

310 Violation Workflow Toolkit

Enforcement Actions Under the Natural Streambed and Land Preservation Act

I. SCOPE

This document establishes guidelines and procedures for the resolution of complaints and 310 violations. It outlines the process conservation districts (hereafter, CDs) should follow to seek judicial enforcement under Mont. Code Ann. §§ 75-7-122 and -123. Additional guidance can be found in the CDs' Adopted Rules. CDs should always consult their Adopted Rules for any requirements unique to an individual CD.

CDs will first attempt to negotiate the resolution of a violation. If this is unsuccessful and the violation continues, judicial enforcement may be required. When the violator refuses to comply with a notice and Order from the CD and the conservation district decides to seek judicial enforcement of its Order, seek a temporary restraining order, injunctive relief, or to collect a civil penalty, the conservation district will request legal services from the county attorney or a legal service provider for the CD to petition the district court. Additional legal support is available from Overland Legal Services PLLC, the legal counsel contracted through DNRC, and technical support is available from the DNRC Stream Permitting Coordinator.

II. AUTHORITY

Under Mont. Code Ann. §§ 75-7-122 and -123 the CD may impose a penalty and may seek judicial relief upon finding that a person has:

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.

If a violation is confirmed and a CD seeks recourse, they may either assess a civil penalty or they may seek prosecution of a criminal misdemeanor. Under Mont. Code Ann. § 75-7-123, the civil penalty may not exceed \$500.00 a day for each day of the violation, not to exceed \$15,000 and the misdemeanor penalty may not exceed \$500. The conservation district must elect between a criminal penalty or a civil penalty. Seeking a civil penalty is the most common recourse. Criminal penalties must be pursued through your local county attorney, not through additional legal support.

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 including 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

Historically, CDs have chosen to assess a civil penalty rather than a criminal penalty for most violations. The CD has the authority to assess a civil penalty of up to \$500.00 per day for violations to the Natural Streambed and Land Preservation Act, not to exceed \$15,000.

When going into court the CD must justify the amount of the civil penalty. A board should take care to

discuss and justify the rationale for the civil penalty when voting at the public meeting establishing the Order. When the CD assesses a civil penalty, all CD 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 likely 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 CD receives a complaint alleging a violation, or is otherwise made aware of a potential violation, the CD will follow the steps below. A one-page summary of the steps below be found on page seven of this toolkit.

STEP 1: ALLEGED VIOLATIONS

Step 1a: CD Becomes Aware of Potential Violation

CDs routinely receive complaints from the public or are otherwise made aware of potential 310 law violations. They must balance their fiduciary responsibility to investigate violations with the reasonableness of the claim. For example, if a CD employee or Supervisor witnesses a violation, the CD may choose to proceed with a violation without a written complaint on Form 274. However, if a complainant is refusing to complete Form 274 or insists on remaining anonymous, the CD may weigh the potential validity of the claim and the likely impacts of the violation in determining if they will proceed.

When receiving a complaint, the CD shall request that the complainant submit a written complaint on Form 274. The complaint should specify the nature of the alleged violation, who is involved, where it is taking place, and when it occurred. Advise the complainant that enforcement action by the CD may depend on the complaining party's willingness to provide testimony. Further, enforcement will depend on the facts of the case and the availability of resources. Additionally, the CD should inform the complainant that complaints are public record.

Step 1b: Contact Alleged Violator

The CD should seek to contact the alleged violator as quickly as possible. First contact could be via phone, email, or mail, or a combination of methods. In communicating with the alleged violation, the CD should inform them that if a violation is occurring, work must stop immediately, and that they will receive a letter with additional information. The CD should document their methods for attempting to contact the alleged violator and the results of their attempts.

Contact information for an alleged violator can generally be found using violation location and the state Cadastral site, found at: <https://svc.mt.gov/msl/cadastral/>. However, it is important to note that a potential violation will be assessed against the person who initiated the work, which is not always the landowner. In rare circumstances, the CD may find a contractor, past landowner, trespasser, or other private entity, as the violator.

Step 1c: Letter 1 - Notice of Alleged Violation

After attempting to contact the alleged violator, send Letter 1 (**Exhibit A**) as soon as possible to the alleged violator. The letter should advise them that the CD has received a written complaint specifically addressing their 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 per day for each

day the violation takes place. The letter 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 CD about trying to resolve the issue immediately.

STEP 2: VIOLATION VERIFICATION

Step 2a: Field Investigation

Conduct a field investigation as soon as possible if the complaint remains unresolved. Never use a quorum of supervisors on a field investigation to avoid any issues related to public meeting law. Unlike an onsite inspection for reviewing 310 applications, a “team” is not required to conduct the investigation. However, the district can invite the alleged violator, the Department of Fish, Wildlife and Parks, or other appropriate persons, to be present at the field investigation, if desired. 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, obtain the permission of the landowner to conduct the investigation; otherwise conduct the investigation from a location that does not require the landowner’s permission if possible. Document 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. While 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.

Step 2b: Field Investigation Report

Investigators shall prepare a report of findings for presentation to the CD Supervisors, including the methods of investigation and the information reviewed to assess if a violation occurred. They must also document the time and costs associated with their investigation and add it to the record of costs associated with enforcement, which may later be used to justify a civil penalty.

Step 2c: Violation Not Verified

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. This should be decided by the Supervisors at a public meeting and both the motion and the discussion should be documented in the meeting minutes.

Step 2d: Violation Verified

Whenever a field investigation affirms a violation, the board of supervisors must decide whether to issue an Order assessing a civil penalty. The supervisors may determine that a civil penalty is warranted if the violator is a repeat offender, the violation is particularly egregious, the violator is not responsive to Letter #1, the violator is uncooperative in remediating the violation, or for other justifiable reasons. The maximum civil penalty, as outlined in §§ 75-7-123, is \$500 per day that the violator continues to be in violation, not to exceed \$15,000. The process for issuing an Order for a civil penalty is outlined in Step 3: Corrective Action.

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. However, to provide documentation, send Letter #2 (**Exhibit B**) 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. Additionally, notice that the CD will follow up with an investigation to confirm whether the violator has corrected the violation may be included when necessary. Letter #2

must be sent certified mail with return-receipt requested.

STEP 3: CORRECTIVE ACTION

Step 3a: Option to Postpone Civil Penalty

In seeking corrective action, the CD may either issue an Order to assess a civil penalty now or later, depending on the severity of the violation, the cooperativeness of the violator, or other circumstances. If the CD wishes to assess a civil penalty now, proceed to Step 3b: Civil Penalty Assessed. If the CD would like to postpone the option to assess a civil penalty because the violation is minor, the violator is cooperative, or for other reasons, continue below.

Step 3a(i): Letter 2 – Notification of Verified Violation

The decision to postpone issuing an Order for a civil penalty must be made during a public meeting and the discussion and motion must be captured in meeting minutes. The supervisors will need to determine 1) the outcome of the investigation, 2) the specific violation that occurred, 3) the course of action required to rectify the violation*, and 4) deadline(s) for taking corrective action**. All four items should be included in Letter #2 (**Exhibit C**) and must be sent certified mail with return-receipt requested.

*The course of action required to rectify the violation will vary for each violation. The board may require the site be remediated to pre-project conditions, determine that removing the project will cause more harm than leaving it and that no further action is needed, or anything in between. The most commonly required course of action is that the site be remediated to pre-project standards, however this is not always possible or beneficial.

**If any remediation work is required, the violator must submit an application using the Joint Application Form 270, detailing how the required work will be performed. It is recommended that the board set a deadline for when the application is due as well as a deadline for when all remediation work must be completed.

Step 3a(ii): No Response or Failure to Meet Deadlines

If the violator is not responsive to Letter #2 or fails to meet the deadline(s) for corrective action, the supervisors should proceed to step 3b to issue an Order assessing a civil penalty. In extenuating circumstances, the supervisors may choose to extend the deadline(s), however, this is generally avoided as it creates a delay in remediation of the site.

Step 3b: Civil Penalty Assessed

The maximum civil penalty, as outlined in §§ 75-7-123, is \$500 per day that the violator continues to be in violation, not to exceed \$15,000. The amount of the civil penalty must be reflective of the severity of the violation or justified by other means. If the violation is minor and/or the violator has been cooperative, the supervisors may assess a reduced civil penalty. If the violation is egregious, the violator is a repeat offender, the violator has been uncooperative, or administering the violation has taken substantial resources, then the supervisors may assess a larger penalty or the maximum penalty.

Keep in mind that once the amount is set, it should not be changed; however, it can later be waived at the supervisors' discretion. For example, if the supervisors set a small penalty but the violator is uncooperative, they cannot reassess a larger amount in an attempt to incentivize cooperation. On the other hand, if the violator proves to be cooperative and corrective action is taken in a timely manner, the board may later choose to waive the penalty.

The decision to issue an Order assessing a civil penalty should be made during a public meeting and the discussion and motion must be captured in meeting minutes. During the meeting the supervisors must determine, 1) the specific violation, 2) the district's finding of noncompliance, 3) the required corrective action, 4) timeframes for compliance, 5) the date the civil penalty commences, and 6) the district's intent to seek judicial enforcement if the civil penalty is not paid or the deadlines for corrective action are not met. Each item, along with any other pertinent information, must be included in Letter #3 (see below). It is also recommended that the letter notify the violator that a site inspection may be conducted to verify corrective action.

Step 3b(i): Letter #3 and Order on the Violation

Letter #3 (**Exhibit C**) serves to notify the violator of the supervisors' decision to assess a civil penalty, establish a deadline for payment, outline any requirements for remediation, and inform the violator of the district's intent to seek judicial enforcement if the penalty is not paid. Letter #3 should also enclose the Order on the violation (**Exhibit D**) which provides the violator with the details of the civil penalty.

Step 3b(ii): No Response or Failure to Meet Deadlines

If the violator does not respond to Letter #3, fails to take corrective action by the deadline(s), or fails to pay the civil penalty, proceed to Step 4: Judicial Enforcement. If the violator meets one requirement, such as paying the civil penalty, but not another, such as submitting a required 310 application for remediation, the conservation district should still seek judicial enforcement on the requirement which the violator failed to meet.

STEP 4: JUDICIAL ENFORCEMENT

Judicial enforcement is the process by which the courts can mandate corrective action and/or payment of civil penalties. The process will be initiated by legal counsel, either the county attorney or other representation, preparing the necessary legal documents and submitting a petition to the courts.

Legal counsel for conservation districts primarily comes from the associated county attorney; however, the CD may seek their own legal counsel or seek legal counsel from the contracted legal services provided by the Conservation Districts Bureau at DNRC.

Step 4a: Contacting Legal Counsel

When the violator does not respond to the Order or take corrective action, the conservation district will seek judicial enforcement. At this time, the CD should notify their county attorney and the DNRC Stream Permitting Coordinator of their intent. Contact information for the Stream Permitting Coordinator can be found in the CD Directory, the Conservation District Bureau website, or by calling the Conservation District Bureau at 406-444-6669.

Throughout the process, legal counsel will keep the conservation district advised of any court actions. Any additional information requested of the CD by the legal counsel or the court will be gathered or prepared by the CD.

Step 4b: Report & Affidavit

The field investigator and anyone else involved should prepare a report for legal counsel detailing the steps taken for enforcement and the costs associated with those steps. It's recommended that this report be submitted to legal counsel as the following affidavits. A draft of the affidavits should first be submitted to legal counsel for review before being finalized. This ensures that all necessary information is included.

- 1) Affidavit of the Conservation District Field Investigator(s) (**Exhibit E**) (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 F**), and, if this action against a violator was initiated by a complaint

VIOLATION WORKFLOW SUMMARY

Step 1: Complaint	
1a: Complaint Received	Complainants should use form 274 and include name and contact information. However, if CD becomes aware of a violation, they have a duty to investigate. Anonymous complaints are strongly discouraged.
1b: Contact Alleged Violator	First contact can be by either phone or letter but should be documented.
1c: Letter 1 (Exhibit A)	Used to notify the alleged violator that a field investigation will take place and that if a violation is occurring it must cease immediately.
Step 2: Verifying Violation	
2a: Field Investigation	May include a site visit, visual analysis from public access or adjacent property, or review of other proof presented such as pictures.
2b: Field Investigation Report	Investigator should compile a report for the board that includes all information gathered, the methods used to gather it, dates, and hours spent on the investigation.
2c: Violation Not Verified	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.
OR	
2d: Violation Verified	If a violation is verified, the supervisors must decide what corrective action is needed and if a civil penalty is warranted at this point (continue to Chapter 3).
Step 3: Corrective Action	
3a: Civil Penalty Postponed	A CD may postpone assessing a civil penalty at their discretion, often in cases where the violator is cooperative or the violation is minor.
3a(i): Letter 2 (Exhibit B)	If the CD does not wish to assess a civil penalty yet, send Letter 2 as certified mail.
3a(ii): No Response or Failure to Meet Deadlines	If the violator does not respond to Letter 2 or fails to meet the deadlines for corrective action, move to assessing a civil penalty (Step 3c).
OR	
3b: Civil Penalty Assessed	If the CD wishes to assess a civil penalty, they must issue an Order on the violation. If corrective action is taken, they may withdraw the civil penalty afterwards.
3b(i): Letter 3 (Exhibit C) and Order (Exhibit D)	Send Letter 3 and the Order to the violator.
3b(ii): No Response or Failure to Meet Deadlines	If the violator does not respond to Letter 3, fails to take corrective action by the deadline, or fails to pay the civil penalty, proceed to Step 4: Judicial Enforcement.
Step 4: Judicial Enforcement	
4a: Contacting Legal Counsel	Notify County Attorney and the DNRC Stream Permitting Coordinator of the CD's intent to seek judicial enforcement.
4b: Report & Affidavit	The field investigator and anyone else involved should prepare a report for legal counsel, submitted as an affidavit, detailing the steps taken for enforcement and the costs associated with those steps.

EXAMPLE 310 VIOLATION COMPLAINT SUMMARY

CONSERVATION DISTRICT:		NUMBER:	
NAME OF ALLEGED VIOLATOR:			
COMPLAINANT NAME:			
PHONE CALL RECEIVED?	Yes	No	Date: _____
WRITTEN COMPLAINT RECEIVED?	Yes	No	Date: _____
FIELD INVESTIGATION NEEDED?	Yes	No	Date: _____
RESOLVED?	Yes	No	Date: _____
SOURCE			

NATURE OF COMPLAINT

RESOLUTION SUMMARY

EXHIBIT A

Letter #1 (Notification of alleged violation)

Date

Dear _____ :

As indicated to you by telephone on _____, 20__, the _____ Conservation District has received a complaint alleging that you are [*facts of alleged violation - the specific dates and locations of where the alleged violation is occurring.*]

Since this matter remains unresolved we need to learn more on the facts of the situation. The Conservation District hereby gives you notice that the Conservation District will be conducting an field investigation of the complaint in the next 10 days. [Note: this letter may be used to invite the alleged violator to be present at the investigation. If the alleged violator is the landowner, this letter may be used to request permission to go on to the land to conduct the investigation].

If you are found to be in violation of the Natural Streambed and Land Preservation Act, you may be subject to a civil penalty in an amount not to exceed \$500 per violation, up to \$15,000 per Mont. Code Ann. § 75-7-123. In addition, under Mont. Code Ann. §§ 75-7-122 and -123, this Conservation District has the right to seek judicial enforcement if corrective action is not taken as prescribed by the Board of Supervisors or the Civil Penalty is not paid, if assessed.

Therefore, if the alleged activities are occurring, they must cease immediately.

Please contact this office immediately if you have any information that can help resolve this matter prior to the investigation being conducted.

Sincerely,

District Administrator

cc: [Board of Supervisors]
[Legal Service Provider]

bcc: [complainant]

EXHIBIT B

LETTER # 2

(Option to postpone issuance of civil penalty)

Date

Dear _____ :

The _____ Conservation District has completed its investigation of a complaint alleging violation of the 310 Law. During the meeting of the Board of Supervisors on [*date of public meeting*] the Conservation District found that you [*specify violation - e.g. initiating a project without written consent of the supervisors*]. This activity is a violation of the Natural Streambed and Land Preservation Act. Enclosed is a copy of our report.

You must cease this activity immediately. You must also [*specify any other requirements - e.g. submit an application on Form 270 detailing how the site will be restored, restore the damaged stream to pre-construction standards, submit a mitigation plan for approval by the board of supervisors, etc.*]. The Joint Application Form 270 and associated mitigation plan must be submitted by [date] and all remediation work must be completed by [date]. Optional: Within the next ten days a representative from the Conservation District will visit the site again to confirm that you have ceased the activity causing the violation.

If you fail to meet these requirements the Conservation District has the right to assess a Civil Penalty of up to \$500 per day that you remain in violation, not to exceed \$15,000 per Mont. Code Ann. § 75-7-123. In addition, the Conservation District has the authority under Mont. Code Ann. §§ 75-7-122 and -123 to seek judicial enforcement to collect any civil penalties imposed against you and ultimately to require the stream be restored and your action abated.

Sincerely,

District Administrator

cc: [Board of Supervisors]
[Legal Service Provider]

bcc: [complainant]

EXHIBIT C

LETTER # 3

(Issuance of civil penalty)

Enclose investigation report and Order

Date

Dear _____ :

This letter concerns [*specify violation - e.g initiating a project without written consent of the Supervisors under the Natural Streambed and Land Preservation Act, known as the 310 law.*] As you know, the _____ Conservation District informed you of a potential violation of the 310 law in a letter dated _____, 20__, and required that you cease the activity immediately. You were also informed that a civil penalty could be assessed under Mont. Code Ann. § 75-7-122 and -123 for noncompliance.

The Conservation District investigated the allegations made against you by [*specify what steps the investigator(s) took.*] Enclosed is a copy of the investigation report. During the meeting of the Board of Supervisors on [*date of public meeting*] the Conservation District found that this activity is a violation of the Natural Streambed and Land Preservation Act.

Pursuant to Mont. Code Ann. § 75-7-122 and the enclosed Order you are hereby assessed a civil penalty of \$ _____ per day for each day your activity continues commencing on [*date*]. Each day of violation constitutes a separate offense. Nonpayment of the assessed civil penalty to the Conservation District will be enforced for collection in the appropriate court.

In addition, you are required to take corrective action to remediate the stream by [*specify the specific corrective action e.g.: submitting a mitigation plan for approval by the Board of Supervisors, submitting a Joint Application Form 270 detailing how the site will be remediated to pre-construction standards, and completing all required remediation work. The mitigation plan and Joint Application must be submitted by [date] and all work must be completed by [date].*]

This situation will be monitored closely. A further inspection may be conducted after your receipt of this Order to confirm your compliance. Failure to meet these requirements will result in judicial enforcement to collect the civil penalty and ultimately to require the stream be restored and your action abated.

Sincerely,
District Administrator

Enc: Investigation Report, Order on Violation

cc: [Board of Supervisors]
[Legal Service Provider]

bcc: [complainant]

**ORDER OF THE
_____ CONSERVATION DISTRICT**

TO:

Under authority vested in the _____ Conservation District, you were notified pursuant to Mont. Code Ann. §§ 75-7-122 and -123 that:

Montana law provides that any person who:

is subject to a civil penalty not to exceed \$500 per violation (and that each day of violation constitutes a separate violation). The _____ Conservation District hereby assesses you a \$_____ a day civil penalty for each day of the violation described above commencing _____.

The _____ Conservation District will seek judicial enforcement of this Order and seek such other relief as may be necessary and appropriate pursuant to Mont. Code Ann. §§ 75-7-122 and -123.

DONE AND DATED THIS _____ DAY OF _____ 20____.

Chair, Board of Supervisors

EXHIBIT E

Legal Service Provider
Name
Address
Phone Number

COUNSEL FOR _____
CONSERVATION DISTRICT

IN THE JUSTICE COURT
IN AND FOR THE COUNTY OF _____

STATE OF MONTANA ex rel.)	
_____)	
CONSERVATION DISTRICT)	Civil No.
Petitioner,)	
)	
)	CONSERVATION DISTRICT
)	AFFIDAVIT
v.)	REGARDING
)	ENFORCEMENT
)	COSTS
)	
Respondent.)	

_____, being duly sworn, swears the following to be true:

- I am _____ [position and Conservation District address].
- My duties at the _____ CONSERVATION DISTRICT include collecting and verifying information regarding the amount of time spent by _____ CONSERVATION DISTRICT employees in enforcement actions.
- For the above-entitled case, I requested from each _____ CONSERVATION DISTRICT employee and supervisor an accounting of the time they spent pursuing the

enforcement of the Natural Streambed and Land Preservation Act. I then took the amount of time spent by each respective employee and supervisor times the amount of their hourly wage on file with the LEWIS & CLARK CONSERVATION DISTRICT payroll technician. Finally, I figured the total amount expended by the _____ CONSERVATION DISTRICT by adding the dollar amounts determined for each employee and conservation district supervisor as set out below:

CONSERVATION DISTRICT TIMESHEET ON ENFORCEMENT ACTIVITIES

Date	Case	Employee or Supervisor	Time Expended	\$/hour

Subtotal _____
 Admin. costs @ x % _____
TOTAL _____

The enforcement of the Natural Streambed and Land Preservation Act in this case cost _____. The LEWIS & CLARK CONSERVATION DISTRICT seeks a civil penalty pursuant to Mont. Code Ann. § 75-7-123. FURTHER AFFIANT SAYETH NOT.

DONE AND DATED THIS ____ DAY OF ____ 20____.

[Name & Signature of _____ CONSERVATION DISTRICT employee]

Subscribed and sworn to me this ___ day of _____, 20__, by the above- named _____, known by me to be the person named as the affiant in the above affidavit.

NOTARY SEAL

Print Name:
NOTARY PUBLIC for the State of Montana
Residing at Helena, Montana
My Commission Expires_____

EXHIBIT F

Legal Service Provider
Name
Address
Phone Number

COUNSEL FOR _____
CONSERVATION DISTRICT

IN THE JUSTICE COURT
IN AND FOR THE COUNTY OF _____

STATE OF MONTANA ex rel.)	
_____)	
CONSERVATION DISTRICT)	Civil No.
Petitioner,)	
)	
)	AFFIDAVIT OF
)	INVESTIGATOR
v.)	
)	
)	
Respondent.)	

_____, being duly sworn, swears the following to be true:

1. I am _____ [position and _____ CONSERVATION DISTRICT address].
2. I [background, education & training].
3. My duties at the _____ CONSERVATION DISTRICT include investigating complaints of violations of the Natural Streambed and Land Preservation Act.
I have been in this position for ___ years.

4. [Set out facts of alleged violation, the _____ CONSERVATION DISTRICT investigation and the investigator's conclusion. Attach a copy of the field investigation report. (Do not discuss here what happened as far as noncompliance after the letter and order were sent out - that is being covered in the succeeding paragraph.) Remember that the Judge is busy, knows nothing about the case, and wants to come up to speed on the facts as quickly as possible, so write what happened in the clearest, most concise manner possible.]

5. The _____ CONSERVATION DISTRICT attempted to obtain voluntary compliance by [set out what was done. Attach a copy of any letters sent to the violator. Describe what the violator did or did not do after their receipt of the _____ CONSERVATION DISTRICT warning letter].

6. Since voluntary compliance was not successful, the _____ CONSERVATION DISTRICT presented [the violator] with a _____ CONSERVATION DISTRICT Order dated ordering them to [describe it]. [Attach a copy of the CONSERVATION DISTRICT Order].

7. Compliance is not taking place, and the Montana Natural Streambed and Land Preservation Act continues to be violated.

8. The _____ CONSERVATION DISTRICT seeks to obtain a civil penalty for the violation of the Natural Streambed and Land Preservation Act described above. Mont.

Code Ann. § 75-7-123 provides:

Penalties -- restoration. (1) A person who initiates a project without written consent of the supervisors, performs activities outside the scope of written consent of the supervisors, violates emergency procedures provided for in 75-7-113, or

violates 75-7-106 is:

...

(b) subject to a civil penalty not to exceed \$500 for each day that person continues to be in violation.

(2) Each day of a continuing violation constitutes a separate violation.

...

(3) In addition to a fine or a civil penalty under subsection (1), the person:

(a) shall restore, at the discretion of the court, the damaged stream, as recommended by the supervisors, to as near its prior condition as possible; or

(b) is civilly liable for the amount necessary to restore the stream. ...

In addition, Mont. Code Ann. § 75-7-122 provides:

Except for emergency action, a project engaged in by any person without prior approval or activities performed outside the scope of written consent of the supervisors, as prescribed in this chapter, is declared a public nuisance and subject to proceedings for immediate abatement.

9. The _____ CONSERVATION DISTRICT as of the date of this affidavit seeks a civil penalty of \$_____ (_____ dollars), and seeks an additional \$500 a day for each additional day's violation between today and the date of hearing or decision in this matter.

11. The _____ CONSERVATION DISTRICT seeks that the activity be declared a nuisance and be immediately abated and the damaged stream be restored pursuant to the recommendation of the board of supervisors attached hereto as Exhibit A.

10. This enforcement and penalty action was brought against [violation] only after careful investigation and bona fide attempts to obtain voluntary compliance.

FURTHER AFFIANT SAYETH NOT.

DONE AND DATED THIS ____ DAY OF ____ 20____.

[Name & Signature of _____ CONSERVATION
DISTRICT employee]

Subscribed and sworn to me this ___ day of _____, 20___, by the above- named
_____, known by me to be the person named as the affiant in the above
affidavit.

NOTARY SEAL

Print Name:
NOTARY PUBLIC for the State of Montana
Residing at _____, Montana
My Commission Expires _____

[IF THE CONSERVATION DISTRICT FIELD INVESTIGATOR IS NOT THE SAME PERSON BOTH
DOING THE INVESTIGATION AND THE LETTER WRITING, AN ALTERNATIVE TO THE ABOVE
AFFIDAVIT WOULD BE TO HAVE:

- 1) an affidavit of the investigator concerning his or her investigation, and
- 2) an affidavit of whoever sent out the CONSERVATION DISTRICT enforcement
letter and Order.

[A DRAFT OF THIS SHOULD ALWAYS BE SENT TO THE CONSERVATION DISTRICT LEGAL
SERVICE PROVIDER BEFORE BEING FINALIZED.]