

Flathead Reservation Water Management Board Meeting Minutes

May 12, 2022

2:00-4:00 PM

In-person & Virtual

Kwat'aq'nuk Resort and Casino
49708 US HWY 93 E
Polson, MT 59860

Board Members Present: Clayton Matt, Roger Noble, Kenneth Pitt, Georgia Smies, Teresa Wall-McDonald
(joined meeting at item 2.3)

1. Call to Order (Board Chair)

1.1. Opening Prayer

1.2. Safety procedures and Covid-19 protocols

1.3. Attendance

- Department of Interior appointee, Shana Radford, no longer serves as the Bureau of Indian Affairs Superintendent of Flathead Agency. Northwest Regional Director, Brian Mercier, will serve as Acting Superintendent of Flathead Agency and will attend Flathead Reservation Water Management Board (FRWMB) meetings as much as possible until the Department of Interior appoints a permanent replacement for the Board position.

2. Board Business (Board Chair)

2.1. Adopt agenda

Motion

Second

Vote result: Approved (4 to 0)

2.2. Approve minutes for April 28, 2022 meeting

Motion by R. Noble

Seconded by K. Pitt

Vote result: Approved (4 to 0)

2.3. Announce meeting recording & minutes on DNRC & CSKT websites (bit.ly/FRWMB-Meetings-Page)

2.4. Board and Office of the Engineer Operations

- Documents presented and considered:
 - FRWMB Interim Funding Agree w Budget
 - Legal Services RFP

Key: Underline = Action item

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- Payroll Services
- Internet and Phone Service
- Anna Christman offer

2.4.1. Funding Agreement between Board, CSKT, and State (DNRC Arne Wick)

- A. Wick briefly described the funding agreement between the Montana Department of Natural Resources and Conservation (DNRC), the Confederated Salish and Kootenai Tribes (CSKT) and the Board. DNRC and CSKT will each provide \$50,000 for the formation of the board, staff, contracted legal services and other activities to establish the Office of the Engineer. The agreement includes specific accounting and reporting requirements. It would cover expenses to July, when the state's new fiscal year will begin. After July 1, DNRC can enter into funding agreements annually and possibly every two years. Once executed funds can be dispersed as soon as possible.
- The Board discussed whether the Board would need to align its fiscal year with the state or CSKT's fiscal year and concluded that the Board would not need to align its fiscal year with the state or CSKT.

2.4.2. Legal Services Request for Proposals (CSKT-Melissa Schlichting)

- M. Schlichting described the draft comprehensive request for proposals (RFP) for legal services for independent legal counsel for the board. The RFP anticipates 20-30 hours per month depending on the issues at hand. M. Schlichting asked where interested parties should send inquiries about the RFP. M. Schlichting offered to be listed as the contact on the RFP. The Board agreed by consensus to have M. Schlichting listed as the contact.
- R. Noble suggested that the RFP require interested parties to include a starting point for fees or an hourly rate. M. Schlichting said Section 5 could be amended to ask for a fee schedule. The Board agreed by consensus to include a fee schedule request.
- M. Schlichting recommends advertising in Montana Lawyer magazine, the publication and online classifieds of the state bar as it is the place attorneys look for RFPs. CSKT could put it up on its website. I don't know if the state could put it on the CSKT Compact website.
- K. Pitt recommended adding a requirement to be admitted to the Montana bar. M. Schlichting will add that requirement.

2.4.3. Contracted services with human resources firm and others (CSKT-Melissa Schlichting)

- M Schlichting said she, the state, and consultant, Alan Mikkelsen, have been looking at human resources firms over the last six weeks to provide services to the board. Associated Employers offers comprehensive human resources services including recruiting, job descriptions, identifying health care packages and employee benefits, and payroll services. Associated Employers' membership fee is \$600 annually which includes 5 hours of work each month. After that, they charge \$100 an hour or by project. They can also do policies and procedures as a separate project. They gave us a sample of what their personnel policies and procedures can look like, and they are comprehensive and geared toward employers in the state of Montana. They are available to answer human resources questions from staff as part of membership. We reviewed the Associated Employers proposal and think they can provide the

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most comprehensive services to the board at the most reasonable cost. A. Mikkelsen concurred that they offer comprehensive service and a fair price. C. Matt said he has been an early advocate of getting human resources firm to help us out. M. Schlichting said the state and tribal team recommend contracting with Associated Employers.

- M. Schlichting also shared two proposals for payroll and two for bookkeeping. Associated Employers can also provide payroll services on top of the services included with the annual membership fee. Associated Employer's payroll services would be \$3000 per year which amounts to about \$250 per month. They can do a host of things within their payroll system. We also got an estimate from Davis and Brown. Davis and Brown has a minimum monthly fee schedule of \$42 per time they run payroll. They would cost approximately \$84 a month and there would be extra expenses setting up the account.
- Davis and Brown could also handle bookkeeping and paying bills. This service would cost \$78 per hour for bookkeeping services which would be on top of payroll fees. They can also provide tax services. I also got a proposal from B-Smart for bookkeeping. They charge \$30 an hour, can do bill paying, and bookkeeping. B-Smart does not employ a CPA and does not do payroll. The team also got a proposal from a CPA in Ronan whose proposal was extraordinarily high. A. Mikkelsen concurred saying the CPA from Ronan was orders of magnitude higher than the other proposals. C. Matt sat in on some of these meetings too.
- M. Schlichting shared an offer of temporary employment for Anna Christman. A. Christman is a student getting her Master's Degree. She will be going to Law School in the fall, and she is available to work over the summer. She is a former DNRC employee who worked in water resources as a compliance technician. She has the skill set we need for this interim period. She could help people fill out 602 applications. Seth Makepeace (CSKT), Ethan Mace (DNRC), and some members of the board had an opportunity to visit with her virtually. We recommend that the board offer her employment for the summer. A. Wick said a person working in this position would make \$19 an hour, but that amount does not include benefits. Since benefits would not be included, \$25 an hour would be comparable with what DNRC offers. S. Makepeace said A. Christman is extremely capable and a resource we should consider. K. Pitt met her and said he was very impressed with her qualifications. R. Noble said that she was extremely competent when she worked in the Kalispell office.

2.4.4. Authorization for chair to set up utilities

- Clayton asked if any members of the board had comments, questions, or concerns on setting up utilities. They did not.

2.4.5. Public Comment on operations proposals

- C. Matt opened a public comment session for the audience and virtually for these agenda items. See no comments he closed the public comment session.

2.4.6. Board Action on operations proposals

Funding Agreement

Motion by K. Pitt to approve and authorize Chairman to execute Interim Funding Agreement and Budget.

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Second by G. Smies
Vote result: Approved (5 to 0)

Legal Services RFP with the changes requested by the Board.

Motion by R. Noble to approve RFP for legal services with changes requested by Board to be posted online and advertised in the Montana Lawyer
Second by K. Pitt
Vote result: Approved (5 to 0)

Contracted Services with Human Resources Firm.

Motion by K. Pitt to authorize the Chairman to execute documents necessary to engage Associated Employers to provide human resources services to the Board at initial cost of \$600 per year.
Second by G. Smies
Vote result: Approved (5 to 0)

Contracted Services for Bookkeeping

Motion by R. Noble to authorize Chairman to engage bookkeeping services from Davis and Brown.
Second by K. Pitt
Vote result: Approved (5 to 0)

Contracted Services for Payroll

- C. Matt: Does the board have the info it needs to decide?
 - R. Noble: I think it would be advantageous to have bookkeeping and payroll together with one firm. Davis and Brown is less expensive.
 - G. Smies said she and her husband use Davis and Brown and they are professional and responsive.
- Motion by R. Noble to authorize Chairman to engage payroll services from Davis and Brown.
Second by K. Pitt
Vote result: Approved (5 to 0)

Utilities set up

Motion by T. Wall-McDonald to authorize the Chairman to set up utilities for the office.
Second by R. Noble
Vote result: Approved (5 to 0)

Offer to Anna Christman

- C. Matt: A. Christman has relevant experience and comes with high recommendations.
- Motion by K. Pitt to offer A. Christman temporary employment as described in the draft offer letter.
Second by T. Wall-McDonald

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Vote result: Approved (5 to 0)

Compensation for Anna Christman

- A. Mikkelsen asked if mileage could be included for her work in Ronan
Motion by K. Pitt to offer \$25 and hour and pay mileage at the state rate (58 cents)
Second by T. Wall-McDonald
Vote result: Approved (5 to 0)

2.5. Finalize Interim Process for Domestic Allowances (DNRC and CSKT)

- Documents presented and considered:
 - 2022-05-11 Domestic Allowance Interim Process Flowchart (Draft 11)
 - 2022-05-11 Form Interim DA PT_A Approval to Construct (Draft 11)
 - 2022-05-11 Form Interim DA PT_A Cover Sheet (Draft 11)
 - 2022-05-11 FWMB Response Letter Form 60 DF-A (Draft 11)
 - 2022-05-11 Interim DA PT_B Completion (Draft 11)
 - 2022-05-11 60 DF-A C-C Checklist (Draft 02)
 - 2022-05-11 Form Interim 634 F Substitute Well Notice (Draft 2)
 - 2022-05-11 Interim Progress Report

2.5.1. Review of draft MOU between Board, CSKT, and State (CSKT-Melissa Schlichting)

- M Schlichting said she does not have a draft ready yet but will have a better idea of what needs to be in the MOU after the board votes on the interim process. It is pending. I will have it for you at the next board meeting.

2.5.2. Individual and Shared forms and flowchart (DNRC-Ethan Mace)

- E. Mace summarized the approval from the last meeting. After the last meeting three board members participated in a work group to continue working on the interim process forms. The work group edited a proposed cover sheet for Form Interim DA PT A Approval to Construct that includes a cover sheet with clarifying information about dates. It's sort of a belt and suspenders approach. On page two of this form, CSKT added a clarification to distinguish this interim process from the separate CSKT tribal water right registration process. This form also explains that applications from people who developed their water before the Effective Dates, but did not register during the 180-day registration period, would be held but not acted upon until the Office of the Engineer is established. We made similar updates to the Interim DA PT_B Completion Form and added to the response letter. We made accompanying updates to the flowchart which we see as a living document that may change as we adapt this process to the administrative process that still needs to be finalized. We still need to determine whose contact information to include on the forms.

2.5.3. Substitute wells notice form (DNRC-Ethan Mace)

- E. Mace also described the new form for substitute wells. This is the form an applicant can use to replace a well that is not working.
- E. Mace said that overall, there are still some gaps and forms that need to be developed. We have not forgotten about the need for an emergency use form and a redundant well form for a public

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water supply and will get to those forms at a later date. We are also designing a database spreadsheet we can use to assign water right numbers and that could be loaded into the database in the future. We are also developing a table we can post on the DNRC website where applicants can see the status of their application. E. Mace clarified that the applications will be public like other water right applications in the state. Posting applications on the website will also provide access for all three bodies, the Board, DNRC, and CSKT.

- E. Mace pointed out that the map requirements are significant for the domestic allowance authorization. These map requirements may be daunting for applicants and the work group tried to figure out how to simplify the requirement. However these are required by the Ordinance. Perhaps there are people at the state or CSKT that could assist applicants with mapping.
- E. Mace pointed out that there is still a lot to do to open the interim process on June 1st. He called the board's attention to a spreadsheet of tasks that still need to be completed. We can't have any of these pieces fall off track. He recommended hiring a full-time administrative staff person.
- M. Schlichting said both the state and tribe are allocating resources to support the effort and said things will become clearer when the MOU draft is ready to review. The tribe wants to see this process move forward.
- K. Pitt and C. Matt thanked the state and tribal staff for the significant work they put into preparing the forms and interim process.
- R. Noble said the work group spend two hours on the forms and the forms are ready to be approved. He suggested the Board take action on the forms and the interim process.

2.5.4. Public Comment on Interim Process

- Dave Bick: I'm a local well driller. I thought the college student would be full time instead of only driving up here a couple days a week. These forms are above and beyond the ability of most homeowners on their own. Especially with the map requirements. The map is supposed to list what neighbors are doing as well as their own property. Neighbors are going to have to get into neighbor's business. On the smaller acreages it will be more neighbors that will be involved in the 500-foot radius. When hiring this college student, I was thinking there would be a person in the office that I can direct people to so they can go and get help with this. But if the person will only be there two days a week I don't know how many people that person can meet with. It seems complicated to me with the mapping portion. With cadastral, it's easy on fee land. But on tribal land it's almost impossible. There aren't geo-codes. What do you do for the 500 foot radius around the well when it's all blocked out tribal land with a Box 278 address for land in trust. And the person who is supposed to help them is only in the office two days a week.
- John Westleigh: when I tried to fill out form I noticed that for the geo-code, the tax statement lists a 15 digit code because it assumes the first two digits are for the county. So I don't know if someone puts down a 15 digit code is that going to be an issue when someone is doing these approvals?
- C. Matt: I am sure staff will take that into consideration. Thank you for comments.
- C. Matt asked for virtual comment. There were no virtual comments.

2.5.5. Board Action on Interim Process

- R. Noble requested that the board consider all the forms and process in one action.

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- E. Mace: listed the following forms and process documents included in the interim process.
 - 2022-05-11 Domestic Allowance Interim Process Flowchart (Draft 11)
 - 2022-05-11 Form Interim DA PT_A Approval to Construct (Draft 11)
 - 2022-05-11 Form Interim DA PT_A Cover Sheet (Draft 11)
 - 2022-05-11 FWMB Response Letter Form 60 DF-A (Draft 11)
 - 2022-05-11 Interim DA PT_B Completion (Draft 11)
 - 2022-05-11 60 DF-A C-C Checklist (Draft 02)
 - 2022-05-11 Form Interim 634 F Substitute Well Notice (Draft 2)

Motion by R. Noble to approve all the forms and process documents E. Mace listed.

Second by K. Pitt

R. Noble responded to D. Bick's concerns about the map requirements. He said the work group recognized the map requirements are substantial. The requirements are part of the ordinance, and so they can't be altered. The work group recommended that the reviewer use some discretion when reviewing the application based on what information is available and accessible to the public.

Vote result: Approved (5 to 0)

2.5.6. Interim Process communication plan (CSKT-Rob McDonald)

- R. McDonald said the communication plan is straightforward. The media that covers the area from Missoula to Kalispell would receive a clearly written press release. Would the board want a press release to go out immediately?
- M. Schlichting: My recommendation would be that you let staff develop a press release based on what you approve today to go out the week before June 1st with info on where people can go to download forms.
- K. Pitt pointed out that if the next meeting is April 26th there isn't time to get the press released approved by the Board and released to the public. M. Schlichting said a meeting may not be needed for the press release. We could just circulate it to the board.

Motion by K. Pitt to authorize staff to develop a press release based on the action taken today.

Second by G. Smies

Vote result: Approved (5 to 0)

3. Updates

3.1. Engineer recruitment

3.1.1. Posting job announcement

- A. Mikkelsen: P. Hoyt and I put together a summary to go along with the link to the full five-page position description. We would like to get that out as soon as possible.
- K. Pitt: I looked at the blurb yesterday and would like it to emphasize that the person does not need to be an engineer and can have expertise in the other fields.
- T. McDonald: I appreciate that suggestion and think it should be added to the summary.
- A. Mikkelsen pointed out since the Board doesn't have a website yet, the position description needs to be posted on another site. It can be posted on the DNRC website now on the CSKT

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Compact portion. The position description can be posted there and advertisements in professional journals will provide a link to that position description.

- R. Noble recommended posting the announcement with the Montana Water Resources Association with Montana State University.

Motion by K. Pitt to authorize staff to post the position description

Second by T. Wall-McDonald

Vote result: Approved (5 to 0)

3.1.2. Process for screening applicants

- The Board agreed by consensus that the Board should start screening applicants on June 15, 2022. The Board asked staff to provide recommendations for a screening process at the next meeting.

3.2. Other Administrative Items (CSKT-Melissa Schlichting)

- M. Schlichting gave an update on other administrative items. We have the office secured. We can access it on May 15th. We are changing utilities and will have security service. We will have a deep clean of the office. We have secured some office furniture and five workstations with desktop computers and screens from the Tribes. We are seeking a short-term contract with Tribal IT to get desktops up and working. We are soliciting proposals for ongoing IT support. We are talking to website developers and thinking about what functionality we want for that website. My request is that we set a virtual meeting for next week to go over the IT proposals and getting the office set up.
- The Board agreed by consensus to meet virtually May 19, 2022 at 3:30pm to discuss these items.

4. Next steps

4.1. Set next regular meeting: May 26, 2022, at 2pm

- The meeting will be held at Kwat'aq'nuk Resort and Casino in Polson.

4.2. Choose meeting topics

- Continue discussion of the interim process for domestic allowances.
- T. Wall-McDonald: I want to understand the issue raised on well drilling with the tribal housing authority. I believe Mr. Bick asked that question. At the next meeting we should have a follow up on that. I ask staff to figure out if there is an issue and summarize that for us. C. Matt: I think that was a technical question aimed at housing itself. Will staff follow up with housing itself?

5. Public Comment

- Duane Smith: There is a disconnect between the county, state, and tribe. I am doing a simple boundary line adjustment that has taken seven months. The county says they are waiting on the Board. Does the County have contact with you? We went through DNRC and DEQ and everyone goes and blames the water board, and they are not talking with you. We even talked with Arne Wick and he said there shouldn't be an issue, but according Bill Barron there are other people who have issues. The county says they can't do anything, it's the water board. You have a nice program going. In the interim, who makes decisions. The county has a disconnect. Where is the county? People need to get some answers so they can get something done. My mother died and I'm trying

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to sell the property. The county doesn't know the water board. There is so much confusion. They are passing the buck. There is no one here from the county, even online.

- C: Matt: Thank you for your comment. I ask that you talk with S. Makepeace and E. Mace so they can understand what is going on. We have nothing to do with county rules and policies. I don't know if there is a problem but given your comment I ask staff to understand what is going on and see if there is something we can do to address it with board action or staff assistance. This is brand new. There is new uncertain ground here. We are trying to build it all right now and I think it scares a lot of people.
- R. Noble: I think it would be helpful if S. Makepeace and E. Mace could sit down with staff in Lake County planning department and see where they are at.
- S. Makepeace asked that the tribal legal department set up that meeting with Lake County based on the history of relationship.
- Dave Bick: I'd like to add to what Duane said. What he is having problems with is more than just him. Gale Decker, the county commissioner said the county can't approve land divisions until the board gets things up and running. But these are separate things. On the reservation, we haven't been able to get water rights for a long time. We have to sign an affidavit about water rights in land divisions saying we understand that there is no guarantee about water rights. Diane Luke is a representative of DEQ and the county and says it's DEQ requirements related to septic. There is something in DEQ about having water rights to divide land. It's above the county. Maybe the state guys can help. It's not just because of the water compact. Maybe it's the county's interpretation of DEQ requirements.
- C. Matt asked for virtual comments. No virtual comments.

6. End meeting (Board Chair)

- The meeting adjourned at 4:04pm.

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