



**Flathead Reservation Office of the Water Engineer**

PO Box 37, Ronan, MT. 59864 | [contact@frwmb.gov](mailto:contact@frwmb.gov) | (406) 201-2532

**BEFORE THE OFFICE OF THE ENGINEER  
FOR THE FLATHEAD RESERVATION WATER MANAGEMENT BOARD**

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**IN THE MATTER OF FORMAL )  
COMPLAINT NO. 2024-FOR-100 ) SCHEDULING ORDER  
)  
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It is **NOTICED** that a Complaint was filed by Duane Smith (Complainant) against Loon Lake Partnership/LLC (Respondent), on November 11, 2024. Pursuant to Ordinance, § 3-1-103, a hearing shall be held in the above--entitled matter at a date to be set during the scheduling conference. The scheduling conference was held on December 11, 2024, from 10:30 AM - 12:00 PM. Parties attended the scheduling conference via conference call.

**NOTICE OF APPEARANCE:** All legal counsel representing parties in this case shall file a *Notice of Appearance* with the Office of the Engineer and serve copies on all parties as soon as possible. This requirement does not apply to legal counsel who previously filed the equivalent notice with the Office. All legal entities, including but not limited to corporations, limited liability companies, trusts, partnerships, and not-for-profit associations, must be represented by an attorney eligible to practice law in Montana, with a Montana licensure, or admission *pro hac vice* or admitted to practice before the Confederated Salish and Kootenai Tribal Court. WP&P, 31-103(4).

**PURPOSE:** The primary purpose of the prehearing conference was to establish a schedule for the conduct of all necessary steps for bringing this matter to hearing; review the issues for the hearing; and discuss any other preliminary or procedural matters. Pursuant to Ordinance, § 3-1-103, the hearing in this matter must be scheduled no later than 15 days after the notice of the Complaint to the Respondent. The Engineer extended

the hearing date pursuant to WP&P, 31-103(3). The following topics were discussed during the scheduling conference:

- a. Hearing schedule and procedures, including the presentation of evidence and witnesses, if any;
- b. Hearing expectations;
- c. Confirmation of email communication as preferred service method:
  - 1) Counsel for Respondent - René L. Coppock: [rcoppock@crowleyfleck.com](mailto:rcoppock@crowleyfleck.com)
  - 2) Complainant - Duane Smith: [duanesmith531@yahoo.com](mailto:duanesmith531@yahoo.com)
  - 3) Lessor - Wacey Cathey [catheyflyin@gmail.com](mailto:catheyflyin@gmail.com)
  - 4) Lessor – Greg Gardiner: [gglivestock84@gmail.com](mailto:gglivestock84@gmail.com)
- d. Logistics for a field visit.

#### **Field Visit**

Thursday, Dec. 12<sup>th</sup>, 2024 approximately 1:40 PM: Date for Engineer to visit property to evaluate issues raised in Complaint. Meeting time and place will be ¼ mile east of the intersection of Marion Lane and Barton Road. Discussed and expected attendees: Gardiner, Cathey, Smith, Engineer (may include staff support).

#### **Submission of Evidence/Testimony**

Friday, Dec. 27<sup>th</sup>, 2024 by 5:00 PM: Date for Complainant to submit pre-filed evidence and testimony.

Friday, Jan. 3<sup>rd</sup>, 2025 by 5:00PM: Date for Respondent to submit pre-filed evidence and testimony.

#### **Hearing Date, Time, Location**

Thursday Jan. 9<sup>th</sup>, 2025, from 1:00 PM to 5:00 PM at the Office of the Engineer in Ronan, MT (400 Main Street SW, Ronan, MT 59864): The hearing in this matter is currently scheduled to be held on this date beginning at the set time and location.

## **CASE SUMMARY**

The following summary recalls the relevant procedural facts pertinent to the Complaint in this case set for hearing:

### **Complaint**

Complainant identified that Respondent's artesian wells are allowed to run at an approximation of 30 gallons/minute resulting in circumvention of aquifer recharge of White Earth Creek aquifer.

## **HEARING PROCEDURES**

Pursuant to WP&P, 31-103, the following hearing procedures shall apply in this matter:

### 1. **Hearing Procedure**

- a. Unless agreed to otherwise, pursuant to WP&P, 31-103, the hearing will be conducted substantially in the following manner:
  - i. Opening remarks by Engineer;
  - ii. (Optional) Opening statements by Applicant and Objector(s);
  - iii. Presentation of testimony and evidence by Complainant, including presentation of pre-filed testimony and evidence;
  - iv. Presentation of testimony and evidence by Respondent, including presentation of pre-filed testimony and evidence;
  - v. The Engineer may question any party or witness to clarify testimony or elicit additional information.
  - vi. (Optional) Closing statements by Complainant and Respondent; and
  - vii. Closing remarks, including scheduling of post-hearing deadlines, if any, by Engineer.
- b. The hearing will be recorded, and any party may request copies of the verbatim audio recording upon payment at the OE's current rates.
- c. The record will be closed at the end of the hearing, unless good cause is shown why evidence could not be presented at the hearing.

2. **Evidence**

- a. All parties should be prepared to present relevant factual evidence. To be relevant, testimony and evidence must pertain or be related to the contents of the Complaint. Testimony or evidence that is irrelevant, immaterial, or unduly repetitious will be excluded.
- b. Parties may submit settlement documents to the Engineer at any time prior to the issuance of the Engineer's final decision in this case.
- c. The Engineer's file shall be deemed part of the record in its entirety and considered in reaching the decision in this matter.

3. **Witness and Exhibit Disclosures**

- a. Prior to hearing, each party must supply the Engineer and all other parties with:
  - i. The name and address of each witness that the disclosing party may use to support its claims or defenses at the hearing, along with a brief summary of the witness's testimony; and
  - ii. A copy of each exhibit that the disclosing party may use to support its claims or defenses at the hearing.
- b. Exhibits presented at hearing will be kept by the OE as a permanent record of the proceedings. Complainant exhibits must be clearly marked using alphabetical markings (ex. Exhibit A). Respondent exhibits must be marked using numerical markings (ex. Exhibit 1).
- c. Surprise is not allowed. Parties must understand that, if in doubt, a party's obligation is to disclose all witnesses or evidence at a reasonable time before hearing. Witnesses or evidence not properly disclosed may be precluded from use at the hearing.

4. **Pre-filed Testimony**

- a. The Engineer may require all testimony to be given on direct examination in this matter to be pre-filed. The testimony must be in writing, presented in question-and-answer format, and served upon the Engineer and all parties by the

established deadline. Except when evidentiary objections are sustained, pre-filed testimony will be part of the record.

b. All witnesses who provide pre-filed testimony must be available for cross-examination at the hearing. If they are not present at the hearing for cross-examination, their pre-filed testimony may be excluded from the record.

c. The party presenting the pre-filed testimony may briefly summarize the pre-filed testimony prior to the start of cross-examination. No more than 10 minutes will be allowed for each witness to present a summary of their pre-filed testimony.

5. **Filing**

a. Copies of all documents filed with the Engineer/Designee, including correspondence, must be served upon all other parties, or if represented by legal counsel, on each party's counsel of record. A certificate of service must appear on the original certifying the manner in which the document was served.

6. **Deadlines**

a. Deadline dates that fall on a weekend or legal holiday move to the next business day. If there is any uncertainty, parties are urged to check with the OE to assure a deadline is not missed.

b. Deadlines must be *strictly adhered to* unless a written motion for an extension has been received and approved for *good cause* shown. A party requesting an extension must note in the motion for extension whether the other parties have been contacted concerning the motion, and whether the other parties object to the motion.

7. **Ex Parte Contact**

a. *Ex parte* communications with the Engineer concerning any issue of fact or law in a contested case are prohibited. Communicating directly with the Engineer on these matters without providing all parties an opportunity to participate is prohibited.

8. **Questions**

a. A link to the Confederated Salish and Kootenai-Montana Compact, the Unitary Administration Management Ordinance, and the Water Policies and Procedures cited herein may be found on the FRWMB's website located at: <https://www.frwmb.gov/>.

b. Questions about the file or the procedures described herein, as well as any requests for copies of applicable statutes, rules, or a sample certificate of service may be directed to the OE at: (406) 201-2532.

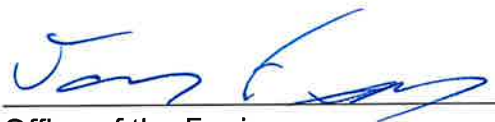
Dated this eleventh day of December 2024



Engineer Office of the Engineer, FRWMB

**CERTIFICATE OF SERVICE**

This certifies that a true and correct copy of the Scheduling Order was served upon all parties listed below by electronic mail (e-mail).



Office of the Engineer

- 1) Counsel for Respondent - Reneé L. Coppock: [rcoppock@crowleyfleck.com](mailto:rcoppock@crowleyfleck.com)
- 2) Complainant - Duane Smith: [duanesmith531@yahoo.com](mailto:duanesmith531@yahoo.com)
- 3) Lessor - Wacey Cathey [catheyflyin@gmail.com](mailto:catheyflyin@gmail.com)
- 4) Lessor – Greg Gardiner: [gglivestock84@gmail.com](mailto:gglivestock84@gmail.com)