

Licensing Memo #1 Oct 19, 2009

A permit issued to a municipal provider that does not provide for RAFN cannot be later amended to gain the benefits of an RAFN permit.

License

When licensing a permit for municipal use for an entity serving an incorporated city, the extent of beneficial use established under a non-RAFN permit should be determined based on the installed capacity developed and operational during the development period of the permit and cannot exceed the amount permitted. However, beneficial use may be further limited if the intended use described in the application as justification for the permit was not accomplished. The license should not be limited by volume except under circumstances where the permit was limited for reasons described above. The place of use listed on the license can be described generally for the service area as defined under Section 42-202B, Idaho Code.

When determining the installed capacity for licensing purposes, the entire municipal portfolio of water rights must be considered to determine the actual increase in installed capacity provided by the permit for the municipal use. Note that the installed capacity of the system is not necessarily the sum of the individual capacities for each pump or diversion into the system.

In situations where a new point of diversion authorized under the permit is developed, but an additional increment of capacity or beneficial use is not developed for the municipal system, a license may be issued limiting the diversion rate in combination with other rights in the municipal system to the existing capacity of the municipal system.

OTHER MUNICIPAL PROVIDERS

Municipal providers that do not serve incorporated cities can receive the full benefit of the 1996 Municipal Water Rights Act if they file an application for RAFN, provide qualifications as a municipal provider, and demonstrate future needs over an established planning horizon consistent with requirements in Chapter 2, Title 42, Idaho Code. For such municipal providers, if they choose not to file an application for an RAFN permit, the ability of the municipal provider to acquire a water right for municipal purposes is limited to the amount that can be diverted and beneficially used based on development during the period authorized under a non-RAFN permit, as described below.

Application for Permit

For an application for permit seeking to divert water for domestic use or some combination of domestic and other uses for a subdivision or other multiple ownership service area, the use would be more properly described as municipal use within the service area if the uses fall under the definition of municipal purposes and the applicant would also qualify as a municipal provider pursuant to Section 42-202B, Idaho Code. An exception would be the use of water for fire protection. Additional rate for fire protection should be listed as a separate use to ensure that the rate, if approved, does not become part of the flows under the permit that may be required for future use of the municipal provider (see fire protection discussion above for permits under Incorporated Cities).

An applicant for a non-RAFN municipal application must demonstrate short-term needs to justify the amount of water required for appropriation. This information should be requested pursuant to the additional information requirements provided under Water Appropriation Rule 40.05.d.i: