

Association of Gallatin Agricultural Irrigators
Testimony in Support of SB 465

Please support SB 465

SB 465 is necessary to provide certainty and reliability to landowners whose property is adjacent to a river as well as those entities who own any type of structure that is located below the low water mark of a river that is navigable for title purposes based on the equal footing doctrine.

In tax year 2008, Department of Revenue used the navigable rivers list prepared by DNRC to remove property that they determined was located below the low water mark from tax assessment. This was done based on DOR's interpretation of the PPL v. Montana District Court decision. This decision is still on appeal to the Montana Supreme Court. The decision essentially said that any property located below the low water mark of the Missouri, Madison, and Clark Fork Rivers is school trust land and the trust must be compensated for any use of the bed of these rivers.

DOR ran a computer system to determine which acreage was not taxable. Based on the Equal Footing Doctrine and 70-16-201, MCA this would be the property that is located below the low water mark of a river that is navigable for title purposes – or in simple terms – commercially navigable at the time of statehood. As you can see from the attached map, this approach took away more property from adjacent landowners than is below the low water mark. Especially since this aerial photography was flown in June – certainly not the low water season in the Gallatin.

When DOR removed property from tax assessment they assigned the removed acreage to the highest valued use within the tract. While this certainly reduced taxes for landowners adjacent to rivers, it had other consequences. For AGAI members, a majority of the acreage removed was classified as irrigated land. For example, if an individual has historically irrigated 150 acres in a 200 acre tract and DOR's mapping software determined that 10 acres were now state land because it is below the low water mark, the individual's property tax records will show that they now irrigate only 140 acres – even though the size of the fields and irrigation has not changed. As a result, an irrigator who historically could enroll 150 acres in Federal Crop Insurance programs can now only enroll 140 acres even though the irrigated acreage has not changed. It is important that the acreage that is removed from the tax rolls is reflective of the actual use which would be grazing since other uses would not have occurred below the low water mark.

This is a fairly simple bill to address the fact that a state agency (DOR) applied a District Court decision on a statewide basis while the case was under appeal.

Please support SB 465 so that Montana's landowners do not have any more property taken from them that is legally theirs.