

**FLATHEAD RESERVATION WATER MANAGEMENT BOARD**  
**APPELLATE RULES OF PROCEDURE**

---

**PART 1: Establishment and Jurisdiction**

**SECTION 1.1: Establishment.** The Confederated Salish and Kootenai-Montana Compact (the “Compact”) and the Unitary Administration and Management Ordinance (the “Ordinance”) (Mont. Code Ann. §§ 85-20-1901 and -1902) vested judicial authority in the Flathead Reservation Water Management Board (hereinafter “the Board”).

**SECTION 1.2: Board of Appeals.** The Board may hear and decide appeals as provided by Compact, art. IV.I.5 and Ordinance, §§ 2-2-111 and 3-1-104, subject to any restrictions imposed by the Compact, the Ordinance, the Montana Constitution, treaties, or laws of the United States. Final decisions of the Board may be subject to review upon an appeal to a Court of Competent Jurisdiction. *See* Compact, art. IV.I.6 and Ordinance, §§ 2-2-112 and 3-1-108.

**SECTION 1.3: Exclusive Jurisdiction.** The Board shall have jurisdiction of all appeals wherein the parties are subject to the jurisdiction of the Board, and over other appeals which are brought before the Board by stipulation of the parties. *See* Compact, art. IV.I.1. Any party involved in an appeal before the Board, but not previously before the Board or the Office of the Engineer, shall consent to the jurisdiction of the Board for purposes of the appeal. The Board shall have exclusive jurisdiction to resolve any controversy over the meaning and interpretation of the Compact on the Reservation, and any controversy over the right to the use of water as between parties or between or among holders of appropriation rights and existing uses on the Reservation except as explicitly provided otherwise in Compact, art. IV.G.5. The jurisdiction of the Board does not extend to any water rights whose place of use is located outside the exterior boundaries of the Reservation.

**SECTION 1.4: Cases Involving a Question of Tribal Jurisdiction.** In any appeal before the Board to which the Confederated Salish and Kootenai Tribes (the “Tribes”) or an agency, officer or employee of the Tribes if not a party, wherein an action or omission, transaction, communication, or jurisdiction of the Tribes is drawn into question, the Board shall certify in writing such fact to the Tribal Legal Department, which is entitled to intervene on behalf of the Tribes as a matter of right, but shall be under no obligation to do so. Should the Tribes intervene, it shall have all the rights and liabilities of a party, provided, however, that the Tribes waive no defenses pertaining to governmental immunity, liability, damages or monetary relief.

**SECTION 1.5: Notice of Appeal.** (1) In appeals brought under either Ordinance, §§ 2-2-111 or 3-1-104, a notice of appeal to the Board must be filed with the Office of the Engineer within thirty (30) days of the Engineer or Designee’s final decision and placed in the custody of the Board within the time fixed for filing. *See* Ordinance, §§ 2-2-110(10) and 3-1-103(4).

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

(2) Appellant shall submit a filing fee of \$50.00 upon filing the notice of appeal. The filing fee covers the cost of filing the notice and transmission of the record from the Office of the Engineer.

(3) The notice of appeal shall be date stamped immediately upon receipt by the Office of the Engineer. At such time, the appeal shall be docketed on the Board's conference agenda by Board legal counsel.

(4) In an appeal brought under Ordinance, § 3-1-104, within three (3) days of receipt of the notice of appeal, the Office of the Engineer shall serve a copy of the notice of appeal on the appellee. *See* Ordinance, § 3-1-104(1).

(5) In an appeal brought under Ordinance, § 3-1-111, the notice of appeal must describe with particularity the action being appealed and the justification for the appeal. The Board must immediately notify the Engineer of the filing of a notice of appeal. *See* Ordinance, § 3-1-111(2).

**PART 2: Board Members**

**SECTION 2.1: Disqualification of Board Member During Appeal.** (1) No Board member may vote on any appeal that the member participated in personally and substantially in any non-Board capacity.

(2) Within ten (10) days of the filing of the notice of appeal, a party may move the Board for the disqualification of a Board member. One such motion shall be granted as a matter of right for each party to the proceeding. A party may move at any time that a Board member be disqualified from a panel for bias or other good cause shown. Such motion shall be supported by an affidavit and, if opposed by a party or a Board member, shall be heard by the remaining Board members. A Board member shall disclose on the record information that the Board member believes the parties or their attorneys might consider relevant to the question of disqualification, even if the Board member believes there is no real bias for disqualification.

(3) A Board member shall disqualify himself or herself in a proceeding in which the Board member's impartiality might reasonably be questioned, including, but not limited to instances where that Board member participated in personally or substantially in any non-Board capacity.

**PART 3: Appeal Administration**

**SECTION 3.1: Duties of Board Members During Appeal.** All Board members, except for the ex officio member, shall participate in any appeal properly noticed before the Board. The Board members shall hear argument, if requested by the parties or ordered by the Board, and attend conferences to discuss the appellate docket, oral argument, the parties' briefs and submit a proposed vote to legal counsel for decision writing, vote on the proposed decision, and submit

final decisions to the Office of the Engineer. The Board Chair is responsible for the administration and management of the Board on appeal.

**SECTION 3.2: Duties of the Office of the Engineer During Appeal.** The Office of the Engineer shall act as the clerical body during an appeal, assisting the Board with collection of appellate documents, pleadings, exhibits, etc. and with service of orders or decisions of the Board. The Office of the Engineer shall not be involved in the appellate conferences or oral argument, unless the Board requests the Engineer or Designee to present testimony as an expert pursuant to Compact, art. IV.I.5.

**SECTION 3.3: Role of Board Legal Counsel In Appeal Process.** The Board's legal counsel shall assist the Board with the administration of the appeal, including maintaining the appellate docket, setting the conference agendas, attending conferences, attending oral argument, and drafting decisions at the direction of the Board. Legal counsel shall not represent any party before the Board on appeal nor act in a judicial capacity during oral argument before the Board, but may represent the Board and/or the Office of the Engineer in a judicial review proceeding before a Court of Competent Jurisdiction.

#### **PART 4: Representation by Counsel**

**SECTION 4.1: Legal Counsel Representation.** (1) A party appearing before the Board in an appeal proceeding may be represented by an attorney in good standing as described in FRWMB App.R.P., § 4.2. Any attorney involved in an appeal proceeding before the Board must promptly file a notice of appearance with the Board, unless the attorney previously filed one in the hearings proceedings before the Engineer or Designee, and shall acknowledge responsibility for all pleadings, motions, and other papers submitted on the party's behalf and for the timeliness thereof and shall acknowledge that all notices incident to the proceedings will be sent to the party.

(2) A corporation, firm, association, partnership, or other organized entity must be represented by an attorney in an appeal proceeding before the Board.

**SECTION 4.2: Admission to Practice.** An attorney in good standing who is admitted to practice before the Montana Supreme Court and/or an attorney admitted to practice before the Confederated Salish & Kootenai Tribal Court shall be admitted to practice before the Board.

**SECTION 4.3: Pro Se Representation.** (1) Any natural person who has not been adjudged incompetent, and who wishes to file an appeal with the Board or who is a named party to an appeal proceeding before the Board may represent himself or herself in person.

(2) An adult Tribal Member who wishes to file an appeal or who is a named party to an appeal proceeding before the Board may be represented without remuneration by another Tribal Member who is neither an attorney nor an advocate and who has not been convicted of a felony nor been

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

adjudged incompetent. The party enlisting such representation shall so inform the Board in writing and shall acknowledge sole responsibility for all pleadings, motions, and other papers submitted on the party's behalf and for the timeliness thereof and shall acknowledge that all notices incident to the proceedings will be sent to the party and not to the Tribal member representative.

**PART 5: Parties and Witnesses**

**SECTION 5.1: Parties on Appeal.** (1) In an appeal brought under Ordinance, § 2-2-111, the parties to an appeal before the Board shall be the same parties in the proceeding before the Engineer or Designee, unless a party has been dismissed for good cause by the Board. The appealing party shall be known as the Appellant and the responding party shall be known as the Appellee.

(2) In an appeal brought under Ordinance, § 3-1-104, a complainant or respondent dissatisfied with the final decision of the Engineer or Designee may appeal to the Board and become the Appellant. The party named in the dispute shall become the Appellee.

(3) In an expedited appeal brought under Ordinance, § 3-1-111, any appropriator whose use of water is affected by an action taken by the Engineer pursuant to Ordinance, §§ 3-1-109 or -110 may appeal to the Board and become the Appellant. The Engineer shall become the Appellee.

**SECTION 5.2: Subpoena Power.** (1) In an appeal brought under Ordinance, § 2-2-111, the Board shall have the power to issue subpoenas to compel attendance of witnesses before the Engineer or Designee, or for the production of documents or other evidence only when the Board grants leave to a party to present additional evidence to the Engineer or Designee. *See* Ordinance, § 2-2-111(2)

(2) In an appeal brought under Ordinance, § 3-1-104, the Board shall have the power to issue subpoenas for the production of documents or other evidence only when a party submits additional factual evidence and legal argument concerning the appeal within sixty (60) days from the filing of the notice of appeal. *See* Ordinance, § 3-1-104(3).

**SECTION 5.3: Privileges, Waiver of Privilege, and Privileged and Confidential Information.** Unless otherwise provided by the Compact and/or the Ordinance, all evidence contained in the record on appeal involving privileged or confidential information or a waiver of privilege shall be received and evaluated in conformance with common law and the Montana rules of evidence.

**PART 6: Appellate Rules**

**SECTION 6.1: Application of Rules.** These Rules apply to appeals made to the Board of final decisions of the Engineer or Designee and to expedited appeals made to the Board in the event of certain actions by the Engineer. *See* Ordinance, §§ 2-2-111, 3-1-104, and 3-1-111.

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

**SECTION 6.2: Appeals Under Section 2-2-111.** An appeal under this section may be brought by any applicant or objector dissatisfied with the final decision of the Engineer or Designee in the permit and change application process, as described by Ordinance, Ch. II.

**SECTION 6.3: Appeals Under Section 3-1-104.** An appeal under this section may be brought by any complainant or respondent dissatisfied with the final decision of the Engineer or Designee in the enforcement process, as described by Ordinance, Ch. III.

**SECTION 6.4: Appeals Under Section 3-1-111.** An expedited appeal under this section may be brought by any appropriator whose use of water is affected by an action taken by the Engineer pursuant to Ordinance, §§ 3-1-109 and -110.

**SECTION 6.5: Assignment of Appeal to Board.** All Board members, except for the ex officio Board member, shall be assigned to each docketed appeal. The Board Chair may request the ex-officio member's deliberative participation in the appeal or in a conference; the ex-officio member has no voting authority. A Board member may recuse himself or herself for good cause. The Board Chair may excuse a Board member from an appeal for reasons of efficient judicial administration.

**SECTION 6.6: Appellate Conference.** All Board members shall convene for conference, which shall be noticed as a closed meeting, to consider each appeal properly brought before the Board. The Board members shall determine whether an appeal is to be considered on its face, whether additional evidence is required, whether to set oral argument, whether to require written briefing, and any other appellate business required. Board legal counsel shall issue and circulate a conference agenda prior to each scheduled conference.

**SECTION 6.7: Submission Date.** 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.

**SECTION 6.8: Scope of Appeal.** (1) Appeals brought before the Board under Ordinance, § 2-2-111, must pertain to the record in the proceeding before the Engineer or Designee, unless additional evidence is allowed by the Board, then after upon considering the additional evidence the record may contain any additional briefing required and decisions issued. Questions not raised before the Engineer or Designee may not be raised in the appeal to the Board unless good cause is established for failure to raise such questions.

(2) Appeals brought before the Board under Ordinance, § 3-1-104, must pertain to the record in the complaint proceeding before the Engineer or Designee, unless the parties submit additional factual evidence and legal argument concerning the appeal to the Board.

**SECTION 6.9: Stay of Engineer Decision Pending Appeal.** (1) In an appeal brought under Ordinance, § 2-2-111, the Engineer or Designee's final decision shall not be stayed, unless a motion

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

is made for a stay of execution upon the filing of a notice of appeal. The Board may grant said stay for such a period of time and under such conditions as the Board deems proper.

(2) In an appeal brought under Ordinance, § 3-1-104, the final decision of the Engineer or Designee shall not be stayed during the pendency of the appeal unless the Board expressly orders such a stay upon motion of the parties.

**SECTION 6.10: Record on Appeal and Additional Evidence.** (1) In an appeal brought under Ordinance, § 2-2-111, the appeal to the Board shall be confined to the record, unless there is good cause for failure to raise the question before the Engineer or Designee warranting consideration of additional information.

(2) In an appeal brought under Ordinance, § 3-1-104, the appeal to the Board shall be confined to the record, unless the parties 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.

(3) The original papers and exhibits filed with the Engineer or Designee, any recording of an Engineer or Designee proceeding, and a certified copy of the hearings docket shall constitute the record on appeal in all cases. Within five (5) days after filing the notice of appeal, the appellant shall order from the Office of the Engineer a recording of such parts of the proceedings not already on file as the appellant deems necessary for inclusion in the record. If the appellee deems a recording of other parts of the proceedings to be necessary he or she shall, within five (5) days after such filing and service, order such parts from the Office of the Engineer. In the event the Board Chair waives the recording costs for good cause shown, the Office of the Engineer shall provide the complete recording on appeal.

(4) The record on appeal, including the recording necessary for the determination of the appeal, shall be transmitted to the Board within fifteen (15) days after the filing of the notice of appeal unless the time is extended to a date certain for good cause shown by the Board Chair upon application of a party.

(5) At the time of filing the notice of appeal, the appellant shall submit to the Office of the Engineer, a fee of \$50.00, payable by check or money order, for filing the notice and transmitting the record on appeal, unless the fee is waived by the Board Chair for good cause shown. Failure to pay the filing fee, unless waived, is grounds for dismissal on appeal. Within three (3) days of receipt of the notice of appeal, the Office of the Engineer shall serve a copy of the notice of appeal to the other parties involved. The Board shall discuss a newly docketed appeal at the next scheduled conference according to the conference agenda set by Board legal counsel.

(6) In an appeal brought under Ordinance, § 2-2-111, if application is made to the Board for leave to present additional evidence and it is shown to the satisfaction of the Board that the additional evidence is material and there were good reasons for failing to present it in the proceeding before

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

the Engineer or Designee, the Board may order that the additional evidence be taken before the Engineer or Designee upon conditions determined by the Board, including the deadline for submission of additional evidence to the Engineer or Designee and for the conclusion of the Engineer or Designee's review of any such additional evidence. The Engineer or Designee may modify the findings and decision by reason of the additional evidence or may affirm the prior decision and shall file a modified decision or notice of affirming the decision with the Board pursuant to the reasonable deadline set by the Board. *See* Ordinance, § 2-2-111(2).

(7) In an appeal brought under Ordinance, § 3-1-104, the parties may 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 the evidence or argument served to respond in writing to the evidence and argument submitted by the other party to the dispute. *See* Ordinance, § 3-1-104(2) and (3).

**SECTION 6.11: Filing and Service.** (1) Papers required or permitted to be filed with the Board must be placed in the custody of the Office of the Engineer within the time fixed for filing. The Office of the Engineer shall note upon each such paper or document the time of filing and transmit the same to the Board members.

(2) Copies of all papers filed by any party shall, at or before the time of filing, be served by the party or a person acting for him or her on all other parties to the appeal. Service on a party represented by counsel shall be made on counsel. Service may be personal or by mail. Personal service includes delivery of the copy to a clerk or other responsible person at the office of counsel. Service by mail is complete on mailing.

(3) Papers presented for filing shall contain a certification of service in the form of a statement of the date and manner of service and of the names of the persons served, certified by the person who made service.

(4) Except as otherwise provided, a signed original and one copy of all papers shall be filed with the Office of the Engineer.

**SECTION 6.12: Motions.** Unless another form is prescribed by these rules, an application for an order or other relief shall be made by filing a motion in writing for such order or relief. The motion shall state with particularity the grounds therefore and shall set forth the order of relief sought. Counsel shall also note therein that opposing counsel or the opposing part, if unrepresented, has been contacted concerning the motion and whether opposing counsel objects to the motion. If a motion is supported by briefs, affidavits or other papers, they shall be served and filed with the motion. If a motion seeks dismissal of the appeal or other substantial relief, any party may file an answer in opposition within seven (7) days after service of the motion, or within such time as the Board may direct.

**SECTION 6.13: Computation and Extension of Time.** Pursuant to Ordinance, § 1-1-106, in computing any period of time prescribed by these rules, the time for completion of the act shall be measured in calendar days unless the last day falls on a Friday, Saturday, Sunday, or Tribal, State or Federal legal holiday, in which case the time for performance is extended to the next subsequent business weekday. For good cause shown, the Board Chair may order an extension of time prescribed by these rules. All motions or orders for extension of time shall include a date certain on or before which date the act for which an extension of time is requested must be performed.

**SECTION 6.14: Briefs Under Section 2-2-111.** (1) If briefing is requested by the Board, an appellant's brief shall be filed and served within twenty (20) days of the issuance of the scheduling order. The brief will contain under appropriate headings in the order indicated: (a) a table of contents and a table of authorities cited, with references to the pages of the brief where they are cited; (b) a statement of the legal issues presented for review; (c) a statement of the nature of the case and of the judgement or order appealed from; (d) a legal argument, which shall contain the contentions of the appellant with respect to the issues presented and the reasons therefor, together with citations to the authorities and pages of the record relied on; (e) a short conclusion, stating the precise relief sought; and (f) a copy of the decision by the Engineer or Designee, if any.

(2) Appellee's brief shall be filed and served within twenty (20) days after service of the appellant's brief and shall conform to the requirements of subsection (1)(a) through (d) of this rule. A statement of the issues or of the case need not be made if the appellee is satisfied with the statement of the appellant.

(3) Within fourteen (14) days of service of the appellee's brief, the appellant may file a reply brief. Any reply brief must be confined to new matter raised in the brief of the appellee. No further briefs may be filed except with leave of the Board.

(4) A brief of amicus curiae may be filed only upon invitation or leave of the Board granted on motion. A motion for leave shall identify the interest of the amicus party, state the reasons why a brief of an amicus curiae is desirable, identify the party whose position amicus supports, provide the date upon which the brief can be filed, and indicate whether the other party consents to the request.

**SECTION 6.15: Briefs Under Section 3-1-104.** (1) Within sixty (60) days from the filing of the notice of appeal, or any extended period of time, not to exceed sixty (60) days, granted by the Board, the parties may each submit additional factual evidence and legal argument concerning the appeal to the Board and shall serve copies of the same on the other party to the dispute.

(2) Either party to the appeal shall have sixty (60) days from the date of receipt of evidence or argument served, or any extended period of time granted by the Board, not to exceed sixty (60) days, to respond in writing to the evidence and argument submitted by the other party to the dispute.



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

(3) A brief of amicus curiae may be filed only upon invitation or leave of the Board granted on motion. A motion for leave shall identify the interest of the amicus party, state the reasons why a brief of an amicus curiae is desirable, identify the party whose position amicus supports, provide the date upon which the brief can be filed, and indicate whether the other party consents to the request.

**SECTION 6.16: Brief Format.** (1) Except by permission of the Board Chair, briefs shall not exceed twenty-five (25) pages, 14-point font, double spaced on 8 ½ x 11 inch paper, exclusive of pages containing table of contents, tables of authorities and any addendum. Changes to the format of the briefs are not allowed, unless a party files a motion for leave of the Board.

(2) A signed original and one copy of each brief shall be filed with the Office of the Engineer. The brief will contain a certification of service to each party separately represented, and will not be accepted for filing absent such certification.

(3) If an appellant fails to file a brief within the time provided by this rule, or within the time extended, the appellee may move for dismissal of the appeal. If an appellee fails to file a brief, he or she will not be heard at oral argument except by permission of the Board.

**SECTION 6.17: Oral Argument in General.** (1) The Board shall set the time and place at which oral argument will be heard during conference. The Board shall issue a scheduling order to the parties describing the following information.

(2) Any request for postponement of the argument must be made by motion to the Board no later than ten (10) days prior to the time scheduled for argument and may only be granted for good cause shown.

**SECTION 6.18: Oral Argument Under Section 2-2-111.** (1) In an appeal brought under Ordinance, § 2-2-111, oral argument may involve either multiple parties from the proceeding before the Engineer or Designee, or may involve one individual party and the Engineer or Designee.

(2) Argument involving multiple parties shall be conducted as follows:

- (i) At oral argument, forty-five (45) minutes will be allowed to appellant and thirty-five (35) minutes to appellee. Appellant's forty-five (45) minutes shall include any time for rebuttal. Arguments of multiple parties shall be allocated by the parties to conform to these limits. A party is not obligated to use all of the time allowed, and the Board may terminate the argument whenever in its judgment further argument is unnecessary. A motion for leave to extend the time limits at oral argument may be filed by the parties for consideration by the Board.

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

- (ii) The appellant is entitled to open and conclude the argument. The opening argument shall include a fair statement of the case, and the closing argument shall be limited to rebuttal of appellee's argument.
- (iii) If counsel for a party fails to appear, the Board may hear arguments on behalf of a party whose counsel is present, and the case will be decided on the briefs, if required or the record and the argument heard. If no counsel appears for any party, the case will be decided on the briefs, if required, or the record.
- (iv) Unless oral argument is requested by the Board, the parties, by stipulation prior to oral argument, may submit the appeal for decision on the briefs.
- (v) The Board shall consider the record before it, any submitted briefs, and the parties' arguments in drafting its final decision.

(3) Argument involving the Engineer or Designee shall be conducted as follows:

- (i) At oral argument, only the appellant is entitled to present argument. The argument shall include a fair statement of the case, and the closing argument shall summarize the intended outcome on appeal.
- (ii) Board legal counsel shall not represent the Engineer or Designee in an appeal before the Board.
- (iii) The Board shall consider the record before it, any submitted briefs, and the appellant's argument in drafting its final decision.

**SECTION 6.19: Oral Argument Under Section 3-1-104.** (1) In an appeal brought under Ordinance, § 3-1-104, either party to the appeal may elect to have oral argument prior to the resolution of the appeal. The argument shall be recorded electronically and an official record maintained.

(2) The appellant must request oral argument at the time of the filing of the notice of appeal or the appellant's right to argument is waived. The appellee must request oral argument within ten (10) days of the appellee's receipt of the notice of appeal, or the appellee's right to argument is waived.

(3) If either party to the appeal requests oral 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.

(4) At oral argument, forty-five (45) minutes will be allowed to appellant and thirty-five (35) minutes to appellee. Appellant's forty-five (45) minutes shall include any time for rebuttal.

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

Arguments of multiple parties shall be allocated by the parties to conform to these limits. A party is not obligated to use all of the time allowed, and the Board may terminate the argument whenever in its judgment further argument is unnecessary.

(5) The appellant is entitled to open and conclude the argument. The opening argument shall include a fair statement of the case, and the closing argument shall be limited to rebuttal of appellee's argument.

(6) If counsel for a party fails to appear, the Board may hear arguments on behalf of a party whose counsel is present, and the case will be decided on the briefs, if required or the record and the argument heard. If no counsel appears for any party, the case will be decided on the briefs, if required, or the record.

**SECTION 6.20: Oral Argument Under Section 3-1-111.** (1) If an expedited appeal is brought under Ordinance, § 3-1-111, the Board must hear the appeal within ten (10) days of the notice of appeal being filed.

(2) At oral argument, only the appellant is entitled to present argument. The argument shall include a fair statement of the case, and the closing argument shall summarize the intended outcome on appeal.

(3) Board legal counsel shall not represent the Engineer or Designee in an expedited appeal before the Board.

(4) The Board shall consider the record before it, the justification for the appeal, and the appellant's argument in drafting its final decision.

**SECTION 6.21: Appellate Review Under Section 2-2-111.** (1) In an appeal brought under Ordinance, § 2-2-111, the review of the Board must be confined to the record, unless additional evidence is submitted.

(2) The Board may not substitute its judgment for that of the Engineer or Designee as to the weight of the evidence on questions of fact.

(3) The Board may affirm the decision of the Engineer or Designee or remand the case for to the Office of the Engineer for further proceedings.

(4) The Board may reverse or modify the decision if substantial rights of an appellant have been prejudiced because: (i) the Engineer or Designee's findings, inferences, conclusions, or decisions are: (1) in violation of constitutional or statutory provisions; (2) in excess of the authority of the Engineer or Designee; (3) made upon unlawful procedure; (4) affected by other error of law; (5) clearly erroneous in view of the record as a whole; and (6) arbitrary or capricious or characterized

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

by abuse of discretion or clearly unwarranted exercise of discretion; or (ii) findings of fact, upon issues essential to the decision, were not made although requested. *See* Ordinance, § 2-2-111(4)(i)(1)-(6) and -111(4)(ii).

**SECTION 6.22: Appellate Review Under Section 3-1-104.** In an appeal brought under Ordinance, § 3-1-104, the Board may sustain the decision of the Engineer or Designee, may overturn that decision and set aside any relief ordered by the Engineer or Designee, or may remand the matter to the Engineer or Designee for further proceedings as may be specific in the Board's written decision. *See* Ordinance, § 3-1-104(7).

**SECTION 6.23: Appellate Review Under Section 3-1-111.** In an expedited appeal brought under Ordinance, § 3-1-111, if the Board finds in favor of the appellant, it may award appropriate relief, including declaratory relief, but not monetary penalties against the Office of the Engineer or any employee thereof, including any Water Commissioner appointed pursuant to Ordinance, § 3-1-111 acting in either their professional or personal capacities. *See* Ordinance, § 3-1-111(3).

**SECTION 6.24: Entry and Notice of Final Decision.** A final decision on appeal shall be submitted to the Office of the Engineer following Board approval during conference. Upon entering the final decision into the administrative record, the Office of the Engineer shall promptly issue to all parties a copy of the final decision and notice of the date of entry.

**SECTION 6.25: Time and Format of Final Decision Under Section 2-2-111.** (1) In an appeal brought under Ordinance, § 2-2-111, the final decision of the Board shall be rendered in writing by a majority of the Board members hearing the appeal and submitted to the Office of the Engineer within ninety (90) days of the submission date.

(2) The Board shall submit the proposed vote to its legal counsel to author the draft decision. Legal counsel shall render a draft decision for review by the Board no later than sixty (60) days after the submission date.

(3) 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.

(4) Copies of the final decision of the Board shall be issued to the parties to the appeal by certified mail and posted to the Board's website for public review.

**SECTION 6.26: Time and Format of Final Decision Under Section 3-1-104.** (1) In an appeal brought under Ordinance, § 3-1-104, a final decision by the Board shall be made in writing within sixty (60) days after the completion of oral argument or, if the right to oral argument is waived,

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

within sixty (60) days after the deadline for the submission of evidence and argument, whichever is later.

(2) The Board shall submit the proposed vote to its legal counsel to author the draft decision. Legal counsel shall render a draft decision for review by the Board no later than thirty (30) days after the submission date.

(3) 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.

(4) The final decision shall set forth the ruling of the Board along with a statement of the reasons therefor.

(5) Copies of the final decision of the Board shall be issued to the parties to the appeal by certified mail and posted to the Board's website for public review.

**SECTION 6.27: Time and Format of Final Decision Under Section 3-1-111.** (1) In an expedited appeal brought under Ordinance, § 3-1-111, a final decision by the Board shall be made in writing within thirty (30) days after the completion of oral argument.

(2) The Board shall submit the proposed vote to its legal counsel to author the draft decision. Legal counsel shall render a draft decision for review by the Board no later than fifteen (15) days after the submission date.

(3) 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 fifteen (15) days after the submission date.

(4) The final decision shall set forth the ruling of the Board along with a statement of the reasons therefor.

(5) Copies of the final decision of the Board shall be issued to the parties to the appeal by certified mail and posted to the Board's website for public review.

**SECTION 6.28: Effect of Final Decision.** The decision issued by the Board in the appellate proceeding shall be deemed the final decision of the Board and is binding upon all the parties as to all issues and claims that were raised or might have been raised on appeal. Pursuant to Compact,

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

art. IV.I.6 and the Ordinance, §§ 2-2-112 and 3-1-108, an aggrieved party may obtain review of the final decision by filing a petition for judicial review with a Court of Competent Jurisdiction within thirty (30) days of the issuance of the final decision.

**SECTION 6.29: Voluntary Dismissal.** In appeals brought under Ordinance, §§ 2-2-111 and 3-1-104, if the parties sign and file with the Office of the Engineer a stipulation that the appeal be dismissed, specifying the terms as to payment of costs, and whatever fees are due, the Office of the Engineer shall enter the case dismissed, and shall give to each party a copy of the stipulation filed.

**SECTION 6.30: Effect of Dismissal.** The dismissal of an appeal under Ordinance, §§ 2-2-111 and 3-1-104 is in effect an affirmance of the Engineer or Designee's decision appealed from unless the dismissal is expressly made without prejudice to another appeal.

**SECTION 6.31: Reference.** This document shall be referred to as the FRWMB Appellate Rules of Procedure and cited as FRWMB App.R.P. § \_\_. \_\_.