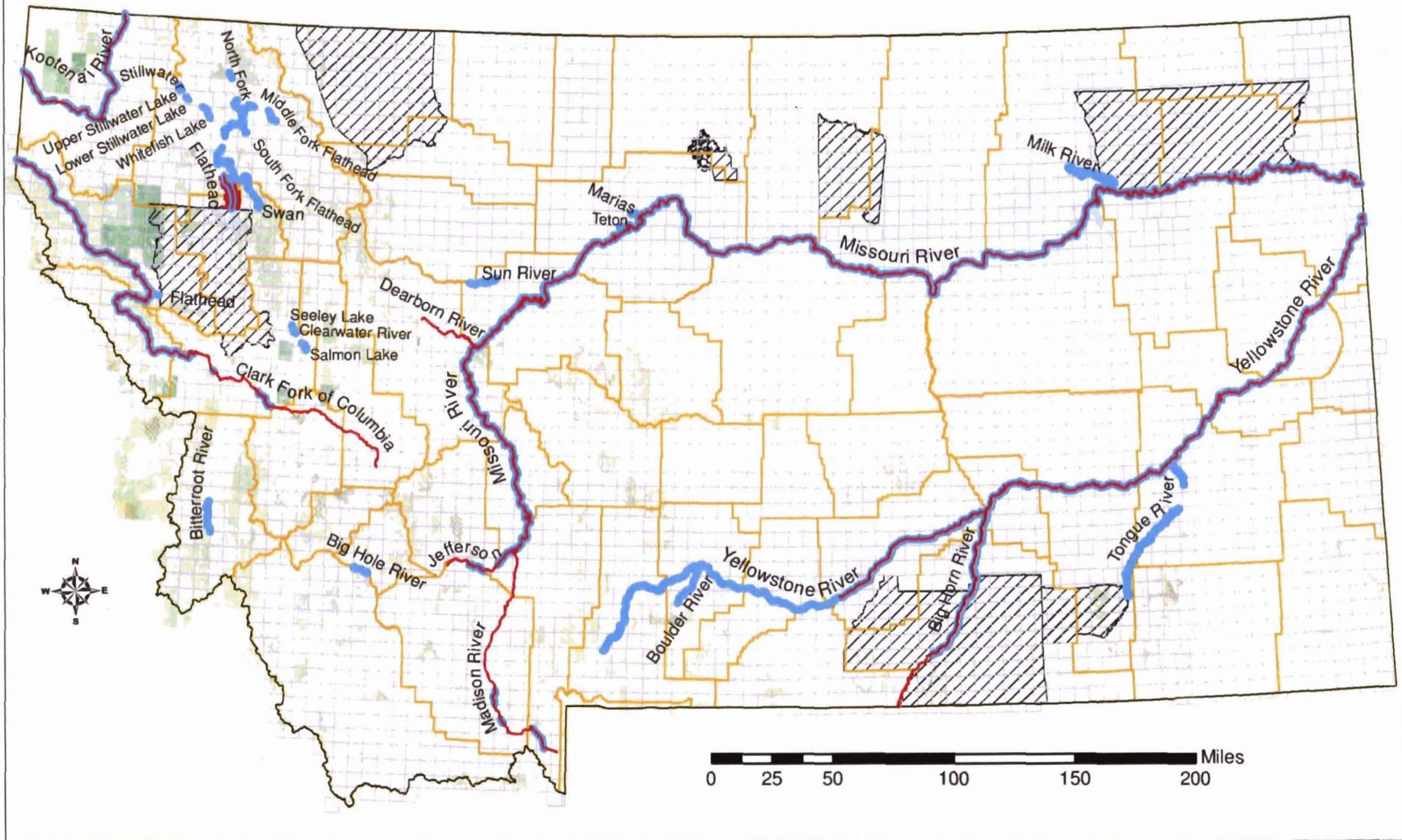
- September 2009 –rules drafting
- Mid-October 2009 – draft rules go out for informal comment to interested parties
- November 2009 – updates made to rules per informal comments, etc.
- Winter 2009/2010 draft rules go to land board for initiating rule making
- Rules completion anticipated late spring 2010

## ***Items in Packet:***

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- DNRC Navigable Waterways Map per SB507
- DNRC Navigable Waterways descriptions per SB507

# MONTANA NAVIGABLE RIVERS AND LAKES THAT REQUIRE MT-DNRC PERMITTING PURSUANT TO SB 507



Red lines and/or polygons indicate rivers and lakes in Montana with historic evidence of commercial use that have been judicially determined as navigable. Light blue lines indicate rivers and lakes with historic evidence of commercial use that are meandered on General Land Office survey plats and considered as navigable under SB 507. Montana Dept. of Natural Resources and Conservation will actively manage these waterways per SB 507 (effective October 1, 2009). The State of Montana owns navigable waterways pursuant to the Equal Footing Doctrine, state statutes, and abundant case law. For more information, contact Trust Land Management Division, MT DNRC at (406) 444-2074. July 22, 2009 edition.

**MONTANA NAVIGABLE RIVERS AND LAKES THAT REQUIRE PERMITTING BY  
TRUST LAND MANAGEMENT DIVISION, MT-DNRC  
PURSUANT TO SB 507**

7/28/2009

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The 2009 Montana State Legislature enacted SB 507. Pursuant to SB 507, the MT-DNRC will require a person who proposes to use the bed of a navigable river up to the low-water mark to obtain a lease, license, or easement. For the purposes of SB 507, "navigable river" means a river that was 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; or that has been judicially determined as navigable by a court of competent jurisdiction. The list below identifies those stretches of rivers and lakes meeting the SB 507 definition and for which MT-DNRC has historic documentation of commercial use.

**BIG HOLE RIVER**

- GLO meandered in T1S, R10W, Principal Meridian of Montana , (PMM) and T1N, R10W, PMM
- Per SB 507, the State of Montana will actively manage the Big Hole River from the west boundary of T1S, R10 W downstream (north) into T1N, R10W to the east boundary of T1S, R10W, PMM

**BIG HORN RIVER**

- GLO meandered from the west boundary of T6S, R31E, PMM to its confluence with the Yellowstone River.
- Judicially determined navigable from the Wyoming state line to its confluence with the Yellowstone River.
- Per SB 507 the State of Montana will actively manage the Big Horn River from the Wyoming state line to its confluence with the Yellowstone River.

**BITTERROOT RIVER**

- GLO meandered in T2N, R21W; T3N, R21W; and T4N, R21W
- Per SB 507, the State of Montana will actively manage the Bitterroot River in T2N, R21W; T3N, R21W; and T4N, R21W.

**BOULDER RIVER (Tributary to the Yellowstone River)**

- GLO meandered at the confluence of the East Fork of the Boulder River in NE¼NW¼ of Section 33, T2S, R13E; downstream to its confluence with the Yellowstone River
- Per SB 507, the State of Montana will actively manage the Boulder River from the confluence of the East Fork of the Boulder River in NE¼NW¼ of Section 33, T2S, R13E, PMM to its confluence with the Yellowstone River.

### CLARK FORK RIVER (Tributary of the Columbia River)

- GLO meandered parts: from the east boundary of T11N, R17W to the north boundary of Section 18, T12N, R17W; Section 1, in T13N, R21W; and from the north boundary of T14N, R22W to the Idaho state line
- Judicially determined navigable from the Idaho state line to Deer Lodge, Montana.
- Per SB 507, the State of Montana will actively manage the Clark Fork River from Deer Lodge, Montana, (the south boundary of NW¼, Section 4, T7N, R9W, PMM) to the Idaho state line.

### CLEARWATER RIVER

- GLO meandered in Section 33, T17N, R15W and Section 4 and part of SW¼SW¼, Section 3, T16N, R15W
- Per SB 507, the State of Montana will actively manage the Clearwater River in Section 33, T17N, R15W and Section 4 and part of SW¼SW¼, Section 3, T16N, R15W, PMM.

### DEARBORN RIVER

- Not GLO meandered
- Judicially determined navigable
- Per SB 507, the state will actively manage the Dearborn River from Highway 434 (in T18N, R6W) to its confluence with the Missouri River.

### FLATHEAD LAKE

- GLO meandered
- Judicially determined navigable
- Judicially determined State of Montana ownership of the portion of Flathead Lake outside of the Flathead Indian Reservation
- Per SB 507, the State of Montana will actively manage the portion of Flathead Lake located outside of the Flathead Indian Reservation.

### FLATHEAD RIVER - MAIN STEM

- Given the Neman court case, the state does not claim any river ownership within the boundaries of the Flathead Indian Reservation at this time.
- GLO meandered the Flathead River main stem outside of the Flathead Indian Reservation from the confluence of the North and Middle Forks to the south boundary of T30N, R20W, PMM; from the south boundary of Government Lot 3, Section 25, T29N, R21W to its confluence with Flathead Lake in Section 3, T26N, R20W; and from the western border of the Flathead Indian Reservation in the SE¼ of Section 6, T18N, R24W, PMM to its confluence with the Clark Fork of the Columbia River
- Per SB 507, the State of Montana will actively manage the main stem of the Flathead River in the meandered areas noted above.

#### FLATHEAD RIVER - MIDDLE FORK

- GLO meandered in T31N, R19W; and T32N, R19W; and from the west boundary of T31N, R17W to part of the NW¼ of Section 27, T31N, R17W; PMM
- Per SB 507, the State of Montana will actively manage the Middle Fork of the Flathead River in T31N, R19W; and T32N, R19W; and from the west boundary of T31N, R17W to part of the NW¼ of Section 27, T31N, R17W; PMM.

#### FLATHEAD RIVER - NORTH FORK

- GLO meandered from its confluence with the Flathead River (main stem) in T31N, R19W upstream through T31N, R20W, and up to the northern border of Section 23 in T31N, R20W; and from the southern border of T34N, R20W to a line across from Logging Creek in Section 20, T34N, R20W, PMM
- Per SB 507, the State of Montana will actively manage the North Fork of the Flathead River from its confluence with the Flathead River (main stem) in T31N, R19W upstream through T31N, R20W, and up to the northern border of Section 23 in T31N, R20W; and from the southern border of T34N, R20W to a line across from Logging Creek in Section 20, T34N, R20W, PMM.

#### FLATHEAD RIVER - SOUTH FORK

- GLO meandered part of Sections 22 and 27, T30N, R19W, from the face of Hungry Horse Dam downstream to the west section line boundary of Section 22.
- GLO meandered from the east boundary of Section 17, T30N, R19W to the confluence with the main stem of the Flathead River.
- Per SB 507, the State of Montana will actively manage the South Fork of the Flathead River in the meandered areas noted above.

#### JEFFERSON RIVER

- GLO meandered in T1N, R2W; and from the west boundary of T1N, R1E, PMM to its confluence with the Missouri River
- Judicially determined navigable from Section 22, T1N, R4W, PMM to its confluence with the Missouri River
- Per SB 507, the State of Montana will actively manage the Jefferson River from Section 22, T1N, R4W, PMM to its confluence with the Missouri River.

### KOOTENAI RIVER

- GLO meandered from the Canadian line to the west boundary of Section 14, T31N, R32W, PMM
- GLO meandered from the east boundary of Section 13, T31N, R33W, P.M.M to the Idaho state line
- Judicially determined navigable from the Canadian line to the Idaho state line
- Per SB 507, the State of Montana will actively manage the Kootenai River from the Canadian line to the Idaho state line.

### MADISON RIVER

- GLO meandered in T9S, R1W; from the north boundary of T11S, R1E to the confluence with the West Fork of the Madison in Section 10, T11S, R1E, PMM; in Section 31, T11S, R4E, and from the northern boundary of T12S, R4E to the east boundary of Section 33 in T12S, R4E, PMM
- GLO meandered Hebgen Lake in T11S, R3E and T11S, R4E, PMM
- Judicially determined Madison River navigable from and including Hebgen Lake to its confluence with the Missouri River.
- Per SB 507, the State of Montana will actively manage the Madison River from and including Hebgen Lake to its confluence with the Missouri River.

### MARIAS RIVER

- GLO meandered from its confluence with the Missouri River to a point five miles upstream (part of NW¼NW¼, Section 10, T25N, R9E, PMM).
- Per SB 507, the State of Montana will actively manage the Marias River from its confluence with the Missouri River to a point five miles upstream (part of NW¼NW¼, Section 10, T25N, R9E, PMM).

### MILK RIVER

- GLO meandered from SE4SW4, Section 11, T28N, R39E at Glasgow, MT to its confluence with the Missouri River.
- Per SB 507, the State of Montana will actively manage the Milk River from SE4SW4, Section 11 T28N, R39E to its confluence with the Missouri River.

### MISSOURI RIVER

- GLO meandered from its headwaters at Three Forks, Montana to the North Dakota state line.
- Judicially determined navigable from its headwaters at Three Forks, Montana to the North Dakota state line.
- Per SB 507, the State of Montana will actively manage the Missouri River from its headwaters at Three Forks, Montana to the North Dakota state line.

### SALMON LAKE

- GLO meandered Salmon Lake (from ~part of SESE, Section 25, T16N, R15W through T16N, R14W to narrow area just west of benchmark elevation point 3927 in Section 8, T15N, R14W)
- Per SB 507, the State of Montana will actively manage Salmon Lake

### SEELEY LAKE

- GLO meandered Seeley Lake (aka Clearwater Lake) in T17N, R15W, and T16N, R15W, PMM
- Per SB 507, the State of Montana will actively manage Seeley Lake

### STILLWATER LAKE (UPPER AND LOWER)

- GLO meandered Upper Stillwater Lake (from SE¼, Section 23, T33N, R24W, through SW¼ Section 31, T33N, R23W).
- GLO meandered Lower Stillwater Lake (from S½SE¼, Section 18, T32N, R23W through the N½NE¼NE¼, Section 29, T32N, R23W, PMM).
- Per SB 507, the State of Montana will actively manage Upper Stillwater Lake and Lower Stillwater Lake.

### STILLWATER RIVER (Tributary of Flathead River)

- GLO meandered the outlet arm of Upper Stillwater Lake, now shown on USGS topographic maps as the Stillwater River in Section 36, T33N, R24W, PMM and in Section 3, T32N, R24W, PMM
- Per SB 507, the State of Montana will actively manage the Stillwater River in Section 36, T33N, R24W, PMM and Section 3, T32N, R24W, PMM.

### SUN RIVER

- GLO meandered (within former Ft. Shaw Military Reservation) from Part NE¼NW¼, Section 10, T20N, R3W, PMM downstream to about the northern boundary of NW¼NE¼, Section 33, T21N, R1W, PMM
- GLO meandered within Sections 11 and 14, T20N, R3E, PMM at confluence with the Missouri River
- Per SB 507, the State of Montana will actively manage the Sun River within the former Ft. Shaw Military Reservation, noted above, and in Sections 11 and 14, T20N, R3E, PMM at the confluence with the Missouri River.

### SWAN LAKE

- GLO meandered in T25N, R18W; T26N, R18W; and T26N, R19W, PMM
- Per SB 507, the State of Montana will actively manage Swan Lake.

### SWAN RIVER

- GLO meandered in T27N, R19W; T26N, R19W; and Sections 16, 21, 22, and ~NE¼NW¼ of Section 27 in T25N, R18W, PMM.
- Per SB 507, the State of Montana will actively manage the Swan River in T27N, R19W; T26N, R19W; and Sections 16, 21, 22, and ~NE¼NW¼ of Section 27 in T25N, R18W, PMM.

### TETON RIVER

- GLO meandered in Section 1, T24 N, R8E, PMM
- Per SB 507, the State of Montana will actively manage the Teton River in Section 1, T24N, R8E, PMM

### TONGUE RIVER

- GLO meandered from the south boundary of T2S, R44E, PMM to the south boundary of Section 3, T2S, R44E, PMM; from the south boundary of T1S, R44E, PMM to the east boundary of T4N, R47E, PMM; and from ~N2NS, Section 19, T6N, R48E, PMM to its confluence with the Yellowstone River.
- Per SB 507, the State of Montana will actively manage the Tongue River in the GLO meandered areas listed above.

### WHITEFISH LAKE

- GLO meandered Whitefish Lake in T31N, R22W, PMM
- Per SB 507, the State of Montana will actively manage Whitefish Lake

### YELLOWSTONE RIVER

- GLO meandered from the mouth of Emigrant Creek (NE¼, Section 8, T6S, R8E, PMM) to North Dakota state line.
- Judicially determined navigable from west boundary of Section 14, T2S, R24E to North Dakota state line.
- Per SB 507, the State of Montana will actively manage the Yellowstone River from the mouth of Emigrant Creek to the North Dakota state line.