

Flathead Reservation Water Management Board

DRAFT Work Session Minutes

February 23, 2023, from 3-5 PM

(Meeting time may run longer if needed)

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

Virtual at Zoom Link: <https://zoom.us/j/99434699654>
Join via phone +1(346) 248-7799 | Webinar ID: 987 1649 2570

1. Call to Order (Board Chair)

1.1. Opening Prayer

1.2. Attendance: Georgia Smies, Clayton Matt, Roger Noble, Ken Pitt, Teresa Wall-McDonald
Absent: Shane Hendrickson

1.3. Adopt agenda.

Remove public comment.

Approved

Vote: 4 of 4

2. Public Comment

Removed public comment, per Chairman and agreed upon by board members. The public is allowed to observe.

3. Work Session: Personnel Policy Drafting and Discussion

E. Mace: I would like to make some changes for FMLA to accommodate regulations. We discussed holidays but have some work to continue these. We will mimic what the state does for travel or after we have the draft for travel provisions we can discuss. We need to work on ADA compliance, workman's comp, and security plan for the office. This is most of the other items. In general, I wanted to introduce you to this document and get you to review it. This is a living document and I request that anyone submit feedback that they have.

C. Matt: Any thoughts or questions currently by any board members? This is the first time I seen this; I haven't been able to review this outside of seeing it today. Most of my attention has been given to the bylaws.

T. Wall-McDonald: Is the intention today to go through the personnel policy section by section? Or was it handed out today for comments to be given back.

Key: Underline = Action item

Normal = Discussion, comment, and/or update

C. Matt: It is my understanding from Ethan, that we would need to review this as it's a draft and then will discuss later.

E. Mace: I would like it to be reviewed and then comments given to me. If someone would like to meet one on one and come into the office, I would appreciate that.

4. Work Session: Board Bylaws Drafting and Discussion

E. Mace: You have the bylaws in front of you and I am hoping we can go through these, review and edit the bylaws. We can do some real time editing.

C. Matt: Let's make sure everyone has 2022-02-05 draft. Does everyone have that draft?

K. Pitt: Mr. Chairman, just so you know Roger and I met and went through these side by side.

C. Matt: This is open for discussion and Ethan you can share on your screen. We will go page by page and section. I made notes that I thought were necessary.

R. Noble: Right at the top I think we should delete, the, from The Flathead Reservation Management Board.

C. Matt: I agree. The red, I made a note that what's in the red isn't necessary.

E. Mace: How do you want the document listed, is the article numbers confusing for anyone? Since the compact uses article numbers too? There are other terms that can be used. That was the intent.

K. Pitt: Should the bylaws simply repeat stuff that's in the compact or the ordinance?

C. Matt: My thought early on is that instead of repeating the ordinance or compact we would site the compact or ordinance. Unless it needs to be repeated for functional purposes. Was that what you meant?

T. Wall-McDonald: I think you need to consider who sees the bylaws and how they are going to be used. What is the orientation that the new person would receive to the see the operations of the office and of the board?

G. Smies: So, you see this as a training document?

T. Wall-McDonald: Absolutely, or an orientation document. Then the employee would get the bylaws, the compact and the ordinance.

K. Pitt: If we do cite it then we should include the citation.

C. Matt: So, if we include the language then we should include the citation for the ordinance so that people would know. Does anyone have any thoughts or questions on this?

R. Noble: You need to make a correction. You need to add U.S. to the Department of the Interior.

T. Wall-McDonald: I have a question from above. The boards creation and jurisdiction began on Sept. 17, which is the effective date. Technically we had jurisdiction before we were appointed.

R. Noble: It should just say jurisdiction.

C. Matt: The effective date was September 17, 2021.

T. Wall-McDonald: When I think of jurisdiction I think about when we take an official action and began to approve something, we can't go back and date to the beginning date that is included for 2021. Jurisdiction is when we begin acting in this capacity.

G. Smies: It should be a separate sentence. It should be the Board's jurisdiction began on September 17, 2021. The board was officially seated/implemented.

K. Pitt: It really makes no difference when we were seated.

G. Smies: If this is used as a training document then we are trying to capture some of the history. People will recall 10 years from now that the jurisdiction began in September, but we weren't able to do anything at that point.

C. Matt: I think it should be included as a foot note. We didn't seat the board, what does the compact language say about the state about the board.

Key: Underline = Action item

Normal = Discussion, comment, and/or update

- R. Noble:** It says upon the effective date of the compact the ordinance shall water rights office. It's known as 1-1-101 3.
- K. Pitt:** Pursuant to Article 4-1 of the compact that the water management board is established.
- C. Matt:** Unless 4-1 says something else then all it says is that it's established, created.
- E. Mace:** The board is established shall be the executive regulatory. I don't want to miss something that is important to you.
- C. Matt:** We are on 2.2.
- R. Noble:** I don't think 2.2 needs to be on there. It's paraphrased anyway.
- G. Smies:** I keep going back to who this is being developed for. If it's for staff or for training, then it's fine. If it's not, then it seems redundant. Who will be reading your bylaws?
- T. Wall-McDonald:** I think generally the bylaws should include a statement on eligibility.
- E. Mace:** 2.4 I did abbreviate this from the previous version.
- G. Smies:** Can we write this differently to where it's easier to understand?
- R. Noble:** I agree. The whole verbiage isn't in there. I would go back in and cite that sentence in its entirety.
- C. Matt:** Does the compact language say 30 days?
- E. Mace:** The 30 days would've come from the compact. 2.5 Removal of board members.
- G. Smies:** I'm on the second sentence and it doesn't make sense to me. Can we change this sentence?
- R. Noble:** Again, the language is included in the compact.
- C. Matt:** If the language is in the compact, we should include it. Then we can cite that.
- G. Smies:** Can we change the wording? Should board action be required during any period of any such vacancy of any tribally appointed board member the following departments would be contacted. If any board action be required during any period of such vacancy of any government appointed board member the following departments would be contacted.
- C. Matt:** Removal of board members. You did provide options to choose from. Everyone could say what they'd prefer. Option 7 is what's best to me.
- E. Mace:** The board may recommend to the appointing entity the removal of a board member by a unanimous vote of the other voting board members at a duly held meeting at which all remaining members are present.
- K. Pitt:** I think a paragraph on how to remove a member is essential. My discomfort is with board members removing board members. I don't agree with us getting rid of the 5th member but I see other way of doing that.
- C. Matt:** The partner language of this is whether we keep the definition of misconduct. As we talk about the basis of removal, we may agree with this or not. I think we need some guidance on removal. It shouldn't be a political decision. We need to have guidance.
- E. Mace:** There are 2 different misconduct sectors. Option #2 has misconduct and option# 3 is from the Tribes misconduct. The board would have to decide whether poor performance or misconduct has occurred through normal motion and majority vote procedures.
- K. Pitt:** I think we need to include the statement, should include but is not limited to.
- C. Matt:** Typically, it is majority vote but something as this serious as removing someone should be unanimous.
- E. Mace:** Step #1 did misconduct or poor performance occur Step #2 Would the board like to recommend or approve removal of the board member. Right? You could put them on a corrective action plan.
- C. Matt:** You could always give them a corrective action plan.
- T. Wall-McDonald:** Then you are treating them as if they're an employee.
- G. Smies:** If we put poor performance in the bylaws wouldn't we include how a board member knows what success looks like. How do we define success?

Key: Underline = Action item

Normal = Discussion, comment, and/or update

C. Matt: Maybe instead of a position description for the board we write a paragraph of the expectations of a board member.

K. Pitt: I think you need to have a broad definition.

E. Mace: Will we have 1 vote? Will it be majority or unanimous? The performance or misconduct would be a majority vote and then recommended.

C. Matt: Is it based on what you're describing that we vote on, whether there is misconduct or poor performance? Once we have done that then that automatically means we are voting for them to be removed.

T. Wall-McDonald: Do we have this in a public meeting or allow the board member to have a chance to present? If a board member had a health issue, then that shouldn't be included in a public meeting.

C. Matt: Both poor performances and misconduct is conducted through a motion and majority vote.

R. Noble: My idea with these kinds of boards, I agree with only having chair and vice chair. The Vice chair rotates into the chair. I think the chair position should rotate between a state appointee or tribal appointee.

G. Smies: The suggestion is that we would have one state and one tribal.

T. Wall-McDonald: Then you are taking a voting opportunity away from the new board member. For the treasurer or secretary if we eliminate these positions does that impact what OE needs? Does that impact the internal control? Will that create a conflict of interest having the chair and vice chair signing each other's documents.

C. Matt: The board positions have been more administrative work than anything. Adding a Secretary and Treasurer could help with some of this. Signing is appropriate but audits need to be thought about. The auditing that we will need to have done will need to be done by someone outside of the board.

T. Wall-McDonald: We need to be transparent, accountable; we need to have joint oversight, Ethan and the Chair would have the best handle on the budget. Once we start assigning duties as where we are saying the secretary or Treasurer is going to spend that time doing these or reviewing documents they should be compensated. That needs to be defined in some type of capacity. Board members should be compensated.

G. Smies: All of us thinking of audits or reviews, when we look at our forms there is a column missing. As a business owner, we could add a column under article 4. We don't have the hours we are putting in.

C. Matt: On the audit question, the state and the tribe have their audit standards. Neither have asked us to impose any type of audit standards. We need to look at if there are any for ourselves that they have. Ask in writing to the state and the tribe to see if there are any audit standards we must meet.

R. Noble: Can we put into 3.1, the Board Chair, Vice Chair are good for now. That it will be a flat election annually, I am on board with everyone else.

E. Mace: In 3.3 the language could be included here. If any language here needs to be changed, I can do so.

C. Matt: Is this where you want to put that it's annual?

E. Mace: Ours is the calendar year. The election is held using a voice vote. Will be held yearly. For work committees and work groups board members have been volunteering. Must meet openly and follow public meeting requirements.

T. Wall-McDonald: Did we follow open meeting laws?

C. Matt: We will have to include the open meeting laws.

R. Noble: Can 3 people meet and not be required to be a public meeting? I look back and Georgia, Teresa and I were on subcommittees.

C. Matt: I think we should have another meeting on open meeting laws but in another meeting. I think we need to review our legal documents on our open meeting law requirements. The constitutional comments state we aren't required to have public comment.

Key: Underline = Action item

Normal = Discussion, comment, and/or update

K. Pitt: Both committees and work groups should be subject to open meeting laws.

C. Matt: For board compensation, it's defined that 1 meeting per day including prep time can be charged at the \$175. We must figure out how to apply that and it is extremely complicated. If we get the budget then we will need to keep that in mind.

G. Smies: I haven't been involved in a meeting yet that didn't require several hours to prepare for. Reviewing applications, preparation for a meeting has taken a lot of time. I can only charge for 1 meeting a day.

C. Matt: We should define what other meetings are considered and the rate. The meeting rates are set, will we get state rates or tribal rates or federal. What other things are we going to agree that we get compensation for?

E. Mace: Should the chair or vice chair set the one meeting per day?

C. Matt: We need to get a proposal in front of us to decide on compensation.

5. Public Comment

Public comment section removed per revision of board.

6. Next Steps/Meetings: Regular Board Meeting: Thursday March 9th, 3:00 pm

7. End meeting (Board Chair)

C. Matt: Vote to end board meeting at 6:11pm.

Note: For this meeting, posted materials may change before the meeting as they are in a state of active drafting.

Note: No action will be taken by the Board during this meeting, beyond adopting the agenda.

Key: Underline = Action item

Normal = Discussion, comment, and/or update