



# Montana Legislative Services Division

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DATE: June 28, 2010  
TO: Legislative Finance Committee by Request of the State Land Subcommittee  
FROM: Jaret Coles, Staff Attorney

This one-page summary was requested by the State Land Subcommittee on June 25, 2010. All page references are to my 22-page legal opinion on this subject dated June 10, 2010. All paragraph references are to the Montana Supreme Court's opinion in *PPL Montana, LLC v. State*, 2010 MT 64.

In *PPL Montana* the Court ordered PPL to pay nearly \$41 million to Montana for using state riverbeds from 2000–2007. The Court never classified the \$41 million in damages as principal. However, the Court did “note that the State [was] seeking damages for past due rent.” (§ 136, fn. 10). If the Land Board had leased the riverbeds pursuant to its fiduciary obligations, then the rent was required to be distributed as income on an **annual basis** to offset operating expenses for the support and maintenance of state institutions of the Land Board's choosing (pp. 10-12). An annual and perpetual appropriation exists for the purposes of distributing the rental income (p. 11). Since the rent had to be distributed on an annual basis, it is the past beneficiaries who were harmed. The **trust (i.e., riverbeds) is already whole for future beneficiaries** who will receive rent payments (pp. 15-16). The riverbeds still exist as principal of the trust.

The Land Board is taking the position that it can buy land and treat the damages as principal, despite the fact that the Land Board does not have an appropriation to buy land using damages. The Land Board cites to section 17-8-101, MCA, which provides that money deposited in the treasury “from **nonstate** . . . sources restricted by law or by the terms of an agreement, such as a contract, trust agreement, or donation” is exempt from an appropriation. The term “nonstate” encompasses donations, funds from a political subdivision for investment, and funds from escheated estates (pp. 14-15). Here, **the Court ordered** PPL to pay the state money for violating Montana law; it did not determine how the damages could be expended. **This was not a negotiated settlement** or a trust agreement where the parties crafted how the damages could be used (*i.e.*, paid to private parties or used to mitigate environmental issues in conjunction with federal government oversight). It is clear that this is state money from a state source (*i.e.*, riverbeds).

In addition, the Land Board does not have the express authority to purchase land outside of bonding or land banking (p. 12). Article X, § 11(4), of the Constitution provides that public land “may be exchanged for other land”, and the Legislature has enacted statutes for this purpose. Pursuant to section 77-1-220, MCA (bonding), the Land Board can use bonds to purchase land and it is required to offset the purchases by selling an equal amount of land. Additionally, pursuant to section 77-2-361(2), MCA (land banking), the Land Board may sell land and use the proceeds to buy additional land (p. 12). Section 77-1-202, MCA, which gives the Land Board general authority, direction, and control over the care, management, and disposition of lands does not give the Land Board authority to buy land. The terms “buy” or “purchase” are never used in section 77-1-202, MCA.

In conclusion, the Legislature did not give the Land Board authority to expend the damages on land, nor did it declare whether past, present, or future beneficiaries are entitled to the money. As such, this power is reserved by the Legislature as a trustee for the people (pp. 17-18). The Legislature can direct the damages to the common schools or state institutions that were objects of The Enabling Act (p. 18).