

Montana Water Court
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**MONTANA WATER COURT
YELLOWSTONE DIVISION
YELLOWSTONE RIVER, BETWEEN TONGUE AND POWDER RIVERS
BASIN 42K
SECOND PRELIMINARY DECREE**

CASE: BASIN-0050-42K-1985

**ORDER ON LAND BOARD'S REQUEST TO EXTEND TIME TO FILE
OBJECTIONS IN BASIN 42K**

On May 8, 2025, the Water Court issued the Second Preliminary Decree for Basin 42K, the Yellowstone River Basin Between the Tongue and Powder Rivers. Issuance of the Preliminary Decree commenced a statutory 180-day objection period. Section 85-2-233(2), MCA. The objection period for the Basin 42K Preliminary Decree closes on November 4, 2025.

On August 8, 2025, the Montana State Board of Land Commissioners (the "Land Board") filed a Request for Extension. The Request asks the Court to extend the objection period for an additional 90 days. As justification, the Requests cites two motions the Land Board adopted. First, on May 20, 2024, the Land Board adopted a motion requiring the Department of Natural Resources and Conservation ("DNRC") to obtain Land Board approval for objections that implicate a category of water right claims "with a point of diversion on private land and a place of use on state trust land." Next, on

July 21, 2025, the Land Board adopted another motion that requires DNRC to provide 90 days prior notice of a meeting where this particular category of objection will come before the Land Board for approval. The Request argues DNRC lacks sufficient time to meet the 90-day notice deadline before the October 20, 2025 Land Board meeting, which is the last meeting prior to the current Basin 42K objection deadline.

The Water Use Act authorizes the Court to extend the objection period for a preliminary decree, provided good cause is shown and the request for extension is received before the end of the current objection period. Section 85-2-233(2), MCA. The Land Board's extension request is timely. Whether it meets the good cause standard is a closer question. Each extension to an objection period the Water Court grants applies to all water right claims in a basin. Each extension also elongates the time necessary for the Water Court to meet its public interest obligations to complete the statewide adjudication in a timely manner. Additionally, each extension has a fiscal impact because the Court pays to publish notice of the extension in three newspapers of general circulation.

There are still several dozen more preliminary and interlocutory decrees to be issued by the Water Court to complete the decree issuance process. Each decree has its own objection deadlines. Most decrees will contain water right claims that likely implicate state trust land in some fashion, which suggests the issues that led to the Request may continue to occur. The Court historically has applied the good cause standard in the objection statute to authorize extensions when unique circumstances in a particular basin justifies them. Now that the Court has received three recent extension requests related to Land Board consideration of objections, the Court is concerned that the good cause standard is being stretched to its limits.

Given the recent vintage of the Land Board's motions, and the possibility that the Land Board was not aware of the cumulative delay they might cause to water users and other parties interested in the statewide adjudication, the Court finds good cause for this particular extension request, as well as the parallel request also filed on August 8 for Basin 43C. This finding of good cause should not be interpreted as precedent for further

extensions in these basins, nor for extensions to objection periods for the numerous future decrees the Water Court intends to issue over the coming months.

ORDER

Therefore, it is ORDERED that the request is GRANTED, and the objection period is EXTENDED until and including **Monday, February 2, 2026** to **file, not mail**, objections to the Preliminary Decree in Basin 42K. This extension applies to ALL WATER CLAIMANTS AND OBJECTORS for claims in this Basin, regardless of whether they asked for an extension. The Court will publish one notice of the extension in the *Billings Gazette*, *Miles City Star*, and the *Terry Tribune*.

ELECTRONICALLY SIGNED AND DATED BELOW.

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