

**FLATHEAD RESERVATION WATER MANAGEMENT BOARD
AND THE OFFICE OF THE WATER ENGINEER**

WATER POLICIES & PROCEDURES

FRWMB



REVISION HISTORY

ORIGINAL DRAFT February 06, 2024

INTRODUCTION

The Water Policy & Procedures (“WP&P” or “Procedures”) are created by the Flathead Reservation Water Management Board (“FRWMB” or “Board”) and the Office of the Water Engineer (“OE”) to specify and clarify details relating to water administration for the achievement and implementation of the Unitary Administration and Management Ordinance (“UAMO” or “Ordinance”). These Procedures, and amendments thereof, shall be published by the OE on the FRWMB website (www.frwmb.gov).

The FRWMB has the authority to develop and promulgate these Procedures pursuant to the Confederated Salish and Kootenai Tribes (CSKT)—Montana (MT) Water Compact (Compact):

Compact Article IV.I.5.a: Powers and Duties.

a. In General. The Board shall have the power to promulgate procedures, prescribe forms, develop additional materials, and implement amendments thereto as may be necessary and proper to exercise its jurisdiction and carry out its assigned functions under this Compact and the Law of Administration. A set of forms for initial use by the Board in the implementation of the Law of Administration is attached hereto as Appendix 37. The Board may amend these forms at its discretion. Such modifications are pursuant to, and shall not be deemed an amendment of, this Compact.

The Board shall promulgate the Procedures through public meetings of the Board. These meetings shall be open to the observation of the general public pursuant to the Compact, Ordinance, and Policies of the Board. Where there is a conflict of laws, the law that provides for greater openness to the public applies. The Board shall notice the public of any scheduled drafting workshops in the creation of these Procedures and shall encourage the participation of the public through public comment, to be considered by the Board at the next scheduled Board meeting. The Board shall not approve any portion of these Procedures until public comment has been solicited.

These Procedures are intended to clarify and supplement details into the implementation of the Ordinance and the administration of water within the exterior boundaries of the Reservation. In the event that these Procedures conflict with the Ordinance or the Compact, the language of the Ordinance or the Compact shall control.

This document is intended to track the organization of the UAMO for purposes of easy referencing to sections of the Ordinance for which the procedural clarification is intended to elucidate; 100 is added to each Ordinance section directly referenced with less direct sections added before and after.

FRWMB Water Policies & Procedures

CHAPTER I: WATER RESOURCES CONSERVATION, DEVELOPMENT AND ADMINISTRATION	6
PART 0: OPERATIONS. SECTION	6
WP&P 10-101. References: Acronyms and Abbreviations, and Defined Terms	6
WP&P 10-102. OE Form Descriptions, Status, Fees, and Version Dates.....	7
WP&P 10-103. Water Right Application Stages through the OE.	7
WP&P 10-104. Water Right Verification for DEQ Subdivision Applications pursuant ARM 17.36.103.....	7
PART 1 – GENERAL PROVISIONS	8
WP&P 11-104. Definitions.	8
WP&P 11-105. Measurement of Water.....	8
WP&P 11-106. Measurement of Time.....	9
WP&P 11-107. Appropriation Rights Allowed.	9
WP&P 11-108. Reservation Water Rights Database.....	9
WP&P 11-109. Groundwater Management Areas.....	9
WP&P 11-110. Standards for Applications for Appropriation Rights and Changes in Use.....	9
WP&P 11-111. Groundwater Diversion Standards.....	9
WP&P 11-112. Mitigation	9
WP&P 11,113. Codification, Severability and Defense.....	9
WP&P 11,114. Effective Date.....	9
PART 2 – UNITARY ADMINISTRATION AND MANAGEMENT	9
WP&P 12-112. Filing Fees.	9
CHAPTER II – WATER USE	9
PART 1 – GENERAL PROVISIONS	9
WP&P 21-101. Registration of Uses of the Tribal Water Right in Existence as of the Effective Date of the Compact. .	9
WP&P 21-102. Process for Registration of Existing Use of the Tribal Water Right.	9
WP&P 21-103. Fee for Filing Registration of Existing Use of the Tribal Water Right.	9
WP&P 21-104. Tribal Member and Allottee Entitlements Pursuant to 25 U.S.C. Section 381.....	9
WP&P 21-105. Tribal- Tribal Member and Allottee Challenge of a Registration Certificate Issued by the Office of the Engineer.	9
WP&P 21-106. Registration of Certain Other Previously Unrecorded Existing Uses.....	9
WP&P 21-107. Process for Registration of Certain Other Previously Unrecorded Existing Uses.....	9
WP&P 21-108. Failure to Register an Existing Use of Water.	9
WP&P 21-109. Limitation to Beneficial Use.....	9
WP&P 21-110. No Adverse Possession.....	9

WP&P 21-111. Abandonment of Appropriation Right..... 10

WP&P 21-112. Procedure for Declaring Abandonment. 10

WP&P 21-113. Prevention of Waste and Interference with Lawful Use. 10

WP&P 21-114. Issuance of Appropriation Right Does Not Constitute Permission to Trespass. 10

WP&P 21-115. Development of Enforceable Schedule for the Tribes’ Other Instream Flow Rights. 10

PART 2 – PERMIT AND CHANGE APPLICATION PROCESS..... 10

WP&P 22-101. Appropriation Rights and Change in Use authorizations on the Reservation..... 10

WP&P 22-102. Burden of Proof for Ground or Surface Water Permits and Change Authorizations. 10

WP&P 22-103. Pre-Application Meeting with Office of the Engineer. 10

WP&P 22-104. Application to Board. 10

WP&P 22-105. Adequate to Process Review. 12

WP&P 22-106. Not Adequate to Process Determination. 12

WP&P 22-107. Application Analysis and Recommended Decision..... 12

WP&P 22-108. Process if Mitigation Required. 12

WP&P 22-109. Appeal to Engineer from Recommended Decision. 12

WP&P 22-110. Notice and Hearing on Recommended Decision to Grant. 13

WP&P 22-111. Appeal to the Board. 13

WP&P 22-112. Appeal to Court of Competent Jurisdiction..... 13

WP&P 22-113. Completion. 13

WP&P 22-114. Compliance with Completion Deadline..... 13

WP&P 22-115 Redundant and Substitute Wells..... 13

WP&P 22-116. Appropriation Rights for Stock Water Allowances..... 13

WP&P 22-117. Appropriation Rights for Domestic Allowances for Homes and Businesses; process for application, review, and issuance. Includes Individual, Shared, and Development Domestic Allowances. 14

WP&P 22-118. Process for development of new uses from Flathead System Compact Water..... 18

WP&P 22-119. Appropriation Rights for Non-consumptive Geothermal Heating or Cooling Exchange Wells..... 18

WP&P 22-120. Temporary Emergency Appropriations. 18

WP&P 22-121. Short-term use of a portion of the Tribal Water Right for road construction or dust abatement. 18

WP&P 22-122. Short-term use of an appropriation right that is not part of the Tribal Water Right for road construction or dust abatement. 18

WP&P 22-123. Wetland Protective Appropriation Rights. 18

WP&P 22-124. Wetland Quantified Appropriation Rights. 19

WP&P 22-125. Notice of Trust Status Conversion for Lands with Appurtenant Water Rights Arising Under State Law Acquired by the Tribes. 19

WP&P 22-126. Water Management Board Adjustment of Priority Date Pursuant to Compact. 19

WP&P 22-127. Tribal Utilization of Water Right with Adjusted Priority Date. 19

WP&P 22-128. Public Water Supply Reporting Requirements..... 19

CHAPTER III – ENFORCEMENT 19

WP&P 31-101. Scope 19

WP&P 31-102. Complaint to the Engineer Regarding Actions or Inactions Between Appropriators..... 19

WP&P 31-103. Resolution of Complaint..... 19

WP&P 31-104. Appeal to the Board. 19

WP&P 31-105. Petition to the Engineer by Any Appropriator Aggrieved by Actions or Inactions of a Water Commissioner. 19

WP&P 31-106. Resolution of Petition..... 19

WP&P 31-107. Appeal to the Board from a Decision on a Petition..... 19

WP&P 31-108. Appeal from a Decision of the Board. 19

WP&P 31-109. Emergency Enforcement Powers of the Engineer..... 19

WP&P 31-110. Additional Enforcement Powers of the Engineer..... 19

WP&P 31-111. Expedited Appeal to the Board in the Event of Certain Actions by the Engineer. 19

WP&P 31-112. Additional Enforcement Powers of the Board. 19

WP&P 31-113. Fines..... 19

WP&P 31-114. Appointment of Water Commissioners..... 19

WP&P 31-115. Powers and Duties of Water Commissioners. 19

WP&P 31-116. Recourse from Water Commissioner Decisions. 19

WP&P 31-117. Removal of Water Commissioners. 19

WATER POLICY & PROCEDURES CERTIFICATIONS 20

CHAPTER I: WATER RESOURCES CONSERVATION, DEVELOPMENT AND ADMINISTRATION

PART 0: OPERATIONS. SECTION

WP&P 10-101. References: Acronyms and Abbreviations, and Defined Terms

1) Acronyms:

ADU	Accessory Dwelling Unit
AF	Acre-Feet (Volume)
AU	Animal Units
CFS	Cubic Feet per Second (Flow Rate)
Compact	Water Compact between the CSKT, MT, and the United States
CSKT	Confederated Salish and Kootenai Tribes
DNRC	Montana Department of Natural Resources and Conservation
ET	Evapotranspiration
FRWMB or Board	Flathead Reservation Water Management Board
FIIP	Flathead Indian Irrigation Project
FIR	Flathead Indian Reservation
GPM	Gallons Per Minute
GW	Groundwater
IWR	Irrigation Water Requirement
MT	Montana
OE	Office of the Water Engineer
UAMO	Unitary Administration and Management Ordinance

2) Defined Terms:

Connected: Means permanent or temporary connections including aboveground plumbing and hose(s) that convey water from the well or source to a home or business.

Corporate Ownership: Includes ownership by legal entities, including but not limited to, corporations, limited liability companies, corporate trusts, partnerships, and not-for-profit associations.

Substantial Credible Information: means probable, believable facts sufficient to support a reasonable legal theory upon which the OE should proceed with the action requested by the person providing the information.

Water Use Plan: Organized description from an engineer, hydrologist, or design specialist describing how water will be used, including, but not limited to volumes, flow rates, purposes, timing, conveyance, all associated water rights to be used, points of diversion, places of use,

and storage. A Water Use Plan should provide all the necessary information for the OE to confirm the accuracy of calculations and determine that a use is within the criteria set forth in the Ordinance and these WP&Ps.

Wells: Unless specifically stated otherwise, the use of the term well(s) includes developed springs.

WP&P 10-102. OE Form Descriptions, Status, Fees, and Version Dates

Form numbers, form descriptions, form status information, application fees and active versions are listed in Appendix 10-1 and are updated as needed.

WP&P 10-103. Water Right Application Submission.

(1) Successful Application Submission. The Application is submitted to the OE with all required information and submission, including payment of all application fees, signatures of all necessary parties, all forms fully completed as required in the Ordinance and these WP&Ps, and proof of possessory interest of the place of use, point of diversion, and conveyance. Applications that do not contain all the required information and submissions will not be processed by the OE and shall be returned, with any submitted application fees, to the applicant.

(2) Application is Adequate to Review. The Application clearly identifies the proposed project, and contains the information required by the application form or application addendum(s). At this stage, the application may be amended in response to a defect letter sent by the OE to the applicant that identifies information gaps in the application. All application amendment information must be submitted within the deadlines set forth on the OE's letter of defect. If the applicant misses the response deadline the OE may terminate the application.

WP&P 10-104. Water Right Verification for DEQ Subdivision Applications pursuant ARM 17.36.103

- 1) Requirement for Water Right Verification: The OE will verify existing water rights required for active DEQ subdivision applications pursuant to ARM 17.36.103.

- 2) Timelines for Review: The OE will perform water right verifications within 30 days for verifications not requiring fieldwork and within 90 days for verifications requiring field or on-site examination. The Engineer or Designee may extend timelines to accommodate weather and access conditions that limit field inspections necessary for resolution of complaints. Extensions may be up to one month or until weather/travel restriction conditions permit, whichever is longer.
- 3) Additional Information Request: The OE may require additional information from the applicant, through a written request, for the purpose of verifying a water right. Failure to respond to the written request within the deadline designated on the request may result in termination of the water right verification process; in this situation, any application fees submitted will not be refunded to the applicant.
- 4) Water Right is Verified (prima facie): If the elements of a water right as detailed on the abstract match the existing use, the OE will document the conclusion in an OE Water Right Verification Letter. This evaluation may include technical work, including field review and examination of current aerial photography of the parcel(s) in question to determine quantities of irrigation, buildings, stock, ponds/pits, and other visually evident indicators of water use.
- 5) Water Right is not Verified (prima facie): If the elements of a water right as detailed on the abstract differ from the existing use, the OE will identify which elements differ, estimate the magnitude of variation, examine the historic water right records, and proceed with documenting the conclusion in an OE Water Right Verification Letter.
- 6) Abandonment Discovered: If the investigation finds evidence of nonuse, the OE may examine the historic aerial photographs and provide an assessment of abandonment pursuant to Ordinance §2-1-111. If the water right appears abandoned, the OE may proceed with abandonment procedures set forth in the Ordinance and these [WP&Ps].
- 7) Illegal Water Uses Discovered: If there are uses of water on any of the parcels in question that lack a valid water right or are used for unauthorized purposes, the OE will not issue a Water Right Verification Letter until the illegal use is documented and formally curtailed or brought into compliance by establishing an existing legal use or through a new water right application. The OE may implement enforcement actions based on this discovery [WP&P].
- 8) Adverse Effect Discovered: If the proposed water use potentially causes an adverse effect to an adjacent water user, the OE will conduct an adverse effects analysis before issuing any water right verifications. The OE will detail its analysis in a Water Right Verification Letter [WP&P].
- 9) Statement of Claims, the OE will not perform water right verifications on Statements of Claim that have not been adjudicated through the Montana Water Court.

PART 1 – GENERAL PROVISIONS

WP&P 11-104. Definitions.

WP&P 11-105. Measurement of Water.

WP&P 11-106. Measurement of Time.

WP&P 11-107. Appropriation Rights Allowed.

WP&P 11-108. Reservation Water Rights Database.

WP&P 11-109. Groundwater Management Areas.

WP&P 11-110. Standards for Applications for Appropriation Rights and Changes in Use.

WP&P 11-111. Groundwater Diversion Standards

WP&P 11-112. Mitigation

WP&P 11,113. Codification, Severability and Defense.

WP&P 11,114. Effective Date.

PART 2 – UNITARY ADMINISTRATION AND MANAGEMENT

WP&P 12-112. Filing Fees.

See Table set forth in WP&P 10-102 for complete form filing fees.

[NOTE: Updated MT-DNRC filing fees are scheduled to take effect on Jan 1st, 2024 as determined by House Bill 114. As per UAMO, §1-2-112, OE form filing fees will match DNRC fees and will take effect in tandem with DNRC.]

CHAPTER II – WATER USE

PART 1 – GENERAL PROVISIONS

WP&P 21-101. Registration of Uses of the Tribal Water Right in Existence as of the Effective Date of the Compact.

WP&P 21-102. Process for Registration of Existing Use of the Tribal Water Right.

WP&P 21-103. Fee for Filing Registration of Existing Use of the Tribal Water Right.

WP&P 21-104. Tribal Member and Allottee Entitlements Pursuant to 25 U.S.C. Section 381.

WP&P 21-105. Tribal- Tribal Member and Allottee Challenge of a Registration Certificate Issued by the Office of the Engineer.

WP&P 21-106. Registration of Certain Other Previously Unrecorded Existing Uses.

WP&P 21-107. Process for Registration of Certain Other Previously Unrecorded Existing Uses.

WP&P 21-108. Failure to Register an Existing Use of Water.

WP&P 21-109. Limitation to Beneficial Use.

WP&P 21-110. No Adverse Possession.

WP&P 21-111. Abandonment of Appropriation Right.

WP&P 21-112. Procedure for Declaring Abandonment.

WP&P 21-113. Prevention of Waste and Interference with Lawful Use.

WP&P 21-114. Issuance of Appropriation Right Does Not Constitute Permission to Trespass.

WP&P 21-115. Development of Enforceable Schedule for the Tribes' Other Instream Flow Rights.

PART 2 – PERMIT AND CHANGE APPLICATION PROCESS

WP&P 22-101. Appropriation Rights and Change in Use authorizations on the Reservation.

WP&P 22-102. Burden of Proof for Ground or Surface Water Permits and Change Authorizations.

WP&P 22-103. Pre-Application Meeting with Office of the Engineer.

WP&P 22-104. Application to Board [Permits and Changes].

- 1) Adequacy of Permit and Change Applications: The OE will not process an application that does not include the required fee payment, fails to demonstrate the applicant owns or has possessory interest in all areas of a water development or fails to provide adequate and comprehensible information. Specifically, the failure to meet Ordinance, § 2-2-104(1) or WP&P 22-104 (2) through (11), set forth below, allows the OE to terminate an application without providing either a notice of inadequacy as per Ordinance, § 2-2-106 or an application defect letter. In these cases, when applicable and possible, the OE will return the application fee to the applicant.
- 2) Wrong Form Filed: An applicant that files the wrong form or is trying to use an application form type inappropriately, such as filing a 60DF-A for a purpose that is solely irrigation or filing a GW application for a surface water sourced water use, may be determined to be a failure to apply and have their applications cancelled pursuant to (1) above. In these cases, when applicable and possible, the OE will return the application fee to the applicant.
- 3) Application Material Quality: Applicants must provide clear, legible, and comprehensible application materials with fonts no smaller than 10-point in a clean font such as arial on all application materials, including maps. Equivalent hand-written printed text is also acceptable. In these cases, when applicable and possible, the OE will return the application fee to the applicant.
- 4) Acceptable Forms of Payment when Application Fees are Due:
 - a) Payment, in full, is required at the time of application, petition, or other form filing.
 - b) Acceptable Payment Forms: Check & Money Order only.
 - c) Refunds for applications where OE staff have committed any work will not be allowed under normal circumstances. Refunds are only allowed in extenuating circumstances where either the OE, the Ordinance, or these Policies and Procedures are likely responsible for an incorrect application fee being administered by the OE. All refunds

require written authorization from the Water Engineer. An applicant may withdraw an application, but application fees will only be refunded if OE staff have not commenced work on the Application.

- 5) Original Signatures Required: Only original signatures are accepted for declarations of ownership and written permission(s) needed for possessory interest. Photocopies, facsimiles, stamps, or scans of signatures and electronic signatures are not acceptable.
- 6) Written Permission of Possessory Interest: If the applicant does not have a possessory interest in the property, the Application must contain notarized written permission from someone with possessory interest in the property. The written permission must include that name of the person giving permission, what actions of the applicant are permissible on the property, what parcels are included in the permission, the duration of permission, and the name of the person to whom permission is being given. The written permission must be signed by both parties and be notarized. In some instances, the written permission may require filing with the county Clerk and Recorder's office to be made appurtenant to the land.
- 7) All owners' authorizations required: For applications with any portions of points of diversion, places of use, or conveyances located on fee land held by multiple owners, all owners of record must provide original signatures on the Application, or the Application must contain written permission pursuant to (6) above of all owners with the possessory interest for portions of the water development located on those lands.
- 8) Non-Tribal Trusts: For applications with any portions of points of diversion, places of use, or conveyances located on non-Tribal lands held in trust, the trustee(s) or trust executor(s) must provide original signatures or written consent on behalf of the trust for portions of the water development located on those lands. A copy of the active and enacted trust that designates who is authorized to act on behalf of the trust is required. If documentation is determined to be difficult to interpret or inconclusive, the OE may require the applicant to provide a written statement from an attorney that is licensed to practice law in Montana that explains that the trust is active, in order, and identifies who is authorized to act on behalf of the trust.
- 9) Corporate Ownership: For applications with any portions of points of diversion, places of use, or conveyances located on corporation owned lands, the corporation executor(s) must provide original signatures or written consent on behalf of the corporation for portions of the water development located on those lands. A copy of the active and enacted articles of incorporation, operating agreement, or bylaws that clearly designate who is authorized to act on behalf of the corporation is required along with proof that the corporation is allowed to do business in Montana. If documentation is determined to be difficult to interpret or inconclusive, the OE may require the applicant to provide a written statement from an attorney who is licensed to practice law in the state of Montana or the CSKT Tribal Court that certifies the corporation is active, in order, and identifies who is authorized to act on behalf of the corporation.
- 10) Tribal Trust: For applications with any portions of points of diversion, places of use, or conveyances located on Tribal Trust lands, the CSKT Lands Department must provide

original signatures or written consent on behalf of the trust for portions of the water development located on those lands.

- 11) Individual Tribal Trust: For applications with any portions of points of diversion, places of use, or conveyances located on Individual Tribal Trust lands, the owner of that land must provide original signatures or written consent on behalf of the trust for portions of the water development located on those lands. A copy of the public version of the TSR documenting ownership of the Individual Tribal Trust lands is required.
- 12) Applicant Communication Representation:
 - a) Communications - Applicants wishing to copy a representative, such as consultant, advisor, counsel, or other agent, on OE communications, must provide written authorization that identifies the representative, including the correct contact information to be used and an original signature from the owner of record requesting copy to a representative.
 - b) Designation of Signatory other than Applicant - Applicants wishing to have someone else sign on their behalf must provide written authorization that designates who is allowed to sign on their behalf, what types of authorizations are allowed, the representatives correct contact information, and have it signed by the owner of record requesting the designation. The document must be notarized.

WP&P 22-105. Adequate to Process Review [Permits and Changes].

- 1) Adequate to Process Scope: Adequate to Process applies to all water right and water use applications. The OE will determine whether an application is adequate to process by reviewing (a) information publicly available within its expertise and (b) the information submitted in the application.
- 2) Adequate to Process Determination is not an Approval: An application deemed Adequate to Process does not entitle an applicant to an authorization and is not the same as proving the statutory criteria. The OE can only approve an application if the criteria for issuance is proven by a preponderance of the evidence.
- 3) Adequate to Process Determination: A water right or water use application will only be determined adequate to process if an applicant's information must contain substantial credible information and all the necessary parts of the application form requiring the information, including any required addendums, have been filled in with the information required by the Ordinance and these FRWMB Policies and Procedures for the requisite application type. The OE has the option but not the mandate to help applicants reach an Adequate to Process status, either through letters of deficiency or other written correspondence with the applicant, as guided by the discretion of the Water Engineer.

WP&P 22-106. Not Adequate to Process Determination.

WP&P 22-107. Application Analysis and Recommended Decision.

WP&P 22-108. Process if Mitigation Required.

WP&P 22-109. Appeal to Engineer from Recommended Decision.

WP&P 22-110. Notice and Hearing on Recommended Decision to Grant.

WP&P 22-111. Appeal to the Board.

WP&P 22-112. Appeal to Court of Competent Jurisdiction.

WP&P 22-113. Completion.

WP&P 22-114. Compliance with Completion Deadline.

WP&P 22-115 Redundant and Substitute Wells.

WP&P 22-116. Appropriation Rights for Stock Water Allowances.

- 1) Existing Wells – New Uses: Existing Wells may be used as a point of diversion for new uses, so long as they were drilled before June 01, 2022¹. Existing Wells must meet all the same domestic allowance application, construction, and use standards as would be required for new Wells [WP&P]. Existing Wells that are currently serving and will continue to serve other water rights may have additional conditions imposed to ensure the new use does not exceed volume or flow rate standards when combined with the existing uses. If an applicant chooses to use an existing Well, the OE may require modifications to comply with standards associated with volume, flowrate, purpose, and place of use of existing water rights associated with the existing Well on the new use and examination of the old use.
- 2) Wells drilled after June 01, 2022: Applicants who drill Wells for a beneficial use without preapproval from the OE may be subject to a fine, or other conditions, for failure to comply with the Ordinance’s requirement to obtain preapproval before drilling a Well to be used for beneficial use. Exceptions include Replacement Wells, Substitute Wells, and Wells drilled solely for aquifer testing that will not be used for a beneficial use.
- 3) Existing Wells – Retired Uses: An applicant using an existing Well that is associated with an existing water right that will be replaced or modified by a different use being applied for through the OE may be required by the OE to terminate the water right being replaced as a condition of approval of a new application.
- 4) Existing Wells – Priority Date(s): Existing Wells to be used exclusively for a new use will receive a priority date of the date of application. Existing Wells to be used for a new use, in conjunction with other existing uses that are approved to be used simultaneously on the same Well, will receive a new priority date of the date of application for the new use portion, and will retain the historic priority date for those existing uses approved to be used simultaneously on the same existing Well.
- 5) Automatic Waterers Allowed: Automatic stock waterers equipped with overflow protection may be used in-place of stock tanks.
- 6) 60SF Maximum Number of Wells: There is no limitation to the number of Stock Water Allowances so long as each allowance meets the application, construction, and use terms

¹ June 01, 2022 was the date upon which the Board concluded public notice of the well drilling preapproval requirements had been sufficiently communicated.

set forth in the Ordinance. Stock Water Allowances are not counted toward the total number of domestic allowances set forth in WP&P 22-117.

- 7) Animal Unit Calculations: Stock use volumes are to be calculated in the same fashion as is applied by the State of Montana: a consumptive use of 15 gallons per day or .017 acre-foot per year per animal unit. Animal unit equivalencies for water consumption are set out in ARM 36.12.101 and the water conversion table, Form No. 615. Form No. 615 prescribes animal unit rates for common varieties of stock animals.
- 8) Stock Water POD Fencing Requirement: if the stock water allowance is sourced from a spring, the point of diversion must be fenced to exclude stock.

WP&P 22-117. Appropriation Rights for Domestic Allowances for Homes and Businesses; process for application, review, and issuance. Includes Individual, Shared, and Development Domestic Allowances.

- 1) Using Existing Wells for Unregistered and New Uses: Existing Wells may be used as a point of diversion for new or existing uses, so long as the Well was drilled before June 01, 2022² and the existing uses have not been registered under Ordinance §2-1-101 through 2-1-108. Existing Wells must meet all the same domestic allowance application, construction, and use standards as would be required for new Wells. Existing Wells that are currently serving and will continue to serve other water rights may have additional conditions imposed to ensure the new use does not exceed volume or flow rate standards when combined with the existing uses. If an applicant chooses to use an existing Well, the OE may require modifications to comply with standards associated with volume, flowrate, purpose, and place of use of existing water rights associated with the existing Well on the new use and examination of the prior use.
- 2) Wells drilled after June 01, 2022: Applicants who drill Wells for a beneficial use without preapproval from the OE may be subject to a fine, or other conditions, for failure to comply with the Ordinance's requirement to obtain preapproval before drilling a Well to be used for beneficial use. Exceptions include Replacement Wells, Substitute Wells, and Wells drilled solely for aquifer testing that will not be used for a beneficial use.
- 3) Existing Wells – Retired Uses: An applicant using an existing Well that is associated with an existing water right that will be replaced or modified by a different use being applied for through the OE may be required by the OE to withdraw the water right being replaced as a condition of approval of a new application.
- 4) Existing Wells – Priority Date(s): Existing Wells to be used for water uses not associated with an existing valid water right will receive a priority date of the date of application. Existing Wells to be used simultaneously for a new use, and an existing use associated with a valid water right, will receive a new priority date of the date of application for the new use portion. Such Existing Wells will retain the historic priority date for those existing uses associated with a valid water right.

² June 01, 2022 was the date upon which the Board concluded public notice of the well drilling preapproval requirements had been sufficiently communicated.

- 5) Other Buildings Defined: Buildings in close proximity to a main “home” or “business,” including shops, outbuildings, ADUs, and other smaller affiliated building connections, do not count as an additional “home” or “business” and can be added to the water right purposed as “Other” so long as the connections do not exceed three in number and are located within the same parcel boundary. This does not apply to buildings that are already or planned to be separated by a parcel boundary.
- 6) Drilling Time Limits: Upon OE authorization to construct a domestic allowance (authorization to drill the Well), the applicant will have **one year** to have the Well drilled. Failure to meet the deadline may result in termination of the application. An applicant may request a deadline extension using Form 607F before, or after this deadline provided that the applicant has made progress on their development; the extension form filing fee increases after missing the deadline.
- 7) Beneficial Use Time Limits: Upon OE authorization to construct a domestic allowance (authorization to drill the Well), the applicant will have one year after the Drilling Time Limit to put the water to beneficial use (hook it up to the home/business and put the water to use). The applicant must file 60DF-Part B within 120 days of completing the project and putting water to beneficial use, as is specified in the Ordinance. An applicant may request a deadline extension using Form 607F before, or after, this deadline provided that the applicant has made progress on their development; the extension form filing fee increases after missing the deadline.
- 8) Municipal Water Supply Connections: Any applicant requesting a Domestic Allowance that is within 500 feet of the exterior boundary of a Municipal Water Supply or Tribal equivalent must provide a letter from that Municipal Water Supply System or the Tribes that they are refused a connection to the Municipal Water Supply as the primary alternative to obtaining a new Domestic Allowance—this requirement is waived when using a Well that was drilled before June 01, 2022.
- 9) Use of FIIP Delivery Water associated with Domestic Allowances: Any Domestic Allowance plan that includes the use of FIIP delivery water to irrigate lawn and garden, landscaping features, or for stock water, must provide a letter from the FIIP Manager authorizing the use of FIIP delivery water as long as the applicant remains in good standing with FIIP. The letter of approval must be dated within six months of the Domestic Allowance application. The use of FIIP water may allow an applicant to apply for additional domestic usage on an Individual, Shared, or Development Domestic Allowance not to exceed flow and volume standards.
- 10) Use of other water rights associated with Domestic Allowances: Any Domestic Allowance plan that includes the use of existing water rights to irrigate lawn and garden, landscaping features, or stock water, must provide a copy of the water right abstract and a statement as to how this use will be incorporated into their Domestic Allowance plan.
- 11) Number of Connections:
 - a) Individual Domestic Allowances may only be connected to one Home or Business (Ordinance, § 1-1-104(8 &31)).

- b) Shared Domestic Allowances may only be connected two or three Homes or Businesses.
- c) Domestic Allowances for Development, as defined in Ordinance, § 1-1-104(16)
 - i) are connected to four or more homes and/or businesses and additionally conditioned by subsection 12 below.
 - ii) Individual or Shared Domestic Allowances that serve 4 or more (proposed or existing) Homes and/or Businesses, in a Development, shall be considered a Development Domestic Allowance.
- d) Incremental increases in the number of allowances may cause a project to be reclassified as Shared or Development Domestic Allowance or a New Appropriation if volume and flow rate standards are exceeded.

12) Development Domestic Allowance Number of Connections: To provide for a maximum flexibility of building options, the number of connections for a Development Domestic Allowance are based on individual bedrooms that could be configured in any arrangement of buildings desired by the developer. A single RV hookup is counted as the equivalent of one bedroom. A conservative approach includes modest lawn and garden uses that, if not present today, are likely to exist in the future. Based on an allocation of 1 AF/Year for a 5-bedroom house with a 1/4-acre yard and using a 2.5 acre-foot/year irrigation water requirement for one acre of lawn and garden, each individual bedroom is allocated 0.25 AF/year which includes 0.0625 acres of lawn and garden, thereby allowing up to 20 bedrooms to be conservatively developed under a 10 AF/Year Development Domestic Allowance.

Example arrangements may include but are not limited to:

- Four 5-bedroom homes with 0.3 acres of lawn and garden each
- Five 4-bedroom homes with 0.24 acres of lawn and garden each
- Four 4-bedroom homes with 1.6 acres of lawn and garden
- Three 5-bedroom homes with 1.75 acres of lawn and garden
- One 20-hookup RV park with 1.25 acres of lawn & garden
- One apartment building with ten 2-bedroom units and 1.25 acres of total lawn & garden

Adherence to this procedure does not alleviate an applicant's requirement to measure and report annual water volume and keep the total annual volume diverted below the 10 AF/year maximum and the flow rate below 35 GPM as set forth in the Ordinance. Annual water measurements in excess of the standards may result in revocation of the water right and or fines by the Board.

This standard is used as a guideline and an applicant requesting variance from the above must provide a Water Use Plan pursuant to section WP&P 22-117(23) below.

~~13) Inclusion of existing uses: In order to avoid adverse effects through combined appropriations of water uses that were not required to be noticed to the public or surrounding landowners, previous groundwater certificates (DNRC Form 602), and State-based registrations (OE Form 602F) will count toward the maximum allowable domestic allowances. For each home or business served by an existing groundwater certificate or state-based registration, the maximum number of Individual Domestic Allowances will be reduced by one and the maximum Development Domestic Allowances will be reduced by 5 bedrooms.~~

14) Maximum Number of Wells:

- a) Individual and Shared Domestic Allowances are restricted to one Well.
- b) Development Domestic Allowances are restricted to ~~three total Wells to ensure an appropriate flow rate for each Well~~ no more than one well per Home and/or Business (Ordinance § 2-2-117.6.e).
- c) If water supply is limited and requires an alternative to a) or b) above, the applicant must provide justification for the need and get OE approval in advance for the use of additional Wells for domestic allowances.

15) Additional Well Fee for Development Domestic Allowances: Each Well beyond one for a Development Domestic Allowance has an additional application filing fee, as set forth on Form ~~6DWF~~ and in ~~WP&P 10-102~~.

16) Measurement Devices:

- a) Each Development Domestic Allowance Well must have an OE approved measuring device that continually measures total volume diverted and time-period of the diversion that allows for monthly diverted volumes to be calculated for all Wells on the system.
- b) Well owners are required to report their usage on Form 622F each year and failure to do so may incur a fine or risk revocation of the water right.
- c) For the OE to approve a measuring device, the applicant must provide the OE with complete information about the measuring device(s), plans for installation(s), identification of installers, identification of recording features, and identification of plans to operate the devices. This information must be included in the 60DD Part A application and must be preapproved before installation. Preapproval by the OE of any equipment does not provide the applicant an assurance that the proposed equipment will work as proposed. Upon preapproval, the OE will issue approval of the proposed measuring device plan along with the Part A application approval.
- d) Once operational, the OE will conduct an inspection of the installation to ensure the equipment and installation was conducted pursuant the preapproval. The OE may request a test to ensure the equipment is functioning properly.

17) Parcel Sizes for Maximum Number of Connections: The maximum number of connection limitations set forth for 60DF and 6DDF are for each contiguous or closely grouped **40-acre** parcel of affiliated ownership, including, but not limited to, housing subdivisions or any combination of business and residential units. ~~For examples: an 80-acre parcel may pursue two 6DDF Development Allowances or up to six 60DF Individual Domestic~~

~~Allowance. A 160-acre parcel may pursue up to four Development Allowances or up to 12 60DF Individual Domestic Allowances. This could include a mix of 60DF and 6DDF types as well.~~ These developments, however, will encumber the property for future domestic allowances in perpetuity or until the developments are removed and the water rights withdrawn.

- 18) Annual Volume: Annual volume limits, 2.4 AF/year for Individual and Shared Domestic Allowances (Form 60DF) and 10 AF/year for Development Domestic Allowances (Form 6DDF) **on parcels 40 acres or less**, are diverted amounts, not to be confused with consumed volume.
- 19) Combined Flow Rates: If a project for any domestic allowance uses more than one Well, the combined flow rate of all Wells operating simultaneously shall not exceed 35 GPM.
- 20) Stock Water Volumes for Domestic Allowances: Stock volumes are additive to other domestic uses for volume calculations and thus may reduce maximum numbers of connections or the acreage of lawn and garden if included in a proposed water development.
- 21) Association of Water Rights: Water rights that share a point of diversion, conveyance, place of use, or are grouped for purposes of determining the maximum number of connections, will be associated through a remark on the water right issuance and abstracts. Associated information about the combined use may also be included.
- 22) Domestic Water Storage: Storage facilities associated with any domestic water system must be enclosed and documented in volume, location, system attachment, additional pump infrastructure, depth if buried, and other pertinent design criteria.
- 23) Exceptions to Standards and Water Use Plans: Any proposed exceptions to standards must include an engineer's, hydrologist's, or design specialist's assessment of need and function. For commercial, business, and other unique water uses, the OE may require the applicant to provide a **Water Use Plan** that specifies volumes, flow rate, and design parameters for each proposed purpose of uses or defines how water storage will be designed and used. If the OE chooses to assess proposed exceptions to standards, an extended timeline may be imposed on application review phases.

WP&P 22-118. Process for development of new uses from Flathead System Compact Water.

WP&P 22-119. Appropriation Rights for Non-consumptive Geothermal Heating or Cooling Exchange Wells.

WP&P 22-120. Temporary Emergency Appropriations.

WP&P 22-121. Short-term use of a portion of the Tribal Water Right for road construction or dust abatement.

WP&P 22-122. Short-term use of an appropriation right that is not part of the Tribal Water Right for road construction or dust abatement.

WP&P 22-123. Wetland Protective Appropriation Rights.

WP&P 22-124. Wetland Quantified Appropriation Rights.

WP&P 22-125. Notice of Trust Status Conversion for Lands with Appurtenant Water Rights Arising Under State Law Acquired by the Tribes.

WP&P 22-126. Water Management Board Adjustment of Priority Date Pursuant to Compact.

WP&P 22-127. Tribal Utilization of Water Right with Adjusted Priority Date.

WP&P 22-128. Public Water Supply Reporting Requirements

CHAPTER III – ENFORCEMENT

WP&P 31-101. Scope

WP&P 31-102. Complaint to the Engineer Regarding Actions or Inactions Between Appropriators.

WP&P 31-103. Resolution of Complaint.

WP&P 31-104. Appeal to the Board.

WP&P 31-105. Petition to the Engineer by Any Appropriator Aggrieved by Actions or Inactions of a Water Commissioner.

WP&P 31-106. Resolution of Petition.

WP&P 31-107. Appeal to the Board from a Decision on a Petition.

WP&P 31-108. Appeal from a Decision of the Board.

WP&P 31-109. Emergency Enforcement Powers of the Engineer.

WP&P 31-110. Additional Enforcement Powers of the Engineer.

- 1) Pursuant to Ordinance, § 3-1-110, the Engineer may deny water right applications on parcel(s) where there are existing illegal uses of water until such time as the illegal uses of water cease and associated infrastructure is permanently removed or the water user finds a way to remedy the illegal use of water through lease, new water right application, or other legal means. This action may occur in the absence, or the presence, of additional enforcement actions imposed by the Engineer as authorized by the Ordinance and these Procedures.

WP&P 31-111. Expedited Appeal to the Board in the Event of Certain Actions by the Engineer.

WP&P 31-112. Additional Enforcement Powers of the Board.

WP&P 31-113. Fines.

WP&P 31-114. Appointment of Water Commissioners.

WP&P 31-115. Powers and Duties of Water Commissioners.

WP&P 31-116. Recourse from Water Commissioner Decisions.

WP&P 31-117. Removal of Water Commissioners.

WATER POLICY & PROCEDURES CERTIFICATIONS

These policies and procedures are hereby adopted by the Flathead Reservation Water Management Board on this _____ day of _____, 20____, for the operation of the Office of the Water Engineer.

_____ Date: _____
Board Chair, Clayton Matt:

_____ Date: _____
Board Vice Chair, Roger A. Noble: