



BEST BEST & KRIEGER
ATTORNEYS AT LAW

Is There Enough Water?

Water Supplies Per SB 610 & Beyond

Association of Environmental Professionals Conference 2014
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PRESENTED BY

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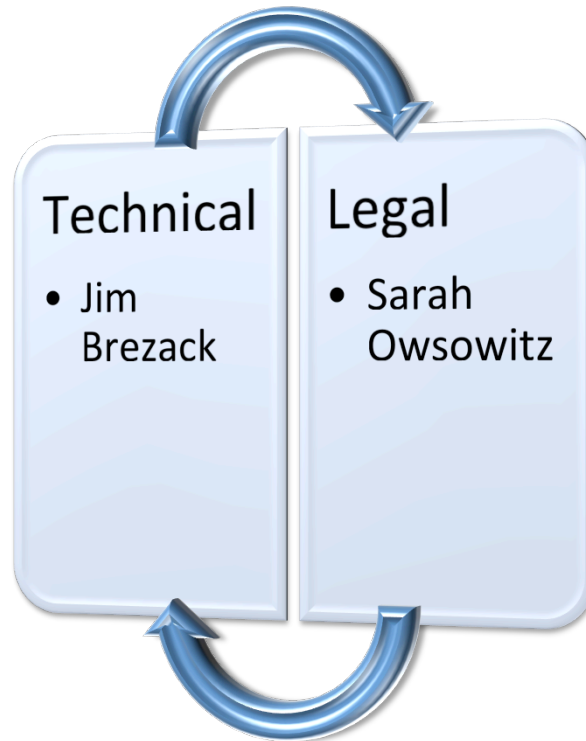
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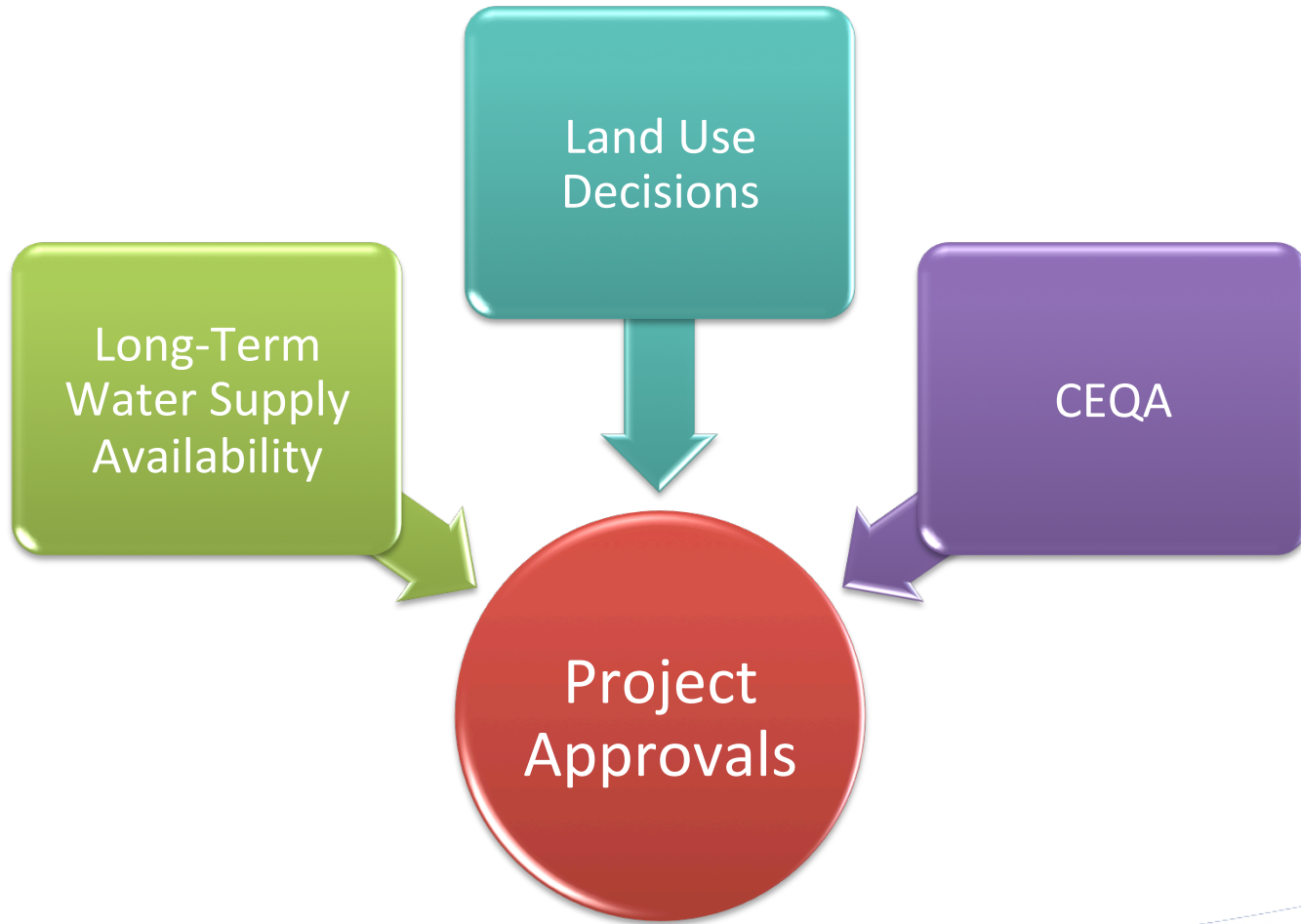




Presentation Format



California's Not So “New” Linkage



California Urban Water Management Planning Act



- Enacted in 1983 (Assembly Bill 797 Klehs)
- California Water Code Division 6, Part 2.6
- Declares that:
 - “ The conservation and efficient use of urban water supplies are of statewide concern; however, the planning for that use and the implementation of those plans can best be accomplished at the local level. ”
- Requires that “Every urban water supplier shall prepare and adopt an Urban Water Management Plan.”



SB610 Overview

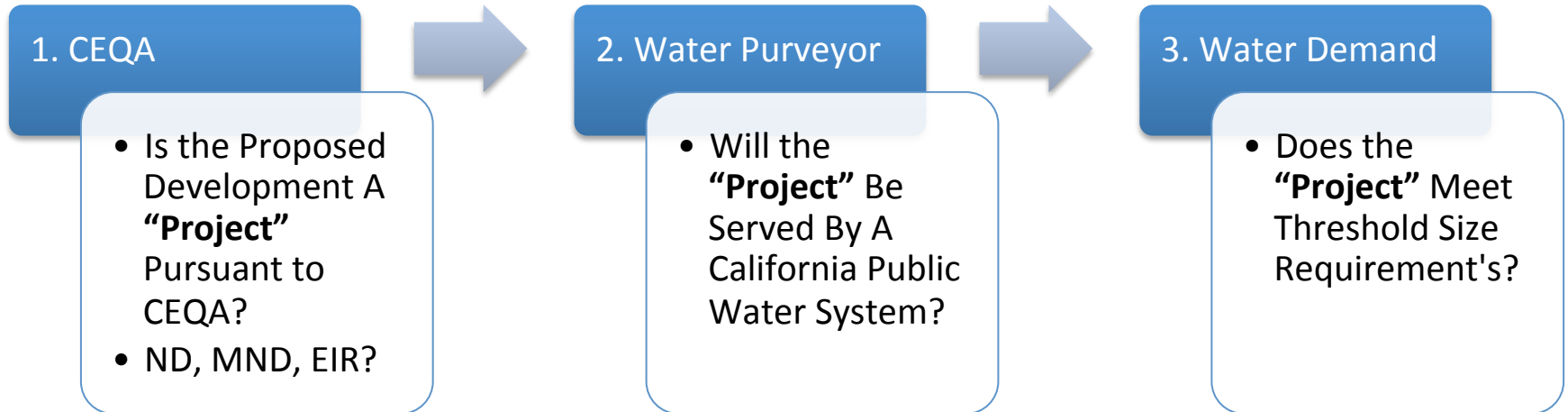
1. California has enacted several laws that tie discretionary approvals for developments to a water purveyors long-term, verifiable water supplies.
2. Disclosure of this nexus between a project & its water supply was intended to inform on the overall impact & need for mitigation per CEQA.
3. Unintended consequences have resulted so that those opposed to a project are now better able than before to challenge its approval.



SB610 Water Supply Assessment

- Enacted in 2001
- Gov' t Code 66473.7 [CWC 10910-10912]
- Water **Purveyor** Analyze Water Sufficiency for a “Project”
- Triggered by CEQA Review
- 20-Year Projection
 - Normal, Single Dry & Multiple-Dry Year Supplies

When Does A WSA Need to be Prepared?




A California Public Water System...

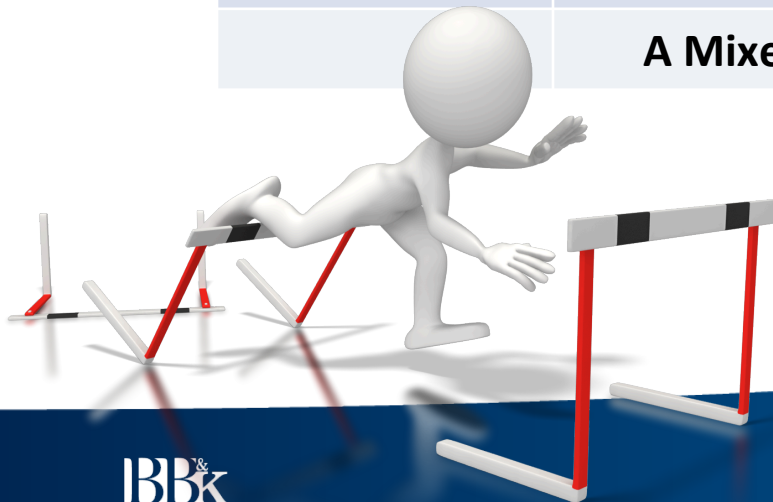
- Provides piped water for human consumption
- Is defined as having **3,000** or more service connections [CWC 10912(c)].
- Different from California Safe Drinking Water Act:
 - “Public water system” that has **15 or more** service connections or regularly serves at least 25 individuals daily at least 60 days out of the year.

Water Purveyor Size

- “*Group I*” - Large Purveyor:
 - 5,000 or More Service Connections
 - Strict Project Thresholds
- “*Group II*” - Small Purveyor:
 - 3,000 – 5,000 Service Connections
 - Sliding Scale Project Threshold

Large Purveyor Development is A “Project” If...

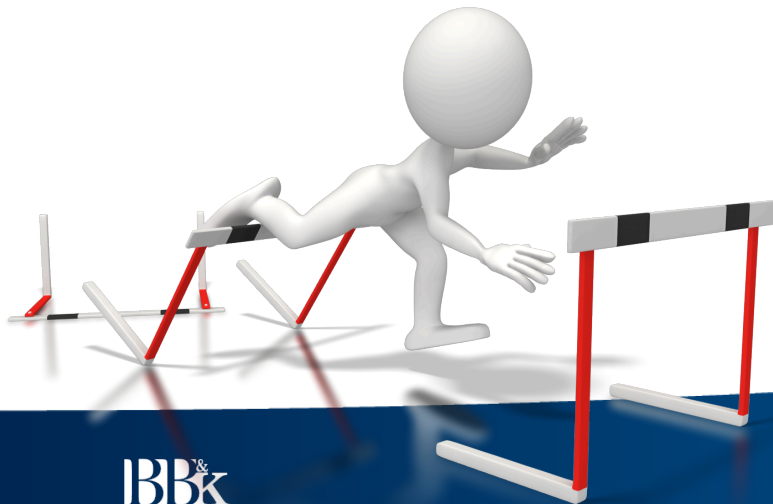
Project Type					
	Residential Development	Hotel/Motel	Com. Office	Shopping Ctr.	Ind., Mgf., Processing Ctr.
Units	500	500			
No. Employees			1,000	1,000	1,000
Interior (Sq ft)			250,000	500,000	650,000
Ares (Acres)					40
	A Mixed Use Project That Includes Any of the Above				



Large Purveyor

Project Thresholds (continued)

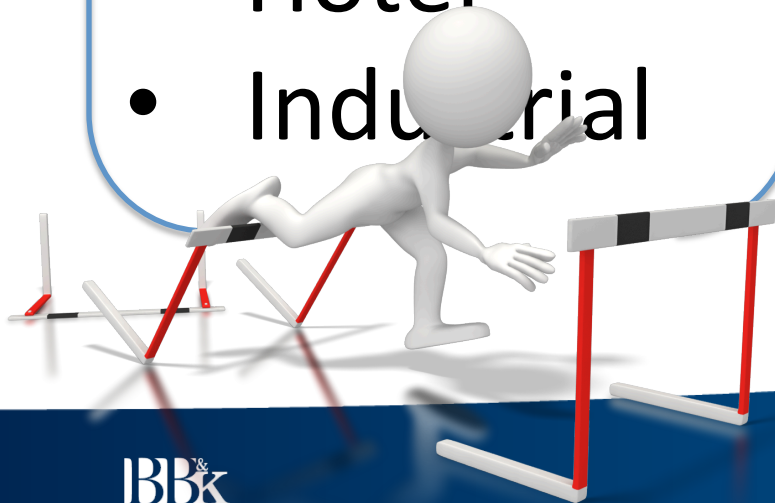
- Water Demand => 500 DU's.
- PV or Wind Energy Facility w/Water Demand >75 AFY.
- Processing Facility >40 acres of Land.



Small Purveyor Project Thresholds

- Residential
- Business
- Commercial
- Hotel
- Industrial

+10%
Number of
Service
Connections

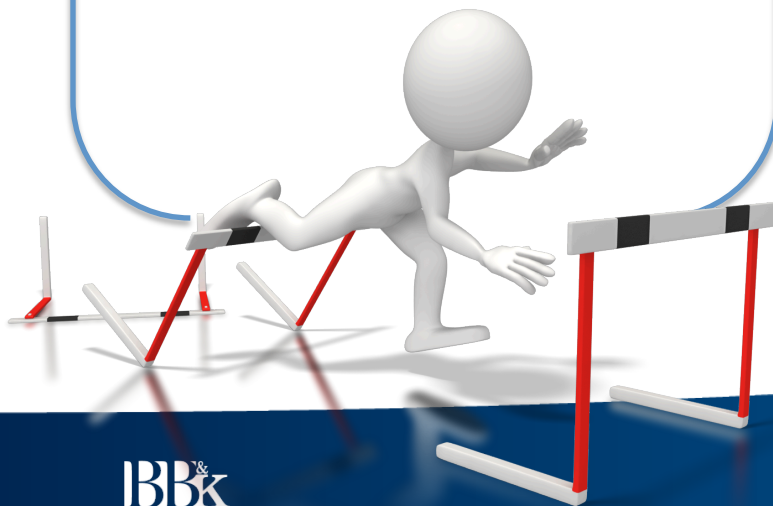


Small Water Purveyor

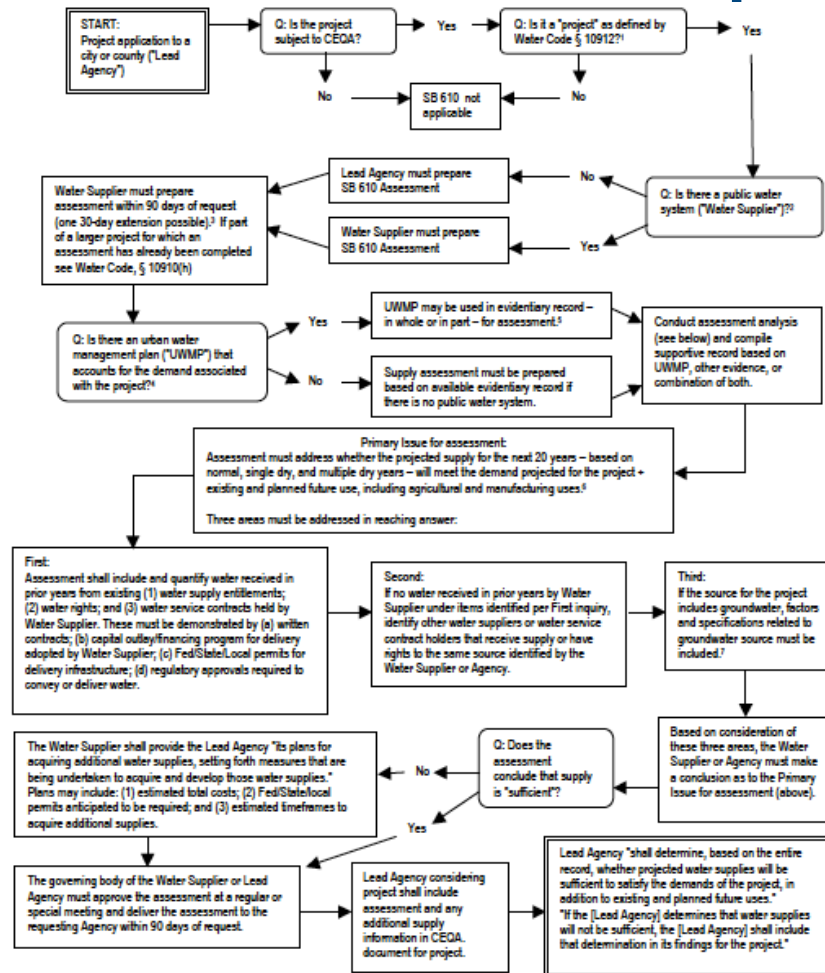
Project Thresholds (continued)

Mixed
Use
Project

A Residential
Development Water
Demand Equivalent to
An Increase of 10% or
More In Number of
Existing Connections



How Is A WSA Prepared?



How A WSA Is Prepared

- Determine If A Public Water System Exists
 - If None, Then Lead Agency Prepares WSA
- Lead Agency Makes Request to Purveyor
- Determine If UWMP Included Proposed Development Project:
 - If Yes; Rely on UWMP Analysis
 - If No; Prepare New Supply Assessment

Water Supply Assessment

- 20-Year Projections
- Anticipated Water Demands
- Proposed Development + Service Area Demands
- Normal, Single-Dry & Multiple-Dry Year Analysis
- Determine if Sufficiency or Deficiency
- Plans to Acquire Additional Water Supplies:
 - Total Costs & Financing Methods
 - Permits & Approvals Needed
 - Schedule

When Must a WSA be finalized?

- Water Purveyor Approves Assessment
 - W/In 90 Days of Lead Agency Request
 - +30 Extension If Needed
- Lead Agency Includes the Approved WSA:
 - Typically as an Appendix
 - DEIR, MND or ND
- Lead Agency Must Make Findings
 - Consider Entire Record
 - Including WSA



Can a WSA's Findings Be Rejected by a Lead Agency?

- Short Answer = “Yes”
- Determine Need for Additional Information
- Make Findings:
 - Must Include Consideration of WSA
 - Substantial Evidence to Support Determination



DWR's Guidebook

Guidebook for Implementation of
Senate Bill 610 and Senate Bill 221 of 2001

to assist water suppliers, cities, and counties
in integrating water and land use planning

Prepared by the California Department of Water Resources

- Prepared in 2003
- SB610 & 221
- Good Information Source
- Flowcharts

How to satisfy CEQA Requirements When no WSA is required

- Use Water Code Basis for Sufficiency/Deficiency Determination.
- Analyze Project + Service Area Demands
- Consider 20-Year Projections:
 - Normal, Single & Multi-Year Drought
- Identify Costs, Financing, and Regulatory Permits to Make Up Deficiency in Supply

What Does This Mean to Water Supply Agencies?

- Focus on Long-Term Water Supply Availability...
 - Address Global Warming
 - Increased Attention to Groundwater Safe Yield
 - Increased Importance for Purveyors to Have a Portfolio of Water Supplies
 - Contracts, Permits, Expenditures Are Required; Not “Paper Water”
 - Conservation Hardening (Facilities, Pricing & Practices)



Key “*What If’s*”

- Your Purveyor Depends on Groundwater?
- Your Purveyor Never Before Prepared a WSA/WV?
- Your Project Wasn’t Included In the UWMP?
- Your Project Has Changed Since Last UWMP?
- Insufficient Water Supply (A Negative WSA?)



Groundwater

- a) Identification of the other users of groundwater in the basin, & their historical use patterns in various water years.
- b) An estimate of the maximum quantity of water that can be continuously withdrawn without adverse effect.
- c) Identification if the basin is overdrafted & a description of known & anticipated effects as a result.
- d) A description of any groundwater management programs to minimize or eliminate problem conditions.



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Case Law

CEQA and SB 610/221

- Multiple CEQA-Related Legal Challenges
 - *Vineyard* Decision – Sufficiency of analysis of the impacts on water supplies
- Notable SB 610 & 221 Cases
 - i.e. *OWL v. Rohnert Park* – Long-term analysis of Groundwater Availability



Water Supply Sufficiency Has Always Been a CEQA Issue

- *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal. 4th 412
 1. CEQA document requires sufficient facts to evaluate pros/cons of supplying needed project water.
 2. Environmental analysis cannot be limited to the first stage or the first few years of a large project.
 3. Future water supplies must bear a likelihood of actually proving available.
 4. Where, despite a full discussion, it is impossible to confidently determine that anticipated future water sources will be available, CEQA requires some discussion of possible replacement sources or alternatives to the use of the anticipated water, and of the environmental consequences of those contingencies.

CEQA and Water Supply

- *Santa Clarita Org. for Planning the Env't v County of Los Angeles* (2007) 157 Cal.App.4th 149
 - Applied to the 4 *Vineyard* principles to hold that an EIR did not ignore, or assume a solution, to the project's water supply issues. The EIR identified specific water sources and disclosed the legal uncertainty of those sources.

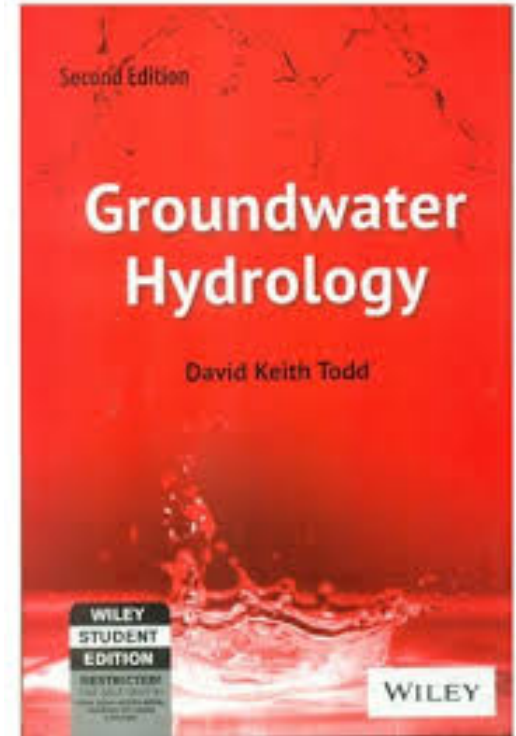
CEQA and Water Supply

- *Habitat & Watershed Caretakers v. City of Santa Cruz* (2013) 213 Cal. App. 4th 1277
 - Upheld Aspect of EIR which acknowledged inadequate supplies and proposed conservation and curtailment in future if desalinization plant did not come online.
 - “As the nature of this harsh reality was discussed and disclosed in the draft EIR, the draft EIR was not inadequate in this respect”



Implementation of SB 610

- *O.W.L. Foundation v City of Rohnert Park* (2008) 168 Cal.App.4th 568
 - Upheld adequacy of WSA evaluating use of groundwater
 - But see *California Water Impact Network v. Newhall County Water District et al.* (2008) 161 Cal.App.4th 1464 - WSAs are not subject to direct legal challenge



Implementation of SB 610

- *Gray v. County of Madera* (2008) 167 Cal. App. 4th 1099
 - Mitigation Measure which could require the construction of a water system for use by affected neighbors may require preparation of a WSA.



Implementation of SB 610

- *Citizens for Responsible Equitable Envt'l Dev. v City of San Diego* (2011) 196 Cal.App.4th 515
 - Upheld decision to augment an EIR certified before SB 610 by including a water supply assessment in an addendum to the EIR.

Implementation of SB 610

- *Madera Oversight Coalition, Inc. v County of Madera* (2011) 199 Cal.App.4th 48, 104
 - WSA rejected for failing to evaluate information showing that the water entitlement relied on in the assessment was uncertain.



Implementation of SB 610

- *Preserve Wild Santee v City of Santee* (2012) 210 Cal.App.4th 260, 282
 - Rejected a WSA because it did not explain a substantial discrepancy between the estimated water demand for a project and the available water supply.



Implementation of SB 610

- *Citizens for Open Government v. City of Lodi* (2012) 205 Cal.App.4th 296
 - No WSA necessary because the evidence supported conclusion that shopping center project would employ 1,000 people or less.



Implementation of SB 221

- *Clover Valley Found. v City of Rocklin* (2011)
197 Cal.App.4th 200
 - A water agency's verification that it has adequate water supplies to serve a project and other existing and planned future uses was sufficient to show that water supplies are likely to be available for purposes of CEQA, even though the water agency provides water on a first-come, first-served basis.



Key “*What If’s*”

- The WSA concludes that there are insufficient supplies?
- There are multiple projects going through the approval process at the same time that propose to rely on the same water supplies?



Key Issues To Look For

- CEQA issues
 - Have you accounted for potential climate change impacts on water supplies (both ground and surface)?
 - Have you disclosed the impacts of constructing new pipelines or drilling new wells?
- WSA issues
 - Does the UWMP really include the project?
 - When does the final WSA have to be published?

Key “*What If’s*”

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- Your Project Has Changed Since Last UWMP?



Thank you for attending.

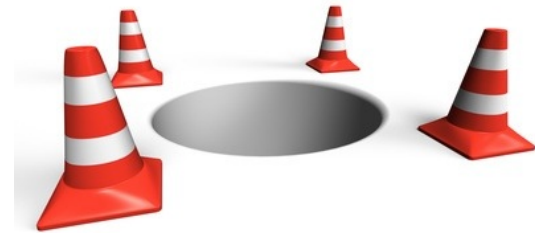
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Discussion

Common Pitfalls on Treatment of Water Supplies in CEQA

- When can you rely on an Urban Water Management Plan?
- How much has to be known about the historic use of an aquifer before you can assume the availability of groundwater supplies?



UWMP Must Describe Demand Management Measures

A description of each water demand management measure (current & future)

- Water survey programs for single-family residential and multifamily residential customers.
- Residential plumbing retrofit.
- System water audits, leak detection, and repair.
- Metering with commodity rates for all new connections and retrofit of existing connections.
- Large landscape conservation programs and incentives.
- High-efficiency washing machine rebate programs.



Water Conservation in Landscaping Act

- It is the policy of the state to promote the conservation and efficient use of water & to prevent the waste of this valuable resource.
- Landscape design, installation, & maintenance can and should be water efficient.
- Requires development & use of a model water efficient landscape ordinance .

(GOV CODE 65591-65600)





SB221 Written Verification

- Gov' t Code 66473.7
- Land Use Agency Certify a “Sufficient Water Supply” Is Available When Approving a Subdivision Map
- Issued by the Water Purveyor
- A *Written Verification of Water Supply Availability*

Focus on Water Supply Sufficiency



Purveyors

Adopt UWMP, WSA & WV



Common Pitfalls on Treatment of Water Supplies in CEQA

- Disclose:
 - potential climate change impacts on ground and surface water supplies
 - Impacts of construction of new pipelines; drilling of new wells
- Does the UWMP include the project?

