In this era of increasing competition for limited water resources, a trend has been developing in western states that limits approval of new development unless the developer can demonstrate that sufficient water supplies are available to support it. After protracted debate in the state legislature, Colorado recently enacted legislation that grants power to local government agencies to deny approval of a proposed development if the developer fails to show that there are adequate water supplies to support the project. Although this type of legislation is also mirrored in California and Arizona, the standards for assessing the adequacy of a water supply vary slightly in each jurisdiction. This article considers the water supply assessment requirements for Arizona, California, and Colorado.

**ARIZONA**

Arizona led the charge to link growth to water resource availability in 1980 with the passage of its Groundwater Management Act (GMA). The GMA requires the developers of any new subdivisions proposed within an “active management area” to demonstrate the availability of renewable water supplies for a period of 100 years. Developers must obtain a certification of water supply from the Arizona Department of Water Resources for the subdivision, and the local land-use planning agency retains ultimate approval of the proposal for development. Even outside the active management areas, an authorization for sale of lots in a subdivision is conditioned on demonstrating an adequate water supply.

**CALIFORNIA**

In 2001, the California Legislature enacted statutes that require a water supply assessment and written verification as part of governmental review of any land development project. Under California’s SB 610, water supply assessments must be furnished to local governments for inclusion in the environmental review of new development projects. The water supply assessment must include detailed documentation about the wholesale water supply, the total available supply, a project demand analysis, a dry-year supply analysis, and a dry-year demand analysis. The timeframe of the assessment is 20 years at full build-out. In addition, the approval by a city or county of certain residential subdivisions requires an affirmative written verification of

The standards for assessing the adequacy of a water supply vary slightly in each jurisdiction.
A sufficient water supply under SB 221, and an urban water management plan is required under AB 901. An urban water management plan is an important foundational document for development and planning and may serve to meet the standards required by SB 221 and SB 610. Together, these measures were designed to create a mechanism that thoroughly verifies that an adequate water supply exists before a development project is approved.

In 2007, the California Supreme Court clearly articulated the principles that should be considered in determining the adequacy of water supply analysis in Vineyard Area Citizens for Responsible Growth Inc. v. City of Rancho Cordova (2007). First, an environmental impact report (EIR) is not adequate if it either ignores a water supply problem or assumes a solution to the problem. Second, an EIR for a project that will be built in phases must consider the water supply and demand beyond the first phase, and it must consider supply and demand at full build-out. Third, a water supply must be actually available and not merely be in the form of “paper water.” Finally, if there is uncertainty about a water supply or demand, alternative water sources that may be used to supplement the full potential demand must be considered.

COLORADO

In Colorado’s HB 08-1140, signed by Governor Bill Ritter on May 29, 2008, the state gives local government agencies the authority to approve proposed developments based on a demonstration of sufficient water supplies. The legislation suggests that local governments should regulate developments that would consume the amount of water available in the state.
The California Supreme Court clearly articulated the principles that should be considered in determining the adequacy of water supply analysis.

Under the new Colorado legislation, there are three routes to approval of a new development, and each route varies, depending on the nature of the proposed water source. For water that is not provided by a water supply entity, a report must be compiled by a registered professional engineer that includes:

- an estimate of the water supply need through build-out,
- a description of the source of water supply,
- an estimate of the yield from the source under various hydrological conditions,
- water conservation measures to be used,
- water demand management measures to be used, and
- any additional information that the local government agency may require.

For a development that intends to use water provided by a water supply entity, the water supply entity’s engineer may prepare a letter providing this same information.

If a development intends to use water provided by a water supply entity that has a water supply plan, neither a letter nor a report is required if the water supply entity has a water supply plan that:

- has been updated within the past 10 years,
- has a 20-year planning horizon (at the minimum),
- lists the water conservation measures used in the area,
- lists the water demand management measures used in the service area,
- includes a description of the water supply entity’s water obligations,
- includes a description of the water supply entity’s water supplies, and
- is on file with the local government.

As these measures demonstrate, Arizona, California, and Colorado have all attempted to take steps to ensure that the pace of development does not exceed the region’s limited water supplies. However, as local government agencies wield ultimate approval power under these schemes, it is uncertain how uniformly these water supply standards are being applied within each state.

About Brownstein Hyatt Farber Schreck

Founded in 1968, the law firm of Brownstein Hyatt Farber Schreck practices in the areas of real estate, natural resources, public policy, corporate law and litigation. Although the firm has played an integral role in water issues for the past decade, its recent merger with the California firm of Hatch & Parent has made it a dominant U.S. law firm in the area of water law and policy. With more than 250 attorneys and legislative consultants in offices in Washington, D.C., and across the western United States, Brownstein Hyatt Farber Schreck also works in such industries as real estate, hospitality, private equity, technology, telecommunications, construction, energy, banking and finance, and gaming. For more information about the firm’s water group, contact Mark Mather at mmather@bhfs.com or (303) 223-1179 or Stephanie Oster Hastings at shastings@bhfs.com or (805) 882-1412. To visit the firm’s website, go to www.bhfs.com.