

DNRC Comp Review – Municipal Use Concerns / Policy Changes

Summary of Proposals – January 5, 2024

- I. Municipal Service Areas
 - A. Background to issue:
 - a. Different than other service areas b/c of municipal purpose (eg changing end-uses), piped water supply, often piped wastewater.
 - b. Unclear where development will precisely occur, and municipalities face challenges of repetitively changing the place of use for their water rights (high transaction costs), or claiming an extensively overbroad service area (assertion of speculative right).
 - c. Municipalities have portfolios of water rights.
 - B. Potential Solutions:
 - a. Legislation to provide for a “streamline” change of water rights process to address expansion of a municipal service areas
 - i. Limited to changes of municipal service areas only
 - ii. Limited to entities operating an exclusively public water supply system / entities with separate statutory authority to annex and incorporate municipal growth / limited to entities with established growth plans.
 - iii. Perhaps other certain statutory criteria: (e.g. numeric volume on water right).
 - b. Legislation to mirror/amend existing statutory legislation concerning irrigation efficiency not being a change of water & promoting conservation / increased efficiency.
 - c. Isolated / unconnected water rights obtained through annexation
 - i. Legislation tolling abandonment process / questions of non-use until they can be changed.
 - ii. Retirement / conservation benefits
 - 1. Planned infiltration systems w/ benefits to municipality
 - 2. Process for acknowledging reduced water use?
 - iii. Water Banking?
 - d. More clear statutes / rules concerning intent to appropriate water for future use.
 - i. Distinguish b/t pre-'73 and post-'73
 - ii. Volumes
 - iii. Service area
 - iv. Anti-speculation / reasonably anticipated growth
 - e. Improved replacement well legislation
 - i. Increase flow rates limitations
 - ii. Better rules on “same aquifer”
 - iii. Simply allow re-drilled wells in same qtr qtr qtr section, if drilled to same depth.

- f. Identify points of friction between DEQ water supply regulations and DNRC water rights permitting
 - i. E.g. increased 'emergency' flows required for groundwater public water supply systems as municipal population grows
 - ii. E.g. Water Rights dictating certain waste water discharges vs. actual changes in MPDES permitting (location & amount)
 - iii. Cisterns /water tanks.

II. Water Measurement

A. Background to issue:

- a. Limited requirements on measuring devices and actual reporting of water use.
- b. Very limited oversight and documentation
- c. Essentially no platform / public access to measurement that are taken
- d. Extensive gap between water use and public access to records of water use
- e. Results in difficulty to determine availability of water and/or adverse effect
- f. Increases mitigation requirements?
- g. Potentially extensive opposition to measurement requirements

B. Potential Solutions:

- a. General support of measurement of all water uses
- b. Operable measuring devices required, even if no water commissioner
- c. Process to "phase in"
 - i. Certain water rights / sources to begin with?
 - ii. Begin with water commissioner records
 - iii. Improved accessibility to automatic recording devices (dataloggers) & reporting