



Montana Legislative Services Division
Legislative Environmental Policy Office

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Aug. 26, 2010

To: Water Policy Interim Committee
From: Joe Kolman
Re: Public Comment

Attached are comments received to date. As was discussed at the July meeting, the timing is such that the mailing needed to go out before all the comments were received. The comment period closes Aug. 30.

However, rest assured that you will receive all of the comments prior to the meeting on Sept. 8. At the very least, you will get them by email. If time allows, hard copies also will be sent.

Please contact me with questions.

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**WATER POLICY INTERIM
COMMITTEE
SEPTEMBER 8, 2010
EXHIBIT 9**

From: [Towlerton, Al](#)
To: [Kolman, Joe](#)
Cc: [Mumford, David](#); [McInnis, Amanda](#); [Clark, Dave](#)
Subject: Water Policy
Date: Tuesday, August 24, 2010 3:13:46 PM

Mr. Kolman:

We offer the following comments on the WQIC draft report and specifically on the proposed legislative items as follows:

- **LC 9004** – We support this proposed bill with the recommendation that the language allowing the designation of a mixing zone easement be deleted. While we recognize this language may make it more palatable to the development community, we believe developers will merely designate an easement throughout the subdivision during the platting process. Thus the intent of the bill will be usurped.
- **LC 9005** – We support this bill.

Thank you for the opportunity to comment on these proposals.

Cordially,

Alan Towlerton
Deputy Public Works Director
2224 Montana Avenue
Billings, MT 59101
(406) 657-8314
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DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION



BRIAN SCHWEITZER, GOVERNOR

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August 10, 2010

Environmental Quality Council
Honorable Chas Vincent, Chairman

Dear Representative Vincent:

I appreciated the Committee's interest and discussions regarding LC 8002 that pertains to the state's ownership and management of navigable waters. I have reviewed the draft legislation and offer the following observations and comments.

The State holds title to the beds of navigable waters, and this asset is administered by the Board of Land Commissioners for the benefit of the public land trust. The Board is obligated to manage all navigable rivers, and must obtain full market value for any use of the beds of these rivers under Art. X, Section 11 of the 1972 Montana Constitution. See, PPL Montana, LLC v. State, 355 Mont. 402, 444, 229 P.3d 421, 450 (2010). In order for the Board to fulfill these Constitutional fiduciary duties, I suggest the following revisions to the legislation:

1. In Section 1 (b) strike "must" and replace with "may."

Comment: The State Land Board retains the Constitutional authority to determine whether it will grant or deny any application for a lease, license, or an easement.

2. Strike Section 1 (d) in its entirety.

Comment: The payment of taxes does not and cannot represent compensation to the public land trust for use of a navigable riverbed owned by the State and held in trust for the public. Property taxes are assessed to satisfy local taxing jurisdictions' functions and expenses. The Montana Supreme Court in PPL Montana, LLC v. State held that the State must obtain the full market value for any use of the beds of navigable waters.

3. In Section 2 (3) add:

Rivers or lakes that are navigable in fact must be regarded as navigable in law; and rivers or lakes are navigable in fact when they are used, or were susceptible of being used at the time of statehood, in their natural and ordinary condition, as highways for commerce over which trade and travel were, or may be conducted in the customary modes of trade and travel on water.

Comment: This legal definition is consistent with the accepted judicial definition of navigable waters provided by the U.S. Supreme Court in The Daniel Ball, 10 Wall. 557, 77 U.S. 557, 19 L.Ed. 999 (1870), and the same definition was utilized by the Montana Supreme Court in PPL Montana, LLC v. State, 355 Mont. 402, 414, 229 P.3d 421, 431 (Mont.,2010). The List of Navigable Rivers that the DNRC developed not only satisfies, but exceeds, the legal definition of "susceptible for use in commerce" because it lists those waters for which there is documented actual historic use of the river for commerce at the time of statehood.

As noted in the Department's fiscal note for SB 507 in 2009, we would anticipate that the state would receive 200 easement applications a year at an average easement fee of \$500 per year, generating \$100,000 annually to Common Schools. We would anticipate issuing 150 land use licenses annually at \$150 each for an annual revenue stream of \$22,500 each year. The State claims ownership of approximately 3,361 miles of navigable waterways on stretches of 38 streams, lakes, and rivers. Nine of the rivers have been judicially determined to be navigable. Historically, eight out of ten permanent easements issued have been across non-adjudicated waterways. Additionally, the trust receives an additional \$25,000 annually on non- adjudicated and meandered waters for oil and gas leasing activities. **Based on the Department's analysis, the annual income from non-adjudicated waterways could be in the range of \$125,000.**

Sincerely,



Mary Sexton
Director, DNRC

cc: Candace F. West, Tom Schultz, Joe Lamson, Jeanne Holmgren

From: niki@redquillranch.com
To: [Kolman, Joe](#)
Subject: Our Rivers
Date: Thursday, July 29, 2010 11:20:04 AM

Comments on SB 507

Dear Committee,

Simple me -

1. Who ever pays land tax on the river bottom owns the land.
2. If the State of Montana owns the river bottom = the people own the river bottom.
3. The Citizens of Montana shouldn't have to pay a tax (license, for an easement) to float across the land they own.
4. The State of Montana provides no services along these fee rivers, (bathrooms, campgrounds, etc) how would the fees collected to be used?

Are they redistributed to all Citizens?

I thought all Montanans have the right to go on all waterways.

Don't close off river use with SB507.

Thankyou,

Niki Sardot

From: [Towlerton, Al](#)
To: [Kolman, Joe](#)
Cc: [Mumford, David](#); [Heisler, Vern](#); [Rubich, Mike](#)
Subject: Use of stream beds bill draft
Date: Tuesday, August 24, 2010 3:18:41 PM

Mr. Kolman:

We offer the following comment on the proposed bill in the draft WQIC draft report:

LC 8002 – We suggest that the bill language be clarified regarding when the fair market value of the riverbed applies. SB 507 from the 2009 legislature contained the same confusing language. For example, Section 1(1)(e) says that an applicant “...shall apply to the state for a lease, license or easement and pay full market value for the use of the riverbed...”. Yet Section 2(2) indicates that the annual payment for a license shall be \$150, apparently unrelated to the full market value.

Thanks for the opportunity to comment and let me know if you have questions.

Cordially,

Alan Towlerton
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