

2023-12-20 **Draft** not yet approved by the FRWMB

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

**WATER POLICIES & PROCEDURES**



REVISION HISTORY

**ORIGINAL DRAFT** December 13, 2023

2023-12-20 Draft not yet approved by the FRWMB

## 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 administrative 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.

Commented [HF1]: See comment below.

**FRWMB Water Policies & Procedures**

**CHAPTER I: WATER RESOURCES CONSERVATION, DEVELOPMENT AND ADMINISTRATION..... 6**

**PART 0: OPERATIONS. SECTION ..... 6**

WP&P 10-101. Acronyms and Abbreviations..... 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..... 8

WP&P 10-104. Water Right Verification for DEQ Subdivision Applications pursuant ARM 17.36.103..... 8

**PART 1 – GENERAL PROVISIONS..... 10**

WP&P 11-104. Definitions..... 10

WP&P 11-105. Measurement of Water..... 10

WP&P 11-106. Measurement of Time..... 10

WP&P 11-107. Appropriation Rights Allowed..... 10

WP&P 11-108. Reservation Water Rights Database..... 10

WP&P 11-109. Groundwater Management Areas..... 10

WP&P 11-110. Standards for Applications for Appropriation Rights and Changes in Use..... 10

WP&P 11-111. Groundwater Diversion Standards..... 10

WP&P 11-112. Mitigation..... 10

WP&P 11,113. Codification, Severability and Defense..... 10

WP&P 11,114. Effective Date..... 10

**PART 2 – UNITARY ADMINISTRATION AND MANAGEMENT..... 10**

WP&P 12-112. Filing Fees..... 10

**CHAPTER II – WATER USE..... 10**

**PART 1 – GENERAL PROVISIONS..... 10**

WP&P 21-101. Registration of Uses of the Tribal Water Right in Existence as of the Effective Date of the Compact..... 10

WP&P 21-102. Process for Registration of Existing Use of the Tribal Water Right..... 10

WP&P 21-103. Fee for Filing Registration of Existing Use of the Tribal Water Right..... 10

WP&P 21-104. Tribal Member and Allottee Entitlements Pursuant to 25 U.S.C. Section 381..... 10

WP&P 21-105. Tribal- Tribal Member and Allottee Challenge of a Registration Certificate Issued by the Office of the Engineer..... 10

WP&P 21-106. Registration of Certain Other Previously Unrecorded Existing Uses..... 10

WP&P 21-107. Process for Registration of Certain Other Previously Unrecorded Existing Uses..... 11

WP&P 21-108. Failure to Register an Existing Use of Water..... 11

WP&P 21-109. Limitation to Beneficial Use..... 11

WP&P 21-110. No Adverse Possession..... 11

**Commented [HF2]:** Suggested organization/reference edit. The chapter number shall be referenced as such, "WP&P 1-xxx." And the corresponding part shall be referenced as, "WP&P x-001." Example: Chapter 1, Part 0, Section 1 shall be referenced as: WP&P 1-001; Chapter 2, Part 1, Section 10 shall be reference as: WP&P 2-110...and so forth.

2023-12-20 Draft not yet approved by the FRWMB

WP&P 21-111. Abandonment of Appropriation Right.....	11
WP&P 21-112. Procedure for Declaring Abandonment. ....	11
WP&P 21-113. Prevention of Waste and Interference with Lawful Use. ....	11
WP&P 21-114. Issuance of Appropriation Right Does Not Constitute Permission to Trespass. ....	11
WP&P 21-115. Development of Enforceable Schedule for the Tribes’ Other Instream Flow Rights. ....	11
PART 2 – PERMIT AND CHANGE APPLICATION PROCESS.....	11
WP&P 22-101. Appropriation Rights and Change in Use authorizations on the Reservation.....	11
WP&P 22-102. Burden of Proof for Ground or Surface Water Permits and Change Authorizations. ....	11
WP&P 22-103. Pre-Application Meeting with Office of the Engineer. ....	11
WP&P 22-104. Application to Board. ....	11
WP&P 22-105. Adequate to Process Review. ....	13
WP&P 22-106. Not Adequate to Process Determination. ....	13
WP&P 22-107. Application Analysis and Recommended Decision.....	13
WP&P 22-108. Process if Mitigation Required. ....	13
WP&P 22-109. Appeal to Engineer from Recommended Decision. ....	13
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. ....	14
WP&P 22-115 Redundant and Substitute Wells.....	14
WP&P 22-116. Appropriation Rights for Stock Water Allowances.....	14
WP&P 22-117. Appropriation Rights for Domestic Allowances for Homes and Businesses; process for application, review, and issuance.....	15
WP&P 22-118. Process for development of new uses from Flathead System Compact Water.....	19
WP&P 22-119. Appropriation Rights for Non-consumptive Geothermal Heating or Cooling Exchange Wells.....	19
WP&P 22-120. Temporary Emergency Appropriations. ....	19
WP&P 22-121. Short-term use of a portion of the Tribal Water Right for road construction or dust abatement. ....	19
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. ....	19
WP&P 22-123. Wetland Protective Appropriation Rights. ....	19
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

2023-12-20 Draft not yet approved by the FRWMB

WP&P 22-127. Tribal Utilization of Water Right with Adjusted Priority Date.....	19
WP&P 22-128. Public Water Supply Reporting Requirements.....	19
<b>CHAPTER III – ENFORCEMENT .....</b>	<b>19</b>
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
<b>WP&amp;P 31-110. Additional Enforcement Powers of the Engineer.....</b>	<b>19</b>
WP&P 31-111. Expedited Appeal to the Board in the Event of Certain Actions by the Engineer. ....	20
WP&P 31-112. Additional Enforcement Powers of the Board. ....	20
WP&P 31-113. Fines.....	20
WP&P 31-114. Appointment of Water Commissioners.....	20
WP&P 31-115. Powers and Duties of Water Commissioners. ....	20
WP&P 31-116. Recourse from Water Commissioner Decisions.....	20
WP&P 31-117. Removal of Water Commissioners.....	20
<b>WATER POLICY &amp; PROCEDURES CERTIFICATIONS .....</b>	<b>20</b>

**CHAPTER I: WATER RESOURCES CONSERVATION, DEVELOPMENT AND ADMINISTRATION**

**PART 0: OPERATIONS SECTION**

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

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
Wells	Unless specifically stated otherwise, wells and developed springs will be used under the same term, 'wells'

**Commented [HF3]:** Suggested change to: REFERENCES.

**Commented [EM4R3]:** Although this section leads with acronyms/terms the vision is that it primarily informs operations of the OE

**Commented [HF5]:** Suggested edit: Delete "WP&P" and add "Section." We can keep "WP&P" in the TOC and when we refer to a specific policy/procedure, but I think for the document it might look cleaner to reference each one as a section.

**Commented [EM6R5]:** The TOC is a direct tie to these heading, which allows CTRL select in the TOC section; I'd like to keep that feature

2023-12-20 Draft not yet approved by the FRWMB

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

Form #	Form Description	Status	Current Fee	Jan 2024 Fee	Version
602CF	Registration Certificate - CSKT	Active	\$0	\$0	Pre OE
602F	Registration Certificate - GW	Ended	\$125	N/A	Pre OE
605F	Registration Certificate - Stock	Ended	\$125	N/A	Pre OE
222F	Registration Certificate - Pre-1973 Exempt	Ended	\$125	N/A	Pre OE
635F	Notice of Completion - Redundant Well	Active	\$50	\$200	1/30/2023
634F	Notice of Completion - Replacement Well	Active	\$100	\$150	12/8/2022
60SF-A	Stockwater Allowance (Preapproval)	Active	\$125	\$250	3/9/2023
60SF-B	Stockwater Allowance (Completion)	Active	\$0	\$0	4/13/2023
60DF-A	Domestic Allowance - Ind/Shared (Preapproval)	Active	\$125	\$250	12/8/2022
60DF-B	Domestic Allowance - Ind/Shared (Completion)	Active	\$0	\$0	12/8/2022
6DDF-A	Domestic Allowance - Development (Preapproval)	Draft	Pending	Pending	
6DDF-B	Domestic Allowance - Development (Completion)	Draft	\$0	\$0	
660F	Appropriation - FWCW Use Authorization	Pending	Pending	Pending	
646F-A	Appropriation - Geothermal	Active	\$250	\$400	1/12/2023
646F-B	Appropriation - Geothermal	Active	\$0	\$0	4/13/2023
6WPF	Appropriation - Wetland Protective	Pending	Pending	Pending	
600F	Appropriation - New Uses	Pending	\$800-1,000	\$1,600-2,900	
606F	Change Authorization - Existing Rights	Pending	\$700-900	\$1,500-2,500	
630F	Petition - Controlled Ground Water Area	Pending	\$1,500	\$3,000	
647F	Notice of Completion for Emergency Fire GW Well	Pending	Pending	Pending	
609F	Complaint About Water Use	Draft	\$55	Pending	
607F	Deadline Extension Request	Active	\$65-115	\$400**	5/11/2023
625F	Request to Reduce or Correct a Water Right	Active	\$0	\$0	5/11/2023
WMR-01	Water Measurement Report	Active	\$0	\$0	
653F	Request to Withdraw a Water Right	Active	\$0	\$0	5/11/2023
608F	Ownership Update of Active Application	Pending	\$20	\$100	
2-2-120	Temporary Emergency Appropriation Report	Active	\$0	\$0	
611F	Objection to a Water Right Application	Pending	\$25	\$50	
644F	Replacement of POD	Draft	\$400	Pending	
6DDF-C	Water Measuring Device Review Fee	Pending	\$150	Pending	
WRVER	Water Right Verification for DEQ Subdivision	Draft	\$65	Pending	
6DWF	Additional Well Fee - Per Well	Pending	Pending		
Denotes DNRC Applications Fee Increases as of Jan 01, 2024; As per Ordinance 1-2-112: The amount of the fee shall be the same as the fee charged by DNRC for the same type of application under State law, as those fees may be modified from time to time by the DNRC.					

2023-12-20 Draft not yet approved by the FRWMB

#### WP&P 10-103. Water Right Application Stages through the OE.

(1) Generally, there are five application stages that a water right or water use application must achieve to meet review and approval standards. Certain application types will not require review under every step (e.g., allowances not requiring public notice (step 4) or objections (step 5)). This Procedure does not contemplate an appeal before the Engineer or an appeal before the Board.

**Commented [HF7]:** Is this a generic term the OE wants to use? Or should we state, "... to meet the review standards as required by the Compact and Ordinance?"

Stage 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 UAMO, legible information, 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 to the applicant or application is terminated with or without notice

Stage 2: Application is Adequate to Review. The Application clearly identifies the proposed project, contains the information required by the application form or addendum. All information must be submitted within 30-days or a notice of inadequacy/defect deficiency letter will be issued. The Application may be amended in response to the deficiency letter.

**Commented [EM8]:** Defect is a term from the ordinance, intentionally set to differ from the DNRC term deficiency

Stage 3: Application is Recommended to Grant. A Recommendation to Grant the Application will be granted/issued if it meets the statutory, policy, and procedures criteria and the proposed use is determined to not cause adverse effects, or if adverse effects are anticipated, they are adequately mitigated or addressed by means of use conditions imposed by the OE. If the application does not pass within 180 days, it is deemed denied.

**Commented [EM9]:** Lets discuss

Stage 4: Application is Publicly Noticed. The Recommendation to Grant must be publicly noticed for 45 days. If no valid objections are filed within 45 days, the Application will be granted.

Stage 5: Application Overcomes Objections. If the Application receives valid objections, the Application will proceed to a hearing before the OE. Based on the evidence presented at the hearing, the OE shall determine whether to grant or deny 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 OE may delay field work due to weather conditions and extend the 90-day timeline. The OE may require additional information from the applicant, through a written

**Commented [JT10]:** Need limits on how long the deadline may be extended.

**Commented [HF11R10]:** I agree. What is reasonable? How would this be documented/communicated to an applicant?

**Commented [EM12R10]:** Changed to field or on-site examination; duration may be hampered by weather



request, for the purpose of making a determination. Failure to respond to the written request of the OE within 30 days of the date of the request may result in the OE issuing a Determination Not to Grant notice; in this situation, any application fees submitted will not be refunded to the applicant.

Commented [EM13]: Is this the correct term?

3) **Determination to Grant (prima facie):** If the elements of a water right, as detailed on the abstract, match the existing use, the OE will conclude that the water right matches the use through a Determination to Grant notice. ~~The OE will issue an opinion that the water right adequately represents the use.~~ This evaluation may include technical work, including field review and examination of a 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.

Commented [EM14]: Same question

4) **Determination Not to Grant (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 one of the following options:

a) Determine that the water right can be corrected to match the existing use and, if the water right owner agrees to OE proposed corrections, the water right will be corrected in an updated version of the water right, at which point the OE will issue an opinion that the water right adequately represents the existing use.

b) Determine that the water right cannot be corrected, but determine that the water right could be changed to match the existing use pursuant a water right change authorization leaving the OE to either:

i) Assist the water user in finding the materials needed to apply for a water right change in use authorization should they choose to proceed; or

ii) Issue an opinion that the water right does not adequately represent the existing use.

c) Determine that the water right cannot be corrected, cannot be changed, and does not match the existing use. The OE will issue an opinion that the water right is not appropriate to support the existing use.

Commented [JT15]: Can the existing use be changed to match the water right?

Commented [HF16R15]: I agree. I don't think there is authority for this. Rather, the OE shall issue a Determination Not to Grant explaining the basis for such. If the OE chooses to provide directions for the applicant that seems fine, but in the context of a subdivision request a change application would be a completely separate process.

Commented [EM17R15]: The change would be through a water right change application process

Commented [JT18]: I don't think this is a good idea.

Commented [HF19]: So I think we need to separate this a bit. It seems like there are really two separate routes the OE can go with a Determination Not to Grant. One could be Not to Grant with conditions and another as Not to Grant (plainly).

Commented [JT20]: What does this mean?

Commented [HF21R20]: I agree. Not to sure what is meant by this?

Commented [EM22R20]: We look at historic aerial photographs from different periods aka period of record; we can clarify if needed

Commented [HF23]: Unclear what is meant here with this term. Perhaps change to "... or the legality of water use."

Commented [EM24]: Ensure confusion is avoided - does the title change accomplish this?

5) **Abandonment Discovered:** If the investigation finds evidence of nonuse, the OE will examine the aerial period of record and provide an assessment of abandonment pursuant to UAMO, §2-1-111. If the water right appears abandoned, the OE will issue a Determination Not to Grant, detailing any abandonment findings.

6) **Illegal Water Uses Discovered:** If there are uses of water on any of the parcels in question that lack a water right or other legal arrangement of water use, or if there are uses of water related to any of the water rights in question that lack a water right or other legal arrangement of water use, the OE will not issue a Determination 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.

7) **Adverse Effect Discovered:** If the use of water under the terms of the proposed subdivision potentially causes an adverse effect to an adjacent water user, the OE will conduct an adverse effects analysis before issuing any opinions. If the OE determines potential for an adverse effect, that will be documented and may be used to add to any determinations and opinions.

2023-12-20 Draft not yet approved by the FRWMB

8) Regarding Statement of Claim consideration pending

**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 1<sup>st</sup>, 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.

2023-12-20 Draft not yet approved by the FRWMB

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.

- 1) Adequacy of Application: 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.
- 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.
- 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.
- 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.

**Commented [HF25]:** Again, always frame the reader with what specifically this Procedure is dealing with. Here, what type of application are we talking about; what is the situation?

**Commented [EM26]:** HCF: We should reference Ordinance sections that provide more detail.

2023-12-20 **Draft** not yet approved by the FRWMB

- 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 that is licensed to practice law in Montana 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 application 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

**Commented [HF27]**: Are we referring to all types of corps? Such as LLC, partnerships, nonprofits? If so, we should list that out to avoid uncertainty.

2023-12-20 **Draft** not yet approved by the FRWMB

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 OE communications to a representative, such as consultant, advisor, counsel, or other agent, must provide written authorization that identifies the representative, includes the correct contact information to be used, and has an original signature from all owners of record and the representative.
- b) Applicant Signatory Delegation - 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 all owners of records and the representative. The document must be notarized.

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

- 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 conforms to the standard of 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.

**Commented [HF28]:** Again, what process are we in (make it easy for the reader and Staff)? The overall organization of this document will need to be considered at workshop.

**Commented [JT29]:** Is this standard set out in the Ordinance?

**Commented [HF30R29]:** Agreed, if we are going to be adopting certain evaluation or assessment standards as to the weight of evidence, we should check if such standards are supported by the Compact or Ordinance.

**Commented [EM31R29]:** "Substantial credible information" means probable, believable facts sufficient to support a reasonable legal theory upon which the department should proceed with the action requested by the person providing the information.

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.

2023-12-20 Draft not yet approved by the FRWMB

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, 2022<sup>1</sup>. 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 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 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

**Commented [HF32]**: See comment above.

**Commented [HF33]**: As set out where? Make sure we reference where the standards are coming from for consistency.

---

<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.

2023-12-20 Draft not yet approved by the FRWMB

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) 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, 2022<sup>2</sup>. 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 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) Other Buildings Defined: Buildings spaced closely from 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.

Commented [HF34]: See comment above.

Commented [HF35]: As set out where? Make sure we reference where the standards are coming from for consistency.

---

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

2023-12-20 **Draft** not yet approved by the FRWMB

- 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 a Municipal Water Supply must provide a letter from that Municipal Water Supply System 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) Maximum Number of Connections:
  - a) Individual Domestic Allowances may only be connected to one home or business.
  - b) Shared Domestic Allowances may only be connected two or three homes or businesses.
  - c) Development Domestic Allowances are connected to four or more homes and/or businesses, as additionally conditioned by subsection 11 below.
  - d) Incremental increases in the number of connections may cause a project to be reclassified as Shared or Development Domestic Allowance or a New Appropriation if volume and flowrate standards are exceeded.
- 11) 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 AF/year IWR for an 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

Commented [JF36]: Check this



2023-12-20 **Draft** not yet approved by the FRWMB

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 flowrate below 35GPM 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.

**12) 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.

**13) Maximum Number of Wells:**

- a) Individual and Shared Domestic Allowances are restricted to one well.
- b) Development Domestic Allowances are restricted to three wells to ensure an appropriate flow rate for each well.
- c) If water supply is limited and requires an infiltration gallery or 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.

**14) Additional Well Fee for Development Domestic Allowances:** Each well beyond one for a Development Domestic Allowance adds an additional application filing fee as set forth on Form 6DDF and in WP&P 10-102 and is to compensate the OE for additional time needed to inspect each well and its measuring device installation.

**15) 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 for all wells on the system.

**Commented [HF37]:** What is the process to get the device approved and what is the timing of approval?

**Commented [EM38R37]:** Language added

2023-12-20 Draft not yet approved by the FRWMB

b) Well owners are required to report their usage on Form WMR-01 each year and failure to do so may incur a fine or risk revocation of the water right.

c) To get a measuring device approved, 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 of any equipment does not provide an assurance that the proposed equipment will work [insert indemnification language]. Upon preapproval, the OE will issue approval of the proposed measuring device plan along with the Part A application.

~~15~~d) Once operational, the OE will conduct an on-site verification of the installation to ensure the equipment and installation was conducted pursuant to the preapproval. The OE may request a test to ensure the equipment is functioning properly.

Formatted

16) 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.

17) Annual Volume: Annual volume limits, 2.4 AF/year for 60DF and 10 AF/year for 6DDF, are diverted amounts, not to be confused with consumed volume.

18) Combined Flow Rates: If a project for any domestic allowance uses more than one well, the cumulative or combined flow rate of all wells operating simultaneously shall be equal to or less than 35 GPM.

19) Stock Water Volumes: 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.

20) 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.

Commented [HF39]: Should there be example language included in this subsection (i.e., what an applicant may see on their certificate)?

21) Water Storage: Storage associated with any system must be enclosed and documented in volume, location, system attachment, additional pump infrastructure, depth if buried, and other pertinent design criteria.

22) Exceptions to Standards and Water Use Plans: Any proposed exceptions to standards must include an engineer, hydrologist, or design specialists' assessment of need and function. For commercial, business, and other water uses that are unique, the OE may require the applicant to provide a Water Use Plan that specifies volumes, flow rate, and design parameters for each

Commented [HF40]: Is this a form the OE would provide if it required an applicant to submit one?

2023-12-20 Draft not yet approved by the FRWMB

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.

Formatted: Justified

2023-12-20 Draft not yet approved by the FRWMB

- 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: