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Groups ask U.S. Supreme Court to accept PPL appeal in water-rights case

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Groups ask U.S. Supreme Court to accept PPL appeal in water-rights case

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HELENA - The Montana Farm Bureau Federation, a water users group and a Libertarian think tank are among those asking the U.S. Supreme Court to accept the appeal of PPL Montana, which wants the nation's high court to overturn a state court ruling that says PPL owes Montana millions of dollars in rent on its hydroelectric dams.

All three organizations filed "friend of the court" documents last week, asking the U.S. Supreme Court to accept the case.

Each of them said the Montana Supreme Court's ruling this year that PPL Montana owes the state \$41 million in back rent for using state-owned riverbeds is flawed, and threatens ownership rights of landholders along rivers.

They also said the ruling could lead to the state charging rent to water-rights holders, for whatever "impoundment facility" they construct on the riverbed.

"The (Montana court) set in motion a trap that will ultimately ensnare thousands of citizens now relying on their existing rights and interests, inevitably including members of the Farm Bureau," said the brief filed by the Farm Bureau and the Cato Institute, a Libertarian think tank based in Washington, D.C.

The U.S. Supreme Court is expected to decide by October whether to accept the case. About 8,000 cases are appealed to the high court each year, but it only accepts about 1 percent of them.

PPL Montana, the state's largest private generator of electric power, asked the high court this summer to overturn the Montana ruling that said the state owns the riverbeds under PPL's 10 hydroelectric dams on

the Madison, Missouri and Clark Fork rivers.

The ruling stems from a 2003 lawsuit filed by several parents of Montana schoolchildren and later taken over by the state. It said the riverbeds used for generating power are school trust land.

Two other power companies - PacifiCorp and Avista Corp. - settled the case and agreed to pay rent, but PPL Montana chose not to.

The Montana Supreme Court's 5-2 decision said the riverbeds are owned by the state because the rivers are "navigable" streams. It said PPL owed \$41 million in rent between 2000-07 and must pay rent in future years.

PPL has made no payments. If it loses the case, it will owe the money plus 10 percent a year in annual interest and any future rent charged by the state.

John Youngberg, vice president of government affairs for the Montana Farm Bureau, said it got involved because its members are concerned about being asked to pay rent for water diversions in streambeds, when they've already paid for water usage.

"There is a concern that, somewhere down the road ... that this would be applied to us," he said. "We have diversions and pump stations and crossings on streams all over Montana."

Youngberg said the Cato Institute decided on its own to join the Farm Bureau on the brief.

In court documents, the Cato Institute said it works to "restore the principles of limited government that are the foundation of liberty."

David Hoffman, spokesman for PPL Montana, said Thursday the company's legal counsel in Washington, D.C., helped solicit the friend of the court filings, which he said is not unusual in such cases.

Also asking the U.S. Supreme Court to take the case are the Montana Water Resources Association, a group representing irrigators, public water companies, farmers, ranchers and power companies (including PPL); the Edison Electric Institute, which is the trade group for the electric power industry; the National Hydropower Association; and a public utility district from Everett, Wash.

The Farm Bureau/Cato Institute brief said the Montana Supreme Court erred in ruling that the entire Missouri, Clark Fork and Madison rivers are "navigable," and therefore the state owns the riverbed.

Prior U.S. Supreme Court rulings have said the navigability of a river must be determined "section by section," and that Montana courts didn't follow that standard, the Farm Bureau and Cato argued.

"The Montana Supreme Court ignored clear evidence that various stretches of each river were non-navigable," they said.

They also argued that the ruling amounts to a "judicial taking" of private property, and that many other landowners who own "non-navigable" riverbeds could have that property declared state property, as a navigable river.