

Flathead Reservation Water Management Board Meeting Minutes

August 25, 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://mt-gov.zoom.us/j/87301521358>

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. Announce meeting recording & minutes on DNRC & CSKT websites
- 1.4. Adopt agenda

Motion by R. Noble to adopt agenda as modified

Second by T. Wall-McDonald

Vote result: Approved (5 to 0)

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

- No public comment

3. Board Business (Board Chair)

3.1. Approve minutes for August 18, 2022

Motion by G. Smies to adopt the August 18, 2022, minutes

Second by K. Pitt

Vote result: Approved (5 to 0)

3.2. Domestic allowance applications

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

3.2.1.1. Two individual domestic allowance applications on a proposed three parcel subdivision

- E. Mace: We have two applications we need guidance on. The project is a subdivision. One parcel has an existing well without a water right. They are not applying for a water right on the existing water use. The applications are for two individual domestic allowances for parcels that don't have homes or wells. Technical staff flagged these two applications, because this could be construed as a development under the Ordinance. Ethan read the definition of a development allowance from Ordinance. Its also flagged because there is a pre-existing unregistered water use. The technical team recommends authorizing the two individual domestic allowances

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Normal = Discussion, comment, and/or update

because 1) the total amount of water would be well under a 10-acre foot limit including the two proposed wells and the existing use. 2) The shared well allowance allows up to three residences attached to a well and this is under that amount. 3) Additionally, the applicant was trying to get in compliance. The technical staff recommend authorizing the two new domestic allowance proposals with a letter that the Office of the Engineer will contact the applicant about the existing use in the future, but the existing use is not being allowed now.

- C. Matt: Will you elaborate on the existing use?
- E. Mace: The existing use is as single home with a well seems to have water use akin to an individual allowance. As far as we know it was not filed on during the registration process. This is only a technical recommendation from the state and tribal hydrologists. Its not a legal analysis.
- R. Noble: Is this a three separate lot proposal? Are they owned by the same person?
- E. Mace: This is a proposed plat so the two additional parcels have not been created yet. They are currently owned by the same entity at this time.
- G. Smies: Is the tech team recommending authorization of existing well and the development of a shared well?
- E. Mace: The applicant filed two separate applications for an individual domestic allowance on each of the two proposed lots. The recommendation is to authorize the drilling of the well for each domestic allowance. This is not a proposed shared well. The technical team thought the shared well arrangements helps set a threshold for applications that are not considered a development allowance.
- K. Pitt: I am worried if we approved this we are opening the door to allowing existing unregistered uses.
- E. Mace: We don't have certainty that this would prevent door opening.
- C. Matt: You were suggesting that there may be a process to allow unregistered existing uses in the future?
- E. Mace: I am referring to the language on the form that says there may be a process in the future for considering these unregistered existing uses.
- C. Matt: Are we in need of board action?
- E. Mace: We are looking for consensus for which direction to follow in continuing to review these applications. Action is not needed.
- R: Noble: I recommend we accept the technical staff's recommendation that these two lots can apply for individual applications. They would be stand alone lots. It's also consistent with what we did with a previous application. I recommend coming to consensus.
- K. Pitt: I agree with Roger and would like to limit guidance to this particular situation with these specific facts.
- C. Matt: Its similar to items that have come before the board. You would ask that this issue before us on a case-by-case basis and not consider this as overall standing guidance?
- K. Pitt: Yes

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- Ethan: The applications are not ready for board action until next week's meeting.
- Board agreed by consensus on guidance for these particular applications for two individual domestic allowances. For similar cases in future bring them forward for discussion.

3.2.2. No authorizations recommended this week

3.3. Office of the Engineer Operations

3.3.1. Introduce Administrative Assistant/Compliance Tech (Board-Cristy Brooks)

- C. Brooks: Introduced herself to the board as Board's new Administrative Assistant/Compliance Technician.

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3.3.2. Introduce DNRC Hydrologist (DNRC-Maya Rao)

- M. Rao: Introduced herself to the board as a new hydrologist with DNRC based in the Missoula office.

3.3.3. Budget and funding agreement update (CSKT-Melissa Schlichting)

- M. Schlichting: Arne Wick and I have been meeting to develop a budget for the additional interim period from September 1, 2022, through July 1, 2023. I expect to have a draft budget and funding agreement for the board at the next meeting.
- C. Matt: Is the interim period from September 1, 2022, through June 30, 2023? When does legislature meet?
- M. Schlichting: The legislature meets in January 2023. The DNRC portion would be included in larger funding bill that is usually considered near the end of the legislature in April. The money doesn't come available until July 1, 2023, which coincides with the start of the state fiscal year. The interim funding agreement would be ready for the next meeting as well. I will provide them to the board in advance.

3.3.4. First Call website design and hosting recommendation (DNRC-Pelah Hoyt)

- P. Hoyt: The website committee consists of Roger, Georgia, Joel, Melissa, and me. We reviewed four proposals submitted to the board, met with each of the four firms, and reviewed websites designed by each firm. We also reviewed some of the best practices for government websites. The committee recommends the Board hire First Call to develop and host the website. In making this recommendation we considered the quality of the firm's websites, the range of options offered, the price, and the firm's responsiveness and follow-up. First Call would charge \$8,376 to develop the website, which could be paid in a lump sum or monthly. The monthly fee to host would be \$149.
- P. Hoyt: If the board authorizes the chairman to sign the proposal an initial meeting would take place in early September. Then the committee or Board would need to work internally to develop initial content. Website development takes 90-180 days depending on the revisions needed, the size of the site, and perhaps most

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significantly, the amount of time Board takes to develop content and review revisions.

3.3.5. Logo contract (Roger Noble)

- R. Noble: This was in front of us, and Ken had expressed concern about two components of the contract. Pelah and Rob reached out to Six Pony and Six Pony agreed to change the governing law portion to refer to “applicable law” and “applicable court”. With regard to the indemnification clause, Six Pony made some valid points about why they need the language. One of the issues they raised is that they are taken a logo from someone else who developed it. Six Pony will modify it to come up with the final version they need to be shielded from intellectual property rights claims. I understand that position. I think we need to give them the gift certificate we agreed to and we should give him two certificates since we want to use two logos. We should also provide the individual with an acknowledgement that they will release the logos to the board for their exclusive use and we can modify and use them to the extent we feel appropriate. Have Rob ensure the artist is amendable to signing a release. The committee already selected those two logos and the board had concurred that we would use those.
- Board agreed by consensus to offer two gift cards and to seek a release from the artist.
- R. Noble: I propose we postpone considering the logo contract until we have a release in place.
- K. Pitt: I am not okay with the indemnification language, I don’t think the ordinance allows us to authorize us to unallocated money.
- C. Pitt: We will have a legal firm discussion today.
- R. Noble: If we get that release then maybe the indemnification concern goes away.

3.3.6. Public comment on operations items

- No public comment

3.3.7. Board action on operations items

Motion by R. Noble to approve item 3.3.4 to hire First Call to develop and host website as described in the proposal provided to the board.

Second by G. Smies

Vote result: Approved (5 to 0)

3.4. Water engineer position update, discussion, and recommendation (Clayton Matt)

- C. Matt: We have gone through the interviews and the board authorized the committee to begin the negotiations with one of the candidates. We are still in discussion. As of today, we don’t have a recommendation for the board to take action. Any questions by board members?
- No questions by board members.

3.4.1. Public comment on water engineer recommendation

- No public comment period opened

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3.4.2. Board action on water engineer recommendation

- No board action taken

3.5. Browning, Kaleczyc, Berry & Hoven legal services contract update, discussion, and recommendation (Clayton Matt)

- C. Matt: introduced Hallee Frandsen from Browning, Kaleczyc, Berry & Hoven (BKBH).
- R. Noble: We had an opportunity to review your contract and for clarification I had a question about item 3 and potential conflicts. The last sentence describes informing the board of potential or actual conflict and says both will use their best efforts to resolve conflicts which could include the firm's recusal from a matter. In previous discussions, the firm had consented to prioritize the board's issues first. Would firm recuse itself to represent the other party?
- H. Frandsen: That would be evaluated on a case-by-case scenario, but the board would take priority. John Tieze (from BKBH) is on as well. John, do you have anything to add
- J. Tietz: That is correct. The default would be to represent the board, but it's hard to anticipate what the conflicts would look like so we would have look at it on a case-by-case basis and what the issues were and where the conflict may lie.
- R. Noble: I think they have acknowledged the prioritization of the board.
- C. Matt: We had this discussion, and the firm added this portion about potential conflicts.
- K. Pitt: I would like clearer language, but I understand that won't be possible based on their explanation.
- T. Wall-McDonald: I am okay with where we are and where the documents are.
- G. Smies: I am okay as well.

3.5.1. Public comment on legal services recommendation

- No public comments.
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3.5.2. Board action on legal services recommendation

Motion by R. Noble we contract with Browning, Kaleczyc, Berry & Hoven to represent the board as our legal advisor.

Second by T. Wall-McDonald

Vote result: Approved (5 to 0)

4. Other Updates

4.1. Board member updates

4.1.1. Request from Patrick Lozar to participate in event on water use in the western United States (Clayton Matt)

- C. Matt: Ask Cristy to follow up to get more information.
- R. Noble: Now that we have a legal firm maybe they could draft up a release for the logo artist.

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- C. Matt: Have Rob ask the individual if he is okay with signing a release and then we can follow up with law firm to draft. Coordinate with me on this.
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- C. Matt: The law conference is coming up. Cristy, confirm with board members who will attend.

5. Next steps

5.1. Set next meetings and location

5.1.1. September 1, 2022 (person)

5.2. Choose meeting topics

6. End meeting (Board Chair)

Adjourned meeting at 3:05

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