

## **Keep the Water Flowing: How to Prevent Your Project's Water Supply From Drying Up**

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Often, water was among the last consideration of developers and businesses in planning new facilities and expanding existing ones. These days, however, they no longer have that luxury. In early August, the California Legislature and governor decided to postpone the public's vote on Proposition 18 – the Safe, Clean, and Reliable Drinking Water Supply Act of 2010 (2010 Water Bond) from November 2010 to November 2012. While political exigencies might have dictated this result, the decision will seriously affect real estate and commercial development in California. This is because without sufficient water, there won't be any new development or other economic expansion.

The purpose of the 2010 Water Bond was to provide more than \$11 billion for water infrastructure projects throughout California, including watershed protection and restoration, groundwater protection, water storage, recycling and projects for disadvantaged communities. While business leaders and environmentalists may differ over the merits of the 2010 Water Bond, its delay will unquestionably be felt for years. Indeed, the delay only serves to compound the adverse effects of recent events, including sustained drought conditions, reductions of water supplies from within and without California (not necessarily tied to drought), and massive reductions of water reserves in many reservoirs throughout the state, to name a few. The confluence of these events creates an uncertain water future that could have a ripple effect throughout large portions of California's economy.

### **Water Future Is Uncertain**

With the delay of the 2010 Water Bond, an already uncertain water future becomes murkier. The 2010 Water Bond could have assisted local water agencies in the preparation of their required Urban Water Management Plans (UWMP), which are due statewide in July 2011. UWMP are assessments of the reliability of an agency's water sources for the next 20 years to ensure that existing and future water demands are met. Depending on the local water agency, the projects in the 2010 Water Bond could have provided additional water sources for current and future water demands. Without these additional water sources, local water agencies have no choice but to concentrate, at least in the short term, on developing "local resource" projects for existing water needs and possibly forego future water demands for their planning purposes.

As a result, delay of the 2010 Water Bond will directly influence future development opportunities that require review under SB 610, Water Supply Assessments, and SB 221, Written Verifications of Water Supply. Under SB 610 and SB 221, approval of certain large specified residential, commercial and industrial developments requires a detailed showing that there will be sufficient water supply. SB 610 requires a detailed water assessment to establish water supply availability, while SB 221 requires a written verification of sufficient water supply for a project. The failure to provide for future water demands undermines developers' efforts to comply with the requirements of SB 610 and SB 221. Although delay of the 2010 Water Bond will negatively impact the 2011 UWMP, this one aspect could easily translate into the postponement, imperilment or even outright denial by local agencies of residential, commercial and industrial development projects throughout California.

### **Securing a Water Supply**

Developers and other businesses nonetheless can pursue a number of alternatives to ensure that a project,

development or business expansion has a water supply to meet the statutory requirements. The key to securing a water supply is to look beyond the local water supplier for the source of water to support a project, development or business expansion. Some ways to secure a water supply that is not currently available from a local water supplier are to:

- Consider whether surface water or groundwater resources might be available in connection with a given project – these water resources may be attached to property, but if they are unattached, they should be included in the purchase or lease of the property;
- Look for an adjacent water supplier to provide water through an agreement with the local water supplier;
- Purchase surface water or groundwater resources and transport or "wheel" them through the local water supplier to the project;
- Purchase surface water or groundwater resources and sell them or give them to the local water supplier in return for an agreement from the supplier to provide adequate water supply;
- Identify and reduce the existing water supply for a current customer of the local water supplier, perhaps by assisting the customer in the transport and use of another water source such as recycled water; or
- Identify and purchase a current customer's operation for utilization of the existing water supply for the project.

All of these methods have been used successfully within the last couple of years to overcome the lack of a current water supply for a project, development or expanding business. An important part of property ownership in the future will be the securing of surface water and groundwater rights to increase the value of the property. Property owners and businesses must explore the nature and extent of their water supplies and consider what, if any, water rights are otherwise available. Developers must diligently review the water supplier's assessment and sources, compare the local supplier's water supply against future water demands, and investigate and secure alternative water rights when purchasing or leasing a property.

Part of the solution to California's uncertain water future lies now in the 2012 Water Bond, but also in continuing the development of alternative water resources and supplies, conservation and revamping the governance of water resources throughout California. Business owners and developers must be mindful that their livelihood depends on the ability to quantify water resource needs and then adequately secure water resources to meet them. These needs may have to be met from someone other than the local water agency.

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