

# Flathead Reservation Water Management Board Meeting Minutes

**April 28, 2022**

**2:00-4:00 PM**

In-person & Virtual

Ronan Community Center  
300 Third Ave NW  
Ronan, MT 59864

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**Board Members Present:** Roger Noble, Clayton Matt, Kenneth Pitt, Georgia Smies, Teresa Wall-McDonald

## 1. Call to Order (Board Chair)

- **Opening Prayer**
- **Safety procedures and Covid-19 protocols**
- **Attendance**

## 2. Board Business (Board Chair)

- **Adopt agenda**  
Motion by R. Noble  
Second by K. Pitt  
Vote result: Approved (5 to 0)
- **Approve minutes for March 31, 2022 meeting**  
Motion by R. Noble  
Seconded by T. Wall-McDonald  
Vote result: Approved (5 to 0)
- **Approve minutes for April 14, 2022 meeting**  
Motion by T. Wall-McDonald  
Seconded by K. Pitt  
Vote result: Approved (5 to 0)
- **Announce past meeting recording & minutes posting on DNRC & CSKT websites**  
**([bit.ly/FRWMB-Meetings-Page](https://bit.ly/FRWMB-Meetings-Page))**

Key: Underline = Action item

Normal = Discussion and/or update

- **Interim Process for Domestic Allowance proposal (Interim Process Work Group)**
  - **Domestic Allowance process, forms, and flowchart (DNRC-Ethan Mace)**
    - Documents presented and considered:
      1. 2022-04 60DF-A C-C Checklist (DRAFT 01)
      2. 2022-04 Domestic Allowance Interim Process Flowchart (DRAFT 03)
      3. 2022-04 Form Interim DA PT\_A Approval (DRAFT 08)
      4. 2022-04 FWMB Response Letter Form 60DF-A (DRAFT 08)
      5. 2022-04 Interim DA PT\_B (DRAFT 08)
    - E. Mace described the proposed interim process for individual and shared domestic allowances as shown in the documents presented. The work group, consisting of three Board members and CSKT and DNRC staff, developed this proposal after discussing the interim process at length. E. Mace specified that applications must be processed within 30 days, or they will be deemed approved as provided for in the Compact. The work group recommends the Board plan to meet every two weeks to process applications in a timely manner. He added that CSKT and DNRC staff would be available to meet with prospective applicants before they applied.
    - T.Wall-McDonald asked about the consequences for applicants that used more water than allowed by the Compact. E. Mace clarified that the Board will have to decide how to proceed in these cases. They could encourage the applicant to change the use and consider enforcement actions.
    - E. Mace described how the interim process proposal would consider four categories of applicants:
      1. Have not developed individual or shared wells
        - Included for processing
      2. Developed individual or shared wells after the Effective Date and before an interim process opened
        - Included for processing
      3. Developed individuals or shared wells before Effective Date and have not registered
        - Applicant's information collected, but applications would not be processed.
      4. Applicant seeking water uses not included in the interim process.
        - Not included in the interim process and applications returned.
    - E. Mace explained that the work group recommends including Category 2 because they did not have a regulatory process after the Effective Date and before an interim process is established. People may have been on a drillers list for some time and drillers only got to their well after the Effective Date. There are other people who did not know when the Effective Date occurred or how it changed the process of getting approval for domestic allowances. He pointed out that pre-Compact DNRC 602 applications do not require pre-approval in contrast to as the post Effective Date Ordinance rules. R. Noble added that the work group wanted to encourage people to get into the system to improve communication and compliance.

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- The Board discussed whether to include Category 2 in the interim process at length and raised the following considerations:
  - Fairness. There are a bunch of people in Category 1 that waited. Is it fair to the people who waited if the Board includes Category 2? There would be no consequences for the people who did not wait. The moral aspects of treating the two categories the same when some people waited to do the right thing. Alternatively, there was no process in place for Category 2 so it may not be fair to leave them out of the interim process. There was no process in place for Category 2 to comply with.
  - The impact on staff capacity. M. Schlichting said 4 staff would be available to put some of their time into processing applications. E. Mace said including both Category 1 and 2 would be quicker to process, because it would be more straightforward. He said it would be more complicated to separate the two groups.
  - There are a variety of reasons someone may have drilled after the Effective Date. Would the Board have time and capacity for fact finding as to whether someone had a good reason to drill?
  - Positive impacts of including Category 2. This process encourages people to get into the water rights system and into compliance. Once people turn in applications the Board will know whether these wells are within Ordinance guidelines. Right now, the regulatory body does not know if the wells are within Ordinance guidelines. Success may be defined as the number of people that are in compliance with the Ordinance.
  - Size of domestic allowances. These domestic allowances are small appropriations in comparison to other uses the Office of the Engineer will consider in the future.
  - Timeline challenges. The Compact created a new regulatory system on September 17, 2021, but the Board overseeing this regulatory system was not fully formed until February 2022 and the Office of the Engineer is not yet established. The ordinance does not clarify how Category 2 fits in to these timelines.
  - How the State handles people who are out of compliance. E. Mace said the state focuses on getting people into compliance.
  - People may not understand the requirements of the regulatory system established by the Compact and how it differs from the system in other parts of Montana.
  - How to prioritize the processing of applications in Category 1 over applications in Category 2.
  - The number of potential applicants in Category 1 and Category 2 is unknown. A large number of applications would be challenging to process within the 30-day timeline.
  - The need to get an interim process moving forward as quickly as possible.
  - Requiring applicants in Category 2 to apply within a limited number of days before facing possible enforcement action.

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- The Board also discussed when the interim process could begin. E. Mace said the documents presented today will need to be finalized. Several administrative pieces will need to be in place. The Board, CSKT, and DNRC will need to sign an MOU. A public outreach plan needs to be developed. Melissa Schlichting (CSKT staff) said the process could open on May 15<sup>th</sup> at the earliest, but that timeline may not be realistic.

**Public Comment:**

- Bud Gillin: I am the Operations Manager for CSKT Housing Program: We have 18 wells we are sitting on waiting for a process. A few people have homes built. They have incurred interest rate hikes waiting. The ability to drill wells impacts our budgets today and our future budgets. I implore you to come to an agreement so we can move this process along. It's going to take a year and a half to drill these wells. We need your help.
- Christopher Chavasse: Is the 2.4 limit for all 4 categories?
  - E. Mace clarified that the 2.4 acre feet limit is for Category 1 and 2. The Board will need to determine the limit for Category 3. People in Category 4 have different requirements.
- John Westleigh: I want to address fairness issue. I have not drilled. I have been waiting. Some drillers have been willing to drill if I exempt the well driller from responsibility. I am following the process. I would hate to be waiting, because staff is overwhelmed with applications from people who already drilled and didn't have permission.
- Dave Bick : I'm owner of Ace Drilling. You are talking about compliance to a process for a process that isn't in compliance. Someone couldn't comply because there was not a process. There isn't a process for these people. There is one part of the process that is there and that is that the compact says all well drilling has to go by Montana's water well drilling laws and those laws say you must have a contractor's license in order to contract wells. Salish Kootenai Housing Authority does not have a contractor's license. The majority of people want to do what's lawful but if there isn't a process in place, they do the next best thing. When you talk about penalties, what are penalties for not having a process in place for people to follow?
- Gail Westleigh (Virtual): My husband just spoke. We are waiting to drill. The fairness issue is big with me. I wonder if we should just go ahead and drill. Let those of us who have been waiting, give us a chance first to apply. The benefit of that is we could get our well drilled and well drilling business would increase. This process is more fair. We need to get to the people who waited in first.

Approved by Board May 12, 2022

Motion by T. Wall-McDonald

To include applicants in Category 1 in the interim process. The goal would be to be ready to accept applications May 16<sup>th</sup>, contingent on meeting on May 12 and the completion of all necessary tasks.

No second

- R. Noble suggested opening the process to both Category 1 and Category 2 but focus on processing Category 1 first and then process Category 2. Eight months have passed since the Effective Date. One driller could drill 50 wells at the most during this time. I don't think there will be a large number of applicants in Category 2.

Motion by R. Noble:

Include Category 1 and 2 in the interim process but prioritize the processing of Category 1 applicants.

No second

- M. Schlichting pointed out that all applications need to be processing within 30 days or they will be deemed approved. If the Board prioritizes Category 1, you run the risk of running out clock on the 30 days and they get approved any way.
- T. Wall-McDonald suggested opening the interim process to Category 2 one month later. M. Schlichting said in that case it would be confusing to have both Categories on one form and suggested using two forms. E. Mace said it will take longer to separate the two categories.
- Mary Price (CSKT staff): We don't know how many applications will come in and we are struggling with this unknown. We want to avoid missing the 30-day time limit for review. A lot of people don't know about requirements of new ordinance. Do we have the staff necessary to implement an unknown number of applications within the 30 days?
- G. Smies asked how long will it take staff to process an application that is filled out correctly? E. Mace said if all information is included it will take 40 minutes. If pieces are missing, it will take longer. G. Smies asked what is a realistic number of applications to process in a week? E. Mace responded that he would reach out to other staff in the state to help to help get through a peak in applications received. I suggest we can do that maximum amount for a short burst of time. I can't imagine there is that much well drilling that has occurred since Effective Date.

**Board takes 15 minute break**

Motion withdrawn by T. Wall-McDonald

No objection

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Approved by Board May 12, 2022

Motion by R. Noble

To approve proposed interim process with the following amendments. Beginning on June 1, 2022, the Board will accept applications for individual and shared domestic allowances for wells that have not been drilled. Beginning on July 1, 2022, the Board will accept applications for individual and shared domestic allowances for wells that were drilled after September 17, 2021 (the Effective Date) and before an interim process was approved. Applicants for wells drilled after September 17, 2021 and before an interim process was approved must file within 120 days or they may be subject to enforcement action.

Second by K. Pitt

Vote result: Approved (5 to 0)

- M. Schlichting asked the Board to clarify whether they want the two categories of applicants to use the same form or different forms. The Board clarified that applicants in both categories should use the same form.
- **MOU between Board, CSKT, and State discussion (CSKT-Melissa Schlichting)**
  - M. Schlichting said that she and the DNRC will work toward finalizing a draft MOU now that the board has provided guidance on the interim process. We will also work on a separate interim funding agreement.
- **Communication plan**
  - M. Schlichting said we need to develop a public information and outreach plan. R. McDonald and I will get a plan done between now and May 12.

### 3. Updates

- **Engineer Job Description and posting – discussion of salary range (DNRC-Arne Wick)**
  - Document presented and considered:
    - Proposed Staffing Plan Table
  - A. Wick clarified that the range of salaries for the engineer position that the technical team shared with the Board at the April 14, 2022 meeting included benefits within the total salary estimate. Recommendation from staff is that the table be used for general staffing planning.
  - Board members reviewed the Proposed Staffing Planning Table.

Motion by T. Wall-McDonald

To accept the staffing plan and set \$731,960 as the maximum amount of the interim budget. This overall framework should provide guidance. There may be changes within the categories, but we try to manage and stay within this amount.

- M. Schlichting (CSKT staff): pointed out that this is draft and there will be a more detailed funding plan proposed for board consideration in the future.

Second by K. Pitt

Vote result: Approved (5 to 0)

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- M. Schlichting updated the Board on the posting the Engineer job announcement. She has not posted it yet because she is seeking assistance from a human resources firm to help with the hiring process.
  - The Board discussed various places where the position could be posted now including the Groundwater professional journal, the CSKT Natural Resources Department, DNRC and other list servs.
  - M. Schlichting suggested the announcement say the position will be open until filled and applicant screening will begin on June 1, 2022.
  - Board approved proposal by consensus.
- **Administrative Items – office space, insurance, HR, accounting (CSKT-Melissa Schlichting)**
    - M. Schlichting updated the Board on several administrative items. She secured general liability insurance and is seeking quotes for director’s insurance. The lease has been signed. The Board will have physical custody May 15<sup>th</sup>. We have obtained some office furniture from Tribes. We could have first meeting there May 24<sup>th</sup>. She is waiting for estimates for accounting services. The human resources small group is setting times to meet with human resources professional to get proposals ready for the board’s consideration on May 12.
    - The Board discussed hosting an open house at the Office of the Engineer building and agreed that they should host it after the Board has a more time to get the Office of the Engineer established.
  - **Logo Communications (CSKT-Rob McDonald)**
    - Documents presented:
      - FRWMB Logo Blurb
    - R. McDonald gave update on the community invitation to design a logo for the Board. He has started circulating the invitation and has already received three submissions

#### 4. Next steps

- **Set next meeting: May 12, 2022 at 2:00 pm.**
  - The meeting will be held at Kwat’aq’nuk Resort and Casino in Polson.
- **Choose topics:**
  - Continue discussion of the interim process for domestic allowances.

#### 5. Public Comment

- Dave Bick: Using Montana cadastral for confirming ownership will be problematic during the interim process, because cadastral only updates ownership every six months. Tribal legal ownership won’t be updated on cadastral. This will be a major hurdle that will slow you down. You will need to add more to your process if you are relying on cadastral. You are underestimating the number of applications will come in. I haven’t heard anyone talk about

Approved by Board May 12, 2022

the criteria for approval and denial of applications. What will decision criteria will be? Back to the fairness issue, you have an unlicensed government agency holding a bag of applications. Are you going to ensure that they have a licensed contractor in place as part of criteria? I heard M. Price tell the housing authority that they can apply early for this process. Do they get priority over everyone else?

- C. Matt asked E. Mace to answer D. Bick's question about the decision criteria. E. Mace said he would do so after the meeting.
- M. Price said she suggested that the housing authority could start compiling the information they need to be ready when the interim process opens.

## 6. End meeting (Board Chair)

The meeting adjourned at 4:56pm.

### Additional Public Comment

- During the public comments period, members of the public were invited to submit public comment via email to Rob McDonald [robert.mcdonald@cskt.org](mailto:robert.mcdonald@cskt.org) and Joel Harris [HarrisJ@mt.gov](mailto:HarrisJ@mt.gov). Gail Westleigh emailed the following comment:

**From:** [westleigh@frontier.com](mailto:westleigh@frontier.com) <[westleigh@frontier.com](mailto:westleigh@frontier.com)>  
**Sent:** Thursday, April 28, 2022 5:49 PM  
**To:** [robert.mcdonald@cskt.org](mailto:robert.mcdonald@cskt.org); Harris, Joel <[HarrisJ@mt.gov](mailto:HarrisJ@mt.gov)>  
**Subject:** [EXTERNAL] Help!

Hello,

I would like to know why my husband and I are being punished for doing the right thing. My husband and I have been patiently waiting for the board to come up with an interim plan for us to be able to drill our well, and the interim plan is that we get to fill out our application one month earlier than the people who have already drilled their well. Plus, we have to wait an additional 30 days to get approval only if we filled out the application correctly. For those who have already dug their well, they can submit their application on July 1<sup>st</sup> and have 121 days after July 1<sup>st</sup> to fill out their application before they get in trouble.

Here are their wins: They have a well and water; they don't have to worry about filling out an application until July 1<sup>st</sup>; and they have 141 days to submit their application before they get in trouble.

Here is our win: We get to submit the form one month ahead of the people who already have wells.

I am thoroughly frustrated with the board. We have been compliant, had empathy for the board's situation, and been exceedingly patient while the board discussed what type of letterhead they should use before addressing the need for an interim plan for people like us.

I am struggling with not making an appointment with a well driller to drill our well as soon as possible. Interest rates are skyrocketing and we cannot get a loan until the well is drilled and we have water. Can you give me a reason why I should not go forward with getting a well drilled? There doesn't seem to be any repercussions. Please help me to understand.

Respectfully,  
Gail Westleigh

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