
Potential Issues Associated with District Court Ruling that Navigable Riverbeds are School Trust Lands

In June, 2008 the Montana First Judicial Court ruled that the beds of navigable rivers are school trust land and that PPL, Montana must pay the school trust a lease payment for occupancy of state lands.

This is a significant opinion for any entity who owns a structure located on a navigable riverbed since once the beds have been declared school trust lands, the state is required, by the Montana Constitution, to obtain fair market value for use of the streambed.

The state Department of Natural Resources recently billed the Brennan's Wave Organization, a kayak park on the Clark Fork River near Missoula, \$3800 to pay for their leasing of the school trust land underlying the river. This will be an annual payment. Additionally, according to a 12/19/08 article in the Missoulian, the Attorney General recently filed suit against Stimson Lumber regarding a cooling pond and an associated berm. One of the causes of action in the lawsuit is trespassing on state land because the berm sits on the riverbed.

Because the state is Constitutionally required to obtain fair market value for any use of state lands, there is reason to be concerned that this long reaching decision will also apply to irrigation diversions, pump sites, etc.

A more detailed explanation of the District Court's decision is available on the AGAI website – www.agaimt.gov or a hard copy is available upon request.