

DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION



BRIAN SCHWEITZER, GOVERNOR

1625 ELEVENTH AVENUE

STATE OF MONTANA

DIRECTOR'S OFFICE (406) 444-2074
FAX: (406) 444-2684

PO BOX 20160
HELENA, MONTANA 59620-160

March 12, 2008

To: Interested Parties
From: Mary Sexton, Director
Re: Use of State Land Streambeds

There has been a good deal of confusion expressed concerning the status of Montana streambed law and practices on navigable waterways. Much of this confusion is generated by a current lawsuit, PPL Montana v. State of Montana, which is before Judge Honzel's First Judicial District Court in Helena. The case will decide if the PPL corporation is liable for rent for the use of navigable streambeds for their hydropower plants.

The lawsuit relates solely to the issue of rent, under Montana's Hydroelectric Resources Act, for use of state owned streambeds on navigable waterways. **The lawsuit has absolutely no effect on water rights or fees for water use.** Here are some key points concerning this issue.

Streambed Leasing Policies Already Exist: The State has leased the streambeds of its navigable rivers since the 1950s for oil and gas exploration, and required easements for structures on navigable rivers for decades. Thousands of streambed acres are already under lease, and hundreds of easements are already outstanding.

The Court Has Not Yet Ruled on the Case: PPL Montana v. State of Montana is a current lawsuit before Judge Honzel at the First Judicial District Court in Helena Cause No. CDV 2004-846. Three Utility Companies sued the State in State Court for a determination that they owed no rents for the use of the navigable water streambeds for their hydropower plants. Two Utility Companies have settled and are entering into leases for their hydropower sites—Avista on the Clark Fork River and PacifiCorp on the Swan River. PPL Montana did not settle and took the state to trial on their claims.

No Effect on Montana Water Rights: The litigation is not related to water rights—it relates only to rents for trust lands beneath navigable riverbeds—and the court will make no ruling on water or its use as a result of this litigation.

The State Owns Navigable Waterway Streambeds: There is no legal dispute on this point. All current navigable waterways are listed on the DNRC's website http://dnrc.mt.gov/trust/about_us/pdfs/navwaterwaysmap.pdf

Only Navigable Riverbed Uses: Trust lands must in all cases be compensated if they are subject to grants or other uses. This includes streambeds below the low water mark of all navigable rivers but does NOT include other non-navigable streams and tributaries. DNRC's current land use license and easement policy for uses other than for hydroelectric resources leases can be found on our web site http://dnrc.mt.gov/trust/MMB/navigable_waterways.asp and applies only to navigable rivers in Montana.

Compensation for Use of State Trust Lands: The Constitution requires compensation for use of all school trust lands.

Montana's Hydroelectric Resources Act: This Act (Mont. Code Ann. 77-4-201) requires the state to enter leases with hydroelectric power producers for the power sites on trust lands. This includes annual rents at not less than the full market value of the estate disposed of through the lease or license.

PPL Generates Electricity Using Montana Streambeds: PPL runs a business generating 600 megawatts of electricity mostly on thousands of acres of streambed owned by the state

For More Information Contact: Tom Schultz, Administrator, Trust Lands Management, 444-4978 or Joe Lamson, Deputy Director, 444-9708.

WATER POLICY INTERIM COMM.
MARCH 13, 2008
EXHIBIT 14