

Flathead Reservation Water Management Board

DRAFT Meeting Minutes

August 11, 2022, from 2:00-4:00 PM

In-person: Flathead Reservation Water Management Board Office
400 Main Street Southwest, Ronan, MT 59864

Virtual at Zoom Link: <https://zoom.us/j/96218100809> [zoom.us]

Board Members Present: Roger Noble, Kenneth Pitt, Georgia Smies, Clayton Matt, and Teresa Wall-McDonald

1. Call to Order (Board Chair)

- 1.1. Opening Prayer
- 1.2. Attendance
- 1.3. Safety procedures and Covid-19 protocols
- 1.4. Announce meeting recording & minutes on DNRC & CSKT websites

2. Public Comment (for items not on the agenda)

- Claudia Creedy (sp): I have been trying to do a small development for four years. It has been cumbersome. I want you to be aware of a couple things. I received a letter from Helena saying they are not going to allow me to move forward until I get a remark from this board. I don't know what that remark entails. I have been shut down for a year. I wanted to let you know that there needs to be some kind of way for people like me to address these things that don't have anything to do with water but get looped in.

3. Board Business (Board Chair)

3.1. Adopt agenda

Motion by R. Noble to adopt agenda as modified

Second by K. Pitt

Vote result: Approved (5 to 0)

~~3.2. Approve minutes for July 21, 2022~~

3.3. Review of complete domestic allowance applications

3.3.1. Applications in need of discussion (DNRC-Ethan Mace)

3.3.1.1. Adding a new domestic allowance to an existing water right

- E. Mace: The board asked technical staff to look into options for adding a new domestic allowance to an existing water right. There are a couple people in this situation. They want to add a new use. After a fair amount of discussion at the technical level, our recommendation is that board needs to address this through policies and procedures. People can come in and drill a new well. We think there are opportunities to address this after there is a formal process in place for adopting policies. The solution now is drilling a

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- new well. There are about four of these and in each situation it would be for a new domestic use, one would include some stock. We think there is some potential for a solution after the board has legal counsel and develops formal processes.
- C. Matt: So, there is an existing well and they want a new use and the recommendation is for them to build a new well?
 - E. Mace: Yes, we think there needs to be legal review to do otherwise.
 - K. Pitt: How would you handle different priority dates?
 - E. Mace: We wouldn't need to handle different priority dates at this time. But that is one of the things that would need to be addressed formally in the future. There could be two priority dates with an added use.
 - K. Pitt: If they have to do a new well, would that be a significant cost?
 - E. Mace: Yes, but this could be addressed soon after there is legal counsel, policies, and staffing.
 - Board consensus on recommendation.

3.3.1.2. Application for authorization for well drilled on June 21, 2022

- E. Mace: The Board received an application for a well that was drilled on June 21, 2022. They have not put the water to use at this time. This person submitted an application for a well that was already drilled. It was drilled after the interim process started. They did not receive authorization before drilling.
- G. Smies: Will we be seeing more of these?
- E. Mace: I think we will see a whole array of people whose water development is outside of the requirements.
- K. Pitt: Is this negligence or something else?
- A. Butterfield: I don't have more information about the circumstances. I have not cashed the check.
- G. Smies: Are these folks who have been caught in the interim and they were on well driller's list?
- E. Mace: That could be the case, but that is speculation. In other places the complexities with timelines exceed the end user's capacity for soaking things in and there can be a fall out in compliance. But we don't know in this situation.
- A. Butterfield: The well driller was out of Missoula and the well driller may not have been familiar with the new process. The applicant is in the southern part of the reservation.
- K. Pitt: I am not comfortable with individual exceptions to timelines. In my opinion, it would be cleaner to extend the grace period.
- E. Mace: We could amend form A and change the June 1st date to a later one or we could change it to an event like staffing of the engineer.
- A. Butterfield: I am concerned about pushing the date out and this happening again.
- C. Matt: If we chose not to accept the application now, how does that leave them?
- E. Mace: That would leave them in limbo until there are procedures developed that may address this. We would leave that person without a legal pathway.
- C. Matt: With full staff and procedures, does that leave a clear path for them?

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- E. Mace: That will be something for the board to determine how they want to handle through policies and procedures. The details of those procedures will drive the options for this situation.
- C. Matt: What we want is to get people to come into compliance, so I am sympathetic to them trying to come into compliance. What does the board want to do?
- R. Noble: I fall back on the definition of success and that is getting people into compliance. If they haven't put the well to use. The driller was out of Missoula. They were on the south end. They may not have been familiar with the rules and regulations. Maybe the driller had an opportunity to drill at that time and it would maybe take a long time for the driller to come back. I look at this as similar to the board of adjustments where we have ability to apply some exceptions. Its in the best interest of the ordinance to get these permitted and recorded. He was 20 days over. I don't' think we need more info. Maybe we let them process the application and see if its possible to process and then we consider.
- A. Butterfield: In my brief look it looks complete.
- R. Noble: I think we give this one a deviation.
- Board Consensus to proceed with processing the application.

3.3.2. Public Comment on applications in need of discussion

- No public comment

3.3.3. Application recommendations (Board-Anna Butterfield)

- A. Butterfield: I provided the board with a list of twelve application recommended for authorization.

3.3.4. Board Action on domestic allowance applications

Motion by K. Pitt to authorize the applications listed on the attached August 11, 2022, list.

Second by G. Smies

Vote result: Approved (5 to 0)

3.4. Office of the Engineer Operations

3.4.1. Operations update (Board-Anna Butterfield)

- A. Butterfield: Tomorrow is my last day in the office. There is a gap week between when I leave and when the new admin position will start. I am asking for flexibility in the first month until I get my schedule figured out.

3.4.2. Staffing office after August 12, 2022 (Board-Anna Butterfield)

3.4.2.1. Monday, Wednesday, and Thursday (10:00-2:00)

- A. Butterfield: The technical team discussed this schedule. The times may be variable. We think it's important to develop a schedule, but we are still figuring out who can be available to answer questions. It's a work in process. This was our proposed schedule, but that seems to have shifted based on technical staff availability. I will update board as we get more figured out. We think that the door should be locked if the new person is here alone until they are trained enough to answer

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people's questions. We will try to have technical team support at other times to get her up to speed. We don't want to throw them into the fire without support.

- 3.4.3. Confirm personnel policies and procedures meeting 10am 8/18 (CSKT-Melissa Schlichting)
- M. Schlichting: The HR firm can meet with the HR subcommittee to review the personnel policies they drafted and answer any questions. It's set for 10am on August 18.
 - C. Matt: Who is on that committee?
 - M. Schlichting: Georgia and Ken are on it.
- 3.4.4. Business manager and water conservation specialist (CSKT-Melissa Schlichting)
- M. Schlichting: We provided these to the board at the last meeting and the board wanted more time to review them. We did not receive comments from the board during that time.
 - R. Noble: I looked over them and I am good with the water conservation specialist description. It is highly needed. I have some reservations about the business manager and the need for that position. I look at that as a combo as the administrators' duties and the engineer's duties. We could use quick books to enter information. We also have an accounting firm to do a detailed analysis. My thought is the finances associated with this position would be better allocated toward a hydrogeologist or hydrologist who can do the technical analysis. I think we have this covered in other areas. I am hesitant.
 - K. Pitt: Was the business manager was part of organizational chart?
 - A. Butterfield: Yes it was. Here is the chart.
 - M. Schlichting: The board can make changes to the chart. It's up to the board to change the organizational chart or hold off on hiring for this position. You could hire the engineer and understand more what the needs will be. Maybe its not this position but could be changed to meet the board's needs. It is up to the board. The state and the tribes are meeting weekly to talk about what the tribal and state contributions will be toward your budget for the next year. I will have a better idea of those contributions in the next week and that might better inform your decisions. We can all agree that we need a water conservation specialist and I strongly urge you to approve that position today.
 - R. Noble: I agree we need to move ahead with the water conservation specialist. I looked at chart. There will be a lot of groundwater applications and we will need to have hydrogeologist expertise on board. I would like to hold back on this the business manager until we know more.
 - G. Smies: I agree with Roger. It seems appropriate that we get the engineer on board to help inform what additional staffing we need. I am in support of moving ahead with water conservation specialist.
 - T. Wall-McDonald: I think it's critical to get the engineer on board and then do further analysis but not change org chart now.
 - K. Pitt: I am ok holding off on business manager position and point out that Melissa is doing a lot of that work now.

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3.4.4.1. Job descriptions approval

Motion by G. Smies to approve the water conservation position description

Second by R. Noble

Vote result: Approved (5 to 0)

- Board agreed by consensus not to make a decision on the business manager position at this time and continue to hold discussions about it.

3.4.4.2. HR firm proposal for recruitment assistance

- M. Schlichting: I asked the HR firm to put together a recruitment proposal for both positions. Up until now Anna, Pelah, Rob, myself have taken on this role. This proposal would be for the HR firm to do everything with the recruitment from soup to nuts. They would identify where to advertise, screen applicants, set up interviews, do background, and reference checks. It's a more complete process than we have cobbled together so far. It's a significant expense but I think it's worth the board's time since we are losing Anna and the tribal state technical staff support is limited. We recommend to the board that they hire the HR firm to do the recruitment process for the water conservation specialist position.
- C. Matt: I suspect the time allocation with current staff is probably in that realm of cost.
- T. Wall-McDonald: I think the proposal is reasonable and appropriate and adds some additional weight to this function versus relying on people who already have full plates to do this. I support this proposal.
- C. Matt: Is there funding for this?
- M. Schlichting: Yes, there is funding in the current allocation.

Motion by K. Pitt to hire the HR firm for recruitment assistance

Second by T. Wall-McDonald

Vote result: Approved (5 to 0)

3.4.5. Associated Employers background check proposal (CSKT-Melissa Schlichting)

- M. Schlichting: We previously discussed the board doing background checks for employees. With this proposal the HR firm would arrange that work for the board. The total for each employee would be \$125 for arranging the background check, how to read it and paying for it. The HR firm would assist with that whole process.
- K. Pitt: That's not included in recruiting proposal?
- M. Schlichting: It is included in the recruiting proposal for the water conservation specialist, but this agreement would cover any other positions you wanted to hire for on an ongoing basis.

Motion by R. Noble to approve the associated employers background check proposal.

Second by K. Pitt

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Vote result: Approved (5 to 0)

3.4.6. Laptop purchase for Admin/CT employee (CSKT-Melissa Schlichting)

- M. Schlichting: In the interest of time and getting an employee hired as soon as possible, the tech team recommends purchasing a laptop for the Admin/CT employee. Kelly Connect can get us one by August 18th for \$1349. I am asking the board to authorize the Chairman to make that purchase. There is money in in the existing budget to approve.
- T. Wall-McDonald: We should do it.

Motion by T. Wall-McDonald to authorize the chairman to purchase a laptop for the Admin/CT employee.

Second by G. Smies

Vote result: Approved (5 to 0)

3.4.7. IT and computer equipment leasing or purchase (CSKT-Melissa Schlichting)

- M. Schlichting: The board approved an IT proposal with Kelley Connect. Kelly Connect assumed that the board had credit. But the board does not have credit, so financing isn't available. Kelly Connect split the proposal in two to separate out equipment. The equipment would be purchased with cash, or the board can come up with financing for the approximately \$16,000 needed for equipment. There is one company on the Reservation that would be available for lease to own arrangements. Their proposal specified \$517 monthly over about three years. The board would pay about \$2000 in interest on the \$16,000. It represents a significant savings over the Kelly Connect original equipment. I also talked with Kelley Connect about the longevity of the equipment. The computers would come with a three-year warranty. The other equipment has about a five-year life span so some items will still be useful. So, you can pay up front for the computers or do the leasing. The board can do the purchase outright or pay over a three-year period.
- G. Smies: Do you see a time when the board could get credit?
- M. Schlichting: No because funding is from the state and tribe. But if you were charging enough fees to support your operations you could.
- C. Matt: Once we are well established, it doesn't make sense to me, because we have that support form tribe and state.
- G. Smies: By my math they would be charging 12% interest. That seems high.
- C. Matt: Is this a way for us to get credit with this outfit?
- R. Noble: The machines would be the same?
- M. Schlichting: Yes
- R. Noble: Where would we buy?
- M. Schlichting: We would give Kelly Connect the money and they would purchase the equipment. If we lease, the leasing company would give Kelly Connect the money and Kelly Connect would buy. The company is called Sovereign Leasing.

Motion by R. Noble to enter into a lease to purchase the equipment

Second by G. Smies

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Vote result: Approved (5 to 0)

3.4.8. Logo update (Georgia Smies, Roger Noble, DNRC-Pelah Hoyt)

- P. Hoyt: The logo subcommittee reviewed the logos submitted for the contest and recommends two for further consideration. One is the water drop and the other has two tepees. We recommend changing the location of the words on both logos and replacing one of the tepees with the Dupuis barn.
- G. Smies: The image with the tepee conveys several components that we thought were important. The simple one could be used on letterhead.
- R. Noble: Rob McDonald took the logos to Six Pony, a graphic designer, and they gave us a proposal to take these two to the next level and provide us with some mockups. Then we could decide if we want to go with one or both. The subcommittee recommends proceeding with this contract to do this professional design work.
- K. Pitt: Is there a legal issue with using the Dupuis barn? I like the concept.
- R. Noble: It doesn't have to be the Dupuis barn. It could be a general barn.
- K. Pitt: I like the concept on the top one with the teepee, mountains, stream, and barn.

3.4.8.1. Logo Contract (CSKT-Rob McDonald)

- R. Noble: Rob was not sure if he could attend this meeting.
- G. Smies: Six Pony normally wouldn't take on this type of project, but they would like to do this project.
- R. Noble: This price is consistent with these types of projects that Georgia and I have been a part of.
- K. Pitt: I have concerns about the governing law and indemnification language. We are agreeing to appropriated money.
- C. Matt: Absent our own legal services we can only send this back to the state tribal team for guidance.
- K. Pitt: That is how I would like to address it. Does the board have authority to agree to the indemnification and governing law provision? I don't know if we have authority or if we want to do this.
- R. Noble: I have seen this language in a lot of contracts. I understand Ken's concerns. Maybe the simplest is to ask Six Pony if they would remove the language. We can defer this and come back at the next meeting.
- Board agreed by consensus to ask Six Pony to remove the language.

3.4.9. Public Comment on operations items

- No public comment on operations items.

3.4.10. Board Action on operations items

- No additional board action

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3.5. Temporary emergency water appropriation (DNRC-Ethan Mace)

3.5.1. Summary of allowance and process

- E. Mace: The Ordinance provides for this temporary beneficial use of water necessary to protect people and property that call for immediate action. Actions due to drought are not eligible. There are a number of fires on the reservation at this time. The Ordinance calls for these appropriations to be recorded with the Board. Prior approval from the board is not needed. Ordinary trades, maintenance, or ag operations are not eligible. The Ordinance specifies that appropriator should notify the Board within 60 days of use. It doesn't include the use of enclosed storage except for local governments, tribal, and fire and emergency agencies. The Board did not have a form, so I created a draft form. The form is fairly straightforward. It describes the appropriation and cites the ordinance. It looks for water user info, source, amounts, and period of use. I am open to any suggested changes. Should there be a filing fee? For some context, this type of use is generally difficult to obtain from personnel in charge of fires. This often is not obtained. It might be harder to get info if there is a filing fee. There is not a lot of review associated with this info. It doesn't become a water right. There is not follow up with someone who files the notice.

3.5.2. Temporary Emergency Appropriation Notice

- See E. Mace's explanation of notice above.

3.5.3. Outreach plan (CSKT-Rob McDonald)

- E. Mace: Rob volunteered to present this to some of the fires management teams to get their compliance.
- C. Matt: This is required as part of this Ordinance.
- R. Noble: Who is responsible for submitting this?
- E. Mace: I think it may change depending on the scope of the incident. With the Red Horn and Elmo fires, it would ask the incident commander to decide the appropriate personnel on their team to provide the info. They would have GIS maps of the places of withdrawals. The incident command teams would be the most likely for that scale. But there may be other scenarios for smaller fires where maybe it would be the initial attack team. There may be other things as well. This includes other disasters beyond fires. I am going to go with incident teams. Some are state, tribal, federal teams.
- R. Noble: It could even be an individual from a volunteer fire department.
- E. Mace: On a lot of the smaller initial attack scenarios, unless it reaches multiple days they are usually getting water from their station or pre-existing fill locations as part of ongoing operations. In that case they wouldn't need to fill this out.
- K. Pitt: How much time would be spent processing?
- E. Mace: It doesn't have a processing requirement. It would need to be filed only so very little time.
- K. Pitt: I suggest that we do not charge a fee.
- C. Matt: Any further discussion or questions?

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- K. Pitt: The federal fire fighters wouldn't be able to sign. I suggest taking out under penalties and perjury and under laws of state of Montana. Also add in a place for the position of person signing.
- G. Smies: I understand that Ordinance doesn't require this, but at the top of form add "in event of emergency coordinate with the CSKT aquatic invasive species program to prevent spread". That would encourage them to coordinate.
- C. Matt: That is a little external to water rights, but given that it's an important issue, maybe as part of public outreach Rob could remind personnel to comply with AIS protocols.
- C. Matt: Should we ask Rob to include AIS prevention encouragement in outreach?
- K. Pitt: It should be added either with outreach or on form. I would prefer to see it on the form.
- T. Wall-McDonald: I am good with that.
- E. Mace: I can add this language.

3.5.4. Public Comment

- Bernie Azure with Charkoosta. Its important for these planes to be checked for AIS. This is the last place in country without aquatic invasive species.

3.5.5. Board Action on Temporary Emergency Appropriation Notice

Motion by K. Pitt to approve the form with no fee, include language regarding AIS, add a place for the position of the person signing, remove the penalties and perjury language and "under laws of the State of Montana.

Second by G. Smies

Vote result: Approved (5 to 0)

4. Other Updates

4.1. Board member updates

- R. Noble: I want to extend a big thank you for Anna and appreciation for all you have done. Thank you.
- K. Pitt: I think it would be nice to have a group photo taken with the board and staff.

5. Next steps

5.1. Set next meetings and location

5.1.1. August 25, 2022, September 1, 2022 (if necessary), and September 8, 2022

5.2. Choose meeting topics

- Engineer position and the legal firm

6. Public Comment

- No public comment.

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7. Executive session to discuss personnel matters (if necessary)

- The board determined that the privacy interests of the personnel matter to discuss outweigh the public's right to know.

Motion by R. Noble to enter into an executive session.

Second by K. Pitt

Vote result: Approved (5 to 0)

8. Re-open public meeting

9. Public Comment

- No public comment

10. End of meeting (Board Chair)

- Meeting adjourned.

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Applications Recommended for Board Approval
Applications for Approval to Construct a Domestic Allowance
August 11, 2022

Summary:

- 12 applications for authorization

Applications:

1. Lefler - Individual Domestic Allowance
 - 1 dwelling, 0.5 acres of lawn and garden
2. Wolfe
 - 1 dwelling, 0.7 acres of lawn and garden
3. Leipheimer
 - 1 dwelling, 0.1 acres of lawn and garden
4. Brown
 - 1 dwelling, 0.7 acres of lawn and garden
5. Henry
 - 1 dwelling, 0.7 acres of lawn and garden
6. Tigger Revocable Trust
 - 1 dwelling, 0.5 acres of lawn and garden
7. Heinrich
 - 1 dwelling, 0.7 acres of lawn and garden
8. Schauss
 - 1 dwelling, 0.7 acres of lawn and garden
9. Burgess
 - 1 dwelling, 0.7 acres of lawn and garden
10. Whipple
 - 1 dwelling, 0.4 acres of lawn and garden
11. Wagner
 - 1 dwelling, 0.45 acres of lawn and garden
12. Seim
 - 1 dwelling, 0.5 acres of lawn and garden

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