



Guidance for Municipalities 04-19-2012

Increased demands on municipal water systems, especially in areas where oil and gas development is occurring, have raised questions regarding the scope of water rights held by municipalities. Each municipality is different. However, some general principles apply to all. The purpose of this document is to briefly explain those general principles.

Most municipalities hold “municipal use” water rights. There is no such right as a “municipality” water right. The focus in Montana is on the nature of the use, not the nature of the entity holding the water right. “Municipal use” is water used for the typical purposes that a municipality would have. “Municipal use” water rights can be held by municipalities, cities, towns, water and sewer districts, or other entities.

Municipalities are held to the same requirements as other water right holders for any other purpose. However, the “municipal use” purpose is unique in that it includes multiple purposes, such as domestic, irrigation, commercial and industrial. The State of Montana does not have a special exception for municipalities similar to the growing cities doctrine of some other states. Additionally, it is illegal to sell water out of state unless the water right specifically authorizes it.

Municipalities may utilize their existing water rights to sell water for oil development as long as the volume and flow of the water rights are not exceeded.

Municipalities may also expand their water right under the following conditions:

- **If a municipality wishes to increase its usage, including either the flow rate and/or the volume of its water right, then it must apply for and receive a Beneficial Water Use Permit (Form 600) for the additional flow rate and/or volume before actually increasing its usage.** If the municipality expands its service area outside the historic place of use and needs to increase its flow rate and/or volume to service that growth then that also requires a new permit.
- **If the municipality expands its service area outside the historic place of use in order to sell water, but is not increasing its flow rate or volume, an Application to Change a Water Right (Form 606) (“Change”) will need to be filed to add the new place of use.** For example, if a municipality wants to set up a new water depot a mile outside of its municipal boundary then it needs to file a Change application and receive authorization before putting the water depot to use.

However, if a municipality wants to add a new water depot at the edge of town, but within city limits or the historic boundaries of the place of use, then it does not need to file a Change if it is not increasing its flow rate or volume. If the municipality changes or adds a point of diversion, a Change will be required unless it falls under one of the following exceptions:

- Replacement Well Notice (Form 634) for municipal wells that do not exceed 450 GPM.

- Redundant Well Construction Notice (Form 635) for redundant wells in a public water supply system as defined in 75-6-102.

In a change proceeding, historic use is a key factor in determining whether or not the change would create an adverse effect. The description of the historic information is related to a date that is dependent on the type of water right being changed. For Statements of Claim, the water use must be described as it was used prior to July 1, 1973. Historic information for a permit must be described as it was used at the date of filing the project completion notice. Information needed in a Change (Form 606) regarding historic use includes a determination of the historic volume. Historic volume can be determined a couple of different ways. Many cities have kept records of actual use and are able to provide information of the actual maximum usage. Some towns, especially the smaller towns, do not have actual measurements of usage. In this case an option may be to use census data and then apply standard per capita usage rates. Each application is fact-specific, and the DNRC can discuss potential options with you.

If you have any questions then please contact the Department of Natural Resources and Conservation Glasgow Water Resources office at 228-2561 or Lewistown office at 535-1922.