

Flathead Reservation Water Management Board

PO Box 37, Ronan, MT 59864 | contact@frwmb.gov | (406) 201-2532 | www.frwmb.gov

Date: September 24th, 2024
Subject: Public Comment Summary of the Flathead System Compact Water Policies and Procedures
Prepared By: FRWMB Water Resources Specialist, Sidney Palmer

Summary of Notice

On September 4th, 2024, The Flathead Reservation Water Management Board (Board) approved sections of the WP&P for a 15-day public comment period. On September 5th, 2024, a draft of the WP&P was published for a 15-day Notice and Comment Period to FRWMB.GOVE. The sections posted included:

- CHAPTER II – WATER USE
 - PART 2 – PERMIT AND CHANGE APPLICATION PROCESS
- WP&P 22-118 Process for development of new used from Flathead System Compact Water.

The public comment period ended on September 23rd, 2024, and a curtesy ten-day grace period for postmarked mail ends on October 3rd, 2024.

On September 24th, 2024 one comment was received from CSKT, NRD DEWR staff. Comment has been attached in its entirety.

Attached Comment from CSKT, NRD DEWR Staff:

To: Office of the Engineer, FRWMP

From: CSKT, NRD DEWR staff

Re: Review of Draft WPP – Flathead System Compact Water

Date: September 24, 2024

Attached please find staff-level comments directed to draft sections of the Flathead System Compact Water Policies and Procedures transmitted by the FRWMB on September 4, 2024.

2) Burden of Proof – Subsection c.

- We recognize that this section generally conforms to the abstract for the FSCW. We bring to the board's attention that, in most if not all circumstances, monitoring to track minimum flow and ramping rates will be recommended to be accomplished by tracking Flathead River and reservoir U.S. Geological Survey gages on a recurrent schedule. The Tribal Water Resources Program has tracked the minimum flows and ramping rates at the Flathead River at Polson gage since 2001 to ensure the dam operator conforms to Section 4(e) license requirements. This has been an effective approach and is transferable to the FSCW process.
- The Flathead River system is complex with various flow targets and diversion locations. We note the full consumptive use of the FSCW is less than 2% of the mean annual runoff measured at the Flathead River at Perma gage. The Tribes, while complying with Ordinance and abstract provisions, may consider that a junior appropriator is influencing the flow criteria found in the abstract for the right to a greater extent than a FSCW water user. Each circumstance will be fact-specific, but the Tribes may seek relief from a junior right holder(s) prior to curtailing use of FSCW. This would manifest as a step in the process to consider cessation of use.

2) Burden of Proof – Section e and subsections.

We recognize that Section 2-2-103 of the Ordinance has water quality as a review criteria and that these criteria apply to applications for FSCW. We note the following:

- Water conservation is a basic tenant to the Tribes perspective on water management. Tribal staff would be most unlikely to represent or advocate an application before the Tribal Council that impaired water quality or did not include infrastructure to facilitate water conservation.
- Tribal staff seek to be responsive to environmental permit requirements in all circumstances, but are often concurrently seeking to advance a project through a permit process. We understand the OE will direct the interaction with the Tribes Water Quality Permitting Program(s), but look for this to be a productive, and case-specific interaction that allows FSCW permit applications to advance expeditiously.
- We note the OE will direct the interaction with the Tribes' Water Quality Permitting Program(s), but fall back to the applicant in Section 2.e.ii.2 to secure written verification of compliance. Two points:

- The applicant is not part of the interaction with the WQ program up to this point and to step in here will require a new project-specific communication channel and inevitable coordination and process requirements.
- The wording includes “to confirm compliance.” Does this phrase reference compliance with the paper plan prepared with an application and/or compliance during the life of a project. These may be distinct and separate and require different technical approaches.

Thank you for the opportunity to review the draft WPP. We are available to address questions as they arise.