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**COORDINATED PLANNING FOR WATER AND LAND-USE:  
IS IT WORTH CONSIDERING?**

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# Coordinated Planning for Water and Land-Use: Is It Worth Considering?

By Larry Morandi

## I. Summary

Water is the most limiting factor in determining if and where growth will occur in arid western states. The availability or lack of water, however, does not necessarily drive growth decision making. Land use planning and development approvals often are made without adequate consideration of dependable water supply, forcing water utilities to find sufficient water to service growth. There is little coordination between land use and water planning, either at the local level, or within state statutes.

Although land use planning is vested primarily with local governments, state legislation may be useful in encouraging or mandating local plans to incorporate water quantity criteria. State legislation may take several forms:

1. Require local plans to include a water supply component.
2. Require local subdivision regulations to ensure that there is sufficient water supply to support a new development as a condition for approval.
3. Leverage state financial assistance to local governments by requiring that the necessary water infrastructure be in place concurrent with development.

Growth management legislation seldom requires local plans to include a water supply component. While there has been an emphasis on planning to avoid land use impacts on water quality, little attention has been paid in the statutes to ensuring water quantity.

The more typical water assurance approach has been reactive. Rather than planning to meet the water supply demands of potential developments,

subdivision regulations respond to an application and place the burden of ensuring an adequate water supply on the developer as a condition for approval. The threshold question becomes at what point does water planning get serious?

The most recent growth management legislation has shifted toward leveraging the financial clout of the state to persuade local governments to approve only those developments that adhere to comprehensive local plans. Under the guise of "smart growth," states may withhold economic development assistance for projects in areas where adequate water infrastructure is not planned or in place to sustain the development.

## II. State Statutory Provisions

A. There is a lack of state statutory law encouraging or requiring local governments to include water supply components in land use plans as part of growth management legislation.

1. Arizona's 1998 Growing Smarter Act (1998 Ariz. Sess. Laws, Chap. 204) amended local government planning law to require that municipal and county general plans include a land use element to promote infill and identify locations where development should be encouraged; a growth area element to identify areas suitable for planned multimodal transportation, encourage mixed use development, conserve significant natural resources, and promote financially sound infrastructure expansion; and a cost of development element to require developers to pay their fair share of the costs of providing necessary infrastructure. Zoning decisions must be consistent with the revised local government plans. Although "rivers and other waters" are included as criteria under natural resources conservation, there is no direct tie between land use planning and assured water supply.

2. The Arizona Legislature amended the local planning law further during a 2000 special session with enactment of Growing Smarter Plus (2000 Ariz. Sess. Laws, 4<sup>th</sup> Special Session, SB 1001) that requires municipalities and counties of a specified size and growth rate to include a water resources element in their general plans. The water resources element must include "an analysis of how the future growth projected in the general plan will be adequately served by the legally and physically available water supply or a plan to obtain additional necessary water supplies" (Ariz. Rev. Stat. Ann., § 9-461.05, § 11-821).
- B. An alternative approach to the inclusion of a water supply component in local land use plans is requiring regional water supply plans to be consistent with local land use plans.
1. Nevada's Water Planning Commission statute creates a water planning commission in each county. The commission must develop a comprehensive plan that includes surface water and groundwater supply elements that identify existing and planned sources of water; existing and planned uses of water; and major facilities to convey and store surface water and extract and convey groundwater. The plan must be consistent with and implement regional plans and local land use plans within the region (Nev. Rev. Stat. §§ 540A.080 et seq.).
- C. The most frequently used legislative water assurance approach is through subdivision regulations.
1. Colorado law requires each county planning commission to develop subdivision regulations. Once adopted by a board of county commissioners, a developer must submit "adequate

evidence that a water supply is sufficient in terms of quality, quantity, and dependability [and] will be available to ensure an adequate supply of water for the type of subdivision proposed" (Colo. Rev. Stat. § 30-28-133). Documentation may include ownership of water rights, historic use and projected yield of water rights, and commitment of water owners to supply water to the subdivision and the feasibility of extending service to the area.

- a. El Paso County has adopted the most stringent water assurance requirement pursuant to the Colorado statute. A developer must demonstrate a 300-year water supply for subdivision approval. Landowners can dedicate non-tributary groundwater beneath their lands to satisfy one-third of the subdivision requirement pursuant to Colorado groundwater law that designates a 100-year life to water in bedrock aquifers and conveys title to the overlying landowner (Colo. Rev. Stat. § 37-90-137). Provided a developer has access to other surface or groundwater supplies, the regulation, in effect, acts as a paper assurance that the subdivision will have the opportunity at a later date to develop a sustainable water supply.
- b. Douglas County, the fastest growing county in Colorado, has adopted a different approach that employs a more active groundwater management regimen. There is no single assured water supply figure as in El Paso County. Water supply standards in the western part of the county--where reliance on non-tributary groundwater may be problematic in certain areas--require a developer to demonstrate a renewable water supply, and include well

spacing and a prohibition on the transfer of groundwater outside the subdivision.

2. Wyoming's subdivision statute is similar to Colorado's. In addition to requiring a developer to submit information documenting that a water supply "sufficient in terms of quality, quantity, and dependability will be available to ensure an adequate supply of water for the type of subdivision proposed," the report accompanying the application must detail all sources of available water, stream flows and groundwater levels, ownership of water rights, and plans for mitigating potential water rights conflicts (Wyo. Stat. § 18-5-306).
3. Arizona's subdivision legislation sets stringent water assurance requirements in groundwater active management areas. An applicant that proposes to subdivide land in a groundwater active management area must submit to the county or municipality with jurisdiction "a certificate of assured water supply issued by the director of water resources...unless the subdivider has obtained a written commitment of water service for the subdivision from a city, town or private water company designated as having an assured water supply by the director of water resources..." (Ariz. Rev. Stat. Ann. § 9-463.01, § 11-806.01). Assured water supply is defined as "sufficient groundwater, surface water or effluent of adequate quality [that] will be continually available to satisfy the water needs of the proposed use for at least one hundred years" (Ariz. Rev. Stat. Ann. § 45-576). Additionally, proposed groundwater use must be consistent with the active management area's management plan, and there must be a demonstration of financial capability to construct necessary facilities to deliver the water.

4. California is considering legislation this session (Assembly Bill 1219) that, as amended, would require "that water utility service that meets the reasonable needs of the [subdivision] project will be provided by a water service provider through existing capacity, planned expansion that will be available to meet the needs of the project, or subject to a distribution formula adopted by the water service provider" as a condition for subdivision approval. The bill also would charge public water systems with incorporating land use information from local general plans into their project water demand forecasts. As originally drafted, the bill would have required demonstration of sufficient water supply to satisfy existing "agricultural, residential, and business needs during a multiyear drought in addition to the needs of the development project."

D. There is a trend in recently enacted legislation to leverage state financial assistance to ensure that local governments comply with the terms of their comprehensive plans, which may contain provisions requiring that adequate water supply infrastructure be planned or in place concurrent with development.

1. Utah's Quality Growth Act of 1999 (1999 Utah Laws, Chap. 24) established a Quality Growth Commission responsible for making recommendations to the legislature regarding what constitutes quality growth areas--areas where local governments have sufficient infrastructure in place to service growth--and what types of state revenue should be targeted to such areas. The state conceivably could withhold economic development or infrastructure assistance funds to local governments that propose development in areas that lack a sustainable water supply, or

encourage local governments to channel growth into areas that have dependable water by providing financial aid.

2. Utah's legislation follows the approach initially enacted in Maryland in 1997. Maryland's smart growth legislation includes a Priority Funding Areas Program that designates the types of existing areas--primarily urban centers and areas proposed for revitalization--that are eligible for state economic development funds, and authorizes counties to designate priority funding areas that meet local guidelines for intended use and have sufficient infrastructure in place to make development viable. Since October 1, 1998, no state funding of growth-related projects has been authorized for projects outside priority funding areas (Md. State Finance and Procurement Code Ann., §§ 5-7B-01 et seq.).

### III. Observations

- A. There traditionally has been a reluctance to use water policy as a growth management tool in western states. Consultation and collaboration between local planning agencies and the water utilities that service growth has been the norm rather than coordination of land use and water planning processes. State land use legislation may require local governments to include in their comprehensive plans components aimed at conserving water or protecting water resources, but the emphasis has been on water quality and not water quantity.
- B. Water assurance has been more closely tied to the subdivision review process than to the land use planning process in state legislation. The subdivision application provides the decision point for considering the availability of a dependable water supply, but it places local government in the position of reacting to proposed development rather than in planning where development may be most appropriate based on water supply.

- C. Recently enacted legislation that authorizes state agencies to base their financial assistance decisions on the relationship of growth to the infrastructure requirements contained in local comprehensive plans offers the state a concrete role in helping to determine where growth can best be sustained without undermining the land use authority of local governments. The regional nature of water supplies and the funding capacity of state government suggests that the state may have an appropriate role in leveraging financial assistance where it views potential conflict between water availability and growth.
- D. Regardless of the specific statutory language contained in land use and water planning laws, the volume and diversity of state growth management legislation currently being considered offers state and local governments, developers and environmentalists, an opportunity to reach agreements on the best means of integrating land use and water planning. The threat of legislation is often sufficient inducement to forge consensus outside the legislative process.

## General References

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