

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
March 17, 2025, 9:00 a.m.
Supreme Court Chambers, Mazurek Justice Building
Helena, MT**

Members Present

Greg Gianforte, Governor
Susie Hedalen, Superintendent of Public Instruction
Austin Knudsen, Attorney General
James Brown, Commissioner of Securities and Insurance
Christi Jacobsen, Secretary of State
Dawnell Fuller, Land Board Secretary

Members Absent

None

Testifying Staff

Amanda Kaster, DNRC Director
Shawn Thomas, DNRC Forestry and Trust Lands Administrator
Aislinn Brown, DOJ Bureau Chief, Agency Legal Services Bureau
Trevor Taylor, DNRC Minerals Management Bureau Chief

Attachments

Related Materials, Attachment 1 – Sign-in Sheet
Related Materials, Attachment 2 – Informational Item 0325-5 Navigating Montana's Water Rights, An Overview of the Adjudication Process, PowerPoint presentation presented by Aislinn Brown
Related Materials, Attachment 3 –Examples
Related Materials, Attachment 4 –Beginning of Water Right Adjudication Process Flow Chart

Call to Order

00:00:19 Governor Gianforte called the meeting to order.

00:00:56 Austin Knudsen, Attorney General moved to approve the February minutes. The motion was seconded by Christi Jacobsen, Secretary of State and carried unanimously.

00:01:14 James Brown, Commissioner of Securities and Insurance moved to approve the March agenda. The motion was seconded by Susie Hedalen, Superintendent of Public Instruction and carried unanimously.

Business Considered

0325-1 Timber Sales A, B & C

00:01:29 Director Kaster gave an overview of the item.

Public Comment: NA

00:03:22 Christi Jacobsen, Secretary of State moved to approve item 0325-1A, B & C. The motion was seconded by Austin Knudsen, Attorney General and carried unanimously.

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Board Discussion/Comments: NA

0325-2 Oil and Gas Lease Sale

00:03:44 Director Kaster gave an overview of the item.

Public Comment: NA

00:04:28 *Christi Jacobsen, Secretary of State moved to approve item 0325-2. The motion was seconded by Austin Knudsen, Attorney General.*

Board Discussion/Comments:

00:04:38 Austin Knudsen, Attorney General

00:05:10 Shawn Thomas, DNRC Forestry and Trust Lands Administrator

00:06:02 Trevor Taylor, DNR Minerals Management Bureau Chief

00:06:39 The motion to approve item 0325-2 carried unanimously.

0325-3 Cabin and Homesite: Set Minimum Bid for Sale

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

Public Comment: NA

00:07:23 Austin Knudsen, Attorney General moved to approve item 0325-3. The motion was seconded by Christi Jacobsen, Secretary of State and carried unanimously.

Board Discussion/Comments: NA

0325-4 Easements

00:07:41 Director Kaster gave an overview of the item.

Public Comment: NA

00:08:30 *Susie Hedalen, Superintendent of Public Instruction moved to approve item 0325-4. The motion was seconded by Austin Knudsen, Attorney General and carried unanimously.*

Board Discussion/Comments: NA

0325-5 Informational Item: Navigating Montana's Water Rights, An Overview of the Adjudication Process

00:08:49 Director Kaster gave an overview of the item.

00:09:03 Greg Gianforte, Governor

Public Comment: NA

00:10:33 Aislinn Brown, DOJ Bureau Chief, Agency Legal Services Bureau

Board Discussion/Comments:

00:30:16 Christi Jacobsen, Secretary of State

00:30:30 Aislinn Brown, DOJ Bureau Chief, Agency Legal Services Bureau

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00:31:56 Greg Gianforte, Governor
00:32:01 James Brown, Commissioner of Securities and Insurance
00:32:09 Greg Gianforte, Governor
00:32:12 James Brown, Commissioner of Securities and Insurance
00:34:20 Aislinn Brown, DOJ Bureau Chief, Agency Legal Services Bureau
00:35:35 James Brown, Commissioner of Securities and Insurance
00:36:08 Aislinn Brown, DOJ Bureau Chief, Agency Legal Services Bureau
00:36:15 James Brown, Commissioner of Securities and Insurance
00:36:26 Aislinn Brown, DOJ Bureau Chief, Agency Legal Services Bureau
00:36:27 James Brown, Commissioner of Securities and Insurance
00:36:29 Aislinn Brown, DOJ Bureau Chief, Agency Legal Services Bureau
00:36:30 James Brown, Commissioner of Securities and Insurance
00:36:34 Aislinn Brown, DOJ Bureau Chief, Agency Legal Services Bureau
00:36:37 James Brown, Commissioner of Securities and Insurance
00:36:55 Aislinn Brown, DOJ Bureau Chief, Agency Legal Services Bureau
00:36:57 James Brown, Commissioner of Securities and Insurance
00:37:06 Aislinn Brown, DOJ Bureau Chief, Agency Legal Services Bureau
00:37:08 James Brown, Commissioner of Securities and Insurance
00:37:18 Aislinn Brown, DOJ Bureau Chief, Agency Legal Services Bureau
00:37:38 James Brown, Commissioner of Securities and Insurance
00:37:42 Aislinn Brown, DOJ Bureau Chief, Agency Legal Services Bureau
00:37:43 James Brown, Commissioner of Securities and Insurance
00:37:51 Aislinn Brown, DOJ Bureau Chief, Agency Legal Services Bureau
00:37:54 James Brown, Commissioner of Securities and Insurance
00:38:00 Aislinn Brown, DOJ Bureau Chief, Agency Legal Services Bureau
00:38:02 James Brown, Commissioner of Securities and Insurance
00:38:31 Aislinn Brown, DOJ Bureau Chief, Agency Legal Services Bureau
00:38:46 James Brown, Commissioner of Securities and Insurance
00:39:11 Aislinn Brown, DOJ Bureau Chief, Agency Legal Services Bureau
00:39:13 James Brown, Commissioner of Securities and Insurance
00:40:32 Aislinn Brown, DOJ Bureau Chief, Agency Legal Services Bureau
00:40:33 James Brown, Commissioner of Securities and Insurance
00:40:54 Aislinn Brown, DOJ Bureau Chief, Agency Legal Services Bureau
00:40:57 James Brown, Commissioner of Securities and Insurance
00:40:57 Greg Gianforte, Governor

General Public Comment

Adjournment

00:41:28 Christi Jacobsen, Secretary of State moved a motion to adjourn. The motion was seconded by Austin Knudsen, Attorney General and carried unanimously.

PRESIDENT

ATTEST

/s/
Greg Gianforte, Governor

/s/
Amanda Kaster, DNRC Director

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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.*

DRAFT

Defending Water Rights on School Trust Land

Balancing Constitutional Duties & Constitutional Rights

March 17, 2025

Attorney Aislinn Brown

The State Board of
Land Commissioners



Overview



The State Land Board and the Forestry and Trust Lands Division are committed to protecting private property rights and fulfilling the State's constitutional obligation to generate revenue for the benefit of public schoolchildren.



The State is the owner of water rights developed on school trust land and is obligated to defend its ownership for the benefit of Montana's schoolchildren.



The State does not assert an ownership interest in wells or other improvements located on private land. Lessees are fairly compensated for any permanent improvements remaining on school trust land upon the termination of a lease.



The State does not assert an ownership interest in existing water rights that are temporarily used on school trust land.



The water adjudication process provides full participation and due process to all parties and an opportunity to dispute any State claims of ownership before an impartial judge.

General Montana Water Law Principles

- The Montana Constitution states, “All surface, underground, flood, and atmospheric waters within the boundaries of the state are the property of the state for the use of its people and are subject to appropriation for beneficial uses as provided by law.”
- To acquire a right to use water under Montana law, a user must:
 1. Intentionally put (or “appropriate”) water
 2. to a beneficial use
 3. on a particular piece of land (or in a particular stream for instream flow rights).
- A water right becomes **appurtenant** to the land that it originally benefitted.
- Montana, like other western states, has adopted the “**prior appropriation**” or “first in time, first in right” system.

State Land Board's Fiduciary Obligations

- The U.S. Supreme Court and the Montana Supreme Court have set out important principles governing school trust lands:
 - The Montana Enabling Act created trusts similar to private charitable trusts that the State cannot abridge;
 - The Enabling Act is strictly construed according to fiduciary principles;
 - The Enabling Act preempts state laws or constitutions;
 - As trustees, the Land Board is required to preserve the value of the school trust lands;
 - An interest in school trust lands cannot be alienated unless the trust receives adequate compensation.

Andrus v. Utah, 446 U.S. 500 (1980); *Dept. of State Lands v. Pettibone (Powder River Basin)*, 216 Mont. 361 (1985); *Schutter v. State Board of Land Commissioners*, 2024 MT 88.



State Ownership of Water Rights on School Trust Lands

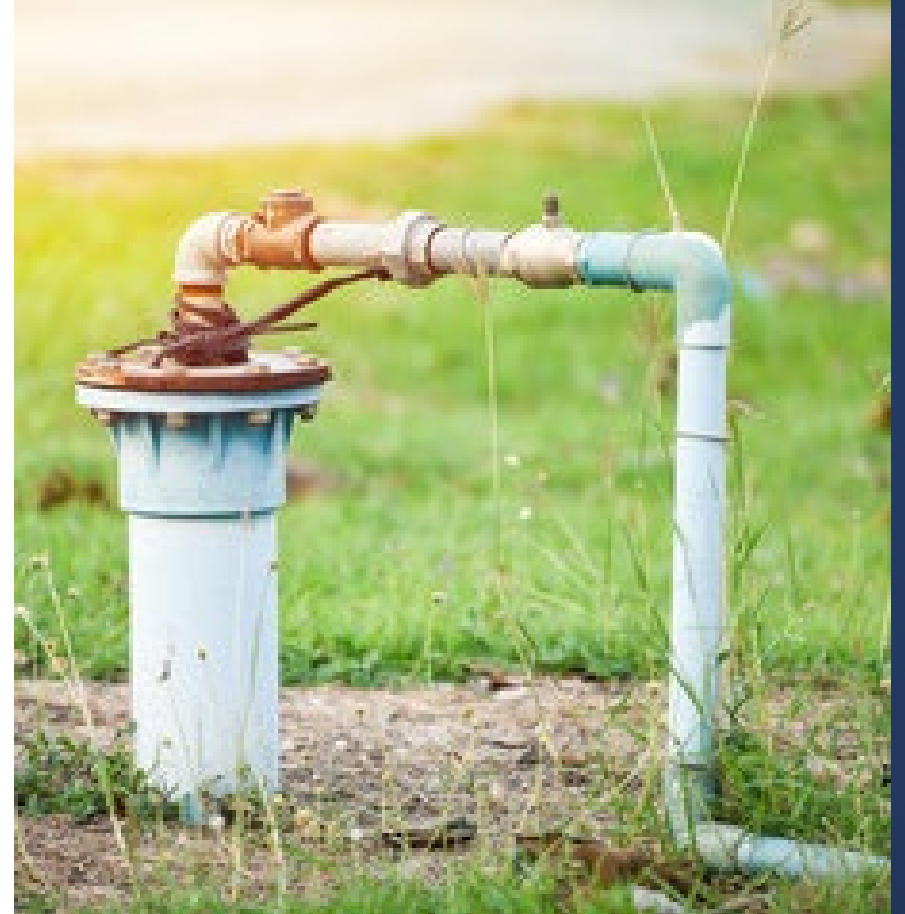
- The State is the owner of water rights developed on school trust land.
- A lessee, in making appropriations of water for use on school trust land, is acting on behalf of the State.
- A water right developed and beneficially used on school trust lands is **appurtenant** to the land and becomes an interest in the land subject to the trust.

*Dept. of State Lands v. Pettibone (Powder River Basin), 216 Mont. 361 (1985);
Schutter v. State Board of Land Commissioners, 2024 MT 88.*



Improvements on State Lands

- If a lease expires, the lessee is **compensated** for the fair market value of any immovable improvements on state trust lands, such as wells or pipes. MCA 77-6-302
- The lessee **may remove** any movable improvements, such as stock tanks or hoses. MCA 77-6-302
- The State **does not own** any interest in any improvements **on private land** that are used by a lessee in diverting or transporting water onto school trust lands.



Contrast: Temporary Use of Existing Water Right on State Trust Land

- The owner of an existing water right may temporarily use a private water right on school trust land **for the duration of a state land lease.** MCA 85-2-441
- The State **cannot acquire an ownership interest** in water temporarily used on school trust lands.
- Lessees apply **for a change of water right** using a form to temporarily change the place of use to the leased school trust land.
 - **The State is not added as a co-owner.**
 - The temporary change automatically terminates at the end of the 10-year lease and the place of use reverts to the original place of use.
 - If the lessee wants to extend its use for another 10 years, the lessee may apply to do so.

Two Water Right Processes
Established under the 1973
Montana Water Use Act

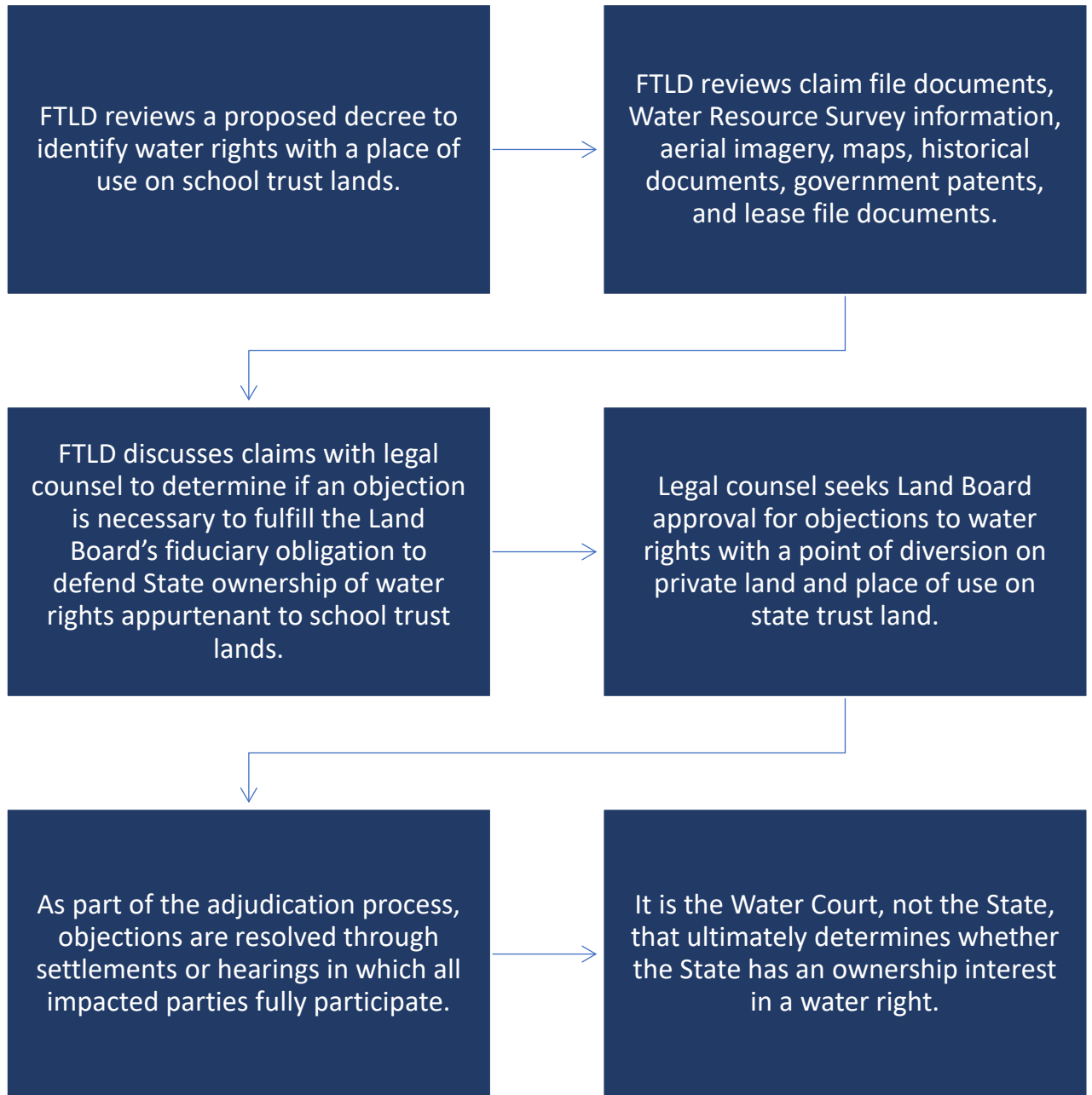
Pre-July 1, 1973
Adjudication

Post-July 1, 1973
Permitting Process

Water Adjudication Process

- Over 250,000 pre-1973 water rights are being adjudicated before the Water Court across 85 basins.
- As a part of the adjudication process, the State has asserted on behalf of public schools and schoolchildren an ownership interest in approximately 10,000 pre-1973 water rights used on school trust lands.
- As proposed decrees are issued, any future assertions of State ownership interests in water rights with a point of diversion on private land and place of use on state trust land is brought to the Land Board for approval pursuant to the resolution adopted at the May 2024 meeting.

Due Process & Transparency are built into the process



EXAMPLES

Example 1: Ranch A filed a claim for a water right with a place of diversion (POD) and place of use (POU) on school trust land. The listed priority date is August 9, 1876. During review of the claims, the Water Rights Division (WRD) added an issue remark that ownership is questioned because of the location on school trust land. During its investigation, the Forest and Trust Land Division (FTLD) determined that the State obtained ownership of the land in 1889. FTLD files a statement of non-interest because the priority date precedes state ownership of the land.

Example 2: Ranch B filed a claim for a water right with the POD and POU on school trust land. The listed priority date is September 10, 1940. During review of the claims, WRD added an issue remark that ownership is questioned because of the location on school trust land. During its investigation, FTLD determined that the State obtained ownership of the land in 1895. FTLD filed an objection to the claim because the water appears to be appurtenant to school trust land, and the State obtained ownership of the land before the right was perfected.

Example 3: In April 1982, FTLD filed, on behalf of the State, a claim for water with a POD on private land and a POU on private land and school trust land with a priority date of 1939 based on evidence of irrigation in the area. Ranch C objected. Ranch C also filed a claim for water use in the same area. The case proceeded to hearing track with both claims (the State's and Ranch C's) consolidated into one case. Evidence produced during the discovery process demonstrated that the water is only used from time-to-time on school trust land during flood years. Under Montana law, the State does not have ownership of the right because the temporary use does not make the water appurtenant to school trust land. Ranch C retains its claim and the State's claim is dismissed.

Example 4: A proposed decree is issued that includes a U.S. Bureau of Land Management (BLM) claim for a water right with a POD on BLM land and a POU on school trust land. Based on its review, FTLD determined the water claimed is likely appurtenant to school trust land. After discussing with legal counsel, FTLD and legal counsel recommend filing an objection, which is brought to the Land Board for approval. If the Land Board approves filing of an objection, the objection goes through the water adjudication process. If the evidence discovered during this process demonstrates that the State has an ownership interest in the water right, FTLD will request the Water Court to include in the final decree an implied claim reflecting State ownership of that portion of the water right used on school trust land.

Example 5: Ranch D filed a claim for water with a POD on private land and a POU school trust land. During its basin review, FLTD determined that the location for the POU on state school trust land is likely inaccurate because there are no signs of irrigation in that area. After consulting with legal counsel, FTLD and legal counsel recommend filing an objection to correct Ranch D's claim to remove school trust land from the POU, which is brought to the Land Board for approval. If the Land Board approves filing of an objection, the case is eventually consolidated and a settlement deadline is set. Given that it appears the land use description for the POU is inaccurate, this case is likely to settle during the settlement period by Ranch D filing a motion to amend its claim and FLTD withdrawing its objection.