

House Bill 286 and the Schutter Decision

House Bill 286

House Bill 286 was passed by the 2019 Legislature when water users discovered that DNRC Trust Lands had been adding themselves as owners or co-owners to 141 water rights in the state. Without the legislation there was nothing water users could do, other than litigation, to remove them as owners.

The Senior Water Rights Coalition (*not the newly founded Senior Agricultural Water Rights Alliance*), Montana Farm Bureau Federation, Association of Gallatin Agricultural Irrigators, Montana Stockgrowers Association, and the Montana Water Resources Association supported HB 286, which was sponsored by Rep. Alan Redfield (R), Livingston to fix this infringement on our water rights.

What is HB 286?

- HB 286 clarified in law that:
 - (1) The State had to remove itself as a listed owner to these 141 water rights (and any other similarly situated water rights) unless it could prove ownership through the following process.
 - (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 on private 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.
- HB 286 applies to water rights that have a priority date AFTER July 1, 1973, since all water rights prior to that date are subject to the adjudication.

What happened next?

- DNRC Trust Lands removed their name from these 141 water rights, as directed by HB 286.
- A trust lands watch dog group sued the State in an effort to declare the HB 286 unconstitutional, and require DNRC Trust Lands to assert ownership of these water rights.
- The State (in concert with the agricultural groups listed above) successfully defended the statute against this legal challenge.

Schutter vs. Montana Board of Land Commissioners (2024 MT 88)

Schutter vs. Montana Board of Land Commissioners was heard before the Montana Supreme Court, and recently decided by a unanimous decision.

- In this case, the Schutter family specifically agreed that they had developed a well on private land in 1960 with the intent of putting a portion of the water right to irrigation beneficial use on state land.
- Schutter filed a water right claim in the statewide water adjudication, asserting that Schutters owned the entire water right, even the portion that was intended to benefit school trust lands.
- Trust Lands objected, arguing it owned the portion of the water right intended to benefit school trust lands, pursuant to the long-standing MT Supreme Court *Pettibone* decision.
- In *Pettibone*, the MT Supreme Court decision that held that water rights appropriated for the benefit of school trust lands are held by the State, and not by the lessee of those school trust lands.
- This decision was based on Montana's Constitution and Montana's admission to the Union as a state. In 1889, the United States passed a federal law that admitted Montana as a state. That law also granted to the State of Montana what is now school trust lands, on the condition that all proceeds generated from these lands be used to establish a permanent school fund benefitting Montana schools.
- Montana accepted the land grants, and further enacted Montana constitutional protections that these trust lands "shall forever remain inviolate, guaranteed by the State against loss or diversion."
- Because of this, the MT Supreme Court concluded in the Schutter case:

- The portion of the water right that was appropriated for the benefit of school trust lands was held by the State, and the rest of the water right held by Schutter. As such, the Water Court was correct to add the State as an owner of the water right for the portion used on school trust land.
- **The MT Supreme Court also found:**
 - **“We reiterate that the Board (of Land Commissioners) does not claim, the Water Court did not grant, and we do not hold that the board has any ownership interest in the well or in the means of transporting water ...”**

Was the Schutter litigation the result of HB 286?

- The Schutter Case WAS NOT a HB 286 case. The water right that was the subject of this litigation (Claim 13169) WAS NOT one of the 141 water rights that Trust Lands had put their name on. The portion of the water right that was appropriated for the benefit of school trust lands, was always intended to be used on school trust land.
- HB 286 did not declare that a lessee of school trust lands could take ownership of a water right away from school trust lands when that water right was appropriated for, and intended to, benefit school trust lands.

For additional information please go to the following links:

- Montana Supreme Court Order

<https://courts.mt.gov/Courts/Supreme/>

- Primer on school trust lands

[2006trustlandadmin.pdf \(mt.gov\)](https://trustlandadmin.mt.gov/2006trustlandadmin.pdf)

- HB 286 (85-2-441, MCA)

https://leg.mt.gov/bills/mca/title_0850/chapter_0020/part_0040/section_0410/0850-0020-0040-0410.html