

APRIL 27, 2011

CSKT-Montana Water Rights Negotiation Session

Presentation on:

Appropriation Rights Allowed

Domestic Allowances

Registration of Existing Unrecorded Uses

<http://www.dnrc.mt.gov/rwrcc/default.asp>

Unitary Administration

- ▣ One regulatory body (“Water Management Board”)
- ▣ One set of rules (“The Ordinance” or “Law of Administration”)
- ▣ Board is responsible for water administration, including by hiring and supervising a Water Engineer and the Engineer’s staff

New Appropriations and Changes

□ DRAFT 1-1-107. Appropriations Rights Allowed

- (1) The following appropriation rights or changes in appropriation rights may be authorized by the Board pursuant to the Compact and this Ordinance:
 - (a) **Domestic Allowances** as set forth in Section 2-2-117 of this Ordinance;
 - (b) Groundwater appropriations for **stock water** development as set forth in Section XX of this Ordinance;
 - (c) Groundwater appropriations for **Redundant or Substitute Wells** as set forth in Section 2-2-114 of this Ordinance;
 - (d) Permits for **non-consumptive uses**, including, but not limited to, hydropower generation and not including flow-through ponds;
 - (e) Authorizations for **non-consumptive geothermal heating or cooling exchange Wells** as set forth in Section 2-2-119 of this Ordinance;
 - (f) **Temporary Emergency Appropriations** as set forth in Section 2-2-222 of this Ordinance;
 - (g) Uses of **Replacement Water** as set forth in Section 2-2-118 of this Ordinance;
 - (h) [Storage of high spring flows;]
 - (i) **New surface or groundwater appropriations** whose net depletions are offset by **Mitigation Water** [or subsurface aquifer recharge] in a manner that addresses adverse effect to Existing Uses from the estimated new [depletion]
 - (j) **Changes in Existing Use** except for those uses authorized under subsections (1)(a), (1)(b), (1)(c), (1)(d), (1)(e), 1(f) or (1)(j) of this section or those Existing Uses exempt from the permitting requirements of MCA 85-2-306 or from the claim filing requirements of MCA 85-2-221 as set forth in MCA 85-2-222;
 - (k) Change of Existing Use as a result of **Saved Water** as set forth in Section XX of this Ordinance;
 - (l) Permits to appropriate **surface water** to conduct response actions related to **natural resource restoration** required for:
 - (i) remedial actions pursuant to the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9601, et seq.;
 - (ii) aquatic resource activities carried out in compliance with and as required by the federal Clean Water Act of 1977, 33 U.S.C. 1251 through 1387; or
 - (iii) remedial actions taken pursuant to Title 75, chapter 10, part 7 [*or applicable provisions of Tribal law*].
 - (iv) No permit issued pursuant to subsection (1)(l) of this section may be used for dilution.
 - (m) uses of **surface water** for or by a **municipality**.
- (2) Except as set forth in subsection (1) of this section, the Board may not grant a permit or other authorization to appropriate surface water or Groundwater within the exterior boundaries of the Flathead Indian Reservation.

Domestic Wells

DRAFT 2-2-117

- Individual Wells: up to a maximum of **35gpm** and **2.4 acre-feet per year** and irrigation of no more than **0.7 acres** (irrigation limit identified by reference to fire safety standards)
 - **NO** metering requirement

- Shared Wells (with shared well agreement): Up to a maximum of **35 gpm** and **2.4 afy** and irrigation of no more than **0.5 acres** total for 2 users and 0.75 acres total for 3 users
 - **NO** metering requirement

- Developments: Up to a maximum of **35gpm** and **10 afy** (and individual irrigation of no more than **0.25 acres** per plot)
 - **Metering requirement**

“Development” means contiguous or closely grouped parcels of land under the same or affiliated ownership, including, but not limited to, housing subdivisions and/or any combination of business and residential units [that are simultaneously but not consecutively platted].

No mitigation requirements for Domestic Allowances

Domestic Allowance Process – 1

- 1) Apply for Domestic Allowance (requires a form and a fee – amount to be determined)
- 2) Water Engineer has 45 days to approve the application or return it as defective
 - An applicant has 30 days to resubmit an application returned as defective
- 3) If Engineer fails to act within 45 days, the application is deemed approved

Form "A for 2-2-117"

(Pursuant to Unitary Water Code § 2-2-117)

FLATHEAD RESERVATION
REQUEST FOR
APPROVAL TO DEVELOP A DOMESTIC ALLOWANCE

Use for a new use of groundwater for domestic purposes that fits one of the categories in Section 1 below.

Check all appropriate boxes and fill in each blank. If more space is needed, attach properly labeled additional information. To avoid processing delays, submit all required information.

FILING FEE: \$???

Request # _____ Basin _____

Date Rec'd _____

Time _____ AM / PM

Rec'd By _____

Fee Rec'd _____ Check # _____

Refund _____ Date _____

Before drilling a well or developing a spring, an appropriator must file this form and receive approval to develop a Domestic Allowance from the Water Engineer's Office of the Flathead Reservation Unitary Water Management Board. Special Identified Groundwater Management Areas may stipulate Domestic Allowance restrictions not covered in § 2-2-117; check with the Engineer's Office for specific listings and restrictions.

1. PROPOSED DEVELOPMENT

- Individual Domestic Allowance** (§ 2-2-117 (6)) (1 household with up to 35 gpm and 2.4 acre-feet with no more than 0.7 acre lawn & garden)
- Shared Domestic Allowance** (§ 2-2-117 (7)) (2 or 3 households with up to 35 gpm and 2.4 acre-feet with no more than 0.75 acre total lawn & garden)
You must attach a copy of the shared well agreement.
- Developed Domestic Allowance** (§ 2-2-117 (8)) (development with up to 35 gpm and 10 acre-feet with no more than 0.25 acre lawn & garden per establishment)
You must attach a copy of the shared well agreement, a description of the measuring device to be used for annual reporting requirements, and a copy of the development plan, plat, or equivalent as required by the associated county government.

If you did not mark one of the boxes above, you cannot use this form. You will need to use Form ___ Flathead Reservation Permit Application. See UWC § 2-2-117 for full details of domestic allowances.

2. NAME OF APPLICANT _____

Mailing Address _____

City / Town _____ State _____ Zip _____

Cell Phone _____ Work Phone _____ Home Phone _____

3. PROPOSED SOURCE OF WATER SUPPLY

Well(s)

Developed Spring(s) (must be fully enclosed)

**Note: Pits, pit-dams, constructed ponds, and reservoirs are not permitted under UWC § 2-2-117.*

Please describe your proposed appropriation works including anticipated Well Shaft Casing Description.

4. PROPOSED BENEFICIAL USE

DOMESTIC Number of homes supplied _____

Year round use? Yes No If no, from _____ to _____, inclusive each year

LAWN & GARDEN Total size of lawn and/or garden—length X width or total acreage _____

April 1—October 31 Yes No If no, from _____ to _____, inclusive each year

STOCK Number and type _____

(i.e. 2 horses) Year round use? Yes No If no, from _____ to _____, inclusive each year

FIRE SYSTEM Is a residential fire system required? Yes No If so, flow rate required _____

5. PROPOSED POINT OF DIVERSION (Must include Latitude and Longitude Coordinates)

LATITUDE _____ LONGITUDE _____
____ 1/4 ____ 1/4 ____ 1/4 Section _____ Twp _____ N/S Rge _____ E/W County _____
Lot _____ Block _____ Tract No. _____ Subdivision Name _____
Government Lot No. _____ COS No. _____
Street Address, including City/State/Zip Code _____

6. COMBINATION OR SHARED DEVELOPMENT

Will this development be used in combination with another well or spring? Yes No

If yes, please attach a separate sheet listing additional Points of Diversion and explain how the development is used.

7. PROPOSED PLACE OF USE

Geocode of the place of use (17 digits) _____

If there are multiple places of use, list the geocode for each parcel on an attached sheet. The geocodes can be found at the County Clerk and Records Office or by visiting <http://gis.mt.gov/>.

Is the place where water is used the same as the point of diversion? Yes No

If no, enter the place of use land description below. If more than one place of use, please attach a separate sheet with additional land descriptions.

____ 1/4 ____ 1/4 ____ 1/4 Section _____ Twp _____ N/S Rge _____ E/W County _____
Lot _____ Block _____ Tract No. _____ Subdivision Name _____
Government Lot No. _____ COS No. _____
Street Address, including City/State/Zip Code _____

8. MAP

Attach a site-map showing the location of all proposed wells including latitude and longitude in decimal degrees. The map must also show a minimum of 500 feet in radius around the proposed well(s) or spring(s) and include all of the following (existing or proposed by the applicant): well(s), developed springs, sewage facilities, buildings, well connections to buildings, property lines, property ownerships, irrigated acres per lot or unit, any and all means of conveyance for all water rights in the area, all water right points of diversions, and all surface water features.

9. AFFIDAVIT OF OWNERSHIP OR WRITTEN CONSENT

I have attached proof that I have possessory interest in the property where the water is proposed to be put to beneficial use and I have the exclusive property rights in the ground water development works OR I have attached written consent of the person owning the ground water development works and/or the person with possessory interest in the land where the water is to be put to beneficial use. UWC § 2-2-117

The statements appearing here are to the best of my knowledge true and correct.

Appropriator's Signature _____

Date: _____

Appropriator's Signature _____

Date: _____

Upon receipt of this form, the Water Engineer's Office shall review the application within 45 days and may either approve the domestic allowance or return a defective application to the applicant, together with the reasons for returning it, affording the applicant the opportunity to correct deficiencies. If the Water Engineer's Office does not approve or return an application within the 45 day review period, the application shall be deemed approved.

APPROVAL TO DEVELOP A DOMESTIC ALLOWANCE

Engineer's Office Authorization _____

Date: _____

After completion of the project, Applicant must file an acceptable Form B to obtain a Domestic Allowance Certificate. This authorization is valid for 365 days. A correct and complete Form B is not submitted within 365 days, this authorization will be deemed invalid.

Domestic Allowance Process – 2

- ▣ Upon approval, applicant may develop the well
 - Must be developed within one year of issuance of approval

- ▣ Must file a notice of completion and a well log report with the Board within 120 days of drilling the well for the appropriation to be valid

**FLATHEAD RESERVATION
NOTICE OF DOMESTIC ALLOWANCE COMPLETION**

Use after the Office of the Water Engineer has approved the
Request for Development (Form A)

Check all appropriate boxes and fill in each blank. If more space is needed, attach properly labeled additional information. To avoid processing delays, submit all required information.

FILING FEE: \$???

Completion # _____ Basin _____

Priority Date _____

Time _____ AM / PM

Rec'd By _____

Fee Rec'd _____ Check # _____

Refund _____ Date _____

This form must be filed within 120 days of completing the pre-approved appropriation works. The Domestic Allowance becomes valid after filing of a correct and complete Notice of Domestic Allowance Completion.

1. **REQUEST NUMBER** (From Approved "Request for Approval to Develop a Domestic Allowance") _____

2. **DEVELOPMENT**

- Individual Domestic Allowance (§ 2-2-117 (6)) (1 household with up to 35 gpm and 2.4 acre-feet with no more than 0.7 acre lawn & garden)
- Shared Domestic Allowance (§ 2-2-117 (7)) (2 or 3 households with up to 35 gpm and 2.4 acre-feet with no more than 0.75 acre total lawn & garden)
- Developed Domestic Allowance (§ 2-2-117 (8)) (development with up to 35 gpm and 10 acre-feet with no more than 0.25 acre lawn & garden per establishment)

3. **NAME OF APPLICANT** _____

Mailing Address _____

City / Town _____ State _____ Zip _____

Cell Phone _____ Work Phone _____ Home Phone _____

4. SOURCE OF WATER SUPPLY

Well(s) A copy of your Well Log(s) must be attached.

Developed Spring(s) Please describe your appropriation works including Well Shaft Casing Description.

5. FLOW RATE / PUMP INFORMATION

FLOW RATE USED _____ GPM PUMP SIZE (If present) _____ HP
DEPTH OF PUMP INTAKE _____ FT PUMP MAKE/MODEL (If available) _____

6. BENEFICIAL USE

DOMESTIC Number of homes supplied _____
Year round use? Yes No If no, from _____ to _____, inclusive each year

LAWN & GARDEN Total size of lawn and/or garden—length X width or total acreage _____
April 1—October 31 Yes No If no, from _____ to _____, inclusive each year

STOCK Number and type _____
(i.e. 2 horses) Year round use? Yes No If no, from _____ to _____, inclusive each year

FIRE SYSTEM Is a residential fire system required? Yes No If so, flow rate required _____

7. POINT OF DIVERSION (Must include Latitude and Longitude Coordinates)

LATITUDE _____ LONGITUDE _____
____ 1/4 ____ 1/4 ____ 1/4 Section _____ Twp _____ N/S Rge _____ E/W County _____
Lot _____ Block _____ Tract No. _____ Subdivision Name _____
Government Lot No. _____ COS No. _____
Street Address, including City/State/Zip Code _____

8. COMBINATION OR SHARED DEVELOPMENT

Is this development being used in combination with another well or spring? Yes No

If yes, please attach a separate sheet listing additional Points of Diversion and explain how the development is used.

9. PLACE OF USE

Geocode of the place of use (17 digits) _____

If there are multiple places of use, list the geocode for each parcel on an attached sheet. The geocodes can be found at the County Clerk and Recorders Office or by visiting <http://qis.mt.gov/>.

Is the place where water is used the same as the point of diversion? Yes No

If no, enter the place of use land description below. If more than one place of use, please attach a separate sheet with additional land descriptions.

____ 1/4 ____ 1/4 ____ 1/4 Section _____ Twp _____ N/S Rge _____ E/W County _____
Lot _____ Block _____ Tract No. _____ Subdivision Name _____
Government Lot No. _____ COS No. _____
Street Address, including City/State/Zip Code _____

10. AFFIDAVIT

I affirm the information provided for this Notice of Completion is to the best of my knowledge true and correct.

Applicant's Signature _____

Date _____

Applicant's Signature _____

Date _____

Applicant's Signature _____

Date _____

State of Montana

County of _____

Signed or acknowledged before me on _____ by _____

Notary's Signature _____

Notary's Name (Printed) _____

Notary public for the State of _____

Residing at _____

My commission expires _____

Affix Notarial Seal/Stamp Above

Other Categories of New Authorized Uses - 1

- Groundwater appropriations for Redundant or Substitute Wells
- Permits for non-consumptive uses, including, but not limited to, hydropower generation and not including flow-through ponds
- Authorizations for non-consumptive geothermal heating or cooling exchange Wells
- Temporary Emergency Appropriations
- Uses of surface water for or by a municipality
- Permits to appropriate surface water to conduct response actions related to natural resource restoration required for various types of environmental remediation (e.g. Clean Water Act, CERCLA)

Other Categories of New Authorized Uses - 2

- ▣ Uses of Saved Water

- ▣ Uses of Replacement Water
 - Replacement Water= the water from the mainstem of the Flathead River backstopped by releases from Hungry Horse Reservoir
 - Replacement Water is an important component as part of the Tribes' commitment to protect existing verified water users

Mitigation

- ▣ New surface or groundwater appropriations whose net depletions are offset by Mitigation Water [or subsurface aquifer recharge] in a manner that addresses adverse effect to Existing Uses from the estimated new depletion
 - If a domestic allowance or other exceptions do not provide for a need, larger new uses may be developed with appropriate mitigation

Changes of Existing Rights

- ▣ Changes allowed of all rights with certain limited exceptions (e.g. small domestic and stock groundwater uses; temporary emergency appropriations; redundant/substitute wells)
 - Changes may include:
 - ▣ Purpose
 - ▣ Place of Use
 - ▣ Point of Diversion
 - ▣ Other

Registration of Existing Unrecorded Uses

Draft 2-1-107 and -108

- ▣ To ensure protection of existing uses, the Board needs to know what and where they are located
- ▣ Reference to DNRC water rights database for claims filed in the adjudication and permits
- ▣ Tribes will conduct a registration process of existing uses of the Tribes' water rights
- ▣ Need to identify small uses that did not have to file in the adjudication or obtain a permit

Who Needs to Register?

- ▣ People with pre-1973 domestic or stock uses who did not have to and did not file a claim for those uses in the adjudication
- ▣ People with post-1973 domestic or stock uses who did not file completion forms (DNRC Form 602 or 605) with the DNRC

What Do You Get When You Register

- ▣ For pre-1973 uses, a water right with a date of first use priority date
- ▣ For uses begun after June 22, 1996, for which a completion form was lodged with DNRC but not processed, a water right with a date of first use priority date
- ▣ For uses begun after June 30, 1973 for which a completion form was never lodged with DNRC, a water right with a date of registration priority date

Process for Registration

- ▣ File a form identifying the particulars of the use
- ▣ Engineer has 180 days to review the form and approve it or return it for correction
 - Registrant has 30 days to return corrected form for reconsideration
- ▣ Anyone dissatisfied with the Engineer's decision on his/her registration form may appeal the decision to the Board

To Sum Up:

- ▣ 1) Appropriations Allowed – opportunity for future growth and development

- ▣ 2) Domestic Allowances – 35gpm
 - Individual: 2.4 afy
 - Shared: 2.4 afy
 - Development: 10afy

- ▣ 3) Registration of Previously Unrecorded Uses
 - ▣ Materials will be on our website by the end of the week

Questions?