



Flathead Reservation Office of the Water Engineer

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

IN THE MATTER OF APPLICATION
FOR THE USE OF FLATHEAD
SYSTEM COMPACT WATER NO.
FSCW-001

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RECOMMENDED DECISION TO
GRANT

Joel Clairmont submitted an application for the use of Flathead System Compact Water (Application No. FSCW-001) to the Office of the Water Engineer (OE) on December 18th, 2024. The OE has fully reviewed and considered the evidence submitted in this Application and issues its Recommended Decision to grant Application No. FSCW-001.

BACKGROUND INFORMATION

The OE considered the following information submitted by the Applicant, which is contained in the administrative record.

Application As Filed

- 660F: Application for a Proposed Used of Flathead System Compact Water
- Lease site map
- Written consent from the Tribal Council
- Project Plan
- Soil Map
- Preliminary Planview
- Irrigation sprinkler system design
- Pipeline profile
- Pump Details

- Pivot Details
- Climatic Data Summary
- Plan to adhere to the minimum flow requirements
- Water quality report
- Irrigation water requirements

Information Received After the Application was Filed

- Applicant's deficiency response received January 27th, 2025
 - Maximum annual volume calculations

Information Within the OE's Possession/Knowledge

- OE Hydrology Technical Report
- Cadastral parcel information
- Tribal water right record

ANALYSIS

PROPOSED APPROPRIATION

FINDINGS OF FACT

- The application is proposing to lease and use water from the Flathead River on Tribal Lease 1296 23-37.
- The proposed purpose includes crop irrigation.
- The means of diversion would include a pump rated at 530 gallons per minute (GPM), 30 horsepower, and 30 feet (FT) in lift.
- The duration of the proposed use would be until December 31, 2037.
- The proposed purpose of crop irrigation would include an annual volume of 167 acre-feet (AF) with the following monthly diverted flow rate:
 - January- 0 GPM
 - February- 0 GPM
 - March- 0 GPM
 - April- 80 GPM

- May- 144 GPM
- June- 213 GPM
- July- 325 GPM
- August- 280 GPM
- September- 148 GPM
- October- 44 GPM
- November- 0 GPM
- December- 0 GPM
- The proposed point of diversion is as follows: NESWSE Section 19 Township 22N Range 21W Lake County at Latitude 47.648260, Longitude -114.345279.
- The proposed place of use is as follows: NESWSE Section 19 Township 22N Range 21W Lake County within parcel 15-3227-19-1-01-02-0000.

BURDEN OF PROOF FOR APPLICATIONS FOR USE OF FLATHEAD SYSTEM COMPACT WATER

GENERAL CONCLUSIONS OF LAW

- The OE is tasked with analyzing an application for the use of Flathead System Compact Water pursuant to Ordinance, § 2-2-118.
- In analyzing an application for the use of Flathead System Compact Water, the OE must assure that the criteria under Ordinance, § 2-2-102(2)(b)-(f) are met. These criteria include:
 - (b) The proposed means of diversion, construction, and operation of the appropriation Works are *adequate*;
 - (c) Except in the case of instream flows or other non-consumptive uses, the applicant has the *possessory interest* or the written consent of the Person(s) with possessory interest in the property where the water is *to be put to beneficial use*;
 - (d) The water quality of an Appropriator will not be *adversely affected*;
 - (e) The proposed use will be *consistent with the classification of water* set for the source of supply pursuant to water quality standards established

under the federal Clean Water Act, 33 USC Section 1251 et. seq., and contained in regulations promulgated under the Confederated Salish and Kootenai Tribes' Water Quality Management Ordinance, Tribal Ordinance 89B; and

- (f) The proposed Appropriation Right or Change in Use authorization will not *impair the ability of a discharge permit holder* to satisfy effluent limitations set forth in a permit issued in accordance with water quality standards established under the federal Clean Water Act, 33 USC Section 1251 et. seq., and contained in regulations promulgated under the Confederated Salish and Kootenai Tribes' Water Quality Management Ordinance, Tribal Ordinance 89B.
- The OE also recognizes with its burdens of proof analyzing an application for the use of Flathead System Compact Water pursuant to Ordinance, § 2-2-118. The OE must assure that the criteria under Ordinance, § 2-2-102(2)(b)-(f) are met.

ADEQUATE DIVERSION

FINDINGS OF FACT

- The means of diversion would include a pump rated at 530 GPM, 30 horsepower, and 30 FT in lift.
- The proposed irrigation would cover 83 acres.
- The proposed purpose of crop irrigation would include an annual volume of 167AF with a monthly diverted flow rate between April and October as follows:
 - January- 0 GPM
 - February- 0 GPM
 - March- 0 GPM
 - April- 80 GPM
 - May- 144 GPM
 - June- 213 GPM
 - July- 325 GPM
 - August- 280 GPM
 - September- 148 GPM

- October- 44 GPM
- November- 0 GPM
- December- 0 GPM

CONCLUSIONS OF LAW

- Pursuant to Ordinance, § 2-2-102(2)(b), an Applicant must demonstrate that the proposed means of diversion, construction, and operation of the appropriation Works are adequate.
- The proposed means of diversion is a pump rated at 530 GPM, 30 horsepower, 30FT in lift to cover 83 acres of irrigated land is proved to be adequate.
- The means of diversion must be reasonably effective (i.e., must not result in a waste of the resource). As per Ordinance, §1-1-101(65), “waste” means the unreasonable loss of water resulting from the design, construction, operation or maintenance of a water diversion, storage, or distribution facility, Well, Developed Spring, or the application of water to anything but beneficial. The proposed means of diversion for agricultural use does not result in a waste of the diverted resource.
- The OE has found that the Applicant has demonstrated through a preponderance of evidence that the proposed means of diversion, construction, and operation of the appropriation Works, as described above, are adequate and reasonably effective pursuant to Ordinance, § 2-2-102(2)(b) and Ordinance, §1-1-101(65).

BENEFICIAL USE

FINDINGS OF FACT

- The proposed use of the leased water will be for irrigation purposes as the primary crop will be alfalfa for hay production. The Applicant plans for three cuttings with aftermath fall grazing. Potential rotation crops include potatoes, corn, and small grains.
- The proposed beneficial use is sourced from the Flathead River as surface water between April and October.

- The Applicant proposes to put the water to beneficial use covering 83 acres on parcel located at geocode 15-3227-19-1-01-02-0000 which is under USA In Trust and is leased by the Applicant under Tribal Lease 1296 23-37.
- The means of diversion is a pump with a peak capacity of 530 GPM to a center pivot with an end gun to irrigate 83 acres of tribally leased land.

CONCLUSIONS OF LAW

- Under Ordinance, § 2-2-102(2)(c), an Applicant must have the possessory interest or the written consent of the Person(s) with possessory interest where the water is to be put to beneficial use.
- Ordinance, § 1-1-104(7), defines “Beneficial Use” as a consumptive or non-consumptive use of water for the benefit of the Appropriator, other Persons, the Tribes, one or more Tribal members, or the general public, including but not limited to agricultural, stock water, domestic, fish and wildlife, cultural and religious practices, industrial, Instream Flow, irrigation, mining, Mitigation Water, municipal, power, recreational uses, and Wetlands purposes.
- An Appropriator may appropriate water only for a beneficial use. The amount of water under a water right is limited to the amount of water necessary to sustain a beneficial use.
- Amount of water to be diverted must be shown precisely.
- It is the Applicant's burden to produce the required evidence.
- The Applicant proposes to divert water between April and October for an agricultural need. The primary crop will be alfalfa for hay production. The Applicant plans for three cuttings with aftermath fall grazing. Potential rotation crops include potatoes, corn, and small grains. Under Ordinance § 1-1-104 (7) this constitutes as a Beneficial Use.
- The OE has determined that the Beneficial Use that the Applicant proposes has proven by a preponderance of evidence that means of diversion of a pump with a peak capacity of 530 GPM to a center pivot with an end gun to irrigate 83 acres of

leased land is the amount needed to sustain beneficial use. The water will be put to beneficial use in accordance with Ordinance § 1-1-104 and has shown precise monthly diversion rates for crop rotation.

POSSESSORY INTEREST

FINDINGS OF FACT

- The parcel located at geocode 15-3227-19-1-01-02-0000 is under USA In Trust and is leased by the Applicant under Tribal Lease 1296 23-37. The Applicant has written consent of the Person(s) with possessory interest as of December 17th, 2024.

CONCLUSIONS OF LAW

- Pursuant to Ordinance, § 2-2-102(2)(c), an Applicant must have the possessory interest or the written consent of the Person(s) with possessory interest where the water is to be put to beneficial use.
- An Applicant or a representative shall sign the application affidavit to affirm the following: (a) the statements on the application and all information submitted with the application are true and correct; and (b) except in cases of an instream flow application, or where the application is for sale, rental, distribution, or is a municipal use, or in any other context in which water is being supplied to another and it is clear that the ultimate user will not accept the supply without consenting to the use of water on the user's place of use, the applicant has possessory interest in the property where the water is to be put to beneficial use or has the written consent of the person having the possessory interest.
- If a representative of the applicant signs the application form affidavit, the representative shall state the relationship to the applicant on the form, such as president of the corporation, and provide documentation that establishes the authority of the representative to sign the application, such as a copy of a power of attorney. The OE may require a copy of the written consent of the person having the possessory interest.

- Pursuant to Ordinance, § 2-2-102(2)(c), an Applicant must have the possessory interest or the written consent of the Person(s) with possessory interest where the water is to be put to beneficial use. The OE has found that the Applicant has written consent of the Person(s) with possessory interest of the parcel located at geocode 15-3227-19-1-01-02-0000. The Applicant has written consent of the Person(s) with possessory interest as of December 17th, 2024.

WATER QUALITY

FINDINGS OF FACT

- The OE Office will contact and notify the Water Quality Program of the CSKT Natural Resources Department.
- The authorization from the Tribes, or its delegates, confirms this application won't adversely affect water quality.
- The Confederated Salish and Kootenai Tribes Surface Water Quality Standards and Antidegradation Policy Section 1.3.7 identifies the Flathead River as a B-1 Classification.

CONCLUSIONS OF LAW

- Pursuant to Ordinance, § 2-2-102(2)(d), the water quality of an Appropriator will not be adversely affected.
- The OE has determined that the authorization from the Tribes, or its delegates, confirming this application of 167AF of water use and the peak diversion rate of 530GPM won't adversely affect water quality standards for B-1 waters is adequate as determined by the appropriate authority.

RECOMMENDED DECISION

Subject to the terms, analysis, and conditions in this Recommended Decision, the OE determines that this Application No. FSCW-001 should be granted.

The OE determines that:

- In analyzing an application for the use of Flathead System Compact Water, the OE must assure that the criteria under Ordinance, § 2-2-102(2)(b)-(f) are met. These criteria include:
 - (g) The proposed means of diversion, construction, and operation of the appropriation Works are *adequate*;
 - (h) Except in the case of instream flows or other non-consumptive uses, the applicant has the *possessory interest* or the written consent of the Person(s) with possessory interest in the property where the water is *to be put to beneficial use*;
 - (i) The water quality of an Appropriator will not be *adversely affected*;
 - (j) The proposed use will be *consistent with the classification of water* set for the source of supply pursuant to water quality standards established under the federal Clean Water Act, 33 USC Section 1251 et. seq., and contained in regulations promulgated under the Confederated Salish and Kootenai Tribes' Water Quality Management Ordinance, Tribal Ordinance 89B; and
 - (k) The proposed Appropriation Right or Change in Use authorization will not *impair the ability of a discharge permit holder* to satisfy effluent limitations set forth in a permit issued in accordance with water quality standards established under the federal Clean Water Act, 33 USC Section 1251 et. seq., and contained in regulations promulgated under the Confederated Salish and Kootenai Tribes' Water Quality Management Ordinance, Tribal Ordinance 89B.
- The OE also recognizes with its burdens of proof analyzing an application for the use of Flathead System Compact Water pursuant to Ordinance, § 2-2-118. The OE must assure that the criteria under Ordinance, § 2-2-102(2)(b)-(f) are met.

- Pursuant to Ordinance, § 2-2-102(2)(b), an Applicant must demonstrate that the proposed means of diversion, construction, and operation of the appropriation Works are adequate.
- The proposed means of diversion; a pump rated at 530 GPM, 30 horsepower, 30FT in lift to cover 83 acres of irrigated land is proved to be adequate.
- The OE has found that the Applicant has demonstrated through a preponderance of evidence that the proposed means of diversion, construction, and operation of the appropriation Works, as described above, are adequate and reasonably effective pursuant to Ordinance, § 2-2-102(2)(b) and Ordinance, §1-1-101(65).
- Under Ordinance, § 2-2-102(2)(c), an Applicant must have the possessory interest or the written consent of the Person(s) with possessory interest where the water is to be put to beneficial use.
- An Appropriator may appropriate water only for a beneficial use. The amount of water under a water right is limited to the amount of water necessary to sustain a beneficial use.
- Amount of water to be diverted must be shown precisely.
- It is the Applicant's burden to produce the required evidence.
- The Applicant proposes to divert water between April and October for an agricultural need. The primary crop will be alfalfa for hay production. The Applicant plans for three cuttings with aftermath fall grazing. Potential rotation crops include potatoes, corn, and small grains. Under Ordinance § 1-1-104 (7) this constitutes as a Beneficial Use.
- The OE has determined that the Beneficial Use that the Applicant proposes has proven by a preponderance of evidence that means of diversion of a pump with a peak capacity of 530 GPM to a center pivot with an end gun to irrigate 83 acres of leased land is the amount needed to sustain beneficial use. The water will be put to beneficial use in accordance with Ordinance § 1-1-104 and has shown precise monthly diversion rates for crop rotation.

- Pursuant to Ordinance, § 2-2-102(2)(c), an Applicant must have the possessory interest or the written consent of the Person(s) with possessory interest where the water is to be put to beneficial use. The OE has found that the Applicant has written consent of the Person(s) with possessory interest of the parcel located at geocode 15-3227-19-1-01-02-0000. The Applicant has written consent of the Person(s) with possessory interest as of December 17th, 2024.
- Pursuant to Ordinance, § 2-2-102(2)(d), the water quality of an Appropriator will not be adversely affected.
- The OE has determined that the authorization from the Tribes, or its delegates, confirming this application of 167 AF of water use and the peak diversion rate of 530 GPM won't adversely affect water quality standards for B-1 waters is adequate as determined by the appropriate authority.

NOTICE

The OE will provide public notice of this Application and the OE's Recommended Decision to www.frwmb.gov pursuant to Ordinance, § 2-2-118. The OE will set a deadline for objections to this Application pursuant to Ordinance, § 2-2-118. If this Application receives no valid objection or all valid objections are unconditionally withdrawn, the OE will grant this Application as herein approved. If the Application receives a valid objection the Application and objection will proceed through the hearing examination process pursuant to Ordinance, §§ 2-2-118(10).

Dated 13th day of June, 2025



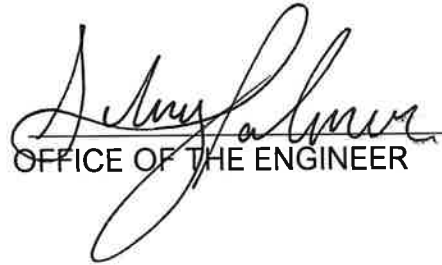
Water Resource Specialist
Office of the Engineer

CERTIFICATE OF SERVICE

This certifies that a true and correct copy of the Recommended Decision to grant was served upon all parties listed below on the 13th day of June 2025 by first class United States mail and/or by electronic mail (e-mail).

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CSKT DEWR
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Amanda.spencer@cskt.org



OFFICE OF THE ENGINEER