

DUNCAN LAW OFFICE

From Desk of

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EXHIBIT 8
DATE 4-1-09
SB 465

Gregory W. Duncan, Esq. *

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Kathleen Glover, Paralegal

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September 2, 2008

Dan Bucks
Montana Department of Revenue Director's Office
P.O. Box 5805
Helena, MT 59604-5805

Re: Broken O Ranch
Teton, Cascade, and Lewis and Clark Counties

Dear Mr. Bucks:

I am sending you this letter at the request of the Broken O Ranch to inquire about certain changes that have taken place on their property tax assessments.

I have enclosed two of the assessments for your convenience.

As you can see, there is an acreage decrease between these assessments. Apparently, the Department of Revenue has taken it upon themselves to back out the lands that run through the center of the Broken O Ranch and underlie the Sun River.

The Broken O Ranch certainly appreciates the fact there are fewer acres of land which they are not being asked to pay the taxes upon. However, they are concerned as to the following:

1. What prompted the Department of Revenue to back out these lands?
2. Is there any statutory or administrative authority that mandated the Department to do so?
3. What impact does this have on title companies and other insurers that have guaranteed title to lands which the Department is now not requiring the taxes to be paid upon?

4. Does this mean if the prescriptive period provided for in MCA §23-2-322 and MCA §70-19-404 runs (i.e. five years), will the state be in a position to claim the land as state owned property especially in light of MCA §70-19-411, which provides that occupancy and payment of taxes is necessary to prove adverse possession?
5. MCA §77-1-105 addresses the title to stream beds in Montana. However, it only authorizes the Department of State Lands to litigate the issues of ownership of stream beds. The ownership of the stream bed would appear to be dependent upon the original patent from the Federal government and whether or not the survey was a meander survey or an alloquat survey. Therefore, depending on how the property was originally surveyed by the government and how the original patent was issued, would depend on who had ownership of the bed, especially those whose properties were patented prior to 1901.
6. There are issues that arise surrounding who will manage the weeds on the property and also issues surrounding what happens when you have accretion and evulsion taking place or if you have a stream that simply changes its channel in its entirety.
7. Does this remove acreage from the ranch, i.e., if the ranch were sold, would these acres be backed out and therefore they would be selling fewer acres than they originally bought?

Therefore, since I do not understand the basis for the change, I would appreciate it if you or one of your personnel could give me an explanation as to what has taken place and what your view of the landowner's rights may be.

We look forward to your response.

Very truly yours,



Gregory W. Duncan

GWD/rji

Enclosures



Dan Bucks
Director

Montana Department of Revenue



Brian Schweitzer
Governor

September 5, 2008

Broken 0

Gregory Duncan
Attorney at Law
2687 Airport Road, Ste. A
Helena, MT 59601

Dear Mr. Duncan:

Thank you for your recent letter to the Montana Department of Revenue. Montana's tax system is a cooperative effort among Montanans and their government, and we appreciate the opportunity to respond to matters that are important to you and other citizens.

Director Bucks wishes to personally respond to each letter he receives, and he is preparing a response to be mailed to you as soon as possible. To ensure he has a good understanding of your situation prior to responding, Director Bucks will gather relevant information from department experts. In most cases, this research process, combined with the large volume of mail he receives, will not allow him to provide an immediate response to you. We apologize for any inconvenience that this delay may cause.

I invite you to call this office directly at (406) 444-1900 if you feel that you need some type of assistance before you have received the department's response to your letter.

Sincerely,

Laurie Logan
Management Officer
Director's Office
PO Box 5805
Helena, MT 59604-5805



Dan Bucks
Director

Montana Department of Revenue



Brian Schweitzer
Governor

November 10, 2008

Gregory W. Duncan, Esq.
2687 Airport Road, Suite A
Helena, MT 59601

Subject: Broken O Ranch -- Teton, Cascade, and Lewis and Clark Counties

Dear Mr. Duncan:

Thank you for your inquiry regarding the property taxation of the streambeds of navigable streams – most particularly on the Broken O Ranch properties. Please allow me to address each of your questions.

1. What prompted the Department of Revenue to back out these lands?

Response: The Department is in the process of a complete reappraisal of all taxable property within the state. In the course of this process, the Department is adjusting all its records and assessments to reflect the physical characteristics and legal ownership of each parcel of property in Montana. This is the first comprehensive reappraisal of agricultural and timber property in several assessment cycles. One of the ownership issues being reflected is the State of Montana's ownership of the streambeds of navigable streams because state owned land is exempt from property taxation. As Department of Revenue staff worked through the reappraisal of all taxable property in the state, they observed that the records for land under navigable streams needed to be updated or corrected in some cases. That fact was brought to the attention of the Legislature's Revenue and Transportation Interim Committee, along with a proposed course of action that ensured all streambeds of navigable streams would be exempt for the 2008 tax year. That course of action was adopted and the Department accomplished that work. The Department established a consistent procedure for equitable treatment of these lands. Using the best information and technology available from the Department of Natural Resource's surveys and determinations of navigable streams, Department staff identified the acreage associated with the streambeds of navigable streams for each affected landowner and extended property tax exemptions to that acreage as provided by law.

The Department does not adjudicate title to property. It simply attempts to make its assessments accurately reflect the underlying ownership. If we have improperly reflected the underlying ownership, please let us know and we will revise our assessments accordingly. In addition to informal channels, due process protections are provided through the tax appeals process.

2. Is there any statutory or administrative authority that mandated the Department to do so?

Response: The Department has statutory authority for the general supervision over the administration of the assessment and tax laws (§ 15-1-201, MCA). The Department is also required to ensure that all assessments of property are made relatively just and equal, at market or productivity value as applicable, and in compliance with the law. If the laws of Montana require a property tax exemption for specific property, it is the duty of the Department to acknowledge that exemption. In this instance that exemption is provided by § 15-6-201(1)(a)(ii), MCA.

3. What impact does this have on title companies and other insurers that have guaranteed title to lands which the Department is now not requiring the taxes to be paid upon?

Response: The Department is required by statute to value and assess all taxable lands in the state. The Department also has the statutory requirement to identify and acknowledge exempt land, such as the streambeds of navigable streams. That is the action the Department has performed. The Department is not aware why there would be any impact on title companies or other insurers as a result of the Department performing its duty under the law because the Department does not adjudicate title. Most title insurers already have standard exceptions for state ownership of navigable streams within insured properties.

4. Does this mean if the prescriptive period provided for in §§ 23-2-322 and 70-19-404, MCA, runs (i.e., five years), will the state be in a position to claim the land as state-owned property, especially in light of § 70-19-411, MCA, which provides that occupancy and payment of taxes is necessary to prove adverse possession?

Response: State ownership of the streambed of navigable streams has been adjudicated. Current law does not allow property owned by the state to be taken by adverse possession, so there should be no change of ownership as a result of any exemption of state-owned streambeds. The Department's tax assessments do not change the status of ownership.

5. Section 77-1-105, MCA, addresses the title to streambeds in Montana. However, it only authorizes the Department of State Lands to litigate the issues of ownership of streambeds. The ownership of the streambed would appear to be dependent upon the original patent from the Federal government and whether or not the survey was a meander survey or an aliquot survey. Therefore, depending on how the property was originally surveyed by the government and how the original patent was issued would depend on who had ownership of the bed, especially those whose properties were patented prior to 1901.

Response: State ownership of the streambed of navigable streams has been adjudicated in other forums. Our understanding is that the courts have affirmed the state's ownership of that land. The Department has acknowledged that ownership as best it can consistent with current law. However, the Department's assessments are not an adjudication of title. The Department is assessing according to the situation it finds on the ground. If the Department's assessments are inaccurate, informal and formal dispute resolution processes are available to remedy the inaccuracy.

6. There are issues that arise surrounding who will manage the weeds on the property and also issues surrounding what happens when you have accretion and evulsion taking place or if you have a stream that simply changes its channel entirely.

Response: The Department does not have any authority over the use or management of streambeds of navigable streams. The Department used the best information available to it, which was 2005 aerial photography, to identify the channels of the navigable streams. With respect to accretion, reliction, or other actions that result in channel changes, if the Department of Natural Resources or court action identifies a different location for the streambed of a navigable stream, the Department will adjust its records and assessments and acknowledge that different location in executing the property tax exemption associated with that land.

7. Does this remove acreage from the ranch, i.e., if the ranch were sold, would these acres be backed out and, therefore, they would be selling fewer acres than they originally bought?

Response: The Department does not determine the legal title of property. In this instance, the courts have determined that the streambeds beneath navigable streams are state property and thus exempt from property taxation to the riparian owner. The Department will continue to reflect the total acres for each landowner as that is identified on the appropriate deed or instrument that is recorded in the Clerk & Recorder's Office of the county where the land is located. The department will not adjust the legal description as described on the current deed.

Throughout this exercise, our intent has been to correct the property tax record after we determined that was necessary and ensure that all affected taxpayers were treated fairly. Again, thank you for giving me the opportunity to address your concerns.

Sincerely,



Dan R. Bucks
Director
PO Box 5805
Helena, MT 59604-5805

DUNCAN LAW OFFICE

From Desk of

GREGORY W. DUNCAN

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Kathleen Glover, Paralegal

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December 12, 2008

Dan Bucks
Montana Department of Revenue
P.O. Box 5805
Helena, MT 59604-5805

Re: Broken O Ranch/Teton, Cascade and Lewis and Clark Counties
Your Letter of November 10, 2008 (copy enclosed)

Dear Mr. Bucks:

I appreciate your response of November 10, 2008. However, I think I am going to need a little more detailed information.

In your letter you state that there have been adjudications and other forums determining the state ownership of the stream bed of navigable streams.

I am requesting that you provide me with not only your general response, but also I would like a list of all authority from those other forums and/or the adjudications that made the determination that these stream beds in question and particularly the Sun River was adjudicated as a navigable stream and as such the state has ownership.

I would request that not only do you name those cases, federal or state statutes, or other authority, but you also provide me with copies of any documentation, including any writings, emails, electronic responses or any other documentation that the department used in making its presentation to the Legislative Review and Transportation Interim Committee. We want all documentation provided to

Bucks
Page 2
December 12, 2008

them in bringing it to their attention. If you don't have these, then I would ask you to let me know who to contact to get them. I am under the assumption that there is a file maintained by someone in your Office with this information. I would be willing to come and review it at your office.

In addition, I would like names of the people that presented the information to the committee.

This appears to be an intent to take or claim land, which has been previously taxed to the landowner. County officials, i.e., Clerk and Recorders, since Statehood and since Patent from the Federal Government have accepted and filed deeds which purporting to give fee ownership to the land under the river bed for years. The State of Montana has never asserted a claim to these lands until now. The State appears to be attempting to gain control and possibly title by indirect administrative means. We need to get to the bottom of this issue and as such, I would appreciate a to each of these deficiencies.

We also would like to know what documentation and information you and your department relied upon in your "our understanding is the Courts have affirmed the state's ownership of that land". That may be found in your response to Section 5.

Also, if your department has been working with any other State Divisions of Government, we would like to know what those divisions are and who you have been coordinating with.

I look forward to your response.

Very truly yours,



Gregory W. Duncan

GWD/rji



Dan Bucks
Director

Montana Department of Revenue



Brian Schweitzer
Governor

December 18, 2008

Gregory Duncan
Attorney at Law
2687 Airport Road, STE A
Helena, MT 59601

Dear Mr. Duncan:

You have inquired what basis the Department of Revenue had for removing the Sun River from the acres assessed to your client, the Broken O Ranch. We are enclosing three files from the Montana Department of Natural Resources and Conservation (DNRC) which provide the basis the Department acted on when removing these acres from your client's property tax assessment.

We again reject your characterization that the Department is attempting to take or claim land. The Department of Revenue does not adjudicate or otherwise determine title to property. Neither have we been acting with or on behalf of any other state agency. The material enclosed is publicly available from the DNRC, which is how the Department acquired it.

I also understand your client is protesting its assessment before the Lewis and Clark County Tax Appeals Board. If your client desires to pay taxes on the land under the Sun River, the Department will not oppose that application. If your client intends to claim ownership of those lands, we will make an appearance to note that the County Tax Appeals Board is without jurisdiction to make any determination of ownership and will tender the defense of any claim of ownership to the State Department of Lands.

If it is your client's desire to attempt to quiet title to the property, Section 77-1-105 makes the State Department of Lands a necessary and indispensable party.

Sincerely,

Dan Bucks
Director
PO Box 5805
Helena, MT 59604-5805

Enclosures

AUTHORIZED SIGNATURE _____

DATE _____

REAL ESTATE MANAGEMENT BUREAU

Management Memo: SUMB 97-1-1 (AMENDED)

Last Update: 08/02/2004

Subject: POLICY FOR LICENSING STRUCTURES IN, OVER
BELOW OR ABOVE NAVIGABLE WATERWAYS

Updated by: LA

I. INTRODUCTION

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

The DNRC has responsibility for the determination of navigability, river boundaries, island formations, and mineral ownership.

II. AUTHORITY

The Department's authority to administer the ownership of navigable water bodies are referenced in the following:

1. Equal Footing Doctrine (1844)

Based on a U.S. Supreme Court decision (Pollard vs. Hagen 44 U.S. 212) the original 13 states held ownership of navigable riverbeds consistent with English Law. The Supreme Court held that all new states enter the union under equal footing. Therefore, all of the state's would own the lands beneath the navigable rivers and lakes.

2. MCA 70-16-201

Provides for state ownership from the low water mark to the low water mark on navigable water bodies.

3. MCA 70-1-202

Provides for state ownership of all land below the water of navigable lakes or streams.

4. MCA 77-1-102

All lands lying and being in and forming a part of the abandoned bed of any navigable stream or lake belongs to the State of Montana, for the School Trust.

5. MCA 70-18-203

Islands and accumulations of land formed in the beds of navigable streams belong to the State of Montana.

III. GOAL

The goal is to provide for the beneficial use of state lands for public and private purposes in a manner which will provide revenues without harming the long term capability of the land or restricting the original commercial navigability.

IV. OBJECTIVES

1. To seek fair market value for the issuance of all easements and licenses.
2. To issue an easement or license when it can be shown to be in the state's best interest.
3. To protect riparian areas or the navigable status of these water bodies.
4. To comply with the provisions of applicable state and federal laws.
5. To reduce duplicative permitting by DNRC and County Conservation Districts. This policy represents a revision of previous DNRC river licensing policy as it narrows the scope of projects which require DNRC authorization.

V. DEFINITIONS

Navigable: Any lake or streambed that has had a history of commercial use/navigation.

Ownership: The State of Montana owns the land between the low water marks under the navigable waters, the department administers this ownership.

Water Bodies: Any commercially navigable stream or lake.

Abandoned Bed: A former channel of a navigable stream or lake.

Low Water Mark: The lowest seasonal width of a lake or stream based on a typical flow rate or lowest seasonal mean elevation level.

<u>Land Use License:</u>	An agreement that allows a said activity to occur on the bed of navigable lake or stream for a prescribed rental and a term of ten (10) years or less, plus any protective stipulations to regulate such activity.
<u>Easement:</u>	An interest acquired in land that entitles the holder of the easement to a specified use or enjoyment. This interest shall remain in force as long as the specified use continues or is maintained.
<u>Fair Market Value:</u>	The most current appraised value of a property.
<u>Impact:</u>	An action or effect to the bed of a navigable lake or streambed as a result of a proposed activity.
<u>Stipulations:</u>	Protective conditions or clauses that mitigate potential impacts to the bed of a navigable lake or stream.
<u>124 Notice:</u>	The reference to the Streambed Preservation Act, which requires any state government; county, municipality, or other subdivision of the state to give notice to the Department of Fish, Wildlife and Parks of any project that could alter a natural stream and its banks.
<u>310 Permit:</u>	The reference to the Natural Streambed and Land Preservation Act, which requires (nongovernment) individuals or organizations to obtain a "310" permit before undertaking a project that would alter or modify a perennial stream.
<u>404 Permit:</u>	The reference to the Federal Water Pollution Control Act, which requires the approval of the Army Corps of Engineers, for the removal or placement of dredged or fill materials into waters, wetlands or seas within the United States.
<u>Accumulations:</u>	Any formation or collection of sediment that creates a land mass within a navigable lake or stream.

VI. EASEMENT, LEASE OR LICENSE REQUIREMENTS

The DNRC requires that an easement or license be acquired by the project proponent for the following structures in, over, below or above a navigable waterway.

1. Dams
2. Bridges
3. Utility lines
4. Pipelines
5. Drop structures used for irrigation
6. River channelization projects, including river barbs over 40' in length or greater than 10% of river channel width measured at low water.
7. All projects where the adjoining land is state owned.

8. Minerals - a lease must be acquired before mineral exploration or development involving lands under navigable rivers, abandoned channels, and on or under state owned islands.
9. Projects noticed by the Corps of Engineers 404 permit system which effect the navigability of a waterway. The DNRC will notify the Corp of Engineers and the Project Proponent of easement or license requirements in these instances.

The DNRC will rely on the County Conservation District 310 permitting process to authorize other navigable river projects including but not limited to the following activities:

1. Rip-rap and bank stabilization projects
2. Temporary gravel irrigation dams
3. River barbs under 40' or 10% of channel width
4. Excavations of less than 10 cubic yards of river bedload accumulation
5. Tree and debris removal not associated with a timber sale
6. Repair and maintenance to existing irrigation structures, and irrigation pump sites.
7. Installation and maintenance of floating irrigation pumps
8. Private boat ramps, wharves and docks.

Pursuant to §85-16-101, wharves and docks shall extend into navigable waters such a distance only as may be necessary to permit boats to safely land and take on and discharge passengers and cargo. In order to establish an acceptable distance for extension of such wharves and docks into a navigable waterway, the DNRC will determine the annual mean low-water mark of the navigable waterway then measure twice the depth of the draft of the boat(s) to be used. A wharf or dock may proceed that distance into the navigable waterway without charge or permit. Beyond that distance, the DNRC has the discretion to require an easement, lease or license.

Projects not described above will be reviewed on a case by case basis by the appropriate DNRC Area Office to determine whether an easement, lease or license is necessary.

VII. PROCEDURES

1. The party requesting a Land Use License or Easement shall submit the appropriate standardized DNRC application and non-refundable application fee, plus the Application Form for Licensing Structures and Improvements on Navigable Water Bodies (DS-432) to the appropriate Area Land Office. This application will require a map showing legal description of project, name of the water body involved, names and locations of adjoining property owners in vicinity of proposed project, type of structure(s) involved, type of materials in the structure, estimated longevity of the project and its associated structures, and a general discussion outlining the need for the project. Easements will require a legal survey completed by a Licensed Land Surveyor or Registered Professional Engineer.
2. The Area Land Office shall conduct a field investigation if necessary and file the appropriate environmental document to determine the project's impact to state-owned land as well as the impact to the future navigability of the water body. This field investigation shall consider determining impacts to: 1) the water resource (water quality and quantity, fisheries, flora); 2) bank and bed stability; 3) recreational and navigational uses.

3. If a Land Use License is to be issued, the rental shall be based on a minimum annual payment of \$100.00 plus filing fee. The maximum term for licenses will be 10 years but the Department may issue a Land Use License for a shorter duration. At the end of the original 10 year license, the licensee may request renewal of the license for an additional term of up to 10 years. However, the structure must be for the original use and in the original location. The licensee shall contact the Department to request a renewal at least 30 days prior to the expiration of the license. The department may require payment of additional fees or bonds and impose new stipulations as condition of renewal. The Land Use License shall be completed by the Area Office and forwarded, upon payment of fees and bonds, to the applicant and a copy sent to the Special Use Bureau. Licenses are typically issued for river barbs, removal of bedload accumulation, channelization projects and some diversion structures.
4. If an easement is to be issued, then the procedures under "Easement Granting Procedures" shall be followed. The Area Office will prepare a report and recommendation on proposed project including construction and/or operating stipulations, bonding, notification of appropriate state and federal agencies, damage fees, other required permits such as 124, 310 or 404, and reclamation. The staff of the Real Estate Management Bureau will evaluate the proposed project and the Area Land Office report and make the final determination as to compensation to the School Trust and set final stipulations. MEPA compliance will be reviewed and augmented as necessary. Easements are typically issued for dams, bridges, pipelines, utility lines, and some diversion structures. In the case of diversion structures, the type of structure, its permanency, effect on navigability, and potential for liability will determine whether a license or easement is issued.
5. The Area Office will monitor the easement and/or land use license for compliance with construction stipulations. If problems or noncompliance of stipulations are found, then a mitigation plan may be required of the applicant by the Department.

**NAVIGABLE WATER WAYS OWNED BY
THE STATE OF MONTANA AND ADMINISTERED BY
THE DEPARTMENT OF STATE LANDS**

See listing of navigable rivers at:

<http://dnrc.mt.gov/trust/MMB/NAVWATERSLIST2CONNIE.pdf>

**NAVIGABLE WATER WAYS OWNED BY
THE STATE OF MONTANA AND ADMINISTERED BY
THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION
TRUST LAND MANAGEMENT DIVISION**

Updated 4/2/2003

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.

The Department's authority to administer the ownership of navigable water bodies are referenced in the following:

1. Equal Footing Doctrine (1844)

Based on a U.S. Supreme Court decision (Pollard vs. Hagen 44 U.S. 212) the original 13 states held ownership of navigable riverbeds consistent with English Law. The Supreme Court held that all new states enter the union under equal footing. Therefore, all of the state's would own the lands beneath the navigable rivers and lakes.

2. MCA 70-16-201

Provides for state ownership from the low water mark to the low water mark on navigable water bodies.

3. MCA 70-1-202

Provides for state ownership of all land below the water of navigable lakes or streams.

4. MCA 77-1-102

All lands lying and being in and forming a part of the abandoned bed of any navigable stream or lake belongs to the State of Montana, for the School Trust.

5. MCA 70-18-203

Islands and accumulations of land formed in the beds of navigable streams belong to the State of Montana.

The Department considers navigable waterways to be those for which it has historical documentation of commercial use. As new navigability data is discovered, the following list of navigable waterways may be revised as required.

**NAVIGABLE WATER WAYS OWNED BY
THE STATE OF MONTANA AND ADMINISTERED BY
THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION
TRUST LAND MANAGEMENT DIVISION**

Updated 4/2/2003

BIG HOLE RIVER

Based on historical documentation, the Big Hole River is commercially navigable from Steel Creek to Divide, Montana. Therefore, the state claims ownership of the Big Hole River between these two points.

BIG HORN RIVER

Based on historical documentation, the Big Horn River is commercially navigable from the Wyoming state line to its confluence with the Yellowstone River. Therefore, the state claims ownership of the Big Horn River between these two points.

BITTERROOT RIVER

Based on historical documentation, the Bitterroot River is commercially navigable from the mouth of Jennings Camp Creek on the east fork to its confluence with the Clark Fork River. Therefore, the state claims ownership of the Bitterroot River between these two points.

BLACKFOOT RIVER

Based on historical documentation, the Blackfoot River is commercially navigable from Lincoln, Montana to its confluence with the Clark Fork River. Therefore, the state claims ownership of the Blackfoot River between these two points.

BOULDER RIVER (Tributary to the Yellowstone River)

Based on historical documentation, the Boulder River is commercially navigable from the northern township line of Township 6 South, Range 12 East, to its confluence with the Yellowstone River. The west Boulder River is commercially navigable from the southern line of Township 3 South, Range 11 East, to its confluence with the main stem of the Boulder River. Therefore, the state claims ownership of the Boulder River between these points.

BULL RIVER

Based on historical documentation, the Bull River is commercially navigable from a point south of Bull Lake (approximately in Section 16, T28N, R33W) to its confluence with the Clark Fork River. Therefore, the state claims ownership of the Bull River between these two points.

CLARK FORK RIVER

Based on historical documentation, the Clark Fork River is commercially navigable from Deer Lodge, Montana to the Idaho state line. Therefore, the state claims ownership of the Clark Fork River between these two points.

CLEARWATER RIVER

Based on historical documentation, the Clearwater River is commercially navigable from, and including, Seeley Lake, to its confluence with the Blackfoot River. Therefore, the state claims ownership to Seeley Lake and the Clearwater River between these two points.

DEARBORN RIVER

Based on historical documentation and court adjudication, the Dearborn River is commercially navigable from Highway 434 to its confluence with the Missouri River. Therefore, the state claims ownership of the Dearborn River between these two points.

DUPUYER CREEK

See "South Fork Dupuyer Creek".

FLATHEAD RIVER - MAIN STEM

Based on historical documentation, the main stem of the Flathead River is commercially navigable from the confluence of its north and middle forks to its confluence with the Clark Fork River. However, given Neman court case, the state does not claim any river ownership within the boundaries of the Flathead Indian Reservation at this time. Therefore, the state claims ownership of the main stem of the Flathead River excepting any portion within the Flathead Indian Reservation. The state also claims ownership of the portion of Flathead Lake located outside of the Flathead Indian Reservation.

FLATHEAD RIVER - MIDDLE FORK

Based on historical documentation, the middle fork of the Flathead River is commercially navigable from three (3) miles above Nyack, Montana to its confluence with the North fork of the Flathead River. Therefore, the state claims ownership of the middle fork of the Flathead River between these two points.

FLATHEAD RIVER - NORTH FORK

Based on historical documentation, the north fork of the Flathead River is commercially navigable from Logging Creek to its confluence with the main stem of the Flathead River. Therefore, the state claims ownership of the north fork of the Flathead River between these two points.

FLATHEAD RIVER - SOUTH FORK

Based on historical documentation, the south fork of the Flathead River is commercially navigable from the face of Hungry Horse Dam to the main stem of the Flathead River. Therefore, the state claims ownership of the south fork of the Flathead River between these two points.

FORTINE CREEK (Tributary to Tobacco River)

Based on historical documentation, Fortine Creek is commercially navigable from Swamp Creek to its confluence with the Tobacco River. Therefore, the state claims ownership of Fortine Creek between these two points.

GALLATIN RIVER

Based on historical documentation, the Gallatin River is commercially navigable from Taylor's Fork to Central Park, Montana. Therefore, the state claims ownership of the Gallatin River between these two points.

GRAVES CREEK (Tributary to Tobacco River)

Based on historical information and Departmental interpretation, Graves Creek is commercially navigable from where Graves Creek intersects the eastern township line of Township 35 North, Range 26 West, to its confluence with the Tobacco River. Therefore, the state claims ownership of Graves Creek between these two points.

JEFFERSON RIVER

Based on historical documentation, the Jefferson River is commercially navigable from its confluence of the Beaverhead and Ruby Rivers to the Jefferson's confluence with the Missouri River. Therefore, the state claims ownership of the Jefferson River between these two points.

KOOTENAI RIVER

Based on historical documentation, the Kootenai River is commercially navigable from the Canadian line to the Idaho state line. Therefore, the state claims ownership of the Kootenai River between these two points.

LOLO CREEK

Based on historical documentation, Lolo Creek is commercially navigable from the mouth of Tevis Creek to Lolo Creek's confluence with the Bitterroot River. Therefore, the state claims ownership of Lolo Creek between these two points.

MADISON RIVER

Based on historical documentation, the Madison River is commercially navigable from the confluence of its west fork to Varney, Montana. Therefore, the state claims ownership of the Madison River between these two points.

MARIAS RIVER

Based on historical documentation, the Marias River is commercially navigable from its confluence with the Missouri River to a point five miles upstream. Therefore, the state claims ownership of the Marias River between these two points.

MILK RIVER

Based on historical documentation, the Milk River is commercially navigable from Glasgow to its confluence with the Missouri River. Therefore, the state claims ownership of the Milk River between these two points.

MISSOURI RIVER

Based on historical documentation, the Missouri River is commercially navigable from its headwaters at Three Forks, Montana to the North Dakota state line. Therefore, the state claims ownership of the Missouri River between these two points.

NINE MILE CREEK (Tributary to the Clark Fork River)

Based on historical documentation, Nine Mile Creek is commercially navigable from the southeast corner of Township 17 North, Range 24 West, to its confluence with the Clark Fork River. Therefore, the state claims ownership of Nine Mile Creek between these two points.

ROCK CREEK (Tributary of the Clark's Fork of the Yellowstone River)

Based on historical documentation, Rock Creek is commercially navigable from the main fork of Rock Creek to Red Lodge, Montana. Therefore, the state claims ownership of Rock Creek between these two points.

SHEEP CREEK (Tributary to Smith River)

Based on historical documentation, Sheep Creek is commercially navigable from the mouth of Deadman Creek to its confluence with the Smith River. Therefore, the state claims ownership of Sheep Creek between these two points.

SMITH RIVER

Based on historical documentation, the Smith River is commercially navigable from the mouth of Sheep Creek to its confluence with the Missouri River. Therefore, the state claims ownership of the Smith River between these two points.

SOUTH FORK DUPUYER CREEK (Tributary to Dupuyer Creek and Marias River)

Based on historical documentation, the south fork of Dupuyer Creek is commercially navigable from the basins above the canyon to the mouth of the canyon, a distance of approximately five miles. Therefore, the state claims ownership of the south fork of Dupuyer Creek between these two points.

STILLWATER RIVER

Based on historical documentation, the Stillwater River is commercially navigable from upper Stillwater Lake to its confluence with the Flathead River. Therefore, the state claims ownership of the Stillwater River between these two points.

SUN RIVER

Based on historical documentation, the Sun River is commercially navigable from the confluence of the north and south forks of the Sun River to its confluence with the Missouri River. Therefore, the state claims ownership of the Sun River between these two points.

SWAN RIVER

Based on historical documentation, the Swan River is commercially navigable from and including Swan Lake to its confluence with Flathead Lake. Therefore, the state claims ownership of the Swan River between these two points.

TETON RIVER

Based on historical documentation, the Teton River is commercially navigable from the confluence of its north fork to its confluence with the Marias River. Therefore, the state claims ownership of the Teton River between these two points.

TOBACCO RIVER

Based on historical documentation, the Tobacco River is commercially navigable from the mouth of Graves Creek to its confluence with the Kootenai River. Therefore, the state claims ownership of the Tobacco River between these two points.

TONGUE RIVER

Based on historical documentation, the Tongue River is commercially navigable from the south line of Township 2 South, Range 44 East to its confluence with the Yellowstone River. Therefore, the state claims ownership of the Tongue River between these two points.

WHITEFISH RIVER

Based on historical documentation, the Whitefish River is commercially navigable from, and including, Whitefish Lake to its confluence with the Stillwater River. Therefore, the state claims ownership of the Whitefish River between these two points.

YAAK RIVER

Based on historical documentation, the Yaak River is commercially navigable from the mouth of Fourth of July Creek to its confluence with the Kootenai River. Therefore, the state claims ownership of the Yaak River.

YELLOWSTONE RIVER

Based on historical documentation, the Yellowstone River is commercially navigable from the mouth of Emigrant Creek to the North Dakota state line. Therefore, the state claims ownership of the Yellowstone River between these two points.