

COLLECTIVE BARGAINING AGREEMENT

between

STATE OF MONTANA

and

MONTANA DEPARTMENT OF FISH, WILDLIFE, AND PARKS AGENCY LEGAL COUNSEL

MFPE

2021-2023

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between the
MONTANA DEPARTMENT OF FISH, WILDLIFE, AND PARKS AGENCY LEGAL COUNSEL

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COLLECTIVE BARGAINING AGREEMENT
between the STATE OF MONTANA
and the
MONTANA DEPARTMENT OF FISH, WILDLIFE, AND PARKS AGENCY LEGAL COUNSEL

THIS AGREEMENT is made and entered into this 19th day of January, 2021, between the State of Montana, by and through the Department of Fish, Wildlife and Parks, hereinafter referred to as the "Employer," and the Montana Department of Fish, Wildlife, and Parks Agency Counsel, hereinafter referred to as the "Association."

It is the intent and purpose of this Agreement to assure sound and mutually beneficial working relationships between the Employer, its' employees, and the Association; to provide an orderly and peaceful means of resolving employee grievances; and to set forth an agreement between the parties concerning the terms and conditions of employment for the employees covered hereunder.

ARTICLE I.
RECOGNITION

The Employer recognizes the Association as the sole and exclusive representative of all Fish and Wildlife Legal Counsel excluding supervisors, management officials, and other employees exempted under statute or covered by other collective bargaining agreements.

ARTICLE II.
ASSOCIATION RIGHTS

Section 1. The Association shall designate a slate of Association officers and representatives who may act as official spokespersons for the Association on any matter, with such designation to be made in writing, and it shall further specify the effective time period for the designation of such officers and representatives. A copy will be provided to the Employer.

Section 2. Association officers and representatives will be permitted to visit with bargaining unit members concerning application of terms and conditions of this Agreement during work hours.

Section 3. The above-mentioned Association officers and representatives shall be recognized by the Employer as having the authority to report irregularities in interpretation or application of this Agreement to Employer and to make contact with Employer representatives for the purpose of adjustment of grievances. Any such officer or representative shall not be discriminated against for discharging any such Association responsibility. No bargaining unit member shall be discharged or discriminated against for their Association involvement. No bargaining unit member eligible to serve on any Employer designated committees shall be discontinued or

discriminated against for their Association involvement and membership.

Section 4. Each employee covered by this Agreement shall have the right to have a representative of the Association present when disciplinary action or discharge is initiated.

Section 5. The Employer agrees to pay any Association officer and/or representative involved in the investigation and adjustment of any written grievance, up to eight hours of paid time for such investigation, and further agrees to pay full salary to any employee whose presence is required for any arbitration proceeding.

Section 6. With the prior written approval of the affected employee, Association officers and/or representatives have the right to inspect an employee's personnel file in the event of any dispute regarding any matter whatsoever between the Association and the Employer concerning the employee's job rights and entitlements under this Contract.

Section 7. The Employer shall inform the Association of any impending changes in the composition of the bargaining unit, including, but not limited to, the following:

- a. any known official proposal pertaining to anticipated changes in the classification of any bargaining unit member; and
- b. a monthly listing of the names and positions of all new hires and terminations within the bargaining unit.

Section 8. The Association shall be permitted to use the Employer's facilities for Association meetings, providing such meeting dates and times do not conflict with other uses previously scheduled by the Employer.

Section 9. The Association will be provided a link to an electronic copy of the current Department Policies and Procedures on relevant employment matters and will be advised whenever changes in policy are being considered, leaving a reasonable amount of time for comment and discussion.

Section 10. Upon written authorization from a member of the bargaining unit, the Employer shall deduct from the pay of that employee the monthly amount of dues as certified by MFPE and shall deliver those dues to union. The union shall defend and hold the employer harmless in any action regarding the legality or propriety of dues or its deduction from employees' pay. A Union representative will meet with each new employee and provide information on Union membership. The MFPE membership form shall serve as authorization for payroll deduction of dues.

**ARTICLE III.
MANAGEMENT RIGHTS**

(In compliance with State statute 39-31-303, MCA)

The Association shall recognize the prerogatives of the agency to manage, direct, and control its business in all particulars, in such areas as, but not limited to:

- a. direct employees;
- b. hire, promote, transfer, assign, and retain employees;
- c. relieve employees from duties because of lack of work or funds or under conditions where continuation of such work would be inefficient and nonproductive;
- d. maintain the efficiency of government operations;
- e. determine the methods, means, job classifications, and personnel by which the agency operations are to be conducted;
- f. take whatever actions may be necessary to carry out the missions of the agency in situations of emergency;
- g. establish the methods and processes by which work is performed.

Such rights are retained by the Employer unless such rights are specifically relinquished in this Agreement.

**ARTICLE IV.
NON-DISCRIMINATION**

Section 1. No employee shall be discharged or discriminated against for upholding MFPE principles, insofar as any such actions are protected by the Public Employees Collective Bargaining Act. Employer and MFPE affirm their joint opposition to any discriminatory practices in connection with recruitment, hiring, evaluation, promotion or training. Decisions in these areas must be based on merit and qualification without regard to race, color, sex, pregnancy, childbirth or medical conditions related to pregnancy or childbirth, political or religious affiliation or ideas, culture, creed, social origin or condition, genetic information, sexual orientation, gender identity or expression, national origin, ancestry, age, disability, military service or veteran status, or marital statute.

Section 2. In accordance with the provisions of the Governmental Code of Fair Practices, the Employer shall recruit, appoint, assign, train, evaluate, and promote its employees on the basis of merit and qualifications, without regard to race, color,

religious creed, political ideas, sex, age, marital status, physical or mental handicap, national origin and ancestry.

**ARTICLE V.
PAY AND HOURS**

Section 1. The wage rates shall be done in accordance with Department of Fish Wildlife & Parks pay policies.

Job Title	Hourly Base Rate
Lawyer	41.855005

Section 2. All bargaining unit employees will receive future statutory increases as determined throughout the remainder of this agreement. The Department will follow the FWP Pay Policy for incorporating statutory increases as approved by the Department of Administration

Section 3. HCBBD is managing the State Employee Group Health Plan to contain costs and minimize member cost impacts. Member contributions, copay amounts, deductibles, coinsurance levels, and maximum out of pocket levels will be the same as negotiated for other State Bargaining Units.

Section 4. It is understood by the parties that bargaining unit positions are classified as “exempt” under the Fair Labor Standards Act requirements and will be paid compensatory time in accordance with the state law.

Section 5. Any authorized holiday leave, sick leave, annual leave, or compensatory time off shall constitute time worked.

Section 6. The parties agree that nothing in this Agreement shall be construed as a guarantee or limitation of the number of hours to be worked per day, days per week, or any other period of time except as may be specifically provided in this Agreement. The Department shall give the Association advance notice of at least 14 working days before implementation and an opportunity to comment upon any layoff or reduction of hours.

Section 7. Compensatory time to be credited on a one-hour-earned for one-hour-worked basis for time worked in excess of 40 hours during a one-week pay period. The employer and employee shall arrange for the taking of such “comp” time by mutual agreement.

Section 8. Teleworking shall be administered by MCA 2-18-120. Management may authorize telework when it is in the Agency’s best interest as documented and

determined by the Agency. When teleworking agreements are denied, the response must be provided in writing along with reason and explanation as to why the request cannot be met at the time. It is understood that teleworking agreements are not the same as home offices and employees will not be compensated for such.

ARTICLE VI. PROFESSIONAL DEVELOPMENT/ CERTIFICATION

Section 1. Employees shall be compensated for time spent while attending work related educational or other related type meetings approved in advance by the employer, which includes travelling to and from such events. The Employer will finance no less than the hours required by the state bar association of each employee's continuing legal education hours subject to final approval of the Employer as to timing, subject matter and location of the Continuing Legal Education course.

Section 2. The Employer will finance any fees or charges required for the employee to maintain bar certification during employment.-

ARTICLE VII. PERSONNEL RECORDS AND PERFORMANCE MANAGEMENT

Section 1. Any written material which documents or directs an employee's job performance, including annual performance appraisals, letters of reprimand, warnings, orders of suspensions, etc., shall be placed in the employee's personnel file and maintained exclusively in the FWP Human Resources (HR) Helena office. These documents shall bear the signatures of both the supervisor initiating the action and the employee. An employee shall have the opportunity, within 10 working days of receipt of the material, to attach a written response to such written material and this response must be made a part of said personnel record. All employees shall have unhindered access to their personnel records.

Records documenting assertions of unacceptable job performance (including letters of caution, warnings, consultation, admonishment, and reprimands), with the exception of annual performance appraisals, shall be considered temporary contents of the employee's personnel file and shall be destroyed 24 months after they were placed in the file unless 1) such items are relevant to further or ongoing disciplinary action(s) arising from subsequent employee action, performance, or behavior, or 2) if these materials are applicable to pending legal or quasi-legal proceedings, or 3) such records document assertions of egregious or illegal actions (i.e. theft, violence, abuse of trust) or ethics violations (as outlined in MCA).

An employee that believes material in their personnel file is incorrect must request in writing that the material be removed. If the Employer denies this written request, the employee shall have the right to appeal for its removal through the grievance procedure outlined in Article XIV.

**ARTICLE VIII.
HOLIDAYS**

Section 1. For pay purposes, the following days shall be recognized as holidays for bargaining unit employees:

New Year's Day	January 1
Martin Luther King Jr. Day	3rd Monday in January
Washington & Lincoln's Birthday	3rd Monday in February
Memorial Day	Last Monday in May
Independence Day	July 4
Labor Day	1st Monday in September
Columbus Day or Alternative Day Off	2nd
Monday in October	
Veterans' Day	November 11
Thanksgiving Day	4th Thursday in November
Christmas Day	December 25
General Election Day	In Even-numbered Years

Section 2. The holidays listed above shall be granted at the regular rate of pay to all eligible employees. To be eligible for holiday pay, an employee must be in pay status on the last scheduled working day immediately before the holiday or on the first regularly scheduled working day immediately after the holiday.

Section 3. When an employee is required by the Employer to work on a holiday listed above, such employee will be entitled to compensatory time at a rate equal to the number of hours worked.

**ARTICLE IX.
NOTIFICATION**

Section 1. The Department shall give the Association an advance notice of at least 14 working days and an opportunity to comment upon any proposed layoff of any bargaining unit permanent employee, including a list of the names and addresses of any employees potentially affected.

ARTICLE X. LEAVES

Section 1. Jury and Witness Duty. Employees summoned to serve as jurors or witnesses shall be granted leave in accordance with Section 2-18-619, MCA

Section 2. Sick Leave. Employees shall be granted sick leave in accordance with Section 2-18-618, MCA

Section 3. Annual Leave.

- a. The Employer shall grant annual leave to employees in accordance with Section 2-18-611 and 2-18-612, MCA. It is understood and agreed that an employee may take annual leave, with prior Employer approval, at the employee's individual discretion, so long as the use of such annual leave does not cause an undue burden upon the Employer's business operations.
- b. Previously approved periods of annual leave may be revoked due to emergency needs of the Employer.

Section 4. Leave Without Pay. The employee may request to be placed on leave without pay status, under mutual agreement with the Employer, if the employee has used all accrued compensatory time and annual leave. This request shall not constitute a break in service and will not interrupt the longevity status of the employee.

Section 5. Military Leave. Military leave shall be granted in accordance with Section 10-1-1009, MCA.

Section 6. Maternity Leave and Adoption Leave. Employees eligible to be granted leave under the Montana Maternity Leave Act shall be granted that leave in accordance with Section 49-2-310 and Section 49-2-311, MCA. In addition, the Employer agrees to allow similar leave benefits for employees who adopt an infant child or children. In addition, the Employer will grant parental leave in accordance with state law.

ARTICLE XI. JOB SECURITY

Section 1. Probationary Period. A probationary period shall be utilized for the evaluation of a new employee. The probationary period shall be for one year following the employee's hiring date. If the Employer determines at any time during the probationary period that the services of the probationary employee are unsatisfactory, the employee may be separated upon written notice from the Employer. Any such termination shall not be subject to the grievance procedure provided for hereunder. The probationary period may be extended for a maximum of six (6) consecutive months.

Section 2. Discipline and Dismissal. The Employer may discipline or dismiss any employee who has completed his/her probationary period only for just cause such discipline or dismissal, the Employer shall furnish the employee with a statement in writing of all of the grounds and the specific reasons for the discipline or dismissal. Any employee who has completed his/her probationary period may appeal any discipline or dismissal through the grievance procedure.

ARTICLE XII. JOB DESCRIPTIONS AND HIRING

Section 1. The Employer agrees to notify all bargaining unit members of any vacant positions for which the employee would qualify as a lateral or promotion within the bargaining unit, at least 10 working days before the application deadline. The notice will be made in the statecareers.mt.gov website and shall state where the interested employee is to make application and the cut-off date for application submittals. This provision does not apply to temporary positions of 12 months or less duration.

Section 2. When filling vacant bargaining unit positions, the employer agrees to utilize a competitive hiring process except in the case of temporary assignments.

Section 3. When a member of the bargaining unit is selected to voluntarily fill a temporary position for longer than 30 days the bargaining unit member shall be paid at the higher salary rate. Upon return to the former position, the employee shall receive their former pay, plus any regularly scheduled pay adjustments.

ARTICLE XIII. ASSOCIATION-MANAGEMENT RELATIONS COMMITTEE

Section 1. The Employer and the Association agree to the mutual benefit of establishment of an Association-Management Relations Committee. The sole purpose of the Committee shall be to discuss items of concern to either party and to improve communications between the Employer and members of the bargaining unit. Nothing said by either party at these meetings shall be considered as binding upon the party as far as the collective bargaining process is concerned, in that the meetings are intended to be simply an opportunity to express mutual concerns. Committee establishment may be called upon by either the Employer or Association if the need arises.

ARTICLE XIV. GRIEVANCE AND ARBITRATION

Having a desire to create and maintain labor relations harmony between them, the parties hereto agree that they will promptly attempt to adjust all complaints, disputes, controversies, or other grievances arising between them involving questions or interpretations or applications of terms and provisions of this Agreement or any other controversy or dispute having occasion to arise between the parties.

If differences or disputes of any kind arise between the Association or the employees covered herein and the Employer, the Association or the aggrieved employee or employees, as the case may be, shall use the following procedure as the means of settling said difference, dispute, or controversy:

Step 1: Any grievance, controversy or dispute relative to this Agreement shall first be taken up with the employee or employees and his/her immediate supervisor, within 10 working days of such grievance. The supervisor shall have 10 working days to respond.

Step 2: If such controversy or dispute cannot be adjusted in this manner, it shall be presented to the Director in writing, within 10 working days of Step 1. The Director shall have 15 working days to respond.

Step 3: The parties may, by mutual agreement, request mediation prior to Step 4. Such agreement will be reduced to writing and a joint request submitted to the mediator within (15) fifteen working days of receipt of the Step 2 response. If mediation is unsuccessful, the grievance may be moved to arbitration in accordance with the Arbitration process in this agreement.

Step 4: If the aggrieved employee is still dissatisfied, he/she may request binding arbitration.

RULES OF GRIEVANCE PROCESSING

It is agreed:

- a. The employee must submit a grievance to his/her immediate supervisor (Step 1) within 10 working days after the employee knows or should have known of the incident which gave rise to the grievance.
- b. The time limits at any stage of the grievance procedure may be extended by written mutual agreement of the parties involved at that step.
- c. A grievance presented at Step 2 and above shall be dated and signed by the aggrieved employee presenting it. A decision rendered shall be written to the aggrieved employee and shall be dated and signed by the Employer's Representative at that Step.

- d. A grievance not advanced by the employee to the next higher step within the time limit provided shall be deemed permanently withdrawn and as having been settled on the basis of the decision most recently given.
- e. In computing time limits under this article, regularly scheduled days off shall not be counted.
- f. When the grievance is presented in writing there shall be set forth all of the following:
 - 1. A complete statement of the grievance and facts upon which it is based.
 - 2. The rights of the individual claimed to have been violated; and the remedy or correction requested.
- g. Those employees desiring to use the alternative procedure through the Board of Personnel Appeals shall not be allowed to pursue the same complaint under the provisions of this contractual procedure.

ARBITRATION

- a. Should the aggrieved employee or employees and the Association consider the decision of the Director to be unsatisfactory, the Association shall, within 10 days of receipt of such decision, notify the Director, in writing, of its intention to have such grievance referred to arbitration.
- b. In the event of a job classification related grievance, the grievance shall be submitted to the Board of Personnel Appeals for final resolution in accordance with 24.26.508 ARM.
- c. Where question arises as to whether the matter falls under the jurisdiction of the Board or should be referred to arbitration the matter shall be referred to the Board for decision.
- d. Thereupon in all events, within 10 days after such written notice of intention is delivered to the Director, the Association and the Director shall call on the Montana Board of Personnel Appeals to provide a list of five persons
- e. Each party shall be entitled to strike two names from the list in alternate order and the name so remaining shall be the arbitrator. The arbitrator shall consider the grievance and shall render a decision, and that decision shall be final and binding.
- f. The losing party shall pay in total the cost of the impartial arbitrator. In the event one of the parties wants a court reporter from the proceedings of the arbitration,

the party requesting the court reporter shall pay all costs. If each party requests court reporter, they shall equally share the cost.

- g. During the processing of any matter under this or the preceding steps, the Association agrees not to strike, render unfair reports, or cause slow down, and the Employer agrees not to lock out employees represented by the union.
- h. Any failure or refusal to abide by the terms of this grievance or arbitration procedure shall constitute a waiver by the party who breaches the Agreement, of the rights and constraints created by the above grievance and arbitration clause.
- i. No arbitrator shall have the power to add to, detract from, or modify the terms of this Agreement.

ARTICLE XV. SEVERABILITY

In the event that any provision of this Agreement shall be declared invalid at any time or unenforceable by any court of competent jurisdiction, by any Montana or Federal legislative enactment, such decision shall not invalidate the entire Agreement, it being the expressed intention of the parties hereto that all other provisions and sections hereof not declared invalid or unenforceable shall remain in full force and effect.

ARTICLE XVI ENTIRE AGREEMENT

Section 1. It is understood and agreed that this Collective Bargaining Agreement contains all the agreements of the parties and that the same may be amended or altered only by agreement in writing signed by the parties.

Section 2. The Employer and the Association agree that all matters desired by either party have been presented, discussed, and incorporated herein or rejected. Accordingly, except to the extent expressly stated to the contrary above, it is agreed that for the life of this Agreement each party voluntarily and unqualifiedly waives the right and each agrees that the other shall not be obligated to bargain collectively with respect to any subject or matter, whether or not referred to in this Agreement. This Article shall not be construed in any way to restrict parties from commencing negotiations under the applicable law on any succeeding agreement to take effect upon termination of this Agreement.

ARTICLE XVII. TERM OF AGREEMENT

THIS AGREEMENT shall be effective as of _____ and shall remain in full force

and effect through June 30, 2023. If one of the parties to this Agreement desires to modify the terms hereof, it shall give the other party written notice of its intent to do so. In such case, the parties agree to give written notice not sooner than 120 days and no less than 60 days prior to the expiration date hereof, and they further agree to meet not later than 60 days prior to the expiration date of this Agreement to renegotiate the terms and provisions hereof. It is also agreed between the parties that they will meet to reopen negotiations in sufficient time to permit adequate negotiations on economic matters in connection with the preparation of an executive budget for each biennium. The Association shall have the right to engage in concerted activity after December 31, 2022, for matters pertaining to wages and economic benefits.

THIS AGREEMENT is executed this 4/13/2021.

For: State of Montana

**For: Montana Department of Fish,
Wildlife, and Parks Legal
Counsel, MFPE**

DocuSigned by:

Mike Manion

Michael P. Manion, Chief
State Office of Labor Relations

DocuSigned by:

Amanda Curtis

Amanda Curtis, President
MFPE

DocuSigned by:

Henry Waisech

Henry Waisech, Director
Department of Fish, Wildlife, and Parks

DocuSigned by:

Aimee Hawkaluk

Aimee Hawkaluk, President
Local Chapter, MFPE