

*These abbreviated summary minutes and the audio recording will become the official adopted minutes at the next Land Board meeting when the board votes to officially approve them. Until then they are considered a draft.*

**REGULAR MEETING OF THE BOARD OF LAND COMMISSIONERS  
MINUTES  
June 17, 2024, 9:00 a.m.  
Supreme Court Chambers, Mazurek Justice Building  
Helena, MT**

**Members Present**

Greg Gianforte, Governor  
Austin Knudsen, Attorney General  
Troy Downing, Commissioner of Securities and Insurance  
Christi Jacobsen, Secretary of State  
Elsie Arntzen, Superintendent of Public Instruction

**Members Absent**

None

**Testifying Staff**

Amanda Kaster, DNRC Director  
Shawn Thomas, Forestry & Trust Lands Administrator

**Attachments**

Related Materials, Attachment 1 – sign-in sheet  
Related Materials, Attachment 2 – Frequently Asked Questions – State Trust Lands Water Rights  
Related Materials, Attachment 3 – Temporary use of Private Water Rights on State Trust Lands  
Presentation  
Related Materials, Attachment 4 – Status Update on Legal Cases Involving Water Rights on State  
Trust Lands Handout

**Call to Order**

00:00:01 Governor Gianforte called the meeting to order.  
00:00:11 Austin Knudsen, Attorney General, moved to approve the May 20<sup>th</sup>, 2024, minutes. The motion was seconded by Christi Jacobson, Secretary of State and carried unanimously.

**Business Considered**

**0624-1 Timber Sale - Beetlejuice**

00:00:29 Director Kaster gave an overview of the item.

*Public Comment: None*

00:01:29 Troy Downing, Commissioner of Securities and Insurance, moved to approve item 0624-1. The motion was seconded by Austin Knudsen, Attorney General, and carried unanimously.

*Board Discussion/Comments: None*

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**0624-2 Oil and Gas Lease Sale – June 4, 2024**

00:02:00 Director Kaster gave an overview of the item.

*Public Comment: None*

00:02:57 Christi Jacobson, Secretary of State, moved to approve item 0624-2. The motion was seconded by Austin Knudsen, Attorney General, and carried unanimously.

*Board Discussion/Comments: None*

**0624-3 Easements**

00:03:21 Director Kaster gave an overview of the item.

*Public Comment: None*

00:04:00 Christi Jacobson, Secretary of State, moved to approve item 0624-3. The motion was seconded by Troy Downing, Commissioner of Securities and Insurance, and carried unanimously.

*Board Discussion/Comments: None*

**0624-4 Informational Item – Temporary Use of Private Water Rights on State Trust Lands**

00:04:29 Director Kaster gave an overview of the item.

00:04:43 Brian Bramblett, DNRC Chief Legal Counsel, provides presentation.

*Public Comment: None*

*Board Discussion/Comments:*

00:13:35 Greg Gianforte, Governor

00:13:53 Brian Bramblett, DNRC Chief Legal Counsel

**0624-5 Informational Item – Status Update on Legal Cases Involving Water Rights on State Trust Lands**

00:14:13 Director Kaster gave an overview of the item.

00:14:26 Aislinn Brown, Assistant Attorney General

*Public Comment: None*

*Board Discussion/Comments:*

00:27:01 Austin Knudsen, Attorney General

00:27:05 Greg Gianforte, Governor

00:27:10 Austin Knudsen, Attorney General

00:29:40 Greg Gianforte, Governor

**General Public Comment**

00:31:24 Ross Morgan, Rocky Mountain Stock Growers Association, President.

00:34:30 Greg Gianforte, Governor

00:35:00 Shawn Thomas, DNRC Forestry & Trust Lands Administrator

00:36:08 Greg Gianforte, Governor

00:36:11 Shawn Thomas, DNRC Forestry & Trust Lands Administrator

00:36:14 Greg Gianforte, Governor

00:36:16 Shawn Thomas, DNRC Forestry & Trust Lands Administrator

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00:36:20 Greg Gianforte, Governor  
00:36:25 Austin Knudsen, Attorney General  
00:36:53 Shawn Thomas, DNRC Forestry & Trust Lands Administrator  
00:38:12 Austin Knudsen, Attorney General  
00:38:28 Shawn Thomas, DNRC Forestry & Trust Lands Administrator  
00:38:37 Greg Gianforte, Governor

**Adjournment**

00:38:48 Adjournment

PRESIDENT

ATTEST

/s/  
Greg Gianforte, Governor

/s/  
Amanda Kaster, DNRC Director

**Please note:** *The Land Board has adopted the audio recording of its meetings as the official record, as allowed by [2-3-212, MCA](#). These minutes provide an abbreviated summary of the Land Board discussion, public testimony, action taken, and other activities. The time designations listed are approximate and may be used to locate the referenced discussion on the audio recording of this meeting. Access to an electronic copy of these minutes and the audio recording is provided from the Land Board webpage at <http://dnrc.mt.gov/LandBoard>. The written minutes summary, along with the audio recordings, are listed by meeting date on the Land Board Archive webpage.*



# DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION



GREG GIANFORTE, GOVERNOR

1539 ELEVENTH AVENUE

## STATE OF MONTANA

DIRECTOR'S OFFICE: (406) 444-2074  
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PO BOX 201601  
HELENA, MONTANA 59620-1601

### Frequently Asked Questions: State Trust Lands and Temporary Water Rights

#### **Can a lessee temporarily use water from a private well or developed spring on their state trust land lease?**

Yes, state law (House Bill 286) provides that "a water right owner may put water from a well or developed spring with ground water development works located on private land to beneficial use on state trust land for the duration of a state land lease the water right owner holds."<sup>1</sup>

In order to do this, a lessee should complete two forms from the Department of Natural Resources and Conservation (DNRC). The lessee must submit an *Authorization for Temporary Change in Appropriation Right Consent Form* signed by the lessee and authorized by the local DNRC area or unit office and DNRC's Agriculture & Grazing Bureau. A lessee must also file an application to Change a Water Right (*Form 606 and Form 606 Technical Analysis Addendum*) with DNRC's Water Resources Division.<sup>2</sup>

#### **Who is listed as the owner of a water right with a temporary change authorization for use on state trust land?**

Ownership will remain solely in the name of the private water right owner. Neither the State Board of Land Commissioners nor DNRC will be listed as a co-owner of a private water right for which a temporary change authorizes state trust land as a temporary place of use.

#### **How is a temporary change different than a permanent change?**

A permanent change authorizes the place of use for a water right to be changed in perpetuity. Typically, this results in the water right attaching to the new place of use.

A temporary change allows the consecutive or intermittent use of the lessee's private water right on the state trust land by temporarily adding the state trust land as an authorized place of use for the private water right for a period of up to 10 years. Under these circumstances, the water right does not attach to the state trust land. If the temporary change authorization expires, the place of use automatically reverts to the private property upon which the water right was originally used.

A temporary change can be renewed for subsequent 10-year periods. Renewal of a temporary change requires completion of an *Authorization for Temporary Change in Appropriation Right Consent Form* from your local DNRC area or unit office as well as DNRC's Agriculture & Grazing Bureau, and completion of a *Notice of Renewal (Form 626)* with DNRC's Water Resources Division.

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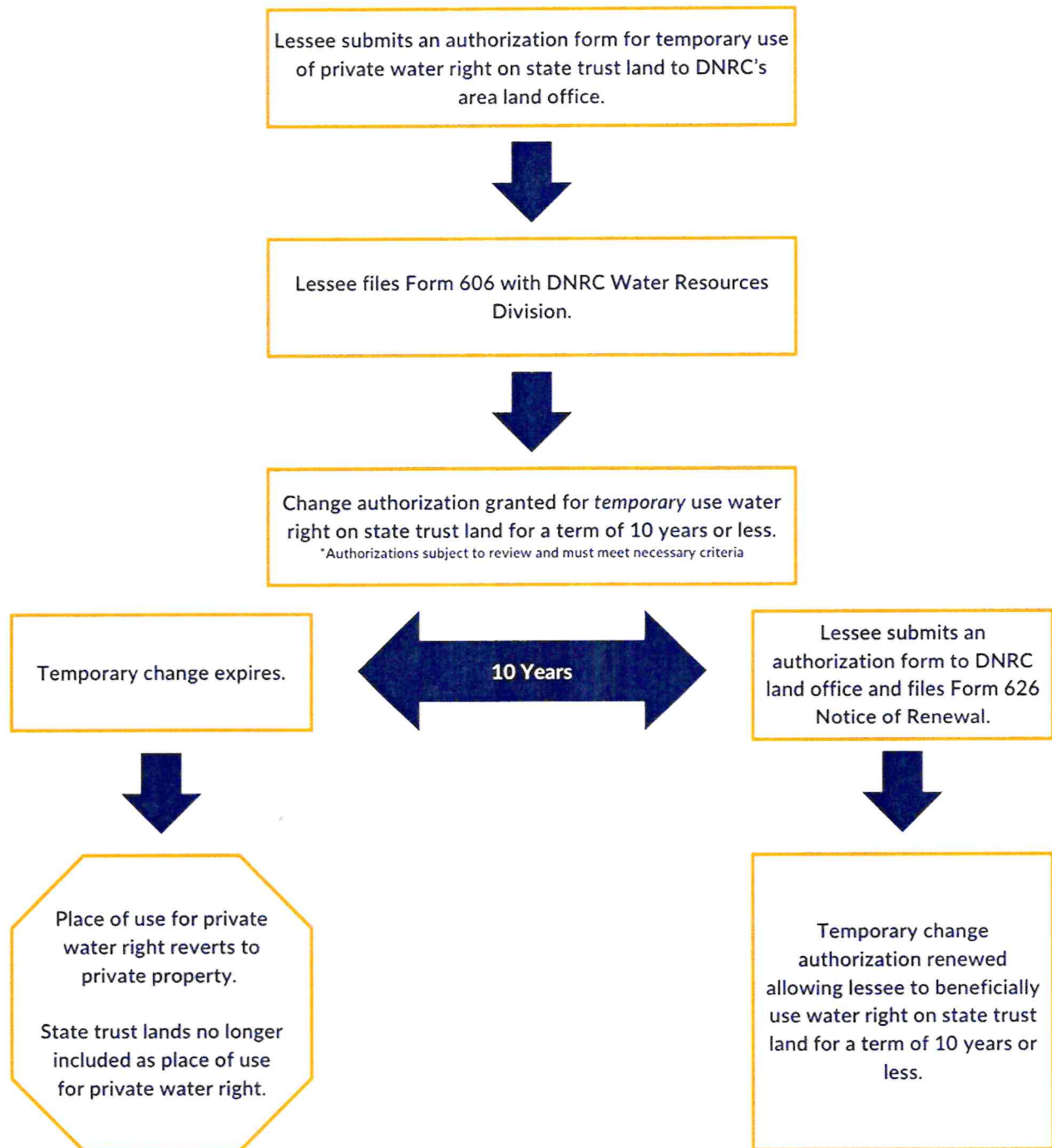
<sup>1</sup> 85-2-441(1), MCA.

<sup>2</sup> 85-2-402 and 407, MCA

## Where can I get started?

Connect with your local DNRC land office to start the process. For a list of land offices visit: <https://dnrc.mt.gov/TrustLand/about/field-offices>

## How to Obtain Temporary Use of a Private Water Right on State Trust Land



# Temporary Use of Private Water Right on State Trust Land



## HB 286

85-2-441. *Temporary use of a water right on state trust land -- restrictions on state ownership -- rescinding of noncompliant ownership interests required.*

(1) ***A water right owner*** may put water from a well or developed spring with ground water development works located on private land ***to beneficial use on state trust land for the duration of a state land lease*** the water right owner holds.

(2) The state may not obtain an ownership interest in a water right or the ground water development works of a water right that is diverted from a well or developed spring located on private land exclusively based on trustee obligations for state trust land unless: (a) a court of competent jurisdiction determines that the state is an owner of that particular water right; or (b) the state is in possession of a deed transferring ownership of the water right to the state.

(3) Before September 30, 2019, the state shall rescind any claim of ownership it asserted or acquired to satisfy trustee obligations for state trust land prior to May 11, 2019, in a water right or ground water development works that do not meet the requirements of subsection (2).

(4) For the purposes of this section, "state trust land" has the meaning provided in 77-1-101.



# Authorization for Temporary Change in Appropriation Right Consent Form

## DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

Trust Lands Management Division



GREG GIANFRORTE, GOVERNOR

1539 ELEVENTH AVENUE

STATE OF MONTANA

DIRECTOR'S OFFICE: (406) 466-2074  
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HELENA, MONTANA 59620-1601

### Montana Department of Natural Resources and Conservation Trust Lands Management Division Authorization for Temporary Change in Appropriation Right Consent Form

The lessee proposes to obtain a temporary change in appropriation right to use the lessee's water right(s) on school trust land for the duration of the State Lease \_\_\_\_\_; lease term beginning \_\_\_\_\_, 20\_\_ and ending \_\_\_\_\_, 20\_\_, pursuant to §§ 85-2-407 and -441, MCA.

Information about the water right proposed for temporary use on state trust land:

Water Right:

Means of diversion  well  
 developed spring

Point of diversion:

Place of use:

Purpose of use:

Information regarding proposed purpose of use/place of use:

Irrigation: \_\_\_\_\_ acres of State Trust Land  
\_\_\_\_\_ acres of Non-Trust Land

Stock/Stock Tanks: \_\_\_\_\_ tanks on State Trust Land  
\_\_\_\_\_ tanks on Non-Trust Land

Industrial/commercial

Other (describe \_\_\_\_\_)

Attach map depicting proposed point of diversion, place of use, location of stock tanks, acres irrigated, etc.

TLMD authorizes the lessee to obtain a temporary change in appropriation right to use the lessee's water right described herein on school trust land for the duration of State Lease \_\_\_\_\_ pursuant to §§ 85-2-407 and -441, MCA. TLMD does not assert an ownership or co-ownership interest in the water right being temporarily changed. Temporary use of the lessee's water right on the state trust land is not an improvement subject to 77-6-301, MCA, and ARM 36.25.125. Authorization is only for the term of the lease and must be re-applied for at the time of lease renewal.

This approval is made upon the express condition that the lessee shall assume all liability for any injury, property damage or loss by any persons, including such loss to any employee or property of lessee, its agents, or third persons, or to the lessee, from any cause or causes arising from placing the above-described water right on state land. Lessee shall indemnify lessor and save, protect, defend, and hold lessor harmless from any and all liability, loss, damage, expense (including legal expenses and reasonable attorney fees), causes of action, suits, claims or judgments arising from injury to person or property or resulting from or based upon lessor's ownership of the property, which is the subject of this lease, from any cause or causes arising from using the above-described water right on state land, and shall, at lessee's own cost and expense, defend any and all suits which may be brought against lessor, either alone or in conjunction with others, upon any such liability or claim(s). Lessee shall satisfy, pay and discharge any and all judgments and fines that may be recovered against lessor in any such action(s).

\_\_\_\_\_  
Lessee Signature

\_\_\_\_\_  
Dated

\_\_\_\_\_  
Lessee Signature

\_\_\_\_\_  
Dated

\_\_\_\_\_  
DNRC Area/Unit Office Approval

\_\_\_\_\_  
Dated

\_\_\_\_\_  
DNRC AG & Grazing Bureau Approval

\_\_\_\_\_  
Dated

## Application for Temporary Change

- 85-2-402 and 407, MCA, provide the requirements for obtaining a temporary change
  - Lessee include *Authorization for Temporary Change in Appropriation Right Consent Form* as part of application
  - Lessee is required to prove the change criteria
    - No adverse effect to other water rights
    - No expansion of the water right being changed
  - Timelines and fees vary
  - Form 606(ST)
  - Form 606

## Temporary Change Authorization

- Change authorization granted
  - Ownership remains solely in the name of the private water right owner.
  - Allows the consecutive or intermittent use of the lessee's private water right on the state trust land by temporarily adding the state trust land as an authorized place of use for the private water right for a period of up to 10 years.
  - Place of use reverts to private property at the end of the 10-year term
- A temporary change can be renewed for subsequent 10-year periods.
  - Complete a new *Authorization for Temporary Change in Appropriation Right Consent*
  - Notice of Renewal (Form 626) with DNRC's Water Resources Division

# Water Court Cases Status Update

June 17, 2024 State Board of Land Commissioners Meeting

## Glossary of Terms and Acronyms:

- Claimant: Person who files a claim for a water right.
- Objector: Person who objects to a claimed water right.
- Notice of Intent to Appear (NOIA): Filed by an interested person.
- SBLC: State Board of Land Commissioners
- POD: Point of Diversion
- POU: Place of Use
- DNRC: Department of Natural Resources and Conservation
- LDS: Livestock Direct from Source
- Priority Date: Date of first use of a claimed water right.

\***Highlighting** represents cases where there is a POU on school trust lands but not a POD.

## Stipulations or Withdrawals Filed

### **40A-0363-R-2022**

- Claimant: McFarland White Ranch Inc.; SBLC
- Objector: McFarland White Ranch Inc.; SBLC
- Issue: SBLC objected to Claim Nos. 40A 211602 and 40A 211604 (surface water flood irrigation via ditch) filed by McFarland White Ranch Inc. with a POU on school trust lands. McFarland White Ranch Inc. objected to SBLC being listed as co-owner on Claim Nos. 40A 30002022 and 40A 110020 (sprinkler irrigation) with a POU on school trust lands.
- Current status: In 2022, MacFarland White Ranch Inc. filed a motion and statement agreeing that SBLC is co-owner of all four rights. Issues unrelated to state ownership are still being resolved.

### **41K-0092-R-2023**

- Claimants: Barbara M. Krause Survivors Trust; John W. Krause Jr.; Bypass Trust; SBLC
- Objector: SBLC
- NOIA: Tee Bar Ranch Co.; LF Ranch MT LLC
- Issue: SBLC objected to Claim No. 41K 216284 (LDS), requesting amendment to the POD and priority date, and Claim No. 41K 30007161 (LDS), requesting amendment to the POD and POU. DNRC issue remarks also exist on the claim.
- Current Status: In February 2024, the parties filed a stipulation to resolve all outstanding objections and issue remarks and are waiting on an order adopting the stipulation.

**41S-0030-R-2024**

- Claimant: Patty G. Erickson
- Objector: SBLC
- Issue: SBLC objected to Claim No. 41S 146441 (LDS) as both the POD and POU are on school trust lands and the water right is redundant to 41S 128229.
- Current Status: The parties filed a stipulation requesting that the claim be withdrawn and are waiting on an order.

**43BV-0226-R-2024**

- Claimant: Crazy D LLC
- Objectors: J Bar L Ranches LLC; SBLC
- Issue: J Bar L Ranches LLC and SBLC objected to Claim No. 43BV 127317 (LDS) because the legal land description contained an error and J Bar L Ranches LLC is the owner.
- Current status: The parties filed a stipulation to change the legal land description and ownership to J Bar L Ranches LLC and are waiting on an order.

**40D-0015-R-2023**

- Claimant: Lacosta Livestock Co.
- Objectors: SBLC; US BLM
- Issue: SBLC objected to Claim No. 40D 152736 (flood irrigation from on-stream dam) because POU 1 is on school trust lands.
- Current Status: The parties filed a stipulation to remove POU 1 as the land has never been irrigated. The water master adopted the stipulation, and the parties have until June 21, 2024, to object to that order, after which it will be reviewed by a water judge.

**41I-0052-R-2023**

- Claimant: Tri G Inc.
- Objector: SBLC
- NOIA: Elliot Ranch LLC; Joseph P. Nelson
- Issue: SBLC objected to Claim No. 41I 11120 because the claimed right (fish raceways project) was never built and thus never perfected.
- Current Status: Tri G Inc. filed a withdrawal of statement of claim, and SBLC moved to dismiss the claim for non-perfection.

## Other Cases Waiting for an Order

### 40D-0021-R-2023

- Claimant: Pluhar Ranch Co.
- Objector: SBLC
- Issue: SBLC objected to Claim No. 40D 125206 (stock watering from a well) because one of the POU's is on school trust lands.
- Current status: The water master required an attorney to file a notice of appearance for Pluhar Ranch Co. by April 12, 2024. When no appearance was filed, SBLC moved for its objection to be deemed well-taken and to be added as a co-owner to the claim.

### 40E-0012-R-2022

- Claimant: SBLC
- Objector: Rose A. Stoneberg
- Issue: Stoneberg objected to three LDS claims (40E 112464, 40E 112465, and 40E 112476) filed by SBLC on school trust lands.
- Current Status: The water master granted summary judgment to SBLC. Stoneberg filed objections, which are fully briefed and waiting for a decision from the water court.

### 41I-0058-R-2023

- Claimant: Flynn Ranch of Townsend Inc.
- Objector: SBLC
- NOIA: Elliott Ranch LLC; Joseph P. Nelson
- Issue: SBLC objected to Claim No. 41I 11126 because claimed right (fish raceways project) was never built and never perfected.
- Current Status: The water master required an attorney to appear for Flynn Ranch of Townsend Inc. by February 23, 2024. After the deadline passed with no attorney appearing, SBLC moved for its objection be well-taken and the claim dismissed for non-perfection.

### 41I-0063-R-2023

- Claimants: David Bar Triangle T Ranch Inc.; D D Davis Ranch Co.; Three D Ranch Co.
- Objector: SBLC
- NOIA: Elliott Ranch LLC; Joseph P. Nelson
- Issue: SBLC objected to Claim No. 41I 11136 because claimed right (fish raceways project) was never built and never perfected.
- Current Status: R & L Ranch Co. (successor in interest to D D Davis Ranch Co.) and David Bar Triangle T Ranch Inc. moved to withdraw statements of claim. The water master ordered Three D Ranch Co to show cause as to why the claim should not be dismissed by March 19, 2024. Nothing was filed by the deadline.

#### **41I-0067-R-2023**

- Claimant: Elaine M. Hume
- Objector: SBLC
- NOIA: Elliott Ranch LLC; Joseph P. Nelson
- Issue: SBLC objected to Claim No. 41I 11138 because claimed right (fish raceways project) was never built and never perfected.
- Current status: Hume appears to be deceased. The water master held a status conference on January 9, 2024, and stated a Master's Report is forthcoming.

#### **41I-0068-R-2023**

- Claimants: James F. Hansen; Maude I. Hansen
- Objector: SBLC
- NOIA: Elliott Ranch LLC; Joseph P. Nelson
- Issue: SBLC objected to Claim No. 41I 11142 because the claimed right (fish raceways project) was never built and never perfected.
- Current Status: The Hansens did not appear at the scheduling conference, and a scheduling order was issued. SBLC filed a request that all deadlines be vacated due to an inability to contact the Hansens (who appear deceased) and to dismiss the water right for non-perfection.

### **Cases with Upcoming Deadlines**

#### **40A-0375-R-2022**

- Claimant: 71 Ranch LP
- Objectors: 71 Ranch LP; SBLC
- Issue: SBLC objected to Claim No. 40A 205645 because a POU (stock tank pumped from a spring) is on school trust lands.
- Current Status: SBLC moved for summary judgment, but the case was stayed before 71 Ranch LP responded pending the outcome of *Schutter v. State of Mont. Bd. of Land Comm'rs*, 2024 MT 88. Following the *Schutter* decision, the water court lifted the stay, and a scheduling conference is set for June 24, 2024.

#### **40A-0298-R-2019**

- Claimant: Diamond Legacy Ltd. Partnership
- Objectors: SBLC; Diamond Legacy Ltd. Partnership
- Issue: SBLC objected to Claim No. 40A 191107 due to POU (stock tank) on school trust land. While the POD is listed as a spring flowing on a section that is not state land, counsel for Diamond Legacy Ltd. Partnership has represented that the spring would flow on state land irrespective of the stock tank.
- Current Status: SBLC moved for summary judgment, but the case was stayed before Diamond Legacy Ltd. Partnership responded pending the outcome of *Schutter*. Following the *Schutter* decision, the water court lifted the stay, and a scheduling conference is set for June 24, 2024.

**41S-0021-R-2024**

- Claimants: Burleighs Angus Ranch Inc.; Scott Sweeney; Veronica E. Sweeney
- Objector: SBLC
- Issue: SBLC objected to Claim No. 41S 121209 because POU No. 3 (sprinkler/flood irrigation) is on school trust lands.
- Current Status: Status reports or settlement documents are due June 25, 2024. If a settlement is not reached, the case will be placed on hearing track.

**41K-0029-R-2023**

- Claimant: Broken O Land & Livestock
- Objectors: Broken O Land & Livestock; US BLM; SBLC
- Issue: SBLC objected to Nos. 41K 96112, 41K 187156, 41K 187157, and 41K 30103793 (flood/ditch/sprinkler irrigation) based on POUs on school trust land.
- Current Status: Status reports or settlement documents are due July 1, 2024.

**41K-0045-R-2023**

- Claimants: Merle, Tucker & Rosanna Morris; Alvin & Gladys Meyer
- Objectors: US BLM; SBLC
- Issue: SBLC objected to Claim Nos. 41K 160879, 41K 160880, and 41K 160884 (flood/ditch irrigation) because all three claims have POUs on school trust land.
- Current Status: Settlement documents or status reports are due July 17, 2024.

**41I-2031-R-2024**

- Claimants: Arnold J. Kolberg; Sharon M. Lewis Revocable Living Trust
- Objectors: Michelle L. Gillespie; Rob Gillespie; SBLC
- NOIA: Michelle L. Gillespie
- Issue: SBLC objected to Claim No. 41I 6758 because POU 2 (stock watering from a well) is on school trust land.
- Current Status: Settlement documents or a status report are due by July 29, 2024.

**39F-0013-I-2024**

- Claimant: Maureen Nixon Revocable Trust
- Intervenor: SBLC
- Issue: Maureen Nixon Revocable Trust filed Claim No. 39F 30139298 (LDS) with a POU on school trust lands. The claim also has DNRC issue remarks that the type of historical use and priority date are missing.
- Current Status: The water master set a deadline for May 24, 2024, for Maureen Nixon Revocable Trust to file information resolving the issue remarks. SBLC moved to intervene. The water master granted the motion, requiring SBLC to file information responsive to issue remarks or claim will be dismissed by July 13, 2024.



**42B-0004-I-2022**

- Claimant: SBLC
- Objector: Montaylor Corp.
- Issue: Montaylor Corp. objected to Claim No. 42B 30111796 (LDS) on the basis that the claim was never perfected and the priority date is unsupported. The disagreement revolved on whether there is water in the claimed ditch.
- Current status: DNRC conducted a court-ordered field evaluation to determine if water is in the ditch during spring runoff and will file results of its investigation by June 14, 2024. The prehearing motions deadline is July 15, 2024.

**41K-0310-R-2021**

- Claimants: SBLC; Blenton Ranch Co.
- Issue: Claim Nos. 41K 11389, 41K 35197, and 41K 160385 (flood irrigation via headgate) contain DNRC issue remarks regarding the type of historical right, priority date, and flow rate.
- Current Status: Parties are required to file information resolving issue remarks by August 23, 2024.

**41E-0200-R-2024**

- Claimants: DPHHS; SBLC; Lori Norby; Anita L. McCauley; Edward McCauley; North Fork Trust
- Objectors: Edward K. McCauley; Anita L. McCauley; BLM
- Counterobjectors: Lori Norby; Pallister Joint Living Trust
- NOIA: Colette M. Lemieux
- Issue: Claim Nos. 41E 27437, 41E 27438, 41E 30884, 41E 93869, and 41E 94068 contain DNRC issue remarks questioning the type of historical right, priority date, and flow rate, among other issue remarks. SBLC is listed as co-owner of 41E 27438.
- Current Status: Status reports or settlement documents are due September 13, 2024.