

Supreme Court will hear PPL appeal of state ruling

By [MIKE DENNISON IR State Bureau](#) | Posted: Tuesday, June 21, 2011 12:00 am | [\(0\) Comments](#)

The U.S. Supreme Court Monday agreed to hear PPL Montana's appeal of a state court ruling that said the hydropower company owes Montana more than \$41 million for using state-owned rivers to produce power.

PPL, the state's largest private producer of hydroelectric power, is appealing the January 2010 ruling by the Montana Supreme Court that said Montana rivers used by PPL are "navigable" and therefore owned by the state.

PPL Montana spokesman David Hoffman said Monday the company is "obviously very pleased" that the nation's high court chose to hear the case and examine the navigability issue.

"This whole issue has huge potential impacts, not only on the hydropower users (of the rivers) but other water-users, ultimately," he said. "It's a clear indication that the court sees this as an issue of great importance."

The U.S. Supreme Court gets hundreds of requests each year to accept cases on appeal but grants only a fraction of those requests. On Monday, for example, the court chose to hear just four cases, including the PPL appeal, but declined to hear 182 appeals.

Montana Attorney General Steve Bullock said Monday he looks forward to showing the U.S. Supreme Court that the stretches of Montana rivers at issue in the case are navigable and owned by the state.

"If a company wishes to use state property to generate hundreds of millions of dollars, they must pay their fair share," Bullock said in a statement.

The U.S. Supreme Court will set a briefing schedule for both sides to submit written arguments and possibly hold oral arguments on the case this fall. The court's acceptance of the appeal does not indicate how it might rule in the matter.

Hoffman said PPL has posted an appeal bond to ensure it will pay the \$41 million-plus judgment if it loses the case. The payment has been increased by 10 percent interest a year since 2007.

The Supreme Court also said it will allow University of Montana historian David Emmons to file an argument on behalf of PPL Montana, saying portions of the rivers were not navigable when Montana became a state in 1889.

The high court's action Monday is the latest development in a multimillion-dollar legal battle into its eighth year.

A lawsuit originally filed by several parents of Montana schoolchildren in 2003 and then taken over by the state led to state District Court and Supreme Court decisions in the state's favor, saying PPL Montana and other hydroelectric dam owners owed Montana rent for using state-owned riverbeds.

The original litigants said the riverbeds are school trust lands, which are supposed to produce income for public schools, and therefore the state should be charging hydroelectric dam owners for using state property.

Two other hydropower producers — PacifiCorp. and Avista Corp. — settled the case and agreed to pay the state rent, but PPL chose to fight the issue in court.

PPL has 10 hydroelectric projects on the Madison, Missouri and Clark Fork rivers, and also owns coal-fired electric plants at Colstrip. It bought the properties from the old Montana Power Co. in 1999, a consequence of Montana's landmark electric utility deregulation law of 1997.

PPL and others have argued that the navigability of a river must be determined "section by section," and that Montana courts have ignored evidence that various stretches of the rivers in question are not navigable.

Four groups joined PPL in asking the U.S. Supreme Court to accept the appeal: The Montana Farm Bureau Federation, which said the earlier court ruling could lead to the state's charging rent to water-rights holders; the Cato Institute, a Libertarian think tank that assisted the Farm Bureau; the Edison Electric Institute and the National Hydropower Association, which are industry trade groups.