

# Water use impacting development

Last year's record-setting drought has begun to impact the development of real estate in this area in a number of ways, both direct and indirect. The lack of rainfall prompted recent actions by state and local governments to curb use.

Here's a look at what has happened and the likely impact.

In 2007, the state legislature enacted session law 2007-518 (House Bill 820) that amended laws governing transfers of water from one river basin to another and directed the N.C. Environmental Review Commission to study such transfers and the allocation of surface-water resources. The legislation directs, among other things, the study of the allocation of surface-water resources and their availability, maintenance and withdrawal for consumption. This includes recommending measures to provide for a comprehensive system for regulating surface-water withdrawals for drinking and other uses, and ensuring that all state laws regulating water resources are consistent with and integrated into a comprehensive system for regulating surface-water withdrawals.

The legislation also requires special certificates to initiate or increase certain inter-basin water transfers, with extensive public-notice requirements to be fulfilled to obtain a certificate. Environmental assessments are also required for proposed inter-basin transfers.

Litigation is ongoing with respect to proposed transfers of water from the Catawba River basin to Concord in the Yadkin-Pee Dee basin. This includes legal actions by parties in South Carolina, where the Catawba and the Yadkin-Pee Dee rivers flow en route to the Atlantic Ocean. In fact, the state of South Carolina has sued North Carolina over this dispute. The U.S. Constitution requires the Supreme Court to resolve that lawsuit.



EXPERT  
 OPINION

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Most, if not all, local governments in the area that supply water imposed restrictions in 2007. In recent years, a number of local governments have enacted moratoria on development to create time to study and address its impact. Although these temporary halts of development approvals have allowed consideration of multiple infrastructure issues raised by growth (such as school construction and funding), consideration of water resources was a factor.

Recently, local governments have begun to consider other ways to limit and manage water consumption beyond the emergency-conservation measures enacted last year. For example, Union County has temporarily stopped issuing "willingness to serve" letters that indicate an agreement to allow connections to its water and sewer system.

Generally, it's less difficult for counties to enact resolutions temporarily suspending approvals for water-system access where those approvals aren't required by law as steps in the county development-approval process. This differs from a moratorium on development. From a substantive standpoint, moratoria can be enacted with respect to almost any county development-approval steps required by law. However, moratoria on development require more involved notice and procedural steps by counties than temporary suspensions of water-service approvals, or meetings where such suspensions are discussed or considered. The General Assembly imposed the additional requirements for moratoria to protect the rights of affected property owners. There are also special statutory protections of vested rights of affected property owners.

To create a vested right, a property owner typically has to expend funds preparing property for development and obtain issuance of a permit

relating to development of the property, such as a building permit.

Limits on access to government water and sewer services impact the nature and pace of real estate and economic development. Enactment of additional comprehensive statewide rules will accentuate that impact.

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It's important to note, however, that these effects will ripple beyond projects under way or ready to begin.

These policies and regulations will also begin to affect economic developers recruiting businesses and employers and facilitating expansion of existing businesses in the region.

The coming changes regarding the efficient use and management of water resources will be a determining factor in the competitive advantage, or disadvantage, of this region.

In the long run, efficient and effective use of our water resources makes good business sense and will help ensure this region continues to prosper.

The best news is that we are blessed with enlightened leaders in business and government who understand these challenges and opportunities and have the courage and ability to craft solutions for water management for the good of all.

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