

*To turn in for
official record*

TESTIMONY BY RON KORMAN TO WATER POLICY INTERIM COMMITTEE

My name is Ron Korman and I own a ranch southwest of Hinsdale. This is the 3rd time that I have come to a legislative committee to tell the legislators that there is a flaw in the Montana Water User Act.

The granting by the United States in the Act of 1866 granted appropriate vested water rights on the then public domain. This act and the following Livestock Reservoir Site Act in 1897 confirmed ownership of vested water rights to my predecessors as a granting act by congress is the same as issuance of a patent.

The United States Supreme Court case *Bardon v Northern Pacific Railroad* states that lands that have no rights or claims attached is public land. My ranch is covered with stock-watering sites and easements and they are private property- private rights. I own vested water rights on my "fee land" and patented land and the inheritable right of use of the forage, the water and rights of way and easements on my fee land. My ranch has no public land.

We have been told by the dnrc that we cannot file a vested water right or any water right on my fee land. *U.S. v New Mexico*, United States Supreme Court, 1978, has said that under the prior appropriation doctrine, a federal agency cannot own a stockwater right on federal land and that water right belongs to the stockman. Bear in mind, this is the 3rd time that this has been pointed out .First at the EQC in September of 2006 AND the second time was at the hearing for HB 711 TO RECOGNIZE VESTED WATER RIGHTS ON FEDERAL LAND. The BLM has been going back as far as 1934 for a priority date filing with the dnrc for stockwater rights and wildlife water rights over my vested water rights and I am told by the dnrc that it is the government's land and water and I can't file. In February of 2007 the Idaho Supreme Court ruled in *LU Ranching and Joyce Livestock* that the ranchers were owners of senior vested water rights. It took *LU Ranching and Joyce Livestock* 10 years and a million dollars each to get that ruling.

The "Valley County Water Resources Survey" done by the Montana Water Resources Board in 1968 page 50 talks about the VESTED WATER AGREEMENT OF 1911 and when Milk River Irrigators traded vested water rights to the Bureau of Reclamation for contract rights. It also says: "Under the terms of this contract, the prior appropriators conveyed all rights to the waters of the Milk River and tributaries to the United States." The United States Court of Federal Claims ruled that the Klamath Irrigators were not damaged by a takings because they had given up their vested water rights for contract water rights. After studying this, and the 1970's legislatively created water classes I looked up some Maxims in the Montana Code, such as consent: A person who consents to an act is not wronged by it. Does that mean that if I don't object to these classes of water use not showing vested and it turns out I come out with some form of contract water privilege from the state that will now be under the authority of the dnrc to administer, control and regulate, including revoke? I can't later claim a damage or takings? Another maxim is Acquiescence : Acquiescence in error takes away the right of objecting to it. Once again, if I agree to all the parts of this Water Users Act then does that mean I can't object.?

My predecessors acquired vested water rights before the legislature created these laws and classes of water users of exempt, statement of claim and provisional permit. I filed 75 exempt dnrc forms and paid three thousand dollars in filing fees before I heard

the water judge say that these don't show up on a decree and you can't get into any court in the state with them and before the dnrc lawyer said they had known for a long time that this law leaves a certain group of people without a court to go to. Both of these are a denial of due process and I think I have been denied equal protection as well. I would like to know if the dnrc legal staff knows what the federal and state constitutions say about due process and equal protection. I would also like to know why they have never even yet after the EQC meeting came to the legislature and said these are the parts of the law we need to fix. They appear to only be concerned with getting an adjudication done and federal reserved water rights compacts. Now, the dnrc sent a letter saying that as of January 1, 2008 they won't accept the exempt form anymore.

This brings me to a couple of United States Supreme Court cases that I think apply. The first is Marbury v Madison : an act of a court or of a legislature that is repugnant to the constitution is null and void. The second is Miranda v Arizona : when it comes to rights secured by the federal constitution, no state shall legislate or rule make which abrogates any of those rights.

The White Paper on Montana Water Rights Adjudication, March 2, 2004 by the Upper Clark Fork River Basin Steering Committee and Mr. Tim Hall, chief legal counsel of the dnrc made some very damaging points. It says that after 25 years and the expenditure by the State of Montana of over 37 ½ million dollars there is no end in sight for the adjudication of the pre- July 1973 water rights – those vested water rights. By the dnrc's own admission, there is no end in sight for the adjudication and they cannot say when it will be completed. Before the Water Users Act, I could go to my district court and have a quiet title done on my property- my vested water rights. But according to Water Users Act, my title cannot be quieted until after the adjudication is done. Why is this not a regulatory takings of one of my rights?



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