

Western States Face Water-Short Future

As cities grow and water supplies tighten, builders must practice conservation and play politics

In February of this year, Denver was grappling with an ongoing municipal water crisis. A lingering drought had left area reservoirs 60% empty, and local governments were debating a continued ban on lawn watering and new caps on water hookups.

But in March, a record blizzard dumped 6 to 8 feet of snow on the Rockies. As the new snowpack melted, lake levels rose. By May, some local reservoirs had reached 85% of capacity and were headed higher. "TV news was showing the guy who has to move the boat docks back as the water rises," says Colorado HBA official Rob Nanfelt. "He couldn't move them fast enough."

Long-term problem. But one spring storm can't change Denver's underlying reality: In Colorado and throughout

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DAVID WINGER, DENVER WATER

This "xeriscaped" front yard in Denver uses a mixture of drought-tolerant plants with a variety of flower and foliage colors. It will save around 10 gallons per square foot over the course of a growing season, compared to a Kentucky bluegrass lawn.

Nailed in One Antitrust Case, Weyerhaeuser Faces Follow-Up Suits

A small Washington lumber mill has bested forest-products giant Weyerhaeuser in federal court, winning treble damages of \$78 million for alleged unfair competition. Ross-Simmons Company, a family-owned mill in Longview, Wash., said that Weyerhaeuser locked up the region's supply of red alder (a hardwood used for furniture and cabinets), then used its market dominance to drive competitors out of business.

Ross-Simmons attorney Michael Haglund promptly filed suit on behalf of five more plaintiffs, seeking total damages of \$206 million (which antitrust law would triple to \$618 million). Haglund also wants Weyerhaeuser stripped of some alder timber holdings.

After two decades of gains, Weyerhaeuser currently controls the bulk of the Northwest's alder trees. In the new case, four small mills charge Weyerhaeuser with cutting them off from the resource. A fifth plaintiff, British Columbia mill Coast Mountain Hardwoods, says Weyerhaeuser destroyed it by bleeding it dry in a joint venture, then buying its remaining assets for a fraction of their worth.

Weyerhaeuser is appealing the Ross-Simmons decision, and a spokesperson called the follow-up suits "an affront" to the company's workers. The firm took a \$52 million charge against earnings to cover the damages, posting a first-quarter loss of \$54 million.

The world's biggest lumber com-

pany, Weyerhaeuser reported just over \$300 million in hardwood sales in 2002, compared to more than \$7 billion in softwood sales and total sales of \$18 billion (including pulp and paper sales and other income). But legal troubles related to hardwood could do disproportionate damage to the firm's bottom line. Weyerhaeuser bought its first alder mill in 1980; by 1997, the number of mills in the market had shrunk from 40 to 15, and Weyerhaeuser had captured a 65% share, according to the *Seattle Times*. The Ross-Simmons case could be just the beginning: "If that one ruling stands," a market analyst reportedly told the *Tacoma Tribune*, "it does open up for a lot of other guys."

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the West, urban growth is coming up against a limited supply of water, most of which is already claimed by the region's farmers. Irrigation accounts for 80% to 85% of total water use in western states.

Only about 5% goes to household uses, and new homes built to modern codes use far less water than existing homes with old-style showers, sinks, and toilets. But new houses and lawns can make a difference at the margins, and water issues have become a convenient touchstone for opponents of development. And unlike agriculture, home construction has no entrenched water rights.

Trouble ahead, trouble behind. The West's population is booming. Nevada led the nation in percentage growth with a 66% population surge during the 1990s, and Southern California added 2 million residents for the largest absolute increase in the country. California's total population, now 34 million, may number 50 million by 2025, according to the Census Bureau, while the West's total population will likely grow from 61 million to 84 million.

Providing water for such numbers will bring on both technical and political problems, with no easy solutions in sight. An Interior Department report released in May, "Water 2025," labeled Denver, Las Vegas, Salt Lake City, Houston, Albuquerque, Flagstaff, and Reno as hot spots where conflict over water is probable in coming decades. The report said Los Angeles, Sacramento, San Diego, Phoenix, and San Antonio could also see water-related disputes.

In fact, the competition is already underway. Much of the region relies heavily on water from the Colorado River, which is tapped to serve farms and cities in Wyoming, Colorado, Utah, Nevada, New Mexico, Arizona, and California. But Nevada and Arizona are fast approaching the limits on their takes under old interstate agreements and court rulings. California, which has overdrawn its allotment for years, went to court this spring to block a 15% rollback ordered by Interior Secretary Gale Norton.

Builders begin to adapt. Hard pressed to wrestle new water from farmers with prior claims, city utilities are pressuring homeowners and builders to cut household water use.

Aurora, Colo., a fast-growing Denver suburb, considered measures to reduce water tap allocations for new buildings in 2002. But city planners backed off the plan when they learned that development used only 1.5% of

the city's water and curtailing new construction would cost the city thousands of construction jobs and millions of tax dollars — including the money needed to fund new water sources and delivery systems in preparation for future droughts.

Aurora's tap fees were boosted from \$6,846 to \$10,711 recently, reports the *Denver Post*. Nanfelt says builders have concerns about how cities account for the funds. "Just in the Metro area, our builders have paid in more than a billion dollars in tap fees in the last ten years," he reports. "Our question for the municipalities is, Where has that money gone?"

Cooperating with utilities. But builders are heeding utility calls to conserve water. Denver's HBA is working with Denver Water, the city's utility, on a proposed rebate program for water-conserving new homes. And the association has completed a voluntary "water-wise" plan for builders that includes ultra-low-flow toilets, advanced water-conserving faucets and showerheads, limits on turf area, and efficient moisture-sensing or rain-sensing irrigation systems. Compared to existing homes, the measures could cut household water use by some 60%.

Builders are also joining water utility efforts in San Antonio, which faces new state limits on withdrawals from a regional aquifer. "A lot of the production builders install sod that will not survive our summers without continuous watering," says San Antonio Water System official Dana Nichols. "Some houses are using 50,000 gallons a month to water the grass in summer." But builders have joined the utility to market a program rebating up to \$1,000 to buyers of homes that use drought-tolerant grasses and shrubs and that restrict turf to 50% of the lot.

A few cities have yet to feel the heat. Salt Lake City draws its water from local creeks and aquifers. "We haven't had to use Utah's Colorado River rights," says Utah HBA official Tasman Beisinger. "Are we concerned about conservation? Absolutely. But no one is making rules for new houses here."

Meanwhile, with agriculture the biggest drain on water supplies, builders are little more than spectators to the region's big battles: the contest between the farms and the cities and between states. Interior Secretary Gale Norton scheduled a water summit in Denver for early June, but in May, Rob Nanfelt said the association had no plans to participate. "As far as I know," said Nanfelt, "we haven't been invited."

How Cold Is Too Cold? Poured-Wall Pros Pool Experience

With sweat running down your back in July, it's hard to believe in winter. But if your October foundation work gets delayed until December, you may be interested in an upcoming report from the Concrete Foundation Association (CFA), a group of residential poured-wall contractors. Armed with high-



Does cold weather have to shut down the pour? Foundation contractors using Hobo Dataloggers (above) have been gathering real-world data to guide cold-weather concrete practice.

tech temperature probes, CFA members have been logging data from real wall pours under field conditions, in search of practical rules for cold-weather concrete work.

"Two winters ago several of our contractors reported that building inspectors were shutting down the job sites because of the cold," says CFA technical director Jim Baty. "Some of them were able to open up again by working with engineers and proving that their mix would work."

The CFA decided to examine the cold-weather performance of different mixes under field conditions, so that more contractors could demonstrate to building officials the validity of their mix designs and protective measures. "Our members bought Hobo Datalogger kits to monitor concrete temperature and ambient temperature in the first 48 hours," says Baty.



Mixes and conditions varied so widely on site that CFA decided to also do controlled testing: a series of cylinder sample tests coupled with full-scale wall tests of 48 selected mix designs. "To date we have not had a mix that failed," says Baty, "and we've poured at temperatures down to 14°F."

It's important that concrete be delivered at 60°F, and it makes a difference whether you cover it, says Baty, but he says, "We can effectively support concrete being placed at temperatures down into the teens — whereas now, if it gets below 30°F to 35°F, building officials are nervous."

CFA's physical testing provides validation for computerized maturity testing that can predict concrete strength gain based on the known chemistry of the mix. "That hasn't really come into residential work, but it's aggressively practiced in road and bridge construction," says Baty. "There the issue is not how cold can you pour, but how soon can you strip the forms and move on? We're not saying, Use this mix design for these conditions. We're saying, Here's a process you can use to show how your mix will perform, rather than go through the elaborate physical testing we have done."

CFA's results will be presented in September at the ACI 306 conference in Boston, Mass.

OFFCUTS

A New Jersey builder who hired detectives to secretly tape-record meetings with town officials can use the tapes as evidence in a lawsuit against the town despite ethical concerns, a state judge has ruled. The *Newark Star-Ledger* says an attorney for Readington Township builder Mark Hartman hired a man-and-wife team to pose as environmental activists and gain the trust of town officials. The pair taped town officials labeling Hartman an "archenemy" and saying

that they had acted to delay his projects knowing that their rulings would be reversed on appeal.

The Massachusetts legislature is considering two fire sprinkler bills, reports the *Boston Globe*. One would authorize towns to require sprinklers in new one-, two-, and three-family homes, and the other would require sprinklers in any new building larger than 7,500 square feet.

Referral Fees — or Kickbacks?

Custom Builders Question Payments to Realtors

Paying real estate agents a commission is nothing unusual for a spec builder, for whom the transaction is like the sale of an existing home. But what if an agent sells a building lot, then approaches a custom builder with an offer to refer the buyer to the builder — for an undisclosed fee? Santa Fe, N.M., contractors say that's unethical, and they hope to end the practice.

In April, Santa Fe marketer Robin Dorrell called a public meeting to draw attention to the issue. Dorrell, who runs a referral service for architects, wants lawmakers to force realtors to disclose all fees collected from builders.

But Lee McDaniel, a New Mexico Real Estate Commission investigator, told *JLC*, "This thing about kickbacks is strictly an allegation by Robin Dorrell. There are no complaints about it in our files, and she gave me no evidence that it is even happening." McDaniel says current regulations for realtor disclosures depend on when the fee is collected: "If the realtor refers a customer to a builder after a lot sale has closed, any fee is not required to be disclosed." Perhaps the builder should disclose the arrangement, McDaniel says, but "custom building is a service — it's not a sale of real property. We have nothing to say about that."

Assistant Attorney General Albert Lama attended Dorrell's April meeting and says, "People made all kinds of claims, but no one could show me one person who has been harmed. Unless someone is harmed, we have no cause to take action."

Ed Breiting, president of the Santa Fe Homebuilders Association, sees it differently. "This is definitely happening," he says. "The month before Robin's meeting, I was approached twice by realtors wanting to refer customers to me for a fee, and neither one wanted it disclosed."

One realtor wanted a 6% commission, says Breiting. "When I objected to that, he quickly dropped it to 3%. I told him that I thought 1% would be a fair finder's fee, but that I would still disclose it." Neither realtor called back.

An informal survey of builder members found many who had been asked to hide realtor referral fees ranging from 3% to 6%, Breiting says. Most contractors in the survey opposed the fees altogether, but Breiting is focusing on disclosure. He has asked the state HBA to push for a change in builder license laws that would require builders to disclose all referral fees.

"The realtors like to be paid out of the first progress payment, or even the deposit," says Breiting. "That's very hard to hide, because division one costs are generally paid based on the percent completion of the project. And that puts builders in an awkward place. Sixty thousand dollars on a million dollar house? People are going to say 'Wait a minute — I didn't get anything for that.'"

"It takes two to tango," says the Real Estate Commission's Lee McDaniel. "The bottom line is, no professional should ask another professional to cover up a payment. It shouldn't be asked in the first place, and it sure as heck should not be agreed to. If it's happening, I'd like to know about it. I would love to get my hands on a case like that, just to see what we could make of it."

OFFCUTS

American Polysteel has introduced an energy-efficient mortgage (EEM) program in cooperation with First Federal Bank that covers the entire continental U.S., Polysteel announced in April. EEMs stretch allowable debt-to-income ratios for home buyers because of reduced energy use by concrete homes built with Polysteel foam forms. Under the program, a single loan can finance lot purchase and house construction, then roll over to provide permanent financing of the home. Information is available at www.polysteel.com or by calling 800/977-3676.

The U.S. probably won't remove import duties from Canadian softwood despite a World Trade Organization ruling May 27 that said Washington calculated the duties improperly, according to the *Toronto Globe and Mail*. Instead, the Commerce Department can appeal the decision, stretching the process out to year's end, then take an additional 15 months to remove the tariffs if it loses the appeal. And the U.S. could still recalculate Canada's alleged timber subsidy by a different method and assess a modified penalty, experts say.

Nevada legislators have passed a right-to-cure bill backed by builders after homeowner, trial lawyer, and builder interests agreed on compromise language. The new law will require homeowners to give formal notice and allow a 105-day or 150-day time frame for builders to fix any reported defect before the homeowner can bring a lawsuit.

BUSINESS TUNE-UP

Scheduling Part-Time Office Help

by Melanie Hodgdon

Many of my clients have reached the point where they can no longer do all their office work themselves. Supervising three or more employees, plus selling and estimating enough jobs to keep them busy, usually forces the business owner to start handing over office tasks.

Before there's enough volume to support a full-time office worker, many builders look for part-time help. The right person can work beautifully — given the right schedule.

There are several ways to schedule 15 or 20 hours a week. The person could work 8 to 10 hours a day for two days each week (the Two-Day

Plan), put in random hours up to a given maximum (the Flex-Time Plan), or show up for 3 to 4 hours each day (the Daily Plan). Each choice creates a different situation.

Suppose your Two-Day Plan person works on Mondays and Thursdays. Whenever she comes in, she'll face a backlog. You'll lose time each week leaving and reading notes and having brief meetings to catch up. Your job-cost data will be current only twice a week. Three days out of five, your phones won't get answered. And you'll be tempted to post urgent checks or invoices yourself (believe me, that can snarl things up).

With the Flex-Time Plan, phone coverage is sporadic. You'll probably continue to do some urgent tasks yourself, creating duplication and confusion. And you and your office worker will still have to leave notes for each other.

With the Daily Plan, my preference, your worker is there every day. You'll be less likely to have to do things you hired her to do, and you won't have to write each other notes. Your worker will stay aware of job progress and new clients. And your voice-mail message can give callers the regular office hours, enhancing your professional image.

A Comeback for California Condos?

In recent years, the California condominium has looked more endangered than the California condor. Despite a huge demand for low-end units, condo construction has been stymied by litigation risks and development restrictions.

But a report in the *Sacramento Bee* says that with single-family lot prices rising out of reach, builders are planning 1,700 condo units in eight projects around the city. That will amount to 10% of homes built in the area, up from an average of 1% in previous years, says the *Bee*.

Condos are leading a statewide boom in home construction, with multifamily permits through March totaling more than 28,000, a gain of 57% over last year. Single-family permits were up 25% over March 2002, at more than 64,000.

That's still far short of the boom years of the 1980s, when condo and apart-

ment construction peaked at 160,000 units before crashing to a low of 15,000 in 1993. A crawl back to around 43,000 in the year 2000 seemed to end at a brick wall, with the stock market collapse, land scarcity, and crushing insurance rates combining to stifle the market.

Now pent-up demand and record low interest rates seem ready to push the condo market through that barrier. One builder, James Brennan of Brenson Corp., told the *Sacramento Bee* that California's new dispute resolution reform law, SB 800, played a part in his decision to go ahead with a condo project (see "California 'Fix-It Law' Aims to Limit Defect Lawsuits," *Notebook*, 11/02).

"This will be the best year we've had since 1990," says California Building Industry Association executive Bob Rivinius. "But one reason the market is



so strong is that we're still not producing enough housing here. And unfortunately it's the affordable units that aren't being built."

Rivinius does credit SB 800 with a positive impact. "So far, the effect is just psychological, because it has only been law for four or five months. But it has already caused a couple of insurers to put their toe back in the water, and it has led a few more builders to take a chance on multifamily work."

