

Flathead Reservation Water Management Board Meeting Minutes

June 21, 2022 from 2:00-3:30 PM

Virtual at Zoom Link: <https://bit.ly/FRWMB-Mtg-June21>

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

1. Call to Order (Board Chair)

- 1.1. Opening Prayer
- 1.2. Attendance

2. Board Business (Board Chair)

2.1. Adopt agenda

- A. Butterfield: sent revised list of applicants that are ready for authorization and suggested adding those to agenda.

Motion by R. Noble to include revise list of applicants and adopt revised agenda

Second by K. Pitt

Vote result: Approved (5 to 0)

2.2. Review of complete domestic allowance applications (Board-Anna Butterfield and DNRC-Ethan Mace)

2.2.1. Applications (Allen; Sievers; Wharton; Connelly; Clancey; Morigeau; DeGrandpre; Connelly; Brown; Devoe; Bossler; Horton; Christopherson; Roberts, Steven; Roberts, Andrew; Guy; Jenson; Diehl; Carr, Michael & Samantha; Newton; Miller; and Love)

- C. Matt: Are these applications open to objection by members of the public?
- K. Pitt: If you got an objection, from a neighbor for example, what would you do with it?
- E. Mace: There is no process in the Ordinance to accept objections before domestic allowances are authorized. If someone felt aggrieved they could submit a water user complaint afterwards through the process described in the Ordinance. hand.
- C. Matt: Then we do not need public comment on them.

2.2.2. Public Comment on domestic allowance applications

- No public comment.

2.2.3. Board Action on domestic allowance applications

Motion by K. Pitt to approve Allen; Sievers; Wharton; Connelly; Clancey; Morigeau; DeGrandpre; Connelly; Brown; Devoe; Bossler; Horton; Christopherson; Roberts, Steven; Roberts, Andrew; Guy; Jenson; Diehl; Carr, Michael & Samantha; Newton; Miller; and Love

Second by G. Smies

Key: Underline = Action item

Normal = Discussion, comment, and/or update

Vote result: Approved (5 to 0)

2.3. Applications in need of discussion (DNRC-Ethan Mace & CSKT-Seth Makepeace)

2.3.1. Extension of one year limit

- C. Matt: We need to find a way to document guidance the board is providing.
- E. Mace: We've been cautious not to proceed on anything that had a gray area without guidance from the board. One applicant requested an extension of the one-year limit to develop their well. This applicant would have well in but wouldn't have house built within a year so they couldn't put water to use.
- C. Matt & R. Noble: The one-year time limit refers to drilling the well instead of putting the water to use.
- K. Pitt: What is definition of domestic allowance in Ordinance? E. Mace read definition.
- K. Pitt: I am comfortable with this clarification.
- G. Smies. It sounds reasonable.
- R. Noble: Under the duties of the board in the Ordinance, we have powers to promulgate procedures. Maybe we should develop some guidance or policy for these kind of things. Then they don't keep coming up in discussion.
- C. Matt: I agree, we should have them documented. If they drill well in the timeframe they are good, even if house isn't completed in a year. The guidance that we give today we could come back and consider as policy to approve. If not we should create written guidance for the board.
- T. Wall-McDonald: I agree with you and Roger. I would find it helpful if we had those procedures and sideboards and we could look back at those and look at where deviations have been. I would like to do that sooner rather than later so that we are efficient with our time and for the individuals who are applying.
- K. Pitt: When we start getting into contested cases and it would be helpful to have this sort of policy.
- C. Matt: Ask the staff to draft as policy for the board to take action on. Roger and Ken: that is what I would like to see. Teresa: I am good with the direction we are heading. Georgia: I agree.
- E. Mace: We would like board to confirm that Ordinance means to drill the well within one year, but applicant would not need to construct the home and put the water to use.
- R. Noble: Could applicants apply for a one-year extension if they don't get well drilled within a year because of the backlog of well drillers? C. Matt: That is an additional technical item and I understand what you are saying. What does board say about extensions?
- E. Mace: I don't think extensions are addressed in the ordinance.
- C. Matt: I am unsure about whether we want to open that up at this time. As soon as we open up extensions, who is not going to ask for an extension? Would you be willing to let technical staff come back with a recommendation on how to approach that at a future meeting? We want to make sure it doesn't just throw door open. R. Noble: That is fine. I don't want to hold up an application because of that.

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- K. Pitt: If Ordinance doesn't allow extensions, you can't offer one.
- C. Matt: What happens if they don't finish in a year? Conceptually they just have to reapply. It may impact their priority date.
- T. Wall-McDonald: I am good with the discussion and enjoyed the detailed and methodical way the board and staff are proceeding.
- G. Smies: I am concerned that if we add this extension it might slow things up. Let's take this one step at a time.

2.3.2. Secondary or "mother-in-law" dwelling

- E. Mace: Applicant wanted well hooked up to two dwellings on same property. Applicant filed for shared allowance but didn't have a shared well agreement and both buildings are within the same parcel. There is no proposed subdivision. In this situation we need to direction. I have three options to present. 1. Ask applicant to change to individual domestic allowance. 2. Request a shared well agreement. Requesting a shared well agreement is less than ideal because there is only one parcel and one ownership so it would be a shared well agreement between one owner. 3. Or ask applicant if they want to proceed with option one or two.
- S. Makepeace: In the letter of authorization we could specify that if the applicant divides the land, they would be subject to the shared well agreement requirement. The fundamental thing here is that its one parcel.
- R. Noble: What constitutes a shared well? E. Mace: A well hooked up to 2 and not more than 3 homes or businesses requires shared well agreement similar to an easement or shared use agreement. Read definition of a shared well from Ordinance. The definition doesn't specify that it applies to separate parcels, but it infers this.
- K. Pitt: It sounds like both option 1 and 3 are acceptable as long as it has the disclaimer Seth mentioned.
- G. Smies: Should use match correct application? It seems first option is a better fit. If you change it to a shared well agreement it makes it easier to subdivide. In the back of my mind, I am thinking about which option best protects the groundwater. We need to make sure there is water there when someone develops a well.
- T. Wall-McDonald: I am thinking about 10-25 years from now. I am supportive of a process that is clear and prevents exploitation of the resources and that has integrity in terms of our role today. I just keep thinking about accountability. I don't know if there is a way to take staff recommendations and honor Georgia's comments and not be too punitive.
- C. Matt: In this case, do you interpret the shared well language to say it is directed toward separately owned parcels? This sounds like an individual well to me.
- K. Pitt: I don't see how that addresses Georgia and Teresa's concerns?
- G. Smies: Based on the definition, I am more comfortable with a shared well needing multiple parcels.
- C. Matt: If one person owns the entire lot a shared well is not required. If they did a shared agreement, who else signs it? There are no two parties to sign it.

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- R. Noble: Typically, a shared well would apply to two lots. As Seth suggested, if property was ever subdivided they would need a shared well agreement.
- S. Makepeace: We've also seen applicants apply for an individual well, but water may be used in a shop or a garage. When it's an individual parcel, and they have identified an ADU, if land is divided in the future, they would need to revisit with board for a shared well agreement.

2.3.3. Proposed shared well agreement

- E. Mace: Two applicants intend to subdivide and do a shared well agreement. They would be able to meet this shared well agreement requirements, but they can't meet it now for Part A, because the property is not subdivided yet. We could stipulate that they would need to provide shared well agreement when they file Part B. Part A gives applicant authorization to put well in. Part B comes back with description of "as built" well and use of the water. They don't get a water right until they get through Part B process. We could require their Part B application to include the shared well agreement. Can we authorize Part A when applicant has a proposed subdivision but condition Part B to require a shared well agreement to get their water right?

2.3.4. Extension & proposed shared well

- E. Mace: This application is a combination of two issues we discussed. The applicant may not have the house built and the water put to use in a year. They also have a proposed subdivision. If board agreed to solution in 2.3.1 and 2.3.3., this is a combination of those two. We are bringing this forward because the board wanted to consider these on a case-by-case basis.

2.3.5. Public Comment on discussion items

- No public comment

2.3.6. Possible Board action on discussion items

Motion by R. Noble on 2.3.1 that applicant must drill well within one year, but they do not need to put water to use within one year.

Second by K. Pitt

Vote result: Approved (5 to 0)

Motion by G. Smies on 2.3.2 that an individual well authorization is allowed if the secondary dwelling unit is on the same parcel as the primary dwelling unit.

Second by T. Wall-McDonald

K. Pitt abstains from vote

Vote result: Approved (4 to 0)

Motion by K. Pitt on 2.3.3. to authorize the drilling of a shared well when subdivision has not been completed but require a shared well agreement to be in place to authorize Part

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B. Nothing in this would allow any excess use of water.

Second by R. Noble

Vote result: Approved (5 to 0)

- E. Mace: The board's vote on 2.3.1 and 2.3.3 addresses the question in item 2.3.4.
- Ethan: You have given us direction to put these into a draft policy item for the board to consider in the future. Can we apply the guidance the board provided in 2.3.1, 2.3.2., and 2.3.3 and authorized these five applications?
- R. Noble: I would like to see the staff develop a list of policies and then staff uses that policy to review applications.
- K. Pitt: Can the public access these policies we are starting to develop?
- R. Pitt: This guidance could be put on the website.
- C. Matt: We need to document our guidance and be mindful we may need further legal interpretation. We may want to ask the tribe and state if any of this guidance should be put into the Ordinance.
- K. Pitt: I'd like to be able to track board decisions on these policies.
- T. Wall-McDonald: I want a really good record of our decision making and the basis for why we made the decisions we made including the circumstances.

2.4. General Interim Process Items

2.4.1. Process Update (Board-Anna Butterfield and DNRC-Ethan Mace)

- A. Butterfield: We have received 53 applications including ones the board has authorized. Folks are responsive and excited to get their approvals done. There has been less foot traffic in the office. I have had fewer phone calls. I haven't gotten many calls on the water court notice.

2.5. Sanitation and Subdivision Act relationship with MT DEQ (DNRC & CSKT)

2.5.1. Update, staff capacity, and possible solutions

- Melissa Schlichting (DNRC): As you know at last meeting, there was a request by an individual who has a pending application and DEQ was requiring a letter from Board to proceed with their review of the subdivision request. Several people from DNRC, Roger, and Clayton met with DEQ via zoom to talk about request and a process for moving forward. For years DNRC has had an MOU with DEQ to provide pre-determination letters. DNRC would conduct a water rights review as part of the subdivision process.
- R. Noble: I had a call with Kathy Olson at DNRC and she clarified that DNRC is making a determination of whether the applicant can get an exempt water right or if they will need a permit. DNRC is taking it to the next step. Now DNRC doesn't have jurisdiction on the Reservation.
- M. Schlichting: This predetermination is required by a DEQ administrative rule. DEQ indicated they would accept letters from the Board to be in this role to issue these types of letters. There may need to be an MOU with the Board. I have a meeting with DEQ staff tomorrow. My understanding is that DNRC would not be a part of the MOU, but DNRC

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may be available to provide technical assistance. There are several people with pending applications, and it would adversely affect people if the Board did not take action.

- Arne Wick (DNRC): It points to a need for water rights standards and policy documents. There are differences off reservation. This is a short-term focus on confirmation on a water right instead of a predetermination.
- E. Mace: There are a handful of these that fall into a complex category and some that are simple. The simple ones need someone to confirm that they have a valid water right and it would be used correctly in their simple proposed subdivision.
- K. Pitt: I am concerned about the board proceeding on this without legal advice.
- R. Noble: Gave citation for the rule and read a portion of rule. I would encourage us to continue to have conversations with DEQ. My take now is that this is beyond the purview of our mission. This is a simple thing. The developer can have a consultant look at if they have a water right. It's not our business to tell DEQ what to do. It's the applicant's responsibility to determine what they have and what is needed. Then they would know if they are covered by an existing water right or if they need to come in to apply for a new water right. That probably isn't what DNRC or DEQ wants to hear. I have thought a lot about it, but I think it's more important that technical staff work on the current tasks they have. We don't have other staff now to take on additional tasks now.
- G. Smies: Roger's suggestion would give us a path forward.
- C. Matt: The discussions are continuing, and I appreciate that. Fundamentally, what is our authority? It's not in the ordinance. I want to help, but we have to figure out how to do that technically and legally. Funding is going to be important. If we are going to do this, we would possibly need language added to the ordinance and add to our processes for funding as well. Authority, staffing, funding, and manpower are all important.
- C. Matt: Melissa, Are you comfortable helping us figure this out or would we be in a better position for the board to make a request to the state and tribe to provide direction to the board? The state and tribe have authority to fund this board.
- M. Schlichting: I want to assist the board to come up with something that would help. I would like to have the opportunity to continue talking with DEQ and talk with state technical staff about the funding piece and if the state could provide technical assistance on this. On Thursday, I can let you know if I need a formal request from the board to the state and tribe. I will see if I can try to work something out with the parties for the board to consider.

2.6. Request from Sanders County to discuss well permitting

- E. Mace: Sanders County is asking for time on your agenda for next Thursday. Sanders County has a well permitting process in place that is different than the DEQ issue. They try to ensure that wells meet setback requirements for septic systems. Their sanitarian would like to meet with the Board and explain their process and look for opportunities to integrate with the Board.
- C. Matt: This sounds like an informational piece. Are they looking for something from us?
- E. Mace: They would provide information and want to know if they need to coordinate with the Board. Its primarily informational and looking for effective ways to coordinate.

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- C. Matt: Are we good with that agenda item?
- Board members confirmed.

2.7. Office of the Engineer Operations (Board, CSKT, & DNRC)

2.7.1. Administrative assistance/Compliance Tech update

- M. Schlichting: We have draft job descriptions for administrative staff and compliance technicians. We are looking at combining those descriptions to get someone who is adaptable and flexible to fill both roles. We will work on revising and distributing to HR subcommittee.

2.7.2. Water Engineer/Manager update

- M. Schlichting: We have received five applications and I have forwarded these to the HR subcommittee. If we can meet next week we could cover both items. I am glad we have received applications for that job.

2.7.3. Moving grand opening to July 21, 2022

- A. Butterfield: Given the state of the office, we don't think it is ready for a grand opening.
- C. Matt: I think it makes sense to wait. It may need to be put off again until we are ready.
- Board agreed by consensus to postpone.

2.7.4. Building improvements update and possible funding request

- A. Butterfield: We could just install blinds on the lower windows for the time being. Honeycomb blinds come up to \$3000 plus which includes installation for all windows.
- G. Smies: I lived in the loft upstairs and I recommend getting whatever shades you can as soon as you can.
- C. Matt: Does board want to authorize full amounts for all blinds or just blinds on the bottom floor?
- K. Pitt: Let's get it done and get it done right.

Motion by T. Wall-McDonald to approved getting blinds on both floors.

Second by G. Smies

Vote result: Approved (5 to 0)

- A. Butterfield: I got a quote from Missoula Textiles. We think the larger room needs four rugs to dampen sound and then three smaller rugs downstairs. Missoula Textiles recommends getting them changed biweekly which would be \$135 per month.
- K. Pitt: Why change bi-weekly?
- A. Butterfield: It's for appearance issues. We would be renting rugs from them. In the summer we may not need to have them changed out that quickly.
- C. Matt: Do we have a regular cleaning? A. Butterfield: Cleaner is bi-weekly on Fridays.
- A. Butterfield: I didn't look at purchasing rugs because they get so dirty.
- G. Smies: Maybe we should compare the price to purchasing rugs

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- E. Mace: Even with cleaning, the rugs are still pretty dirty. Maybe we need to upgrade the cleaning agreement. I struggle with the monthly charge. Maybe it would be enough to have them changed once a month.
- M. Schlichting: We found the rugs Anna is talking about in a closet. I wouldn't rely on those rugs as good examples of how much cleaning they will need.
- C. Matt: Will someone take a look at the cleaning agreement to make sure rugs are included?
M. Schlichting: Yes
- A. Butterfield: The cleaner said her equipment was in another place, and she will get that back and may be able to clean better soon. I will look at the cost of purchasing.
- A. Butterfield: I also spoke with landlady about resolving issues with building. She said she would try to resolve some of them. To get a ramp, she said it has to be in front and we would need to go through Ronan Planning. She doesn't want a ramp in the back because of how it would affect the business in the back. I found doors in basement and need to get them installed.
- C. Matt: Let me know if you need me to assist with those conversations.
- A. Butterfield: We need art and plants for the office. Do any board members or partners have art or plants they would be willing to donate?
- K. Pitt: SKC has a very accomplished art department. You may want to talk with them.
- C. Matt: We can reach out to SKC and see if there is anything there. Anna is offering an opportunity to board members to contribute as well.

2.7.5. Public Comment on operations items (if Board action)
No public comments.

2.7.6. Possible Board action on operations items

3. Next steps

3.1. Set next general meeting and location

- Next meeting on Thursday in person. Meet weekly with every other meeting in person.
- K. Pitt: Rob and I will meet with the Flathead Lakers on July 11th. Thank you Roger for sharing the presentation.

3.2. Choose meeting topics

4. Public Comment

5. End meeting (Board Chair)

- Adjourn at 4:05

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