

**FLATHEAD RESERVATION WATER MANAGEMENT BOARD
AND THE OFFICE OF THE WATER ENGINEER**

WATER POLICIES & PROCEDURES



THE BOARD APPROVED THE FOLLOWING FRWMB WATER POLICIES & PROCEDURES (WP&P) FOR A 15-DAY PUBLIC COMMENT PERIOD STARTING ON **August xx, 2025**. COMMENTS MUST BE RECEIVED OR POSTMARKED BY 5:00 PM SEPTEMBER 13. THESE DRAFT POLICIES INCLUDE **[NEW] SECTIONS, [NEW] SUBSECTIONS, AND [UPDATED] SECTIONS THAT HAVE NOT BEEN APPROVED BY THE BOARD:**

- **WP&P 11-108(3) UPDATED BASED ON COMMENT: Reservation Water Rights Database;**
- **WP&P 21-106, 107, &108 NEW SECTIONS: State-based Registrations;**
- **WP&P 21-112(2) REPOST FOR COMMENT: Abandonment and Procedures for Declaring**
- **WP&P22-101(2) NEW Subsection: Permits and Changes. Replacement POD.**

INTRODUCTION

The Water Policy & Procedures (“WP&P” or “Procedures”) are created by the Flathead Reservation Water Management Board (“FRWMB” or “Board”) and the Office of the Water Engineer (“OE”) to specify and clarify details relating to water administration for the achievement and implementation of the Unitary Administration and Management Ordinance (“UAMO” or “Ordinance”). These Procedures, and amendments thereof, shall be published by the OE on the FRWMB website (www.frwmb.gov).

The FRWMB has the authority to develop and promulgate these Procedures pursuant to the Confederated Salish and Kootenai Tribes (CSKT)—Montana (MT) Water Compact (Compact):

Compact Article IV.I.5.a: Powers and Duties.

a. In General. The Board shall have the power to promulgate procedures, prescribe forms, develop additional materials, and implement amendments thereto as may be necessary and proper to exercise its jurisdiction and carry out its assigned functions under this Compact and the Law of Administration. A set of forms for initial use by the Board in the implementation of the Law of Administration is attached hereto as Appendix 37. The Board may amend these forms at its discretion. Such modifications are pursuant to, and shall not be deemed an amendment of, this Compact.

The Board shall promulgate the Procedures through public meetings of the Board. These meetings shall be open to the observation of the general public pursuant to the Compact, Ordinance, and Policies of the Board. Where there is a conflict of laws, the law that provides for greater openness to the public applies. The Board shall notice the public of any scheduled drafting workshops in the creation of these Procedures and shall encourage the participation of the public through public comment, to be considered by the Board at the next scheduled Board meeting. The Board shall not approve any portion of these Procedures until public comment has been solicited.

These Procedures are intended to clarify and supplement details into the implementation of the Ordinance and the administration of water within the exterior boundaries of the Reservation. In the event that these Procedures conflict with the Ordinance or the Compact, the language of the Ordinance or the Compact shall control.

This document is intended to track the organization of the Ordinance for purposes of easy referencing to sections of the Ordinance for which the procedural clarification is intended to elucidate; 100 is added to each Ordinance section directly referenced with less direct sections added before and after.

FRWMB Water Policies & Procedures

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|---|---|
| WP&P 11-108(3). [UPDATE] Reservation Water Rights Database..... | 3 |
| WP&P 21-106. [NEW] Registration of Certain Other Previously Unrecorded Existing Uses..... | 3 |
| WP&P 21-107. [NEW] Process for Registration of Certain Other Previously Unrecorded Existing Uses..... | 3 |
| WP&P 21-108. [NEW] Failure to Register an Existing Use of Water..... | 7 |
| WP&P 21-112(2). [REPOSTED] Procedure for Declaring Abandonment..... | 7 |
| WP&P 22-101(2). Appropriation Rights and Change in Use authorizations on the Reservation..... | 7 |

WP&P 11-108(3). [UPDATE] Reservation Water Rights Database.

- 3) Correction to Water Rights with a Priority Date Prior to July 1, 1973 (Statements of Claim): Corrections to Statements of Claim shall be limited to the: owner names, owner addresses, geocodes, and title status report tract number.

WP&P 21-106. [NEW] Registration of Certain Other Previously Unrecorded Existing Uses.

- 1) Certain Unrecorded Existing Uses: The Existing Uses, as described in Ordinance § 2-1-106 and WP&P 21-106(1)(a)-(c), are termed, “State-based Registrations.
- 2) Determination of State-based Registrations that have a Duplicative Claim Filing: The OE may compare State-based Registrations with claims filed in the Montana General Stream Adjudication. If the OE determines a claim has been filed for the same (duplicative) water use, the OE will suspend the duplicative State-based Registration until the claim is resolved by the Montana Water Court.
- 3) Determination of State-based Registrations that have a Duplicative post-1973 Filing: The OE may compare State-based Registrations with certificates, permits, allowances, and/or other State-based Registrations filed with the Montana DNRC or the OE. If the OE determines that a certificate, permit, and/or other State-based Registration has been filed or issued for the same (duplicative) water use, the OE may require the Registration owner to resolve the issue.

WP&P 21-107. [NEW] Process for Registration of Certain Other Previously Unrecorded Existing Uses.

- 1) Adequacy of State-based Registrations – Registration Processing:
 - a. Informal Resolution of Defects: The OE may choose to resolve State-based Registration defects informally through phone, email, or in-person communication.
 - b. Formal Resolution of State-based Registration Defects: Upon making an initial determination to reject a State-based Registration, the OE shall send notice, in the form of a Defect Letter, to the owner(s) of record that details the defects that

caused the initial determination to reject the State-based Registration. The owner(s) of record has thirty (30) days from the receipt of the letter to provide the OE with corrected information that addresses all defects identified by the OE. The thirty (30) day deadline shall begin fifteen (15) days from the date the Defect Letter was mailed to ensure delivery, thereby resulting in a forty-five (45)-day deadline for response. A response postmarked within the above timeframe is considered a timely response.

- c. Failure to Respond: Failure to respond within the required timeframe, in b. above, may result in the OE's rejection of the State-based Registration.
- d. State-based Registration Issuance: Upon determining that a State-based Registration is adequate, the OE shall issue the Certificate of Registration and send an official copy of the issuance to the owner(s) of record.
- e. State-based Registration Rejection: Upon determining that a State-based Registration is rejected, the OE shall send a notice of Registration Rejection to owner(s) of record.

2) Adequacy of State-based Registrations - Possessory Interest and All Owners: State-based Registrations must meet the requirements of **WP&P 10-103 (6-12)**.

- a. The OE may reject State-based registrations that fail to demonstrate that the owner(s) have possessory interest and appropriate title or the written, notarized permission from all owners with a possessory interest for all points of diversion(s), places of use, and the entirety of the conveyance.
- b. State-based Registration owners must update and resolve ownership issues relating to all associated parcel(s) where the water use occurs. If a DNRC Ownership Update (Form 608) is needed, the Registration owner must complete this process as identified by the OE. The OE may choose to extend defect response deadlines if the applicant can demonstrate that delays in DRNC's processing of Form 608 caused missed deadlines.

3) Adequacy of State-based Registrations – Location: The OE may reject a Registration if the places of use and points of diversion locations are not clearly identified and the Registration owner fails to provide corrected or missing location information identified in a Defect Letter.

4) Adequacy of State-based Registrations - Pre-1973 filings under Ordinance **2-1-106(1)**: Registrations under this section are limited to uses whose first use predates July 1, 1973 and the use is one of the following:

- a. Surface Water, direct from source, purposed for stock;
- b. Groundwater purposed for single domestic that may include lawn and garden; or
- c. Groundwater purposed for stock.

- 5) Adequacy of State-based Registrations - Volume: The OE may reject a State-based registration that fails to meet the following volume requirements:
- a. Information needed to determine the maximum annual diverted volumes as identified in a Defect Letter.
 - b. The OE calculates that the volume exceeds the allowable amount for a State-based Registrations, and the registrant fails to provide a Reduction or Correction (Form 625Fs) that adequately addresses the volume overage.
 - i. Registrations that would qualify as an exception to the permit requirements of 85-2-306, MCA, as notices of completion of Groundwater development (DNRC Form 602) are limited to Ten (10) acre-feet per year; and
 - ii. Registrations that would qualify as an exception to the permit requirements of 85-2-306, MCA, as completed Stock Water pit or reservoir (DNRC Form 605) are limited to Thirty (30) acre-feet per year with an impoundment or pit less than fifteen (15) acre-feet in volume.
- 6) Adequacy of State-based Registrations – Flow Rate: The OE may reject a State-based registration that fails to meet the following flow rate requirements:
- a. Information needed to determine the maximum flow rate as identified in a Defect Letter.
 - b. The OE calculates that the flow rate exceeds thirty-five (35) gallons per minute as allowed for a State-based Registrations, and the registrant fails to provide a Reduction or Correction (Form 625Fs) that adequately addresses the flow rate overage.
- 7) Adequacy of State-based Registrations – Max Total Annual Volume Limits for Permit Exceptions: State-based Registrations are Permit Exceptions and subject to maximum annual volume limits. The OE will apply criteria set forth in WP&P 22-117(15) for State-based Registrations filed for under Ordinance 2-1-106(2 &3) that are based on Notices of Completion of Groundwater Development (DNRC Form 602) (MCA 85-2-306). The OE may reject a State-based Registration that does not comply with WP&P 22-117(15) if the owner fails to reduce the maximum annual volume(s) as identified in a Defect Letter.
- 8) Adequacy of State-based Registrations – Date Water Was Put to Use: The OE will reject any State-based Registration if the water was not put to use by the September 17, 2021, which is the Effective Date of the Compact.
- 9) Adequacy of State-based Registrations – Wrong Form Filed: If the OE determines that an applicant has filed the wrong form, or is trying to use an application type inappropriately, the OE will return the filed form with a termination letter that notifies the applicant that the wrong form has been filed.

- 10) Adequacy of State-based Registrations – Fee(s) Due: The OE will not review State-based Registrations that DNRC has identified as not having paid the appropriate registration application fee at the time of submittal to the State of Montana. The OE will send a letter to the owner(s) of record indicating that fees are due and the OE will also assess and collect an additional processing fee of \$30 dollars. Notice of failure to pay the application fee is not the same as a letter of defect that identifies inadequacies; letters of defect shall not be generated until such time as the applicant owner of record pays the State-based Registration fee(s) and the additional OE processing fee(s) in their entirety.
- 11) Volume Standards: The OE shall apply water use standards as specified in the DNRC Water Calculation Guide. The calculated volume and flow rates will appear on the water right, rather than the “up to” standards seen on allowance water rights issued by the OE.
- 12) Adequacy of State-based Registrations - Shared Wells: Shared wells should be identified, when possible, through information such as well logs, plats or subdivision records, maps, property records, or written testimony from applicants. The OE shall require a Shared Well agreement to be submitted prior to issuing a Certificate of Registration for uses that include Shared Wells. The following Shared Well conditions apply:
- a. Registrations using a Shared Well will be associated with formal remarks on all water rights connected to the Shared Well as per WP&P 22-117 (28).
 - b. If the OE identifies a Shared Well where one or more users have not filed or do not hold an active water right for a portion of the use, no Registration Certificates shall be issued for that well until all uses come into compliance.
 - c. Registrations for Shared Wells require a signed and recorded shared well agreement to be added to the water right filing.
- 13) Adequacy of State-based Registrations - Ponds, Pits and Reservoirs: Consistent with the requirements under state law for the types of existing uses that are allowed to be registered, all State-based Registrations that include ponds, pits, and reservoirs must provide the following:
- a. Identification of any surface water source that is included in the use;
 - b. The maximum depth; and
 - c. The surface area.

The OE will use DNRC’s 602 Pond Guidance Document to calculate total annual volume, which cumulatively includes surface water evaporation, reservoir volume, and any diverted uses. These volumes contribute toward the applicant’s maximum annual Permit Exception Allowance and maximum volume allowed by the registration.

WP&P 21-108. [NEW] Failure to Register an Existing Use of Water.

- 1) Failure to Apply – Application for New Use: Applicants who failed to file for Existing Uses pursuant to **Ordinance § 2-1-106(2)-(3)** may file an application with the OE to establish a new water right for an application type that can accommodate their use or reduced use and is also attainable in the area. The OE shall process that application according to the Ordinance and WP&Ps. The priority date of these water rights shall be the date that the application was received by the OE. Water right element restrictions, such as maximum volume, maximum flow rate, allowed irrigable acreage, or source restrictions, shall follow guidelines set forth in the Ordinance and WP&P depending on the water right type.

WP&P 21-112(2). [REPOSTED] Procedure for Declaring Abandonment.

- 2) Evidence of Water Supply: For purposes of Ordinance 2-1-111 and 2-1-112, a Petitioner claiming reduced water supply will be considered prima facie evidence of reduced water supply. Form 612F.

WP&P 22-101(2). Appropriation Rights and Change in Use authorizations on the Reservation.

- 2) Replacement Point of Diversion

Option 1; NOTICE: The Notice of Replacement Point of Diversion form (Form 644F) can be used when a surface water POD has been replaced. All information requested by form 644F must be correct and complete. The form must be filed within sixty (60) calendar days of the completion of the replacement POD. The OE will review the Notice within sixty (60) days of the OE receiving and date stamping the Notice. If a deficient Notice of Replacement POD is received, the OE will send a defect letter that itemizes the deficiencies and allows thirty (30) calendar days to respond. If the applicant requests additional time, the OE may allow up to six (6) months total time in which to respond to defects. If the applicant is unable to finalize the necessary paperwork in that time, they will need to file a full 606F Change Application.

Option 2; REQUEST: Before replacing a surface water Point of Diversion, a water user must file a Request for a Replacement Point of Diversion form (Form 644F). All information requested by form 644F must be correct and complete before the OE may approve the request. Upon receipt, the OE has 60 days from receiving and date stamping to review the request. If the request has deficiencies, the OE will send a Letter of Defect that itemizes the defects the applicant must address. The applicant has thirty (30) calendar days from the date of the letter to respond. If the applicant requests additional time, the OE, at their discretion, may allow up to six (6) months in which to respond to defects. If the applicant is unable to attain OE approval for a request to

move a point of diversion, the action is not permissible.

If the OE determines a 644F request to be outside the parameters of what is allowed under this section and Form 644F, the applicant may alternatively be required by the OE to submit and receive approval for a 606F Change Authorization Request before replacing the POD.