

MUNICIPAL RIGHTS & FORFEITURE

Forfeiture only applies to rights, not permits.

1996 Municipal Water Rights Act (42-202, 42-202B, 42-217, 42-219 & 42-222) authorized Reasonably Anticipated Future Needs (RAFN) municipal rights. Can obtain by application for permit or by application for transfer to change from non-RAFN to RAFN rights.

Unless changed by transfers, all pre-1996 municipal rights are non-RAFN.

Rights with priorities 1996 & younger can be either type of municipal right, depends on how the application for permit was crafted.

Cannot change permit from non-RAFN to RAFN (expansion).

Admin. Memos with RAFN information

Application Memo #18 – updated 10/19/2009, mostly for non-RAFN but some discussion about RAFN.

Application Memo #63 – updated 6/15/1999, with 10/24/2000 addendum, mostly RAFN but some discussion about non-RAFN. Includes Director's 1999 letter about forfeiture etc. ¹

Transfer Memo #24 – updated 12/21/2009, but does not cover municipal forfeiture.

Can municipal rights be forfeited?

1) RAFN municipal rights can be forfeited. There can be partial forfeiture of a RAFN right if not fully developed. Once developed, forfeiture probably does not apply.

Example situations, assume a RAFN license was issued: ²

- forfeit to the extent did not develop full system capacity needed to provide water for RAFN by end of planning horizon
- forfeit to the extent the anticipated future needs do not materialize by end of planning horizon.

¹ Director K. Dreher letter to attorney Chris Meyer, Givens Pursely, 6/14/1999. RAFN conclusions confirmed by SO 6/20/2011. Letter also concluded pre-1996 non-RAFN municipal rights could be forfeited, which was later refuted by Court.

² For all Permits, proof of b.u. due $\leq$ 5 years, 42-204. RAFN to complete $>$ 5 years. So RAFN condition 109 developed: The full system capacity necessary to provide water for the reasonably anticipated future needs authorized under this right must be constructed by the end of the designated planning horizon.

2) Pre-1996 non-RAFN municipal rights unlikely to be forfeited [Beus v. City of Soda Springs, 62 Idaho 1 (1940)]. Forfeiture is unlikely but possible under an extreme scenario. Can't think of a reasonable example.

Items 1 & 2 per emails, Garrick Baxter & Jeff Peppersack, 6/20/2011.

3) Non-RAFN municipal right with priority 1996 or younger subject to forfeiture? Don't know yet, deal with it if/when it comes up.