How Can We Better Integrate Water Supply Planning with Land Use Planning in Colorado?

A Panel's Perspective on the Question

Sustaining Colorado Watersheds: Striking a Balance for the Future
A Conference Sponsored by the Colorado Watershed Assembly, The Colorado Riparian Association, The Colorado Lakes and Reservoir Management Association, and AWARE Colorado
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Intent

Better define the problem and begin to outline some potential collaborative steps to move together in a positive direction.

Panel Members

- Sarah Bates, Deputy Director Policy and Outreach, Western Progress; Senior Fellow, Public Policy Research Institute, University of Montana
- Craig Bell, Executive Director, Western States Water Council (Western Governors Association)
- Steve Boand, Commissioner Douglas County, Colorado
- Harris Sherman, Executive Director, Colorado Department of Natural Resources
- Chris Treese, External Affairs Director, Colorado River Water Conservation District
- Kevin Walker, Planner and Developer, Norwood Development Corporation

Facilitator

MaryLou Smith, Vice President, Aqua Engineering, Inc.

Introduction

Jeff Crane, Director of the Colorado Watershed Assembly and one of the organizers of *Sustaining Colorado Watersheds: Striking a Balance for the Future*, wanted to include in the conference a session on the often discussed disconnect between water supply planning and land use planning. To organize and facilitate the session, he called on MaryLou Smith, who works with diverse water stakeholders to tackle a variety of water policy conflicts.

The results are reported in this brief document. Our hope is that by recording questions which were clarified, consensus which was achieved, and recommendations which were made, this report will contribute to real progress in addressing this critical issue.

Integrating land use planning with water supply planning is a complex endeavor. At root is the sometimes paradoxical goal of respecting all private property rights while guarding the public good. Sara Ross, author of The Integral Process for Working on Complex Issues (Ross, S. N., 2006,Bethel, OH: ARINA, Inc.) promotes the simple idea not often employed, that we should carefully and painstakingly seek to understand the problem—with all its causes and ramifications—before attempting to solve it.

With this session, that is what we tried to do—a formidable attempt for a session of only an hour and a half. Specifically, we wanted to better define the problem and begin to outline some potential collaborative steps to move together in a positive direction. To jump start the process, panelists were asked to provide answers to a set of core questions in advance. Reading through each others' responses beforehand gave panelists a head start by allowing them to cut to the meat of the issue without having to acquaint one another on the different views each brings to the table.

Background

Where's the water going to come from for projected growth?

Colorado state demographers expect population growth in the state to increase by 50% percent in the next 25 years. The Statewide Water Supply Initiative projects we will be 20-30% short of having enough water to meet the demand, especially on the Front Range.

Some say:

"Stop the growth!"

"Don't the land use planners talk to the water providers?"

Others respond:

"You can't stop the growth-it's a free country. Besides, we need the growth for a healthy economy."

"Water utilities are charged with providing adequate water for the service area, not deciding if more growth is desirable."

"Plus, it's a myth that local governments are forging ahead with development without planning for water needs."

Many ask:

"Is it good for the economy to have more people than you have water for?"

"Why can't we limit growth to those areas which have enough water?"

"Can't we require developers to have water before they build houses?"

"How can we balance private property rights with the public good?"

Population Growth

Colorado's population is estimated to grow 50% in the next 25 years.

We have roughly 5 million people in Colorado today. The state demographer's estimate for our population 25 years from now is roughly 7.5 million people. That's half again as many people as we currently have.

Statewide Water Supply Initiative

The state expects to be 20-30% short of water to supply that growth.

Ongoing studies by the Colorado Water Conservation Board show that Colorado will be short water supplies by at least 20% by the year 2030, even if all projects and processes currently in progress are successful. It is widely expected that the shortage will be even greater, given that many of those planning projects and processes are counting on the same sources of water and water development is highly controversial.

HB08-1141—State Representative Kathleen Curry (D-Gunnison)

The state recently passed legislation requiring verification of adequate water supplies.

Colorado recently passed legislation which requires verification of the adequacy of proposed water supplies before new developments are approved. Representative Curry promoted the bill out of concern that land use decisions are being made without enough regard for water supplies to support the growth. The bill evolved to deal with concerns of those wishing to preserve local control over land use decisions, but there are many questions unresolved, such as, "how is *adequate* defined" and "adequate for what period of time?"

IBCC Dialogue on Integration of Land Use/Water Supply Planning

Representatives to the IBCC and the basin roundtables are charged with addressing the gap.

The state's interbasin compact committee, in visualizing what the state could look like in 50 years in terms of water, recently discussed the importance of integrating land use planning with water supply planning. Points of discussion included:

- If we were to change density, how could that moderate demand? Should we be looking at a changed paradigm for future growth? Perhaps growing UP instead of OUT?
- Most water utilities capitalize construction projects with anticipated tap fees from new growth. What happens if anticipated growth slows?
- Local governments have to increase their revenue stream by building a bigger tax base through growth. How does that work against local governments who wish to grow sustainably?
- We need to stimulate a conversation between water providers and land use decision makers.
- We need to get water policy information out to land use decision makers.

Western Governors' Association Issues Recommendations

Western governors encourage states to tackle the issue of water for growth.

A June 2008 report from the Western States Water Council sets forth five steps states could take to promote better integration of water and land use planning, keeping in mind that states should not overtake local planning. The five steps can be summarized as:

- Facilitate information flow between water resources/local planning agencies.
- Enable localities to impose developers' impact fees to pass on new water supply costs.
- Consider land use regulations and decisions during the water right appropriation process
- Permit and monitor exempt wells as part of water rights regulation
- Require local governments to adopt local comprehensive plans that include water resources

(Water Needs and Strategies for a Sustainable Future: Next Steps, June 2008, Western States Water Council).

Additional Publications

- *Water and Western Growth*, Dan Tarlock and Sarah Bates, September 15, 2007, The Water Report.
- *Watering the West*, Sarah Bates, June 17, 2008, Science Progress.
- *Bridging the Governance Gap: Strategies to Integrate Water and Land Use Planning*, 2007, Public Policy Research Institute, University of Montana.

Pre-Dialogue Questions and Responses

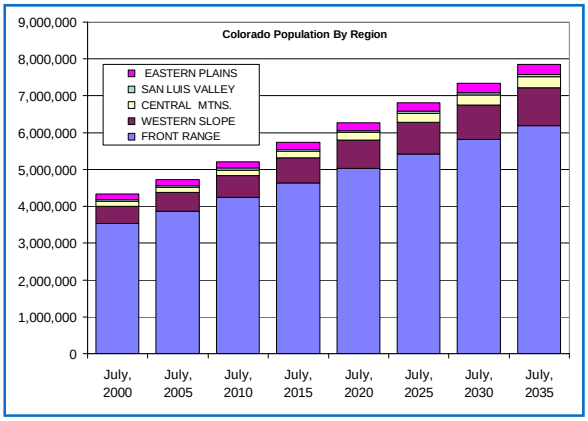
A general response from Harris Sherman, Director of the Colorado Department of Natural Resources served to frame the exercise. Director Sherman, in a conversation with MaryLou Smith, said:

Colorado is blessed with extraordinary geographic and economic diversity. We should try to protect all the values that result from that. *In addition, Colorado faces extraordinary new population projections. We currently have about 5 million people. State demographers project we will have another 2.5 million people by 2030 and again another 2.5 million people by 2050. 80% of that growth will occur on the Front Range. But the fact that the fastest growing areas will be the*

headwater counties has implications for wildfire response and watershed protection.

If Colorado wants to have a viable agriculture economy, a robust urban economy, a viable tourism/recreation economy, and meet internal and national energy responsibilities, we have to be thoughtful about how water is allocated. At the same time, we have to protect our quality of life and provide water for non-consumptive uses, so we have a lot to balance in the face of significant growth and energy development.

All of this raises questions about the interface of land use and water use. What kinds of mechanisms could be explored to better integrate these twin goals?



What are the tough questions Colorado should be asking about growth and water?

Bates: I am less concerned that there is "not enough" water to fuel urban and suburban growth than I am with the consequences of obtaining that water—whether from ag-urban transfers, trans-mountain diversions, or groundwater pumping. While, in a big-picture sense, there is sufficient water available for all projected needs, this may come at costs (economic, social, and environmental) that the public would find unacceptable if fully accounted for at the outset. Thus, although I applaud the movement toward water-sensitive land-use decision processes facilitated by the Curry bill, I would like to see broader questions asked about *how* Colorado's citizens want to grow, and what values for the land (including water) they want to elevate and protect in that process. And, increasingly, we need to ask whether the institutions governing water allocation adequately take into account the likelihood that conditions are changing as a result of climate change. The key for the future will be adaptability and flexibility—a better consciousness of the "water footprint" of our activities in addition to the now-popular concept of a "carbon footprint."

Bell: It is obvious that changing demographics and values placed on various water uses is transforming the future of water management. Western states like Colorado are experiencing large population percentage changes. Water continues to move from farms to cities, with expected and sometimes unexpected results. Further, as municipal and industrial water use increase relative to older agricultural uses, the demand becomes more inelastic. The farmer can forego a crop year when water supplies are tight; a municipal water system cannot cut back or shut down without serious consequences to the community served. Growth is also occurring in agricultural areas where key water resources are often fragile and scarce.

Related questions are: 1) To what extent are decisions about where and how we grow influenced by water policy or the availability of water? 2) While efforts should not attempt to preempt local prerogatives, how can the state best inform, guide, and assist local efforts to address growth management challenges relative to water resources?

Boand: Colorado's waters will continue to be reallocated pursuant to our current water supply development and transfer process. Only limited discussion takes place at a statewide level when water reallocations take place. Water courts do face a number of the issues related to economic

and environmental impacts and have done a reasonable job at beginning to address the regional impacts of water transfer. Water providers, seeking to minimize project costs, avoid engaging local governments and environmental interests in a positive manner regarding mitigation of the impacts of water transfers and development. This leads to:

- Significant variation in the cost and scope of mitigation requirements across Colorado;
- A prolonged review process for water development projects

Local governments in Colorado are provided limited guidance and assistance in water supply determinations. As an example, nonrenewable groundwater supplies in Douglas County are normally determined by the State to be conditionally adequate, leaving local officials to deal with that conditional adequacy.

Treese:

- Is this really a problem? With the vast majority of water use and water rights in agriculture, at least a sufficient percentage of which are presently willing to sell to municipalities, can't the system continue as is?
- As a public policy matter, should water supply be a limit to growth? Whose decision is this (individual utilities, municipalities, basins, state policy)?
- Should the traditional water supply model of individual utilities and communities developing their own water supplies be scrapped in favor of a more regional, collaborative model? Can Colorado afford to continue with this model of Balkanized water development and delivery? How does Colorado make that transition?
- What constitutes a "sustainable" water supply? Can for instance 40-year Reclamation contracts serve as part of a "sustainable" supply?
- How does Colorado transition from suburban growth to higher density living/development?
- Is this a statewide problem demanding a statewide solution? Or do the "remedies" need to be geographically distinct or at least flexible?

Walker: Before I tell you where I stand, as Mike Rosen always opines, you need to know where I sit. I am a community developer in Colorado Springs and have been in this business for over 30 years. I come from a city planner background, having achieved a Masters Degree in 1979 and suffering several years of practice in that profession. I have years of experience in comprehensive planning, regulatory practices (as regulator and regulated), and in representing arguments to both sides. I am not a water expert. I only have a cursory understanding and much to learn of the points of view related to this critical issue. But lack of knowledge has never stopped me from voicing an opinion before and learning from the resulting discussion. So, in response to What are the tough questions Colorado should be asking about growth and water, I have a couple of counter questions, and my answers to those questions.

Question: Does anyone think that water-related interest's attempts to regulate land use will slow or stop growth in Colorado?
Answer: I hope not. Growth is a result of free people choosing to live in the place they want, and are able to, based on their economic situation.

Question: Is water going to be the next regulatory tool to price future Coloradan's out of those choices?
Answer: Perhaps that is the motivation of some water interests. It is similar to other anti-growth interests and will likely have some success, but I hope not the success that California has had, with their resultant pricing. These attempts simply have the result of creating less desirable land use patterns and other unintended consequences.

Question: Will market ownership of water rights be affected negatively by such regulations to the extent that the market improperly allocates the resources?
Answer: The market should be used to allocate resources with proper government regulation. Unfettered markets have consequences, so does over regulation.

What concrete steps could we take to better integrate land use/water supply planning?

Bates: The Colorado Water Roundtables are a good start at thinking more comprehensively about land use and water, and I would like to hear more about how they are working or what could be improved. Their focus is on water, but they include representatives of local government who make critical land-use planning and development decisions. If their concerns and priorities were folded into the priority-setting for water development and management in the state, Colorado could be among the leaders in integrating land use and water supply planning. But my sense is that this is not happening in such a comprehensive fashion.

Bell:

- The state, working with interested stakeholders, could identify innovative ways to allow water transfers from agricultural to urban uses while avoiding or mitigating damages to agricultural economies and environmental values.
- The state could offer technical/financial support for watershed groups dealing with water issues associated with growth, and assure these groups are sufficiently empowered to deal effectively with these issues.
- The state could examine its related laws and institutions to evaluate the merits of implementing the following steps:
    - establish state policies that facilitate the flow of information from water resource agencies to local planning agencies;
    - enact legislation to assure that localities are enabled to impose impact fees on developers so as to pass on the cost of acquiring new water supplies;
    - identify and implement the most effective means to consider growth management plans or other land use regulations and decisions during the water right appropriations process; and
    - require local governments, after providing them with assistance, to create and adopt local comprehensive plans that include a water resources element.

Boand: Improve the level of discussion by local governments during their land use review process. Current law allows officials to inquire regarding the adequacy and dependability of water supplies. There is, however, no consistent definition of what constitutes an adequate or dependable water supply. To effect better planning:

- Water supply criteria should be classified as a matter of statewide importance and basic guidance should be provided to local entities. Water supplies should to be evaluated in terms of reasonable sustainability criteria.
- A specific determination of water supply adequacy should be applied to local land use determinations. If a phased water plan is needed for a project, a source of supply plan, a financial plan and water conservation plan should be elements of basic local review at the first step of subdivision. Substantial progress should be required for each progressive land use approval with an assured sustainable water supply available for the platted area at final plat approval.

Treese: Tools we could use to better integrate water supply planning and land use planning include:

- Conservation easements
- Statewide legislation
- Local land use controls
- Better information on the sustainability of non-tributary groundwater (including not non-tributary waters)
- Zoning higher densities
- Incentives to developers that demonstrate sustainable water supplies up front or commit to more water efficient programs such as streamlining the permitting process and awarding additional development units.

Walker: I believe the first Western Governors Issue Recommendations for Better Integration of Water and Land Use Planning (Ed. Note: cited in Background, above) is the only step that can be taken today. Information flow is always critical and appropriate.

The other recommendations require significant discussion, argument and conflict before resolution. For example, it is not a fact that Colorado will be 20% short of water to serve projected growth. It is true that without changes in allocations, which can and do occur today and in the future, that this may be the case. This sort of posturing is always a part of the land use regulation game, but in this case, not true. And not helpful.

We have a system that distributes water resources and controls land uses in place already. Water supply planning occurs within that framework now. And it integrates things pretty well. It is moving, as have many regulatory issues like water quality, toward more regulation. This is just another issue, one of many I might add, that affect the use of private property.

The concrete step I would recommend is that proponents of water supply planning recognize that this issue is not different than many that have gone before it and it will follow the same path.

What political and/or institutional barriers currently prevent us from taking those steps?

Bates: Traditionally Traditionally, land use planning is exclusively a local prerogative, although state law provides the sideboards for what is allowed. Water resource management and supply planning is the responsibility of a variety of government agencies and non-governmental water supply organizations, and seldom enters into local land use planning or development decisions in a meaningful way. When one level of government has only limited powers to make decisions about what happens with a resource, it is understandable to give little emphasis to that resource in planning and related management decisions.

Bell:

- We have established a system in which agricultural water users have property rights in those uses, therefore constraining what

governments may do relative to proposed water transfers.
- Colorado has no "public interest" standard for water right applications and transfers, so growth plans and local land use decisions apparently cannot be considered under current law.
- There is considerable political tension relative to protecting local land use planning prerogatives which may complicate closer integration.

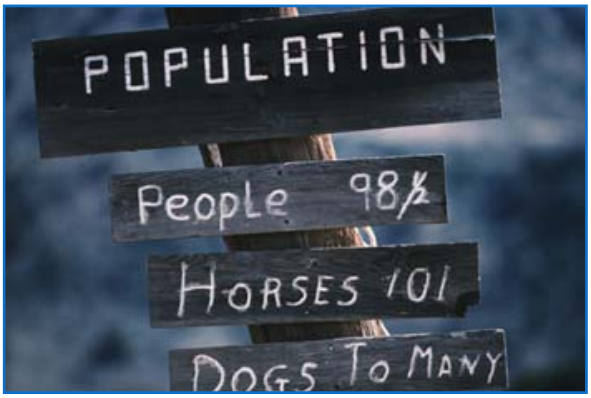
Boand: The current "system" is a significant asset and barrier at the same time. Water transfers and reallocations are completed within a market system with relatively limited government interference. Local governments are allowed to set rules for water supply determinations that fit their needs.

The legislative process often leads to outcomes that are "watered down". Take HB08-1141 for instance, it did little in terms of clarifying water planning issues and affirmed the status-quo with little guidance to local decision makers. Nevertheless, the legislative system is the proper place for statewide discussion and outcomes.

Treese:

- Colorado's long tradition favoring local control.
- Historical and present ownership of water rights and water infrastructure.
- Utilities' present reliance on growth to continue to fund existing infrastructure.
- Increasing "no growth" or "limited growth" sentiment in Colorado.
- Municipalities' reliance on sales tax for public revenues.
- Developer's concerns with additional expenses associated with more regualtions.
- $$$$

These barriers are there for a reason. They are part of a constitutional whole. They will not be overcome without understanding that they exist. Enthusiasm does not trump the rule of law. One of the philosophical underpinnings of land use regulation is proper distribution of costs and benefits. If there is a belief that there are costs that are not being properly accounted for, these need to be brought forward and researched, analyzed and discussed. The same with the debate about benefits.



What ideas do you have for easing those barriers?

Bates:

- Build upon the foundation of the water roundtables to incorporate local land use priorities into water supply planning and resource management decisions.
- Meaningful implementation of the Curry bill by local leaders who are serious about assessing the sustainability of water supplies for new development.
- Consider legislation to require stronger water elements in growth management planning—in other words, taking the analysis contemplated by the Curry bill to an earlier point in the planning process and considering broad questions of water availability and impacts of obtaining water when projecting future growth patterns.

Bell:

- Colorado could enact legislation to provide financial and technical assistance to local government/watershed entities to develop comprehensive plans with a water resource element.
- Colorado could enact legislation to require consideration of local growth management/land use decisions when reviewing applications to appropriate or transfer water.

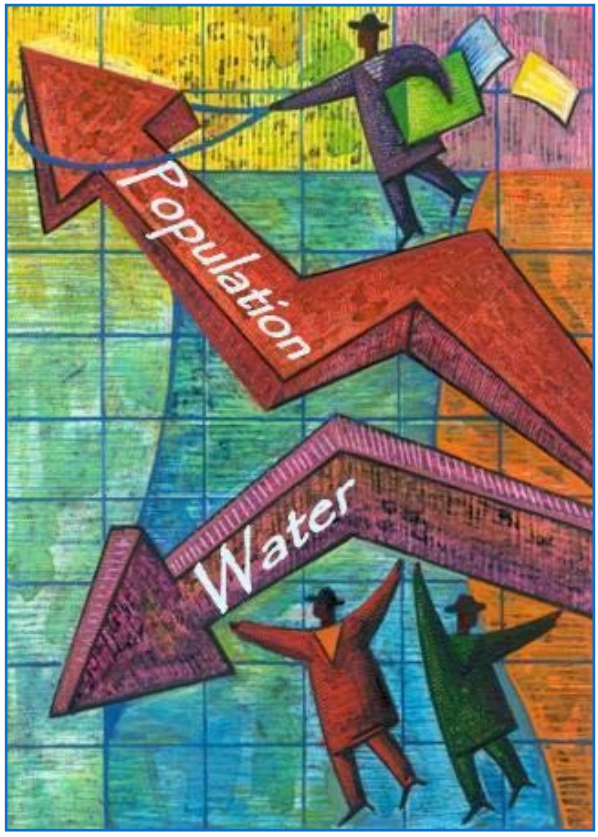
Boand: Legislative Action 1: Require water supply entities (public and private) developing water outside of their service area to abide by a set of mitigation and basin of origin standards. At present, some water providers have mitigation requirements, other do not. Water conservancy districts are held to a basic mitigation requirement while water districts are not. The Colorado General Assembly should define what issues are considered matters of statewide interest in regional water transfers,

Legislative Action 2: The legislature should define water supply sustainability.

Treese:

- Institutionally assured communication and coordination between water supply planning entities and land use decision makers.
- Water supply planning as an assured and integral element of land use planning and zoning.
- Single, impartial (state?) experts assisting local land use authorities in determining sustainability of proposed water supplies.
- Incentives for regional water supply development.
- Incentives for regional water sharing (e.g., interconnects between utilities).

Walker: There are many ideas for changing time bound processes and regulation. But the most important of them is an attitude that desires to understand why these barriers exist. The next is to understand how these arguments about land use regulation have played out in the past – legislatively, in the public, in the courts, etc. And most of all, I counsel patience. Changing past practice without understanding the current system, and accepting that it exists for a good and sound reason, is fraught with peril and frustration.



Do You Have Ideas on How to Better Integrate Land Use and Water Supply Planning? Please Share Them with Us.

In an effort to draw from conference participants as well as panelists, a computer was made available throughout the conference for sharing ideas and questions. Those who shared were given the option of writing anonymously. Here are the results:

Marcella Hutchinson
US EPA Region 8
Ensure that water resources (quantity and quality including stormwater), energy needs, and land use planning are conducted together and are comprehensive. The current process usually entails land use decisions that then tell energy and water providers to find/create the needed resources.

Steve Glaser
High County Citizens' Alliance
We have to overcome the institutional barrier of jurisdictions that causes different levels of government to preempt each other.

Rachel Richards
Pitkin County Commissioner

- I would like to see a more reasoned overall regional rate of growth, so that water uncertainty issues, new supply strategies, climate change and so on can play out before too much new demand is placed on the system. Such a growth rate could have different rates for different types of growth based on community needs.
- I would like to see all new growth pay into a permanent minimum stream flow fund to restore dewatered areas and protect healthy streams.
- I would like to see growth 'bought off' in some regions to create open space urban growth boundaries around urban areas and incentivize more infill and redevelopment of water efficient buildings within those urban communities. For the price (in billions) of new diversions and reservoirs, buying off growth could create higher quality of life in existing communities while stretching scarce water supplies.
- I would like to see some small percentage of water bought off any given ag area required to remain either with the land or in the originating river or stream.
- I would like to see environmental concerns and water needed for healthy streams, rivers, fisheries and riparian zones considered as a 'baseline' that must be met in considering any transfers of water out of its basin of origin.

Gary Barber
Organize a followup conference around a roll out of the IBCC's 50 year vision. Time it for near the end of the next legislative session, about May 1st. Get economic assistance from Colorado Municipal League and Colorado Counties Inc.

MaryLou Smith
The issue of how to protect private property rights while preserving the public good is at root of the conflict between the "no growth" camp and those promoting growth as necessary for our economic well-being. I present the following "devil's advocate" statements to stimulate dialogue between those two groups. Can we agree on the following?

- We should not allow water availability questions to be used for purposes of inciting or fueling "anti-growth" sentiments that would seek to curtail the proper exercise of private property rights, BUT

- By assuring that a sustainable supply of water is available for lands proposed for development we can protect:
  - Private property rights of proposed new land owners
  - Rights common to proposed new property owners, existing property owners, and the public (dependent on water for a variety of reasons including community economic and environmental well-being, and public health and safety)
- The cost of assuring a sustainable supply of water for new development should take into account the public good, but those costs should be carefully researched and equitably distributed.

The Dialogue/Next Steps

The dialogue among panel members and conference participants was intended to "better define the problem and begin to outline some potential collaborative steps to move together in a positive direction." Was that achieved?

Here is a summary of what came out of the dialogue:

- HB1141, passed last year by the Colorado legislature, is a helpful start toward better integrating land use planning and water supply planning. Those promoting it negotiated with a variety of stakeholders to address initial concerns, primarily the issues of 1) local control versus state mandate and 2) the lack of funding at the state level to verify the sufficiency/accuracy of a projected water supply for a project at buildout.
- The county commissioner on the panel expressed concern that HB1141 could unintentionally undermine more stringent regulations already put in place by his county. The bill was generally considered by the panel to be a step in the right direction. The developer on the panel pointed out that certainly the end users who in the long run pay for the development (not the developer) deserve and demand the certainty of a long-term water supply, but the cost of providing that must be factored into concerns for the cost of affordable housing.
- Agreement was reached that what's needed now is a better definition of the word "adequate." Though the bill defines adequate as being sufficient to meet the present and future needs of the project to be built, there is no length of time specified in the bill. When asked "for what period of time" is the water supply supposed to be "adequate," one panel member quipped, "forever." Presumably, specifying a length of time in state law would be seen as infringing on local control and to limit certain kinds of water supplies (e.g., contracted water and certain groundwater supplies). Is it possible to gain consistency and still maintain local discretion?
- The need for smart growth strategies was one of the themes which emerged in the dialogue. Rather than a concentration on "should we grow," perhaps the question is "how do we grow?" It was suggested that we need to balance smart growth with good regulations. Higher density may be needed. Can we learn from other urban areas how to grow without increasing water usage? Coordination with other aspects of growth, such as transportation, is needed, one participant pointed out. Perhaps CDOT (Colorado Department of Transportation) should have a referral back to counties about carrying capacity, it was suggested. Concern for the economies of rural communities from which water is projected to be transferred for urban growth was discussed.

- Tension between state and local government agencies was cited as a detriment to integrated land use and water supply planning. One panelist asked if watershed groups, such as those represented at the conference, could serve to bridge that gap. Watershed groups should be just as concerned about water quantity as water quality it was suggested. One participant pointed out that different levels of government are preempting each other on this issue because of the "institutional barrier of jurisdictions."
- One of the out of state panelists who works extensively on this issue asserted that there has been plenty of study about what policy is needed. The difficulty is in finding the political will to enact policy and implement it.
- Communication between water providers and land use decision makers is critical, it was agreed. But how can we foster that communication? By furthering dialogue at a meaningful level appeared to be the consensus.
- During the conversation among panelists immediately following the session, two concrete ideas for this dialogue emerged.
    1) A forum for dialogue among those attempting to put the new state law into action—those on the water supply end as well as those on the land use end.
    2) A regional conference to highlight what is being done in other states to ensure that plans for growth include plans for water to serve that growth. It was suggested that Western States Water Council be the sponsor or co-sponsor of such a conference or forum.

NOTE: This bill has been prepared for the signature of the appropriate legislative officers and the Governor. To determine whether the Governor has signed the bill or taken other action on it, please consult the legislative status sheet, the legislative history, or the Session Laws.

HOUSE BILL 08-1141

BY REPRESENTATIVE(S) Curry, Borodkin, Butcher, Carroll M., Fischer, Frangas, Gagliardi, Gallegos, Green, Labuda, Levy, Looper, Madden, McFadyen, Merrifield, Peniston, Romanoff, Rose, Scanlan, Solano, Soper, Stafford, Hodge, and Jahn;
also SENATOR(S) Bacon, Boyd, Hagedorn, Isgar, Schwartz, Tochtrop, and Tupa.

CONCERNING SUFFICIENT WATER SUPPLIES FOR LAND USE APPROVAL.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. 29-20-103 (1), Colorado Revised Statutes, is amended to read:

29-20-103. Definitions. As used in this article, unless the context otherwise requires:

(1) "Development permit" means any preliminary or final approval of an application for rezoning, planned unit development, conditional or special use permit, subdivision, development or site plan, or similar application for new construction; EXCEPT THAT, FOR PURPOSES OF PART 3 OF THIS ARTICLE, "DEVELOPMENT PERMIT" IS LIMITED TO AN APPLICATION REGARDING A SPECIFIC PROJECT THAT INCLUDES NEW WATER USE IN AN

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

AMOUNT MORE THAN THAT USED BY FIFTY SINGLE-FAMILY EQUIVALENTS, OR FEWER AS DETERMINED BY THE LOCAL GOVERNMENT.

SECTION 2. Article 20 of title 29, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW PART to read:

PART 3
ADEQUATE WATER SUPPLY

29-20-301. Legislative declaration. (1) THE GENERAL ASSEMBLY:

(a) FINDS THAT, DUE TO THE BROAD REGIONAL IMPACT THAT SECURING AN ADEQUATE SUPPLY OF WATER TO SERVE PROPOSED LAND DEVELOPMENT CAN HAVE BOTH WITHIN AND BETWEEN RIVER BASINS, IT IS IMPERATIVE THAT LOCAL GOVERNMENTS BE PROVIDED WITH RELIABLE INFORMATION CONCERNING THE ADEQUACY OF PROPOSED DEVELOPMENTS' WATER SUPPLY TO INFORM LOCAL GOVERNMENTS IN THE EXERCISE OF THEIR DISCRETION IN THE ISSUANCE OF DEVELOPMENT PERMITS; AND

(b) TO THAT END, DECLARES THAT WHILE LAND USE AND DEVELOPMENT APPROVAL DECISIONS ARE MATTERS OF LOCAL CONCERN, THE ENACTMENT OF THIS PART 3, TO HELP ENSURE THE ADEQUACY OF WATER FOR NEW DEVELOPMENTS, IS A MATTER OF STATEWIDE CONCERN AND NECESSARY FOR THE PRESERVATION OF PUBLIC HEALTH, SAFETY, AND WELFARE AND THE ENVIRONMENT OF COLORADO.

29-20-302. Definitions. AS USED IN THIS PART 3, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(1) "ADEQUATE" MEANS A WATER SUPPLY THAT WILL BE SUFFICIENT FOR BUILD-OUT OF THE PROPOSED DEVELOPMENT IN TERMS OF QUALITY, QUANTITY, DEPENDABILITY, AND AVAILABILITY TO PROVIDE A SUPPLY OF WATER FOR THE TYPE OF DEVELOPMENT PROPOSED, AND MAY INCLUDE REASONABLE CONSERVATION MEASURES AND WATER DEMAND MANAGEMENT MEASURES TO ACCOUNT FOR HYDROLOGIC VARIABILITY.

(2) "WATER SUPPLY ENTITY" MEANS A MUNICIPALITY, COUNTY, SPECIAL DISTRICT, WATER CONSERVANCY DISTRICT, WATER CONSERVATION DISTRICT, WATER AUTHORITY, OR OTHER PUBLIC OR PRIVATE WATER SUPPLY COMPANY THAT SUPPLIES, DISTRIBUTES, OR OTHERWISE PROVIDES WATER AT

RETAIL.

29-20-303. Adequate water supply for development. (1) A LOCAL GOVERNMENT SHALL NOT APPROVE AN APPLICATION FOR A DEVELOPMENT PERMIT UNLESS IT DETERMINES IN ITS SOLE DISCRETION, AFTER CONSIDERING THE APPLICATION AND ALL OF THE INFORMATION PROVIDED, THAT THE APPLICANT HAS SATISFACTORILY DEMONSTRATED THAT THE PROPOSED WATER SUPPLY WILL BE ADEQUATE. A LOCAL GOVERNMENT SHALL MAKE SUCH DETERMINATION ONLY ONCE DURING THE DEVELOPMENT PERMIT APPROVAL PROCESS UNLESS THE WATER DEMANDS OR SUPPLY OF THE SPECIFIC PROJECT FOR WHICH THE DEVELOPMENT PERMIT IS SOUGHT ARE MATERIALLY CHANGED. A LOCAL GOVERNMENT SHALL HAVE THE DISCRETION TO DETERMINE THE STAGE IN THE DEVELOPMENT PERMIT APPROVAL PROCESS AT WHICH SUCH DETERMINATION IS MADE.

(2) NOTHING IN THIS PART 3 SHALL BE CONSTRUED TO REQUIRE THAT THE APPLICANT OWN OR HAVE ACQUIRED THE PROPOSED WATER SUPPLY OR CONSTRUCTED THE RELATED INFRASTRUCTURE AT THE TIME OF THE APPLICATION.

29-20-304. Water supply requirements. (1) EXCEPT AS SPECIFIED IN SUBSECTIONS (2) AND (3) OF THIS SECTION, AN APPLICANT FOR A DEVELOPMENT PERMIT SHALL SUBMIT ESTIMATED WATER SUPPLY REQUIREMENTS FOR THE PROPOSED DEVELOPMENT IN A REPORT PREPARED BY A REGISTERED PROFESSIONAL ENGINEER OR WATER SUPPLY EXPERT ACCEPTABLE TO THE LOCAL GOVERNMENT. THE REPORT SHALL INCLUDE:

(a) AN ESTIMATE OF THE WATER SUPPLY REQUIREMENTS FOR THE PROPOSED DEVELOPMENT THROUGH BUILD-OUT CONDITIONS;

(b) A DESCRIPTION OF THE PHYSICAL SOURCE OF WATER SUPPLY THAT WILL BE USED TO SERVE THE PROPOSED DEVELOPMENT;

(c) AN ESTIMATE OF THE AMOUNT OF WATER YIELD PROJECTED FROM THE PROPOSED WATER SUPPLY UNDER VARIOUS HYDROLOGIC CONDITIONS;

(d) WATER CONSERVATION MEASURES, IF ANY, THAT MAY BE IMPLEMENTED WITHIN THE DEVELOPMENT;

(e) WATER DEMAND MANAGEMENT MEASURES, IF ANY, THAT MAY BE

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IMPLEMENTED WITHIN THE DEVELOPMENT TO ACCOUNT FOR HYDROLOGIC VARIABILITY; AND

(f) SUCH OTHER INFORMATION AS MAY BE REQUIRED BY THE LOCAL GOVERNMENT.

(2) IF THE DEVELOPMENT IS TO BE SERVED BY A WATER SUPPLY ENTITY, THE LOCAL GOVERNMENT MAY ALLOW THE APPLICANT TO SUBMIT, IN LIEU OF THE REPORT REQUIRED BY SUBSECTION (1) OF THIS SECTION, A LETTER PREPARED BY A REGISTERED PROFESSIONAL ENGINEER OR BY A WATER SUPPLY EXPERT FROM THE WATER SUPPLY ENTITY STATING WHETHER THE WATER SUPPLY ENTITY IS WILLING TO COMMIT AND ITS ABILITY TO PROVIDE AN ADEQUATE WATER SUPPLY FOR THE PROPOSED DEVELOPMENT. THE WATER SUPPLY ENTITY'S ENGINEER OR EXPERT SHALL PREPARE THE LETTER IF SO REQUESTED BY THE APPLICANT. AT A MINIMUM, THE LETTER SHALL INCLUDE:

(a) AN ESTIMATE OF THE WATER SUPPLY REQUIREMENTS FOR THE PROPOSED DEVELOPMENT THROUGH BUILD-OUT CONDITIONS;

(b) A DESCRIPTION OF THE PHYSICAL SOURCE OF WATER SUPPLY THAT WILL BE USED TO SERVE THE PROPOSED DEVELOPMENT;

(c) AN ESTIMATE OF THE AMOUNT OF WATER YIELD PROJECTED FROM THE PROPOSED WATER SUPPLY UNDER VARIOUS HYDROLOGIC CONDITIONS;

(d) WATER CONSERVATION MEASURES, IF ANY, THAT MAY BE IMPLEMENTED WITHIN THE PROPOSED DEVELOPMENT;

(e) WATER DEMAND MANAGEMENT MEASURES, IF ANY, THAT MAY BE IMPLEMENTED TO ADDRESS HYDROLOGIC VARIATIONS; AND

(f) SUCH OTHER INFORMATION AS MAY BE REQUIRED BY THE LOCAL GOVERNMENT.

(3) IN THE ALTERNATIVE, AN APPLICANT SHALL NOT BE REQUIRED TO PROVIDE A LETTER OR REPORT IDENTIFIED PURSUANT TO SUBSECTIONS (1) AND (2) OF THIS SECTION IF THE WATER FOR THE PROPOSED DEVELOPMENT IS TO BE PROVIDED BY A WATER SUPPLY ENTITY THAT HAS A WATER SUPPLY PLAN THAT:

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(a) HAS BEEN REVIEWED AND UPDATED, IF APPROPRIATE, WITHIN THE PREVIOUS TEN YEARS BY THE GOVERNING BOARD OF THE WATER SUPPLY ENTITY;

(b) HAS A MINIMUM TWENTY-YEAR PLANNING HORIZON;

(c) LISTS THE WATER CONSERVATION MEASURES, IF ANY, THAT MAY BE IMPLEMENTED WITHIN THE SERVICE AREA;

(d) LISTS THE WATER DEMAND MANAGEMENT MEASURES, IF ANY, THAT MAY BE IMPLEMENTED WITHIN THE DEVELOPMENT;

(e) INCLUDES A GENERAL DESCRIPTION OF THE WATER SUPPLY ENTITY'S WATER OBLIGATIONS;

(f) INCLUDES A GENERAL DESCRIPTION OF THE WATER SUPPLY ENTITY'S WATER SUPPLIES; AND

(g) IS ON FILE WITH THE LOCAL GOVERNMENT.

29-20-305. Determination of adequate water supply. (1) THE LOCAL GOVERNMENT'S SOLE DETERMINATION AS TO WHETHER AN APPLICANT HAS A WATER SUPPLY THAT IS ADEQUATE TO MEET THE WATER SUPPLY REQUIREMENTS OF A PROPOSED DEVELOPMENT SHALL BE BASED ON CONSIDERATION OF THE FOLLOWING INFORMATION:

(a) THE DOCUMENTATION REQUIRED BY SECTION 29-20-304;

(b) IF REQUESTED BY THE LOCAL GOVERNMENT, A LETTER FROM THE STATE ENGINEER COMMENTING ON THE DOCUMENTATION REQUIRED PURSUANT TO SECTION 29-20-304;

(c) WHETHER THE APPLICANT HAS PAID TO A WATER SUPPLY ENTITY A FEE OR CHARGE FOR THE PURPOSE OF ACQUIRING WATER FOR OR EXPANDING OR CONSTRUCTING THE INFRASTRUCTURE TO SERVE THE PROPOSED DEVELOPMENT; AND

(d) ANY OTHER INFORMATION DEEMED RELEVANT BY THE LOCAL GOVERNMENT TO DETERMINE, IN ITS SOLE DISCRETION, WHETHER THE WATER SUPPLY FOR THE PROPOSED DEVELOPMENT IS ADEQUATE, INCLUDING,

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WITHOUT LIMITATION, ANY INFORMATION REQUIRED TO BE SUBMITTED BY THE APPLICANT PURSUANT TO APPLICABLE LOCAL GOVERNMENT LAND USE REGULATIONS OR STATE STATUTES.

29-20-306. Cluster developments - inapplicability. NOTHING IN THIS PART 3 SHALL BE DEEMED TO APPLY TO A RURAL LAND USE PROCESS REGARDING THE APPROVAL OF A CLUSTER DEVELOPMENT PURSUANT TO PART 4 OF ARTICLE 28 OF TITLE 30, C.R.S.

SECTION 3. Applicability. This act shall apply to applications for development permits submitted on or after the effective date of this act.

SECTION 4. Safety clause. The general assembly hereby finds,

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determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Andrew Romanoff
SPEAKER OF THE HOUSE
OF REPRESENTATIVES

Peter C. Groff
PRESIDENT OF
THE SENATE

Marilyn Eddins
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES

Karen Goldman
SECRETARY OF
THE SENATE

APPROVED May 29th, 2008 at 11:36 A.M.

Bill Ritter, Jr.
GOVERNOR OF THE STATE OF COLORADO

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