

# Flathead Reservation Water Management Board

PO Box 37, Ronan, MT 59864 | [contact@frwmb.gov](mailto:contact@frwmb.gov) | (406) 201-2532 | [www.frwmb.gov](http://www.frwmb.gov)

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Date: July 1<sup>st</sup>, 2024  
Subject: Summary Public Comment Received from WP&P  
Sections released by the Board on 05/28/2024  
Prepared By: FRWMB Water Resources Specialist, Sidney Palmer

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**Flathead Reservation  
Water Management Board**

## Summary of Notice

On May 28, 2024 The Flathead Reservation Water Management Board (Board) approved sections of the WP&P for a 15-day public comment period. On May 31, 2024 a draft of the WP&P was published for a 15-day Notice and Comment Period to [FRWMB.GOV](https://www.frwmb.gov). The sections posted include:

- CHAPTER I – WATER RESOURCES CONSERVATION, DEVELOPMENT AND ADMINISTRATION
  - PART 0 – OPERATIONS
    - WP&P 10-101. Acronyms.
    - WP&P 10-102. OE Form Descriptions, Status, Fees, and Version Dates.
    - WP&P 10-103. Water Right Application Submission.
    - WP&P 10-104. Water Right Verification for DEQ Subdivision Applications.
  - PART 1 – GENERAL PROVISIONS
    - WP&P 11-104. Definitions.
    - WP&P 11-111. Groundwater Diversion Standards.
  - PART 2 – UNITARY ADMINISTRATION AND MANAGEMENT
    - WP&P 12-112. Filing Fees.
- CHAPTER II – WATER USE
  - PART 2 – PERMIT AND CHANGE APPLICATION PROCESS
- WP&P 22-117. Appropriation Rights for Domestic Allowances for Homes and Businesses; Process for Application, Review, and Issuance.

The public comment period ended on June 17, 2024 and a curtesy ten-day grace period for postmarked mailed ended on June 27, 2024. See attached for the full Notice for Comment that was posted.

## Summary of Comments

Four public comments were received via email and no comments were received through postal. The comments received have been appended in their entirety in chronological order.

- 1) Ron Warren – Surveyor, received June 10, 2024
- 2) Karl Roesch – Water User, received June 17, 2024
- 3) Jack Duffey – Surveyor, received June 17, 2024
- 4) Seth Makepeace – CSKT Dept of Engineering and Water Resources, received June 17, 2024

Summary public comments included,

- Parcel size for Developments. This was discussed in three (Ron Warren, Jack Duffey, and Seth Makepeace) of the four comments.
- Concerns about volume limits for subdivisions (Ron Warren).
- Number of Parcels per allowance (Jack Duffey).
- Water Right application process (Seth Makepeace).
- Definitions (Seth Makepeace).
- Groundwater diversion standards (Seth Makepeace).
- Appropriations rights for Domestic Allowances for Home(s) and/or Business(es)
- Exception of registration fees for intermittent or low flow water developments (Karl Roesch).

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FRWMB

Overall the new policies and procedures look pretty good.

My biggest concern was that existing parcels that are being split would have a 10 acre foot water right amongst the parcels being created. So if a 20 acre parcel was being split into 5 parcels, each parcel could get up to 2 acre feet as a domestic allowance.

My next concern was for the larger aliquot parcels. The Department of Environmental Quality only reviews parcels that are less than 20 acres in size. So, parcels greater than 20 acres will be created without any predetermination for water rights. Then as those 20+ acre parcels get developed they will have to apply for water rights. If a 20 is split into 4 or more parcels, the 10 acre feet allowed for the entire 20 acres will be pretty minimal for any number of parcels greater than 4 parcels (Less than the 2.4 acre feet per residence). Very few 40 acre tracts are created anymore and in the rare circumstance where 40's do exist, if they are only allowed 10 acre feet, the smaller parcels probably won't be able to have enough water to get by if they are split into residential tracts of land at less than 10 acres with 2.4 acre feet of water each.

Another issue is: If FRWMB allows 10 acre feet per 20 acre parcel and if someone owns 60 acres and they split it into 3 -20's and each 20 gets 10 acre feet =30 acre feet total, then the 20's get split into 5's (15 total lots) - each 5 would get 2 ac-ft. Would a developer be able to put an agricultural exemption on 40 acres and then do a cluster development on the remaining 20 acres creating 15 small tracts with 2 acre feet each?? Same amount of water being used for domestic purposes and this would allow land to stay in agricultural use. Cluster developments are encouraged in many areas and even rewarded to encourage keeping "open space" and agricultural zones...

I think the end effect of limiting every 40 acre aliquot part of land to 10 acre feet, is that single family residential houses will be on 10+ acre tracts of land ( with 2.4 Acre Feet per parcel) instead of being concentrated on smaller parcels. **Cluster type developments happen with demand for housing and with employment opportunities.** These cluster type developments preserve the larger agricultural tracts of land for farming and ranching.. Building subdivision roads (\$50-\$60 per lineal foot) and bringing power (\$20-\$25 per lineal foot) and phone (\$10-\$12 per lineal foot) into new housing developments is very expensive. The larger the lots the more this cost is when distributing the costs on a per lot basis... Then we start drilling wells at \$70+ per foot and installing septic systems that range from \$12,000 to \$35,000 each depending on soil types..

We already have housing shortages across the entire state of Montana - and most of the country. Increasing lot sizes only exasperates the issue and makes almost all tracts unaffordable for anyone living on the current medium household income for the State of Montana...

As a surveyor with over 40 years of experience in land development, I have only seen minimal new development on the Reservation. Small Family Transfer type splits and then a majority of subdivisions are either greater than 20 acres or small 5-10 lot cluster developments to minimize the cost of infrastructure. Lots from the small cluster type developments are the only parcels that are even close to affordable for the average Montanan.. Limiting Water rights to developments on large parcels, prices our local working families out of the market!!

Please consider how future land development will be affected by your decisions on how individual lots will be appropriated water. The policies created today will have very long term effects on future development.

Ronald G Warren, PLS

**From:** [KARL ROESCH](#)  
**To:** [Contact@FRWMB](mailto:Contact@FRWMB)  
**Subject:** Re: Public Comment Period Closing Today - Monday 2024-06-17 & FRWMB Meeting Tomorrow - Tuesday 2024-06-18 1-5pm  
**Date:** Monday, June 17, 2024 8:24:46 AM  
**Attachments:** [image001.png](#)

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Good Morning

I have several small cattle water tanks which use underground water as source usually a perforated pipe for collection, up to 8 foot depth and gravity fed. Some flow only seasonally but serve particular pastures at a time of flow. Most produce a trickle which accumulates over time

I could not find that to be addressed in the proposal and if I missed it OK but I like to see an exception of registration and fees for intermittent or low flow water de developments  
Flows of less than a gallon per minute , or seasonal ( or what the board seems proper)  
should be exempt.

Thanks for your consideration

Karl Roesch 318 N. Valley Creek Dr. Arlee. 17. June 2024

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## Public Comment

Jack Duffey <duffeysurvey@gmail.com>

Mon 6/17/2024 1:41 PM

To: Contact@FRWMB <contact@frwmb.gov>

To Whom It May Concern:

This email is for comment on the draft water policies & procedures.

The Annual Volume limits, 2.4 AF for individual and Shared Domestic Allowances. So if volume is the controlling number, then that should not be tied to the number of parcels. In other words, one well with the limit of 2.4 AF should be able to be shared between two parcels with each getting 1.2 AF-which is enough for domestic use. Volume used from the one well can be measured to assure that volume is not exceeded. Therefore, what does it matter if the well is shared with another property as long as the volume limits are met.

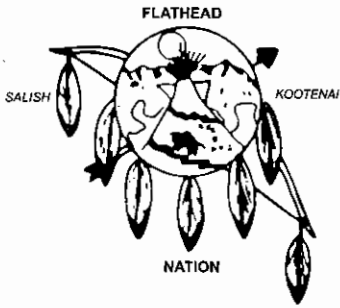
Maximum Number of Connections for Large Parcels are entitled to up to 10 AF. This allowance should be for every 20-Acres as this would be consistent with historic numbers and allow landowners for flexibility.

Thank you for the opportunity to comment.

Respectfully,

Jack Duffey, PLS  
Duffey Land Surveying

Sent from [Mail](#) for Windows



A Confederation of the Salish,  
Pend d' Oreille  
and Kootenai Tribes

THE CONFEDERATED SALISH AND KOOTENAI TRIBES  
OF THE FLATHEAD NATION

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A People of Vision

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June 17, 2024

**Ethan Mace, Water Engineer**  
**Office of the Water Engineer of the FRWMB**  
**P.O. Box 37**  
**Ronan, MT 59864**

*Via: Electronic transmittal*

*Re: Review of FRWMB Water Policies and Procedures dated May 31, 2024*

Dear Mr. Mace,

Enclosed please find comments provided by technical staff within the Natural Resources Department Water Rights Office of the Confederated Salish and Kootenai Tribes (CSKT). Comments are directed to the May 31, 2024, Office of the Engineer request for public comment on FRWMB-approved sections of the Water Policies and Procedures (WP&P). Comments are sequential and follow the format of the WP&P sections.

**WP&P 10-103. Water Right Application Process (1)**

Do the submission criteria apply to change of use applications?

Section 6 of the Application process identifies criteria for proof of possessory interest. Would a cross reference to that section further inform an applicant reviewing Section 1 regarding the application process where the applicant does not own possessory interest?

**WP&P 10-103. Water Right Application Process (2)**

Sentence one – extra word.

The Section identifies criteria for wrong form filed and cites to the Ordinance, applicable form(s) and WP&P. It seems a source of applicant confusion could be avoided by removing example submittal materials and citing directly to the Ordinance sections.



**WP&P 10-103. Water Right Application Process (4)**

Potential clarification – both the words “committed” and “commenced” are used to reference Office of the Engineer (OE) staff work on a potential application. It may improve the section to apply the same word to limit confusion as this section is applied.

**WP&P 10-103. Water Right Application Process (6)**

The Tribes, with review by the OE, have developed a process and form to transmit Flathead System Compact Water (FSCW) applications to the OE. The form includes Tribal Chair and applicant signature and elements from the lease between the Tribes and the applicant. It is the opinion of Tribal staff that the criteria in Section 6 do not apply to applications for FSCW because of the unique nature of this water right and use, the presence of Tribal Chair signature on an application, and the inclusion of lease elements in an application.

**WP&P 10-103. Water Right Application Process (7)**

The section is written to address circumstances where an applicant needs to secure signatures from multiple owners. There will likely be situations where an applicant needs to secure a signature from a single owner. This section seems to be precluded in this section. Is this addressed elsewhere in the Ordinance?

**WP&P 10-103. Water Right Application Process (11)**

Suggested rewording – ... *CSKT Lands Department* may provide written consent on behalf of the Tribes for an applicant to complete work to put a water use application to beneficial use. The Tribal Lands Department, at their discretion, may require rights-of-way, easements or other access documentation. The Department may also, at their discretion, require water use and/or operation and maintenance plans for activities on Tribal Trust Land. [Discussion – this section seems to contemplate the situation where the water user is a Tribal Lessee. There are a number of sites where diversion infrastructure is located on Tribal Trust Lands but serves Fee Lands.]

**WP&P 10-103. Water Right Application Process (12)**

This section may require additional clarification as individual trust land may have multiple owners, and the Tribal Lands Department, or other governmental entity, may have a role to play in review of individual trust, including allotment, lands.

**WP&P 10-103. Water Right Application Process (13 and 14)**

There appears to be overlap between the intent and wording of these two sections, and there may be opportunity to condense the two sections to one section.

**WP&P 10-103. Water Right Application Process (15)**

Proving the statutory criteria – this reads as an awkward phrase. An alternative might be – an application determined adequate to process is not the same as a determination that the application meets the statutory criteria for application approval.

**WP&P 10-104. Water Right Verification for DEQ Subdivision Applications (9)**

This section places a stay on DEQ subdivision review for Statements of Claim that have not been perfected through the Water Court adjudication process. The practical implication of this may be limited, but we note this may limit subdivision of certain applicant parcels for an extended time period.

**WP&P 11-104. Definitions (1)**

Connected - Since this definition may apply to larger infrastructure, such as ditches, it may be appropriate to include a phrase such as, “all water conveyance infrastructure intended to move water from a source to a place of use, including from a well....”

**WP&P 11-104. Definitions (3)**

Seepage Water or Seepage – Option: “Flow diverted from a source and moved through a conveyance that infiltrates underground and eventually returns to surface water or groundwater. Seepage is not limited to, but may include, irrigation ditch or pond losses.”

**WP&P 11-104. Definitions (4)**

Substantial Credible Information – It may be valuable to consider: a) “Facts, and interpretation based on facts, sufficient to support a credible technical analysis and reasonable legal theory....”

**WP&P 11-104. Definitions (5)**

Ditch Tailwater or Tailwater – Option: “Flow diverted from a source and moved through a conveyance which returns as surface water to any surface water source. Tailwater may originate from end or ditch or canal flows, or from onfarm runoff that leaves the water application area as surface flow.”

**WP&P 11-104. Definitions (6)**

Water Use Plan - Organized description seems like an awkward phrase, perhaps consider “Complete technical analysis with supporting information and calculations”. Design Specialist too vague, perhaps technical professional with expertise in water use planning.

**WP&P 11-111. Groundwater Diversion Standards (1)**

Sentence two – may be good to include the free flow of water from the well and/or annulus around the well [many artesian wells flow along the outside of the casing, not from well free flow].

**WP&P 22-117 Appropriation Rights for Domestic Allowances for Homes and Businesses; Process for Application, Review, and Issuance (1)**

Two comments are forwarded – a) Overall the section is somewhat difficult to track from beginning to end. This may occur because the section is out of context for its application. We think it is meant to apply where an existing well can be additive to a new development, but the

combined use of water must meet the Ordinance flow rate and volume criteria. B) There is no reference that an Existing Well drilled prior to June 1, 2022 needs to have an underlying water right. This section could be interpreted to allow an unpermitted use of water to be used for future development.

**WP&P 22-117 Appropriation Rights for Domestic Allowances for Homes and Businesses; Process for Application, Review, and Issuance (10)**

This is an appropriate inclusion in the Domestic Allowance review process.

**WP&P 22-117 Appropriation Rights for Domestic Allowances for Homes and Businesses; Process for Application, Review, and Issuance (11)**

This is an appropriate inclusion in the Domestic Allowance review process.

**WP&P 22-117 Appropriation Rights for Domestic Allowances for Homes and Businesses; Process for Application, Review, and Issuance (15)**

It may be appropriate to clarify that individual and shared well applicants cannot aspire to the 10 af volume, but are capped at 2.4 af.

**WP&P 22-117 Appropriation Rights for Domestic Allowances for Homes and Businesses; Process for Application, Review, and Issuance (19)**

Part B – it may be helpful to reinforce that Development Allowances are capped at 5 wells.

**WP&P 22-117 Appropriation Rights for Domestic Allowances for Homes and Businesses; Process for Application, Review, and Issuance (23)**

The WP&P indicates that the Board is considering an acreage limit of 20.01 or 40 acres. Tribal staff have informally advocated for, and continue to advocate for a 40-acre parcel size. This perspective is based on consideration of cumulative uses of water in lower yield aquifer systems (common in parts of the Reservation), the intent to maintain the viability of the assessed acreage under the Flathead Indian Irrigation Project, and the Tribes' interest in preserving the open space character of the Reservation for various purposes.

**WP&P 22-117 Appropriation Rights for Domestic Allowances for Homes and Businesses; Process for Application, Review, and Issuance (29)**

See previous comment on profession – design specialist.

Thank you for the opportunity to review the draft sections of the WP&P. We are available to address enclosed comments as requested.

Sincerely,

Seth Makepeace, CSKT DEWR

*Seth V. Makepeace*

## Flathead Reservation Office of the Water Engineer

PO Box 37, Ronan, MT 59864 | [contact@frwmb.gov](mailto:contact@frwmb.gov) | (406) 201-2532

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From the Water Engineer

On Friday, May 31, 2024, the Office of the Engineer published FRWMB-approved sections of the Water Policies and Procedures (WP&P) for a 15-day public comment period.

The WP&P sections approved for public comment include language related to:

- Water Right Forms
- Water Right Verification for DEQ Subdivision Applications
- Individual, Shared, and Development Domestic Allowances
- Diversion Standards

These WP&Ps offer guidance on the implementation of the Water Compact's Ordinance: <https://www.frwmb.gov/unitary-administration-management-ordinance/Ordinance>. A full PDF version of the approved sections can be found on the Board's website under the "Meetings & Notices" tab.

**Written comments must be submitted by Monday, June 17, 5:00 PM.**

**Mailed comments must be postmarked by Monday, June 17.**

**Written comments may be electronically submitted here: [contact@frwmb.gov](mailto:contact@frwmb.gov)**

**Written comment may be mailed to: FRWMB, PO Box 37, Ronan, MT 59864**

Feel free to reach out to our office at [contact@frwmb.gov](mailto:contact@frwmb.gov) or (406) 201-2532

**Ethan Mace, Water Engineer**

Office of the Water Engineer of the  
Flathead Reservation Water Management Board  
(406) 201-2532



**FLATHEAD RESERVATION WATER MANAGEMENT BOARD  
AND THE OFFICE OF THE WATER ENGINEER  
DRAFT WATER POLICIES & PROCEDURES**



**NOTICE**

THE BOARD APPROVED THE SECTIONS OF THE WP&P BELOW FOR A 15-DAY PUBLIC COMMENT PERIOD ON 5/28/2024. THESE SECTIONS INCLUDE:

- CHAPTER I – WATER RESOURCES CONSERVATION, DEVELOPMENT AND ADMINISTRATION
  - PART 0 – OPERATIONS
    - WP&P 10-101. Acronyms.
    - WP&P 10-102. OE Form Descriptions, Status, Fees, and Version Dates.
    - WP&P 10-103. Water Right Application Submission.
    - WP&P 10-104. Water Right Verification for DEQ Subdivision Applications.
  - PART 1 – GENERAL PROVISIONS
    - WP&P 11-104. Definitions.
    - WP&P 11-111. Groundwater Diversion Standards.
  - PART 2 – UNITARY ADMINISTRATION AND MANAGEMENT
    - WP&P 12-112. Filing Fees.
- CHAPTER II – WATER USE
  - PART 2 – PERMIT AND CHANGE APPLICATION PROCESS
    - WP&P 22-117. Appropriation Rights for Domestic Allowances for Homes and Businesses; Process for Application, Review, and Issuance.

## CHAPTER I - WATER RESOURCES CONSERVATION, DEVELOPMENT AND ADMINISTRATION

### PART 0 - OPERATIONS

#### WP&P 10-101. Acronyms.

ADU	Accessory Dwelling Unit
AF	Acre-Feet
ARM	Administrative Rules of Montana
AU	Animal Units
CFS	Cubic Feet per Second
Compact	Water Compact between the Confederated Salish and Kootenai Tribes, Montana, and the United States
CSKT	Confederated Salish and Kootenai Tribes
DEQ	Montana Department of Environmental Quality
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
MCA	Montana Code Annotated
MT	Montana
OE	Office of the Water Engineer
TSR	Title Status Report
UAMO or Ordinance	Unitary Administration and Management Ordinance

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

- 1) Application Forms and Petitions. Form types, numbers, 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. Applies to all water use applications. The application is submitted to the OE with all required information and submission, including payment of all application fees, original signatures of all necessary parties, all forms fully completed as required in the Ordinance and these WP&Ps. Applicants must provide proof of possessory interest in the place of use, point of diversion, conveyance, and all areas of a water development. Failure to meet Ordinance or WP&P submission requirements 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. Applications that do not contain all the required information and submissions will not be processed by the OE and shall be returned, when applicable and possible, with any submitted application fees, to the applicant.

- 2) Wrong Form Filed. If an applicant files the wrong form the OE may be determine that the applicant has failed to successfully submit and application and the wrong form filed may be cancelled pursuant to **WP&P 10-103(1)**. In these cases, when applicable and possible, the OE will return the application fee to the applicant. Wrong form filed includes applications whose sources, completion status, maximum volumes/flow rates, and other fundamental parameters do not comply with requirements specified on the application form, in the Ordinance, or in these WP&Ps.
- 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. Failure to meet application material quality requirements is failure to make a successful application submission pursuant to **WP&P 10-103(1)**.
- 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 or 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 WP&Ps 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 **WP&P 10-103(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) Properties Under a Contract for Deed. For applications with parcels that are under a contract for deed, both the transferor(s) and the transferee(s) must sign water right applications with original signatures. Water rights approved by the OE will be issued to both the transferor(s) and the transferee(s). If the contract for deed is finalized before the OE issues a water right, the transferee may provide a copy of the deed and file an **Application Owner Update Form (620F)** with the OE and any subsequent issuances will list only the transferee(s). If the contract for deed is finalized after the OE issues a water right, the transferee(s) must file a **Water Right Ownership Form (608)** with the Montana DNRC Water Resources Division.
- 10) 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.
- 11) 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.
- 12) 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.



- 13) Application is Adequate to Process. Applies to all 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. 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 defects identified by the OE. All application amendment information must be submitted within the deadlines set forth by the OE, typically done through application meeting or defect letter sent to the applicant by the OE. If the applicant misses a response deadline the OE may terminate the application.
- 14) Adequate to Process Determination. A water right or water use application will only be determined adequate to process if an applicant's information contains 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 WP&Ps 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.
- 15) 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.
- 16) 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 10-104. Water Right Verification for DEQ Subdivision Applications.**

- 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, but is not limited to, technical work, 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) Appearance of 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 will document this finding in an **OE Water Right Verification Letter**.
- 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 an **OE Water Right Verification Letter** until the illegal use is documented and formally curtailed or brought into compliance by conforming to the legal use of the water right or through final approval of a new water right application. The OE may implement enforcement actions based on this discovery **WP&P []**.
- 8) Adverse Effect. The OE water right verification request process does not include an adverse effects analysis.
- 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. The OE will issue a letter to the applicants informing them that there is an existing statement of claim that has not been adjudicated by the Montana Water Court.

## **PART 1 – GENERAL PROVISIONS**

### **WP&P 11-104. Definitions.**

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

- 2) Corporate Ownership. Includes ownership by legal entities, including but not limited to, corporations, limited liability companies, corporate trusts, partnerships, and not-for-profit associations.
- 3) Seepage Water or Seepage. Diverted flow which is not consumptively used and which slowly seeps underground and eventually returns to a surface or groundwater source. Typical examples of seepage water include underground losses from an irrigation ditch or pond.
- 4) Substantial Credible Information. 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.
- 5) Ditch Tailwater or Tailwater. Part of a diverted flow which is not consumptively used and which returns as surface water to any surface water source. Tailwater occurs when an irrigation application of water exceeds what can be absorbed into the ground. The water that stays on the surface and is not absorbed into the earth and which remains at the end of the furrow and is collected in a *tailwater* ditch is *tailwater*.
- 6) 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.
- 7) Wells. Unless specifically stated otherwise, the use of the term well(s) includes developed springs.

#### **WP&P 11-111. Groundwater Diversion Standards.**

- 1) Flowing Artesian Wells. Flowing artesian wells must be capped and or sealed in a way that prevents the free flow of water from the well to avoid Waste or Wasting of water as defined by **Ordinance, § 1-1-104(65)**.

## **PART 2 – UNITARY ADMINISTRATION AND MANAGEMENT**

#### **WP&P 12-112. Filing Fees.**

- 1) Filing Fees. See **WP&P 10-102** for complete form filing fees. Form types, numbers, descriptions, form status information, application fees and active versions are listed in **Appendix 10-1** and are updated as needed.

## CHAPTER II – WATER USE

### PART 2 – PERMIT AND CHANGE APPLICATION PROCESS

#### WP&P 22-117. Appropriation Rights for Domestic Allowances for Homes and Businesses; Process for Application, Review, and Issuance.

- 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, 2022<sup>1</sup> and the existing uses have not been registered under **Ordinance, §§ 2-1-101 to -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 Redundant 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 Use(s) associated with a valid water right.
- 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

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

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) Sites Defined. Business “Sites,” as part of the definitions of Business in **Ordinance, §1-1-104(8)**, mean any location where business is conducted and may include areas that are absent a building/structure, including but not limited to fields, canopies, industrial settings, and other areas where business operations occur.
- 7) 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 submit a **Deadline Extension Request (Form 607F)** before, or after this deadline provided that the applicant has made progress on their Development; the **Form 607F** filing fee increases after missing the deadline.
- 8) 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 or Business and put the water to use). The applicant must file **Form 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 submit a **Deadline Extension Request (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.
- 9) Putting Water to Beneficial Use. Putting water to Beneficial Use as per **Ordinance, § 2-2-117(13) and WP&P 22-117(7)** above means the Well is physically connected to the Home(s) and/or Business(s) authorized by the OE in an authorization to develop a Domestic Allowance and the water is being used for one or more of the purposes designated on said authorization. **A Domestic Allowance completion form (Form 60DF – Part B)** may be filed if the connection is made to a Home or Business that is temporary, so long as the connection is at the same location and connected to the same Well.
- 10) Municipal Water Supply Connections. Any applicant requesting a Domestic Allowance that is within 500 feet of the exterior boundary of a municipal water supply system 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. The Water Engineer can consider exceptions on a case-by-case basis.
- 11) 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 and the letter of approval is dated within six months prior to 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.

12) 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.

13) Number of Connections and Standards.

a) Individual Domestic Allowances may only be connected to one Home or Business. Ordinance, § 1-1-104(8) and (31).

b) Shared Domestic Allowances may only be connected to two or three Homes or Businesses. Ordinance, § 2-2-117(5).

c) Development Domestic Allowances as per Ordinance, § 2-2-117(6) may be connected to more than one, but not more than five, Homes or Businesses.

i. The requirement to measure and report annual water volume use and maintain the total annual volume diverted below the annual maximum volume issued and the flow rate from any individual Well up to 35 GPM must be adhered to. Ordinance, § 2-2-117(6)(b).

ii. Annual water measurements of water use for a Development Domestic Allowance exceeding the annual maximum volume issued, may result in revocation of the water right and/or fines by the Board.

d) Adding additional Domestic Allowances and/or making additional connections to existing Wells for new uses may cause a project to be reclassified as Shared or Development Domestic Allowance or a new Appropriation if volume and/or flow rate standards are exceeded. This excludes Stock Allowances set forth in Ordinance, § 2-2-116.

e) Any deviation from these standards requires the applicant to provide a Water Use Plan pursuant to section WP&P 22-117(23) below.

14) Permit Exceptions Defined. For purposes of this section, Permit Exceptions shall include:

a) Groundwater Certificates developed on or after May 17, 1991, at a volume and flow rate that would qualify as an exception to the permit requirements of 85-2-306, MCA, and for which a notice of completion of groundwater development (DNRC Form 602) was filed with the DNRC.

b) State-based registrations of certain other previously unrecorded existing uses pursuant to Ordinance, § 2-1-106.

c) Individual, Shared, or Development Domestic Allowances as described in Ordinance, § 2-2-117.

d) Due to the complexities of Groundwater Certificates which predate May 17, 1991, and were issued by the Montana DNRC for up to 100 gallons/minute and without a

volume, the OE will, on a case-by-case scenario, determine an appropriate method for incorporating these Permit Exceptions.

- 15) Inclusion of Existing Permit Exceptions for Annual Volume Maximums. Within a Development, individual parcel, or among parcels sharing a Well, all water rights issued as Permit Exceptions will be considered as part of the total additive maximum annual diverted volume, not to exceed 10 AF. Existing and future water rights purposed solely for stock are not included as part of the 10 AF cumulative maximum annual volume that is allowed before a permit is required. Ordinance, §§ 2-2-116 to -117; WP&P 22-117(12).
- 16) Water Measurement for Permit Exceptions. Mandatory water measurement is not necessarily required for cumulative Permit Exceptions with total additive maximum annual diverted volumes that are 10 AF or less.
- 17) Reduction or Correction of a Water Right. An applicant may request that the OE consider reducing the volume of an existing Permit Exception, using a Request to Reduce or Correct a Water Right Record (OE Form 625F), to avoid exceeding the maximum annual volume limit of 10 AF.
- 18) Phased Developments. For purposes of determining an area as defined as a Development or for defining what adjacent parcels as being affiliated, the date of September 17, 2021 (Effective Date) will be used. Any subdivision approved after this date will be considered a Development, regardless of phased subdivisions. The parcel boundary as of September 17, 2021, will serve as the controlling parcel boundary of a Development for purposes of determining cumulative total annual volume limitation for Permit Exceptions. Sale of individual parcels after this date does not alter the contiguous or closely grouped nature, or the same or affiliated ownership, of a Development.
- 19) Maximum Number of Wells.
  - a) Individual and Shared Domestic Allowances are restricted to one Well.
  - b) Development Domestic Allowances are restricted to one Well per Home and/or Business. Ordinance, § 2-2-117(6)(e).
  - c) If one Well is inadequate, the applicant must provide justification for the need and receive OE approval to drill additional Well(s).
- 20) Clarification for Developments. For the definition of Development, Ordinance, § 1-1-104(16), the term “closely grouped” will mean those parcels with boundaries that are physically connected by edge to edge, corner to corner, or edge to corner. Separations of boundaries resulting from rights of way will be considered on a case-by-case basis by the OE.
- 21) 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.
- 22) 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 **Form 6DDF Part A** application and must be preapproved before installation. Preapproval by the OE of any equipment does not provide the applicant 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.
- 23) Maximum Number of Connections for Larger Parcels. Large parcels of land that are under the same or affiliated ownership, including, but not limited to, housing subdivisions or any combination of Business(es) and residential units, are entitled to up to 10 AF in Permit Exceptions for each **[the Board is considering 20.01-acre or 40-acre]** apportionment of land within the Development. Applicants applying for multiple 10 AF amounts based on parcel size are responsible for providing a map that demarks each **#-acre** apportionment. These Developments, however, will encumber the property for future Domestic Allowances in perpetuity or until the Developments are removed and the water rights withdrawn.
- 24) Annual Volume. Annual volume limits, 2.4 AF for Individual and Shared Domestic Allowances (**Form 60DF**) and 10 AF for Development Domestic Allowances (**Form 6DDF**) on **parcels # acres** or less, are diverted amounts, not to be confused with consumed volume.
- 25) Combined Flow Rates. No single Well may exceed 35 GPM in flow.
- 26) Stock Water Volumes for Domestic Allowances. Stock volumes are additive to other Domestic Use(s) for volume calculations and thus may reduce maximum numbers of connections or the acreage of lawn and garden if included in a proposed Development.
- 27) 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.
- 28) 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.



- 29) 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.

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