

OFFICE OF THE GOVERNOR
STATE OF MONTANA

BRIAN SCHWEITZER
GOVERNOR



JOHN BOHLINGER
LT. GOVERNOR

May 6, 2009

The Honorable Linda McCulloch
Secretary of State
State Capitol
Helena, MT 59620

Dear Secretary McCulloch:

In accordance with the power vested in me as Governor by the Constitution and the laws of the State of Montana, I hereby veto Senate Bill No. 299 (SB 299), **"AN ACT AN ACT PROVIDING FOR THE OWNERSHIP OF THE CHANNEL AND FORMER CHANNEL OF A NAVIGABLE RIVER OR STREAM; PROVIDING THAT A FORMER CHANNEL IS OWNED BY THE ADJACENT LANDOWNER AND THE LAND UNDER THE NEW CHANNEL IS OWNED BY THE STATE; DEFINING THE TERM "NAVIGABLE"; PROVIDING RULEMAKING AUTHORITY; AMENDING SECTION 77-1-102, MCA; REPEALING SECTION 70-18-202, MCA; AND PROVIDING AN APPLICABILITY DATE."**

Senate Bill 299 may be the singular piece of legislation passed by the 62nd Legislature to have slipped by with the gravest unintentional consequences. The bill primarily was intended to define the ownership of the channel of navigable waters altered through avulsion (see section 1 of SB 299). However, in the process of dealing with the subject of avulsion, SB 299 divests the State of its ownership of a large portion of the beds of navigable rivers – authority held by the State of Montana since passage of the Enabling Act by Congress in 1889 –contrary to well-settled federal and state constitutional law. See *The Daniel Ball*, 77 U.S. (10 Wall.) 557 (1870); *Montana Coalition for Stream Access, Inc. v. Curran*, 210 Mont. 38, 682 P.2d 163 (1984).

Specifically, SB 299 amends § 77-1-102, MCA – a statute addressing the administration of state lands that has remained unchanged since its enactment in 1937 – to define navigable rivers as only those that have been "adjudicated" navigable. By defining navigable rivers in this narrow way, SB 299 could be construed to divest the Land Board of its power to fulfill its constitutional duty to administer all the public trust lands granted to the State of Montana at the time of statehood, regardless of whether a river has been adjudicated. Under this scenario, SB 299 would unintentionally divest the State of its ownership of over approximately 1,500 miles of riverbed granted to the state at statehood.

I understand the 62nd Legislature used a similar narrow definition of "navigable" rivers in SB 35, which establishes a regulatory process for leasing beds of navigable rivers. Senate Bill 35 contained nine new sections of law, to be codified presumably as a new part in Title 77, chapter 1, MCA, for the *exclusive* purpose of establishing the regulatory

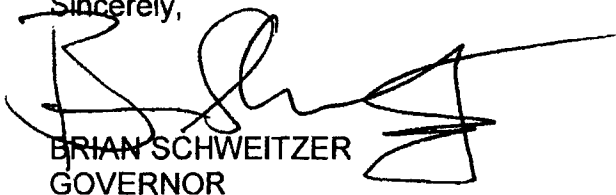
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scheme for leasing riverbeds. Senate Bill 35 also contains an express proviso that nothing in the bill "diminishes the state's ownership of the beds of navigable rivers, streams, or lakes under any other law." See section 1(3) of SB 35. This limiting provision in SB 36 is markedly absent from SB 299, a bill which amends Montana's bedrock law regarding the administration of state lands and limits state ownership of those lands.

While I would not have objected to codifying the matter of the ownership interests, and therefore the tax consequences, of beds of streams and rivers whose channels have changed through *avulsion*, given the consequences of SB 299, I have no choice but to veto it. The amendments to the 1937 statute contained in SB 299 would affect the ability of the Land Board to fulfill its constitutional duty to administer all the public trust lands granted to the State at the time of statehood.

I strongly urge legislators to sustain my veto of SB 299.

Sincerely,



BRIAN SCHWEITZER
GOVERNOR

cc: Legislative Services Division