

**DRAFT W2ASACT MEETING NOTES**

Meeting on October 4, 2022, 10 am to 12 pm

Dept. of Natural Resources & Conservation, 1539 11<sup>th</sup> Ave, Helena, Montana  
First Floor Montana Conference Room and Zoom

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**Zoom Meeting participants:**

1	Alisha Oellermann, Commerce	21	Rick Duncan, DNRC
2	Amy Personette, DNRC	22	Samantha Kemp, DNRC
3	Ashley Kroon, UDSA-RD	23	Sandie Koenig, DEQ
4	Autumn Coleman, DNRC	24	Seth Shter, DNRC
5	Christine Abelmann, DEQ	25	Shawna Swanz, DNRC
6	David Larson , DNRC	26	Sonja Hoeglund, DNRC
7	Denver Fraser , DEQ	27	Steve Lipetzky, DEQ
8	Diana Hoy, DNRC	28	Susan Brurud, Bear Paw Dev.
9	Erik Ingman, Centerville Schools	29	Tina Salazar, Commerce
10	Erin Wall, DNRC	30	14067882089
11	J Springer	31	cba440
12	John Camden, MRWS	32	cb5588
13	Katherine Certalic, DNRC	33	
14	Katy Callon, LFD	34	
15	Kristi Kline, MRWS	35	
16	Mark Smith, DEQ	36	
17	Michelle McNamee, DNRC	37	
18	Mike Abrahamson, DEQ	38	
19	Rebecca Shaw-Quinones, Interstate	39	
20	Renee Lemon, Commerce	40	

**At DNRC:**

Anna Miller, DNRC	Steve Troendle, USDA - RD
Denise Cook, DNRC	Mike Henshaw, KLJ
Melissa Downing, DRN	Rika Lashley, Morrison-Maierle
Lindsay Volpe, DNRC	Chad Thompson, MAP
Greg Montgomery, DEQ	Lance Goodman, MAP
Erinn Zindt, MAP	

**Acronyms:**

AIS – American Iron & Steel  
APE – Advances Pump & Equipment  
ARPA – American Rescue Plan Act of 2021  
ARRA – American Recovery & Reinvestment Act of 2009

AWWA – American Water Works Association  
BABA – Build America, Buy American  
BIL – Bipartisan Infrastructure Plan  
BOI – Montana Department of Commerce, Board of Investments  
CARDD – Conservation & Resource Development Division, DNRC  
CDBG – Community Development Block Grant Program, MT Department of Commerce  
CMRWA – Central Montana Regional Water Authority  
COVID-19 – Corona Virus 2019  
DEQ – Montana Department of Environmental Quality  
DNRC – Montana Department of Natural Resources & Conservation  
GWE – Great West Engineering  
HDR – HDR Engineering  
HUD – Housing and Urban Development  
IAC – Infrastructure Advisory Commission (ARPA)  
KLJ – Kadmas Lee & Jackson Engineering  
LFD – Montana State Legislative Fiscal Division  
MAP – Midwest Assistance Program  
MEPA – Montana Environmental Policy Act  
MISC – Montana Invasive Species Council  
MRWS – Montana Rural Water Systems  
RATES – Rural & Tribal Environmental Solutions  
RDG – Reclamation Development Grant Program, DNRC  
RRGL – Renewable Resource Grant and Loan Program, DNRC  
SRF (DNRC) – Wastewater State Revolving Fund Loan Program  
TSEP – Treasure State Endowment Program, MT Department of Commerce – Now MSEP  
USDA - RD – United States Department of Agriculture – Rural Development  
WASACT – Water & Solid Waste Action Coordinating Team, Montana  
WRF (DNRC) – Drinking Water State Revolving Fund Loan Program

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#### Call to Order, Sign-in Sheet, Agenda Changes

Anna Miller, Chair, called the scheduled meeting of the Water, Wastewater and Solid Waste Action Coordinating Team (W2ASACT) to order at 10:00 am, on Tuesday, October 4, 2022. Those present at DNRC introduced themselves. According to the Zoom report, there were a total of 40 participants on the meeting. The draft minutes from the July 12, 2022, meeting, which were distributed to those present at DNRC and emailed to the WASACT govdelivery group last week, were approved and adopted by those attending with no revisions. There were no changes made to today's agenda.

#### **Topics of Discussion: Build American, Buy American Act (BABA) Lead Service Lines**

Discussion began on BABA

Mark Smith said with BABA, everything has to be domestically produced except for cement and aggregate. With respect to the Water and Wastewater SRF program, there are two waivers. One is based on the project cost, so small projects. If it is less than \$250,000, BABA does not apply now. You still have the legacy AIS requirement and all others as our pragmatic requirements. The other waiver issued was if a project was in the planning stages prior to the May 14, 2022, implementation date. They would have the waiver exempts requirements for those so that can be planning stage. Or if you have a PER written or hired an engineer, define a scope of work or if you have strategic plans for your water system and so forth, it would all have to be documented. What had to have occurred was some sort of planning effort for that project prior to the May 14 implementation date. So those are the high spots of the two waivers.

Anna said one thing to remember is in Montana, we do an awful lot of multiple funded projects. For example, we are working with "town X" and they are doing a drinking water project. RD's loan is \$3M and they have a MCEP grant, and they have our RRGL grant. Let's say SRF is putting in \$2M. Because RD is putting in the most money, they would be the lead agency on the BABA requirements.

With the waivers, Anna suggested if we have a project where SRF is the lead, we want to make sure we've talked about the waivers and say we looked at the BABA. If it does not apply because we have our planning grant. Put a note in the file and memorialize so that in 2 years when EPA or Rural Development or whoever comes to audit, that we've looked at that and that its done.

Anna suspects there be a fairly large transition. Once we are through this waiver time we will look at what we are going to do as far as American products. If you can't find the pumps that go with your current equipment, or you can't get delivery of pipe by a certain time, or its fifty percent higher than if you buy a different kind of pipe. We will have to deal with those things as we go so keep that kind of step in mind.

Anna asked Steve and Ashley to talk about RD waivers and their process with BABA.

Ashley said as of today (Oct 4, 2022), RD has two waivers approved. The first is an adjustment period waiver, which was the perspective August fourth and that expires in six months. That is for us to figure out how to implement the new BABA requirements, which as Mark said, everything has to be domestic, except for aggregate and cement materials. That is the first waiver and that does cover subsequent obligations. We have a project that was obligated prior to May 14, 2022, and then for whatever reason, they

end up needing additional funds from us. This adjustment period waiver will cover a subsequent obligation.

The second waiver just came out last month on September 13, 2022, and it does not expire. This is the small grants and minor components waiver that's very similar to the one we have under the AIS requirements. She will put a link in the chat for the website that has all of the information about these waivers. Links to the waivers were sent in a govdelivery email to WASACT group previously. Lindsay will make sure those links get posted on the WASACT website.

Anna said one thing to remember is like with our regional water projects, if the Bureau of Reclamation (BOR) in say a Central Montana or North Central regional water project, if BOR is putting in \$10M and one of the funders is putting in \$3M then BOR would be the lead agency on the BABA. Rika asked if the lead agency's waivers apply and none of the others and Anna replied yes. Lindsay said the amount of funding determines the lead on a project. Ashley said the memo released from (OMB) shortly after the BABA regulations came out and that memo outlines the lead agency situation. Ashley will email the memo/link to Rika. Sandie Koenig confirmed that the lead agency's waivers or lack thereof, apply. Ashley concurred.

Anna added that since this group will be working with the engineers, at some point we will have to look at possible adjustments to our 0900 section of the Uniform Application engineering documents to make sure that we cover those things in the BABA so that committee of engineers will be looking at that as we move forward and get through that six-month period. Ashley said RD has a draft of edits to bulletin 1780-35 which is the bulletin that has the AIS requirements in it, and we can use those on a case-by-case basis.

Ashley said she understands that by their national office engineering staff is that they are working on updating that bulletin officially to have the new requirements for domestic preference included. In the interim if something comes up, whatever reason between now and when that adjustment period waiver on the RD side expires, please let her know and she can get those edits out to you. Anna suggested that as you get that info or links, we have Lindsay put that on the WASACT website, so everybody has access to it.

Mike Abrahamson asked Ashley as you approach the 6-month expiration, which is like February, what happens if projects are in design say in late January? How does that transition occur for your projects? Does that mean they have to comply because they would not go out to bid until after that? Yes, on RD's side we're very clear that the applicability of the BABA requirements is based on the date of obligation, so if there is a project that was obligated prior to May 14 of this year, then it's exempt from the popular

requirements based on our date of obligation. And if there is something that is not obligated today for example, it would also be exempt because we are in that adjustment waiver period time. But if something gets obligated, let's say in April of next year, which would be after the adjustment period waiver expires, then that project would be subject to the BABA requirements, based on the date of obligation. Mike added unless it involved SRF as well, which was in the planning prior to May 14, and we had more money in that game right? Ashley added that it's going to be a lot of balancing there for us to try to work together agencies to make sure we coordinate on the waivers. RD only has the two waivers, and we are a bit different than EPA and SRF because we have other funding programs throughout USDA. Many waivers happening on the RD side are at an agency level, not just RD, they are USDA. We've heard that hopefully there is going to be a subsequent obligation waiver and we may get some waivers for components that we know are not made in the US. We are looking at wastewater pumps that may not be made in the US. The housing program does not care about that. That is why we have the adjustment period waiver to figure out how it is going to get implemented on our end. And how we will work with other federal agencies.

Mark Smith asked Ashley what constitutes obligation of funds from your perspective? From RD's point of view, is that your equivalent of a binding commitment or what is the actual decision of record or what truly obligates those? Steve Troendle replied that we are looking at when we say obligation of funds, is that we have done all our underwriting and, we have the funds in our state account. Then we issue a letter of conditions, the customer reviews the letter, gives back the two forms with their signature. One of the forms is a good faith intent to the letter of conditions and the other is a request for the funds, which is input by his state loan technician into the computer for processing. The next day it puts out an obligation that gives him the date of obligation and at that point the funds are set aside under the customer's Tax ID Number for that specific project. That is the date of obligation that we work with at RD. Mark said that we will need to confirm with RD on the date if that's coming into place.

#### Discussion began on Lead Service Lines

Anna said there is an initiative that the EPA put forth through the states through the revolving fund program to get money out to replace lead service lines, not only to replace lines, but also to get an inventory of lead service lines. Greg Montgomery from DEQ is here to explain. We will get Greg's contact info out on the website and in the meeting notes.

Greg Montgomery began by saying the EPA updated the Lead in Copper Rule last year December of 2021. That rule applies to all community public water supplies. There are many significant new requirements in that rule. One of the biggest is the requirement for a lead service line inventory. October 16, 2024 is the actual implementation date for

the new rule. That date is also the that the inventory is due to be submitted to DEQ. All community systems must inventory all the service lines that are connected to their distribution system, regardless of ownership.

By the end of this month (October) we will be coming out with guidance documents and templates of how to this can be done. EPA came out with their guidance documents in August of this year (2022), on how to do an inventory. The inventory template will be an Excel-based template that we will send to communities and may be on DEQ's website as well. Communities will fill out the template and send back to us and we will put into a GIS database and eventually upload to EPA. The EPA is looking for four main categories in this inventory whether the service line is lead or not. If there is or was lead pipe upstream it's treated as a lead service line.

Some of the other inventory requirements relate to community systems. For a system with a population over 50,000, a population does have to be available online. For communities/systems less than 50,000 the inventory has to be publicly accessible. Information included in the inventory is the type of line, are there connectors, date(s) installed and materials within a particular customer's home.

Congress set aside money. Montana received \$28M per year for next 5 years. The IUP needs to show projects totaling the amount each year. Request for projects was sent out. Add to project priority list for FY 2022 funding. November 30 is the deadline for survey for their IUP. Planning grants and ARPA funds can be used. Lindsay asked if planning grant money is part of the \$28M?

Anna said what funding is needed to help communities. Get the inventory done and then talk to us. Ann Kulczyk added that lead in distribution lines, RD considers that a health and safety issue. Steve added that up to 75% of grants are to help with health and safety issues. There are also improvements on private property doing side service replacements. A single-family housing program for say, older homeowners, can get up \$7,500 to replace pipe to get rid of lead. One in eight is eligible. Is lead gooseneck included? Greg replied yes.

Rob Ashton asked how we will know of lead lines? Greg will be at Fall water school to educate and answer questions. Talk it over with utility companies. We will have options and ways around entering buildings. Anna asked about a home built before or after the ban. Greg said the ban started in 1986. In December of 1987 it was adopted so homes built after should not have lead lines.

John Camden suggested get-together to work with public water supply. Lindsay added that RRGL has private grants funding, and we work with private systems – is there help for them? Greg said funding can be used regardless of ownership. We cannot do

partial line replacement. Steve noted that one person could hold up an entire project by not granting and easement. Denver Frasier asked about where pipe enters the house. Greg replied there are two parts of the service line. 1) main to curb, and 2) curb to home. Unknown lines are treated as being lead. There could be more work down the road. Lead and copper rule was revised last year by the EPA and will be revised again.

Anna said that communities should be receiving surveys for the IUP, and the deadline is November 30. Get your project on the list. We will be looking at funding. Pay attention to RD for health and safety funding help. Also, there is the fall water school and the MRWS conference in March of 2023. Greg suggested looking at the Lead & Copper Rule website and look for DEQ trainings and webinars.

Steve asked when will funding be available to do construction and Anna replied by 2023 construction season. Greg's contact information will be put on the WASACT website. His phone number is (406) 444-5316.

A question was raised on emerging contaminants. Mark Smith had no information yet. We will work on that after the lead in service lines gets started. Forever chemicals and emerging contaminants will be taken on later. We have to develop and IUP, etc.

Mike Abrahamson said funding on wastewater side has to go to capital improvements and may prove to be challenging. Anna added there will be more to come on that.

In response to the flooding in Montana this spring, FEMA is working with affected communities. We could do construction loans, then FEMA funding could fund later projects/phases. There is a 25% non-federal match requirement. Anna added that we will work with people. Steve noted that RD has not had an application completed for flooding. We can use our 25% match to help. RD cannot pre-loan funds. There is an emergency RW assistant grant available. This can be due to flood damage for \$150K or operator error. Anna suggested to be aware of this when working with communities. People seeking funding help may not be familiar.

## **Program Updates**

### Lindsay Volpe, DNRC

There were 70 RRGL applications. No meeting has yet been scheduled with the Governor for approval. Work is being done on the Governor's budget book. Look online for more info. Governor Gianforte will approve after RRG folks meet with him. Anna added that that will build House Bill 6. Lindsay mentioned a new program, Submittables, that DNRC is migrating to for grants. Planning grants will begin in January.

John Camden, MRWS

John attended the National Water Pro conference. Staff from Montana Rural Water won \$5K plus and additional \$2.5K to purchase equipment. John won a \$500 seafood gift certificate. Deliveries went from 100 hours to 300 hours of training. Apprenticeship program is moving forward. March 22, 2023 is the next Montana Rural Water Systems conference. Operations Specialist. Don Okamel (sic) is the new National President. He serves for 2 years.

Steven Troendle, USDA-RD

The continuing resolution passed so staff can keep working. In 22 years, RD has invested \$48M in the state. \$28M in community facilities and \$20M in water and wastewater projects. Due to short time frame, we are not seeing as many applications. We need \$8M to \$10M in applications complete by April 2023. We have 4 applications on hold and other 2 should move forward. There is a new Median Household Income Survey. Programs have population limits. There is arguing over which MDI to use. We have the 2020, not the 2010 at some point. We spent 83% of loan money and 217% of grant funds. We will have planning grant money and will partner with anyone working with RRGL, which is very beneficial. Lindsay asked if you see funding needs affected by ARPA and is this happening in other states? The answer was yes.

Katy Callon, LFD

Regarding Legislative issues, there is a meeting December 8. Katy says things are looking good. Anna added that the state is in a good position. There is ARPA money for RRG and MCEP and more money in planning. Anna asked if after November 8 will we know who will be on committees? Katy said yes.

Autumn Coleman, DNRC

Autumn reminded all that Minimum Allocation grant applications deadline is November 1, 2022. Commerce is helping people to apply. Recommendations are due to IAC before January 1, 2023. It is challenging to stay organized. If you have questions on funding, contact Commerce. Mid November will be the next IAC meeting. By January we will have a better picture of projects funding.

Autumn noted that Katherine Certalic and Shawna Swanz are on the way to League of Cities and Towns conference.

Mark Smith said in new IUP year, DEQ had base cap grant and supplemental grant awarded. We have funds available, in another cycle.

Mike Abrahamson , DEQ

Mike said on the wastewater side, they are down 50% on what we loan. They are down one employee with Terry Campbell retiring.

Anna added Cristine Abelmann is on staff for ARPA projects.

Rick Duncan, DNRC Regional Water System Program Manager

**Fort Peck-Dry Prairie** - The Fort Peck Tribes continue work in the NW portion of the Reservation with branch main segments. After those are complete, smaller service mains and service lines will be all that remains to construct. Additional planned retrofits to the water treatment plant (WTP) are proceeding, with operating efficiencies improving due to this work. (As previously reported) US Bureau of Reclamation has completed the funding ceiling “recalculation” for the project, both on- and off-Reservation. Both Dry Prairie and the Fort Peck Tribes will be able to complete the project without having to go back to Congress with a reauthorization request. For Dry Prairie, the Opheim mainline project (bid last year) is proceeding, as well as branch main projects for the Scobey, Flaxville, Outlook and Westby areas. Plans for providing water service to the Pines cabins, a group of previously recreational use homes now being converted to year-round residences, is in the planning stages.

**Rocky Boy's-North Central** - A copy of the quarterly newsletter, which was received yesterday by DNRC, is available in electronic form to anyone interested. Progress on Phase 1 of the WTP continues; the 11 MGD phase is to be complete by mid-2023. The Chippewa-Cree Construction Corporation (CCCC) is installing Phase 4 Core pipeline, with materials for Phase 5 arriving on site, and Phase 6 about to be bid (materials). The North Central Authority (NCMRWA) currently has the Loma and Big Sandy segments under construction, with pipe and other materials arriving daily. Planning and design of the Havre segment are taking place; there has been some difficulty in obtaining easements from a few landowners for the preferred route. The Hill County Water District segment is next on the schedule. There needs to be a 1.25 MGD cumulative demand created in order for Phase 1 of the WTP to operate as designed. The repricing and re-indexing of costs on this project, in contrast to Fort Peck – Dry Prairie, are going to be a major concern/hurdle.

**Central Montana RWA – the Judith-Musselshell regional system** - Phase I project is under construction, with pipeline installation from Ubet wellfield to Harlowton well under way. Completion of that work is anticipated by mid- 2023. Supply chain issues have been affecting progress on the water storage tank and metering station. Phase 2 Wellfield-to-Roundup is still in the design phase, but all easements have now been obtained, and that 70+-mile pipeline phase will be out for bids early-to-mid 2023. The

\$50 million-plus phase financing is being worked out with several funding agencies. LiDAR for Phases 3, 3A, and 4 was completed earlier in the summer.

**Dry-Redwater** - The \$5 million authorized by Congress in late 2020 for Reclamation to complete the revised feasibility study for this proposed project may be resolved but was not previously appropriated. The good news is that the Dry-Redwater Authority has negotiated with USBR, and previous grant and loan funds made available have qualified for match for the total amount. The Authority has approached the Fort Peck Tribes about possibly buying water for northern Sheridan and McCone Counties, but the Tribes are not committing at this time because they do not know the possible impacts this would have on completing their system. The Authority is working with the Little Shell Tribe as to a possible water supply system for Hell Creek Campground, Jordan, and rural areas in between. There is a possibility of receipt of funds from other Federal agencies for a smaller WTP on the east side, to be located on the Yellowstone.

Anna added that BIL and RD are helping to fund rural water projects.

Erinn Zindt, MAP

We have 5 new employees. Working under 8 contracts and grants. Will be helping with lead lines; utilities will need something. Anna suggested sending Denise info on new personnel.

Rene Lemon, Commerce

They are busy with ARPA. Staff is finished reviewing 50 grant requests. List is due to Governor Gianforte tomorrow. List published mid-November. October 5, 2022, deadline for public and community facilities and housing. Oct 14, 2022 is the Community Development deadline. Susan B and Tina S were helping with ARPA and heading to League of Cities and Towns. Anna said people can call Rene's staff for help with applications on ARPA. Anna added that RD, MAP and Commerce work well together.

Anna noted that Steve Lipetzky is new with DEQ.

Tanya said abstracts are due November 4, 2022, for conference. We need WASACT workshop info by Thanksgiving.

Uniform Application: David Larson, DNRC

David would like to get a committee back together and he may send out an email to reach out.

Website: Lindsay Volpe, DNRC

DNRC will compile website and will have a draft done by the end of October 2022. Items on the site not used will be cleaned up. Community needs will be added. We will look at the website from the user side. Lindsay will post updates. Let her know if issues and questions on the website.

#### Congressional Update

Anna said the federal government is funded through December 16.

#### **End of updates**

Next WASACT meeting is scheduled for January 10, 2023

Zoom meeting was dropped at 11:47.

Minutes taken by Denise Cook and reviewed by Anna Miller and Rick Duncan.