

SB 284 Property Fairness Act—Restructures Takings law for Montana.

The Bill **redefines** an unconstitutional taking of private property—and triggers a **PRESUMPTION** in the law that when the trigger point (10% of FMV) is reached it is **presumed to have resulted in an unconstitutional takings and must be compensated.**

One of the most troubling issues with the bill is that the new law makes the determination of a takings A QUESTION OF FACT for a jury whereas the legal standard is a question of LAW for the Court.

In other words, all current case law from the US Supreme Court (Tahoe-Sierra Preservation Council v. Tahoe Regional Planning Agency, 2002) and the Montana Supreme Court (Kafka v. MDFWP, 2008) could/would be ignored. This creates **UNCERTAINTY** in the regulation and permitting that DNRC has a statutory obligation to undertake each day as directed by the legislature.

I. DNRC has **extensive regulatory** responsibilities:

1. for water, water management and hydrological analyses,
2. for permit and change application review,
3. for enforcement against illegal water uses;
4. for floodplain delineations;
5. for management decisions for 5.2 million acres of surface school trust lands;
6. for 6.2 million acres of management of mineral estates, including
7. for management of over 1 million acres of split estates where at the outset divisive interests in the management decision arise.

II DNRC extensively manages and regulates real property matters, including the usefructory property rights in water.

- II. In every regulatory process or permitting process, whether regulating or failing to regulate, whether by granting a water use permit or denying a water use permit, whether leasing or not leasing, whether mapping a floodplain or not mapping a floodplain, whether selling a parcel for land banking or not selling a parcel, DNRC is caught in the potential takings spiral. In its capacity as regulator or manager of the land trusts, DNRC is exposed at any point to an argument asserting that 10% of the FMV has been lost on any parcel in the mix.

This bill turns long-established takings law, consistently upheld in our Montana Courts and the United States Supreme Court, on its head and will restrain the constitutional mandates imposed upon the DNRC to manage trust lands for the school trust beneficiaries and manage water for the benefit of our citizens.

DNRC opposes this bill.

Contact: **Candace West, DNRC SB 284**