

Water Conservation

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Updated August, 2008



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Background

The United States as a nation possesses abundant water resources and has developed and used those resources extensively. The future health and economic welfare of the nation's population are dependent upon a continuing supply of fresh uncontaminated water. Many existing sources of water are being stressed by withdrawals to meet offstream needs (a water use that depends on the diversion or withdrawal of water from a surface- or ground-water source) along with increasing instream-flow requirements (a water use that occurs within the stream channel for such purposes as hydroelectric-power generation, navigation, recreation, etc.) to meet human and environmental needs.

Issue Analysis

A national water rights system does not exist. Instead, state water laws have evolved under different traditions and conditions. In the Western states, the first to put water to beneficial use has a right superior to later claimants. This Colorado doctrine is also known as "first-in-time is first-in-right." Eastern states generally apply riparian rules, based on common law, that tie water rights to ownership of adjacent land and require state permits for use. Over time, some states have adopted variations on both and courts in the West have addressed newcomer's ability to gain water rights. While a national water rights system is not in place, the federal government does reserve water rights for land set aside from the public domain thereby reserving sufficient water to satisfy the purpose for which the reservation was established. This principle is referred to as the "reserved right" doctrine and has been upheld by the courts. These reserved rights by the federal government are controversial due to the undetermined scope of the quantity and nature of those rights. Regardless of the doctrine the states and the federal government follow, the entire country is increasingly faced with the need to balance water demand with available supply due to the ever-expanding population and subsequent need for new development.

The United States Geological Survey (USGS) began compiling water use data in 1950 and it conducts the survey at 5-year intervals. According to the USGS surveys, there was a general increase in water use from 1950 to 1980 and a general decrease in water use from 1980 to 1995. From 1995 to 2005 water use rates were relatively stable. The decrease between 1980 and 1995 is attributed to higher energy prices in the 1970s (causing a greater collective consciousness about conservation), a large drawdown in ground-water levels in some areas increasing the cost of irrigation water, a down-turn in the farm economy reducing demands for irrigation water, and a transition from water-supply management to water-demand management encouraging more efficient use of water. In addition, new technologies in the industrial sector that require less water, improve plant efficiencies and increase water recycling along with higher energy prices, and changes in laws and regulations to reduce the discharge of pollutants resulted in decreased water use and less water being returned to the natural system after use. The enhanced awareness of the general public to water resources and active conservation programs in many States has contributed to reduced water demands. As of 2007, national patterns of water use (fresh and saline) is 48 percent for thermoelectric generation, 34 percent for irrigation, 11 percent for public supply, 5 percent for industrial, 2 percent for self-supplied domestic, livestock, aquaculture, and mining combined.

Commercial Water Use

Commercial water use includes water for motels, hotels, restaurants, office buildings, other commercial facilities, and civilian and military installations. During 1995, commercial water use was an estimated 9,590 million gallons per day or 16 percent more than during 1990. According to the USGS, the large increase in commercial water use has more to do with different sources of information, changes in how the estimates are calculated, and how fish hatcheries and military establishments are reported, rather than actual changes in water use. USGS did not collect data on commercial water use in 2000 and therefore a percent change since 1995 is unavailable.

Commercial, residential and industrial conservation and recycling have become increasingly common over the past 20 years. Severe droughts have been the greatest impetus for these efforts. Water utilities offer payments, rebates and incentives for adopting conservation measures like retrofitting (low-flow faucet aerators, showerheads and toilets), landscape efficiency (Xeriscaping™), and use and recycling of “graywater”, or treated wastewater for non-potable (non-drinkable) water uses. According to the USGS, these conservation efforts have made a significant impact on the amount of water resources used for commercial purposes.

Residential Water Submetering

Traditionally, the cost of water usage has been included in the monthly rental charged to residential tenants, regardless of how much water is actually consumed in each unit. Due to the increased costs to property owners for water and sewage services in the past decade, property owners have to measure water consumption more closely and accurately. The practice of submetering (installing secondary meters) provides property owners with the ability to measure consumption unit by unit and distribute consumption costs accurately to each resident.

The Safe Water Drinking Act (SWDA), originally passed in 1974 to regulate the public’s drinking supply, was revised in 1996 to minimize regulatory burdens and allow for flexibility in state’s interpretation of the Act. Enforcement of the Act, which does address submetering, falls under the jurisdiction of the EPA. According to the Act, a residential complex that engages in submetering is considered a “public water system” (PWS) and subject to considerable requirements and compliance measures. The Act states if a distributor of water bills separately for the service, that activity is classified as a “sale” and is subject to regulations outlined in the SWDA. If the provider includes the charges for water in the rental fee, then a sale has not occurred within the context of the Act. It is irrelevant whether a profit is made from the submetering activity.

Some states have broadly interpreted the EPA’s definition of a PWS and have allowed submetering to be classified as a “consecutive water system” (one that receives its water from another PWS or “parent”, i.e., a municipal water source), allowing for greater flexibility in monitoring requirements and compliance activities. However, some states have taken a strict line of the EPA’s definition of a PWS and have mandated excessive and burdensome requirements and regulations for properties and entities that submeter water. Similar discrepancies in the interpretation of “selling” water have also occurred.

IREM Position

IREM supports the continued voluntary usage of water conservation efforts such as retrofitting, landscape efficiency, the use of graywater, education programs, water-use audits, pressure management, water accounting and loss control by commercial real estate where feasible. States and localities should have the authority and flexibility to determine which of these measures are most suitable for their state or location with the assistance of guidelines from federal government agencies like the Environmental Protection Agency.

IREM supports state efforts and initiatives that encourage economic growth while promoting the sustainability of water resources. Regulations, requirements and penalties should be minimized in order to foster commercial growth due to commercial real estate's measurable and continued commitment to water conservation. Investment real estate professionals understand that the quantity of water available has a direct impact on the quality of water for all uses. In addition,

IREM supports the states in their efforts to maintain control over water use issues.

The practice of submetering has proven to be effective in promoting water conservation.

Submetering provides an equitable method for property managers to accurately distribute water usage cost to tenants, thereby controlling operating expenses and rent increases. Studies have shown that in properties that are sub-metered residents generally consume 18% to 39% less water than those with one shared water meter. IREM supports legislation at the state and local level that allows property owners to engage in water submetering without subjecting owners to burdensome regulatory and compliance requirements. IREM also encourages the EPA and state and local water authorities to exclude those practicing submetering activities as public water systems. The water source provider needs to continue to assume responsibility for the quality of the water.

Case Study: New Jersey

In New Jersey, all outdoor sprinkler systems installed after September 8, 2000 are required to be equipped with automatic rain sensor devices. In July 2006, New Jersey State Senators Bob Smith and Henry McNamara introduced legislation that would go a step further, requiring all lawn sprinklers installed on commercial, retail, and industrial property prior to September 8, 2000 to be retrofitted with an automatic rain sensor.

To enforce this mandate, municipal certificates of occupancy, inspection or other documentary certification of compliance with laws and regulation relating to safety, healthfulness and upkeep would be withheld until the officer or agency responsible for its issuance has determined that rain sensors have been installed. In addition, closing of title on the sale of property would be contingent on both the buyer and seller certifying in writing that the required devices have been installed. Violators will be subject to a \$500 fine.

While IREM supports the usage of water conservation efforts and technology, it believes that such usage should be voluntary, with minimal regulations, requirements and penalties, in order to foster commercial growth. CPMs in New Jersey were asked to write their State Senator and ask them to balance the goal of water conservation with the vitality of the state's commercial real estate market.

Source for Information on Water Conservation Policy

IREM Statement of Policy

<http://www.irem.org/sec1ins.cfm?sec=publicpolicy&con=environment.cfm&par=#11>

National Association of REALTORS® Field Guide to Water Rights and Resources Issues

<http://www.realtor.org/library/library/fg809>

United States Geological Survey (USGS)

<http://www.usgs.gov/>

National Conference of State Legislatures

www.ncsl.org