

Flathead Reservation Office of the Water Engineer

400 SW Main, PO Box 37 Ronan, MT 59864

(406) 201-2532

Date: February 09, 2023 **DRAFT DRAFT DRAFT**

Topic: Policy Clarification: Water Use Standards for Domestic, Lawn and Garden, and Stock as relating to new applications for Domestic Allowances by the Office of the Engineer.

From: Ethan Mace, Water Engineer emace@frwmb.gov

The Office of the Engineer of the Flathead Reservation Water Management Board seeks to set procedures through this policy clarification for the assessment and water right value assignment of annual water volume maximum values and maximum flow rates for Domestic Allowances pursuant to 2-2-117 of the Unitary Administration and Management Ordinance (MCA 85-20-1902 and CSKT Ordinance No. 111-A) (Ordinance) of the Confederated Salish and Kootenai Tribes (CSKT) - Montana water rights compact (MCA 85-20-1901) (Compact).

Water Right Issuance Values and Remarks: The recommended approach for maximum volume and flow rate is to issue *Not to Exceed* values of 2.4 acre-feet per year and 35 gallons per minute for Individual Domestic Allowance (Ordinance 2-2-117.4) and Shared Domestic Allowances (Ordinance 2-2-117.5). The recommended approach for maximum volume and flow rate is to issue *Not to Exceed* values of 2.4 acre-feet per year and 35 gallons per minute for Development Domestic Allowances (Ordinance 2-2-117.6).

In cases where new Domestic Allowances are added to existing *Exception to Permit Requirements* (MCA 85-2-306), both the existing Groundwater Certificate and the new Domestic Allowance will be designated as 'associated' by informational remark occurring on both water rights along with a limitation that both water rights, in combined use, are limited to 2.4 acre-feet/year in diverted volume and 35 gallons per minute in maximum flow rate for Individual and Shared Domestic Allowances or are limited to 10 acre-feet/year in diverted volume and 35 gallons per minute in maximum flow rate for Development Domestic Allowances.

Water Annual Volume and Flow Rate Assessments: In determining whether or not an applicant's proposed use(s) exceeds annual volume and flow rate, focus will rely on the regulatory maximum set forth in the Ordinance, which include: lawn and garden size, stock tank requirements, number of homes/business attached, and Development Domestic Allowance water measurement requirements. Stock use estimates will be based on animal unit and duration when needed and calculations will be equivalent to state-based water use standards.

The above approaches recognize the variable nature of individual home use, allows for future changes in pump sizing to avoid invalidating issued flow rates, and puts the burden of meeting the annual 10 acre-foot volume limits on the developer that designs a use intended for a Development Domestic Allowance.

Background and detailed discussion are presented below.

Ordinance Defined and Measurable Use Limitations

The terms of Development Domestic Allowances were negotiated based on concerns from senior water right holder on the Flathead Indian Reservation that these exceptions to a permit, which do not have any requirement for public noticing, could cause adverse effects to their water supply. To provide for orderly methods for Domestic Allowances that could be easily enforced, the Compact negotiators focused on easily measured/observed restrictions of lawn/garden size, mandatory stock tank use, number of homes/businesses attached to wells, and for Development Domestic Allowances, there is an annual water measurement and reporting requirement to avoid any need for supposition through the estimation of water uses based on standards.

The Ordinance does not have any requirement to adopt or impose water use standards, either existing or to be developed.

Montana DNRC Water Use Standards

Montana DNRC has historically used water use standards in order to regulate maximum volume and gallon per minute proposed uses, whereby an applicant's proposed uses are run through a standard set of calculations to ensure the additive values do not exceed the maximums allowed. The Montana DNRC uses standards are published in administrative rule:

[36.12.115](#) WATER USE STANDARDS (Administrative Rules of Montana)

(2) The department will use the following standards when reviewing notices or applications for new uses of water:

- (a) for domestic use, for one household, 1.0 acre-foot per year of water for year-round use;
- (b) for lawn, garden, shrubbery, and shelterbelts, 2.5 acre-feet per acre per year;
- (c) for stockwater, a consumptive use of 15 gallons per day or .017 acre-foot per year per animal unit. Animal unit equivalencies for water consumption are set out in ARM [36.12.101](#) and the water conversion table, Form No. 615;

Form No. 615 prescribes animal unit rates for common varieties of stock animals.

These rules are often applied in strict fashion for the processing and review of applications pursuant [85-2-306](#), MCA, *Exception to Permit Requirements*, as filed for on a *Notice of Completion of Groundwater Development* (DNRC Form 602).

When DNRC provides "predeterminations" for subdivision reviews, however, the 1.0 acre-foot per year standard for domestic use is often reduced, with the reduction being based on a division of available water amongst the total number of home being proposed.

Negotiated Settlement Water Use Estimates

The negotiated settlement did use water use standards and estimates in order to derive the maximum values for Individual and Shared Domestic Allowances (see table), but these use estimates were only used for purposes of setting the upper threshold. It was recognized that large variations in uses occur by home/business based on type, duration of use, habits of use, and changes over time to these characteristics and infrastructure.

Table 4: Annual Diverted and Consumed Water Volume Estimates		AF Per Year		
		Household	Irrigation	Total
Five-person household with 0.7-acre firewise lawn	Diversions	0.50	1.9	2.4
	Consumption	0.06	1.4	1.5

2010. Mace. DRNC Water Resources Division. Small domestic household water right exceptions: recommendations for the CSKT Water Compact negotiation.

Summary

These policies will streamline the processing of Domestic Allowances without compromising the requirements set forth in the Ordinance. Lawn size, number of home/business connections, reliance on tanks vs pits and ponds for stock, and positive measurement requirements for Developments are sufficient controls to ensure the terms of the Ordinance on Domestic Allowances. Attempts to provide detailed estimates of volume and flow rate of applicant proposed water uses based on standards does not provide any additional or tangible benefit to the water right as compared to *Not to Exceed* values.