

**FLATHEAD RESERVATION WATER MANAGEMENT BOARD  
APPELLATE OPERATING RULES**

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**SECTION I. APPEAL CONFERENCES; CONSIDERATION FOR SUBMISSION OF APPEAL**

1. Upon receipt of the notice of appeal, the Office of the Engineer shall promptly date stamp the notice. Filing of the notice of appeal may occur either by placing the notice in the custody of the Board within the time fixed for filing or by mail addressed to the Board to be received within the time fixed for filing. Upon acceptance of the notice of appeal, the Office of the Engineer shall compile and transmit the record to the Board.
2. Board legal counsel shall place each appeal on a conference agenda at least five (5) days after receipt of the notice of appeal from the Office of the Engineer. Board legal counsel shall circulate the conference agenda to each Board member, and to the Office of the Engineer to post on the Board's website, no more than seventy-two (72) hours prior to the scheduled conference; any appeals filed within this time shall be promptly placed on the following conference agenda.
3. The following procedures will be used in considering the appeals set for discussion on the conference agenda.
  - A. **Appeals Brought Under Ordinance, § 2-2-111:**
    - i. Appeals Determined with No Argument or Briefing. The Board may consider an appeal properly submitted before it without requiring oral argument or briefing.
      1. In this situation, the Board shall follow the decision writing procedures listed under Section III. The date the Board Chair submits a proposed vote to Board legal counsel for decision writing is marked as the submission date for the appeal.
      2. The final decision shall be assigned to the public domain and posted to the Board's website.
    - ii. Appeals Requiring Additional Evidence. Before the Board sets an appeal for oral argument, a party may seek leave to present additional evidence if such evidence is material and there were good reasons for failing to present it in the Office of the Engineer proceedings.
      1. Once the Board grants leave, the additional evidence shall be presented before the Engineer or Designee upon conditions determined by the Board, including deadlines for submission of evidence and for the conclusion of the Engineer or Designee's review.
      2. The Engineer or Designee may modify the previous findings and decision after review of the additional evidence or may affirm the prior decision or notice the affirming of the decision with the Board.

**BOARD APPROVAL FOR NOTICE AND COMMENT ON 12-14-2023  
SUBMITTED FOR PUBLIC COMMENT ON 12-18-2023**

3. If the Engineer or Designee affirms the previous decision, the Board shall issue a status order detailing the position of the appeal before the Board after the Engineer or Designee's consideration of the additional evidence.
  4. If the Engineer or Designee modifies the previous decision, the Board shall issue a status order detailing the position of the appeal before the Board and may require briefing or oral argument requiring the appellant to explain whether the modifications alter their basis for appeal.
- iii. Appeals Set for Oral Argument. The Board may set oral argument in an appeal properly brought before it. An appeal may be set for oral argument upon the request of appellant, at the time of filing the notice of appeal, or upon the determination of the Board members.
1. Following the conference in which oral argument is set, the Board shall issue a scheduling order to the parties detailing the time and place for the argument, the form of the argument, and other such information contained in FRWMB App.R.P. § 6.18.
  2. Board members and Board legal counsel may further discuss an appeal set for oral argument in a noticed closed executive session prior to the date set for argument.
  3. Appeals classified for oral argument shall be placed on the Board's calendar on the FRWMB website.
- iv. Appeals Requiring Written Briefs. The Board may also consider requiring briefing for an appeal properly submitted before it.
1. If the Board requires briefing, it shall issue a scheduling order to the parties, following the conference, detailing the timing for submission of briefs, length of briefs, format of briefs, and other such information contained in FRWMB App.R.P. § 6.14.
  2. The Board may also, at this time, require oral argument following the submission of written briefs. The Board shall include whether it requires oral argument in its scheduling order to the parties.
  3. If an appeal is found to be insufficiently briefed, it may be returned to the parties, and/or their counsel, for such rebriefing as is required.
  4. Board members and Board legal counsel may further discuss an appeal requiring briefing or set for oral argument in a noticed closed executive session prior to the date set for argument.
  5. Any briefing or oral argument required by the Board shall be placed on the Board's calendar on the FRWMB website.
- B. Appeals Brought Under Ordinance, § 3-1-104:**
- i. Appeals Determined with No Argument or Briefing. The Board may consider an appeal properly submitted before it without requiring oral argument or briefing.

**BOARD APPROVAL FOR NOTICE AND COMMENT ON 12-14-2023  
SUBMITTED FOR PUBLIC COMMENT ON 12-18-2023**

1. In this situation, the Board shall follow the decision writing procedures listed under Section III. The date the Board Chair submits a proposed vote to Board legal counsel for decision writing is marked as the submission date for the appeal.
  2. The final decision shall be assigned to the public domain and posted to the Board's website.
- ii. Appeals Requiring Additional Evidence. The parties may each submit additional factual evidence and legal argument concerning the appeal to the Board within sixty (60) days from the filing of the notice of appeal. Either party to the appeal shall have sixty (60) days from the date of receipt of evidence or argument served to respond in writing to the evidence and argument submitted by the other party.
- iii. Appeals Requiring Oral Argument. The Board may set oral argument in an appeal properly brought before it or either party to the appeal may elect to have oral argument prior to the resolution of appeal.
1. The appellant must request argument at the time of the filing of the notice of appeal. The appellee must request argument within ten (10) days of the appellee's receipt of the notice of appeal.
  2. If argument is requested or the Board sets argument, such argument must be held within sixty (60) days of the filing of the notice of appeal or within thirty (30) days of the receipt of evidence or argument, whichever date is later.
  3. Following the conference in which oral argument is set, the Board shall issue a scheduling order to the parties detailing the time and place for the argument, the form of the argument, and other such information contained in FRWMB App.R.P. § 6.19.
  4. Board members and Board legal counsel may further discuss an appeal set for oral argument in a noticed closed executive session prior to the date set for argument.
  5. Appeals classified for oral argument shall be placed on the Board's calendar on the FRWMB website.
- iv. Appeals Requiring Written Briefs. The Board may also consider requiring briefing for an appeal properly submitted before it.
1. If the Board requires briefing, it shall issue a scheduling order to the parties, following the conference, detailing the timing for submission of briefs, length of briefs, format of briefs, and other such information contained in FRWMB App.R.P. § 6.15.
  2. The Board may also, at this time, require oral argument following the submission of written briefs. The Board shall include whether it requires oral argument in its scheduling order to the parties.
  3. If an appeal is found to be insufficiently briefed, it may be returned to the parties, and/or their counsel, for such rebriefing as is required.

**BOARD APPROVAL FOR NOTICE AND COMMENT ON 12-14-2023  
SUBMITTED FOR PUBLIC COMMENT ON 12-18-2023**

4. Board members and Board legal counsel may further discuss an appeal requiring briefing or set for oral argument in a noticed closed executive session prior to the date set for argument.
5. Any briefing or oral argument required by the Board shall be placed on the Board's calendar on the FRWMB website.

**C. Expedited Appeals Brought Under Ordinance, § 3-1-111:**

- i. Oral Argument. If a party brings an expedited appeal before the Board, the Board must hear the appeal within ten (10) days of the notice of appeal being filed.
  1. Following the conference in which oral argument is set, the Board shall issue a scheduling order to the parties detailing the time and place for the argument, the form of the argument, and other such information contained in FRWMB App.R.P. § 6.20.
  2. Expedited appeals classified for oral argument shall be placed on the Board's calendar on the FRWMB website.
4. If an appeal is deemed frivolous, it will be summarily dismissed. The Board shall issue a final decision regarding dismissal to the parties within ten (10) days following the conference in which a vote for dismissal has occurred.
5. Following the conference, Board legal counsel shall submit an updated conference agenda to the Office of the Engineer within forty-eight (48) hours before the conference for posting on the Board's website. Any scheduling orders or status orders of the Board shall be promptly issued to the parties within seven (7) days following the conference in which that specific appeal is discussed, unless an appellant files an expedited appeal under Ordinance, § 3-1-111, then the Board shall issue a scheduling order within three (3) days of the filing of the notice of appeal.
6. All written documents submitted on appeal or issued by the Board, shall also be posted on the Board's website. The Board reserves the right to redact confidential information on any document posted to its website pertaining to an individual's privacy or specific litigation information.

**SECTION II. ORAL ARGUMENT**

1. Oral arguments shall function pursuant to FRWMB App.R.P. §§ 6.17 through 6.20.
  - A. **Appeals Brought Under Ordinance, § 2-2-111:**
    - i. Arguments Involving Multiple Parties: An argument involving multiple parties shall proceed pursuant to FRWMB App.R.P. § 6.18(2).
    - ii. Arguments Involving the Engineer or Designee: An argument involving an individual party and the Engineer or Designee shall proceed pursuant to FRWMB App.R.P. § 6.18(3).
  - B. **Appeals Brought Under Ordinance, § 3-1-104:**
    - i. Arguments held in this type of appeal shall proceed pursuant to FRWMB App.R.P. § 6.19.

**C. Expedited Appeals Brought Under Ordinance, § 3-1-111:**

- i. Arguments held in this type of appeal shall proceed pursuant to FRWMB App.R.P. § 6.20.
2. Following oral argument, the Board members shall preliminarily discuss and vote on the outcome of the appeal during the next scheduled conference.
3. Appeals in which oral argument was heard must be voted on at the next scheduled conference. A Board member absent at a subsequent conference will be responsible for presenting his or her views in writing no less than twenty-four (24) hours prior to the next scheduled conference.
4. When a majority of Board members have reached a proposed vote on the appeal, that appeal will be submitted to Board legal counsel for opinion writing by the Board Chair. The date the case is submitted for decision writing is marked as the submission date for the case.

**SECTION III. DECISIONS**

**1. Final Decisions Under Ordinance, § 2-2-111:**

- A. The final decision in this type of appeal shall be signed and filed with the Office of the Engineer no later than ninety (90) days following the submission date. Complexity of issues and appeal load may require additional time for filing of the final decision with the Office of the Engineer.
  - B. The following process applies to the final decision drafting process:
    - i. Within sixty (60) days of the submission date, legal counsel shall circulate a decision draft for the Board to review. The Board reserves the right to extend the drafting period depending on complexity and appeal load.
    - ii. A Board member who wishes to draft a separate decision through a dissent or concurrence may do so and must propose their intention to the Board at conference. The individual Board member may work with its legal counsel who is not aiding in the majority draft decision. The individual Board member shall render a draft dissent or concurrence for review by the Board no later than sixty (60) days after the submission date.
    - iii. The draft decision shall be considered at the next scheduled conference, subject to the requirement that the draft decision must be circulated at least seven (7) days before the next scheduled conference to be considered for review.
    - iv. At conference, the decision draft shall be voted upon. If a majority of Board members vote in favor, the draft shall be finalized into a proposed decision.
    - v. Before the end of the drafting period, Board legal counsel shall revise the proposed decision for final approval of the Board members. The final decision shall be posted to the Board's website following approval and issued to the parties.

**2. Final Decisions Under Ordinance, § 3-1-104:**

- A. The final decision in this type of appeal shall be signed and filed with the Office of the Engineer no later than sixty (60) days after the completion of oral argument or after the deadline for submission of evidence and argument, whichever is later.
- B. The following process applies to the final decision drafting process:
  - i. Within thirty (30) days of the submission date, legal counsel shall circulate a decision draft for the Board to review. The Board reserves the right to extend the drafting period depending on complexity and appeal load.
  - i. A Board member who wishes to draft a separate decision through a dissent or concurrence may do so and must propose their intention to the Board at conference. The individual Board member may work with its legal counsel who is not aiding in the majority draft decision. The individual Board member shall render a draft dissent or concurrence for review by the Board no later than thirty (30) days after the submission date.
  - ii. The draft decision shall be considered at the next scheduled conference, subject to the requirement that the draft decision must be circulated at least seven (7) days before the next scheduled conference to be considered for review.
  - iii. At the conference, the decision draft shall be voted upon. If a majority of Board members vote in favor, the draft shall be finalized into a proposed decision. An individual Board member who votes against the decision draft may author his or her own dissenting decision.
  - iv. A Board member shall circulate, to the other Board members and Board legal counsel, copies of his or her signed dissenting decision as soon as practical after the date on which a majority approves a proposed decision.
  - v. Before the end of the drafting period, Board legal counsel shall revise the proposed decision for final approval of the Board members. The final decision shall be posted to the Board's website following approval and issued to the parties.

**3. Final Decision Under Ordinance, § 3-1-111:**

- A. The final decision in this type of appeal shall be signed and filed with the Office of the Engineer no later than thirty (30) days after the completion of oral argument.
- B. The following process applies to the final decision drafting process:
  - i. Within fifteen (15) days of the submission date, legal counsel shall circulate a decision draft for the Board to review. The Board reserves the right to extend the drafting period depending on complexity and appeal load.
  - ii. A Board member who wishes to draft a separate decision through a dissent or concurrence may do so and must propose their intention to the Board at conference. The individual Board member may work with its legal counsel who is not aiding in the majority draft decision. The individual Board

**BOARD APPROVAL FOR NOTICE AND COMMENT ON 12-14-2023  
SUBMITTED FOR PUBLIC COMMENT ON 12-18-2023**

member shall render a draft dissent or concurrence for review by the Board no later than fifteen (15) days after the submission date.

- iii. The draft decision shall be considered at the next scheduled conference, subject to the requirement that the draft decision must be circulated at least three (3) days before the next scheduled conference to be considered for review.
- iv. At the conference, the decision draft shall be voted upon. If a majority of Board members vote in favor, the draft shall be finalized into a proposed decision. An individual Board member who votes against the decision draft may author his or her own dissenting decision.
- v. A Board member shall circulate, to the other Board members and Board legal counsel, copies of his or her signed dissenting decision as soon as practical after the date on which a majority approves a proposed decision.
- vi. Before the end of the drafting period, Board legal counsel shall revise the proposed decision for final approval of the Board members. The final decision shall be posted to the Board's website following approval and issued to the parties.

**SECTION IV. OPERATION AS A FIVE-MEMBER APPEAL BOARD**

- 1. The appellate body shall consist of the five voting-members of the Board. The sixth ex-officio member shall not participate in the appeal or the appellate conference, unless the Board Chair requests the ex-officio member's deliberative participation in the appeal or in a conference; the ex-officio member has no voting authority.
- 2. The Board shall hear all appeals timely submitted to it pursuant to the Ordinance, §§ 2-2-111, 3-1-104 and 3-1-111.
- 3. All draft decisions and proposed decisions shall be circulated to all Board members, including the sixth ex-officio member of the Board.

**SECTION V. ORDERS OF THE BOARD**

- 1. This section is designed to provide a more efficient procedure for issuing and executing orders of the Board. All orders covered by subsection 2 of this section shall be signed by the Board Chair or in his or her absence, the Vice Chair, on behalf of the Board in this manner:

For the Board,

By \_\_\_\_\_  
[NAME]  
Board Chair



**BOARD APPROVAL FOR NOTICE AND COMMENT ON 12-14-2023  
SUBMITTED FOR PUBLIC COMMENT ON 12-18-2023**

2. The following orders shall be signed as provided in subsection 1 above:
  - A. All orders based on stipulation of the parties;
  - B. All orders covering matters decided by the Board in conference;
  - C. All orders fixing or extending time within which an act must be done;
  - D. All orders concerning Board calendars, appeal considerations, participation in and time limits for oral argument, request for written briefs, and related orders; and
  - E. All interlocutory orders.
3. The following matters shall require the individual signatures of a majority of the Board members:
  - A. All final decisions; and
  - B. Orders granting or denying an appeal, orders of dismissal, or other final dispositions.

## **SECTION VI. GENERAL**

1. The Board Chair shall submit all appeals for decision writing to the Board's legal counsel.
2. The Board shall generally hold oral arguments in the morning of the second and fourth Thursday of the month, unless an appellant submits an expedited appeal under Ordinance, § 3-1-111, in which the Board shall hold oral argument within ten (10) days from the notice of appeal being filed.
  - A. The Board may hear multiple arguments in one day depending on complexity of issues on appeal and docket load. The Board may alter the day of the week for an oral argument upon a majority vote in favor of such change.
3. The Board shall hold conference on the second and fourth Tuesday of the month, unless an appellant brings an expedited appeal under Ordinance § 3-1-111, in which the Board shall hold conference no more than five (5) days after hearing oral argument.
  - A. At all conferences, appeals without a submission date shall be given top priority.
  - B. In the event any Board member is unable to attend a conference, he or she shall advise the Board Chair no less than forty-eight (48) hours prior to the date of the conference, unless in the case of an emergency. Absent Board members shall also provide their written vote setting forth his or her decisions on matters to be discussed at the conference to the Board Chair.
4. The Board Chair shall preside over all appeal matters. If the Board Chair is unable to attend a conference, the Vice Chair may serve as acting Chair for that conference.
5. In those cases in which a Board member disqualifies himself or herself, the Board Chair or acting Chair shall designate the process on appeal at the next scheduled conference.