

A Widespread Drought - Legal and Other Challenges of the Association

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Water conservation is not new to California communities. But the declared statewide drought emergency coupled with water conservation legislation aimed specifically at community associations leaves no doubt that water conservation will remain in our vocabulary. And while the emergency requires short term action to conserve water, it also provides a rare opportunity to make long term reductions in our communities' water consumption, provided your community can negotiate through the challenges presented by its Governing Documents and human nature.

Engage Your Residents

Community-wide change requires owner buy-in. Look for ways to involve the owners in the process. For example, form a water conservation committee tasked with surveying the Association's water use and identifying ways to reduce water consumption. If owners are part of the solution, you are more likely to build community-wide acceptance of water reduction measures. Guide the committee with a charter that identifies specific tasks such as 1) identify areas suitable for drought tolerant plants; 2) locate areas for irrigation specific modification or reduction; 3) identify areas of poor drainage or excessive water run-off.

Amend Rules or Adopt Policies to Reduce Water Use

Associations subject to local water restrictions will have to conform to watering schedules and other limitations. Unregulated communities can be proactive by voluntarily adopting policies to reduce community-wide water use. Policies should limit watering to certain times of the day or certain days of the week. For sub-metered communities, boards can work with their local water utility to determine acceptable per owner water use standards and adopt policies to limit water use per owner. A fine schedule or surcharge would serve to motivate owners to monitor their own water use more carefully and become mindful of the amount of water they are using and how much they can conserve.

Plant selection is an excellent way to reduce water use and should be a part of a community's architectural or landscape rules. Up until now, communities have been slow to embrace drought tolerant or native plant palates preferring instead greenbelts and lush lawns over artificial turf. But today's drought tolerant plants are more varied than just cactus. Boards should work with landscape contractors to develop recommended and prohibited plant lists and provide incentive programs for converting yards to drought tolerant plants, within established architectural or design guidelines. Finally, proposed state laws are aimed at restricting an Association's ability to fine owners for dry lawns in times of drought. Boards should consider modifying rules to eliminate or suspend the imposition of fines for dry turf to promote voluntary reduction in turf water use. And since desperate times require desperate measures, consider the use of lawn dyes that keep lawns looking green until mowed.

Capital Improvements and Investment in Infrastructure to Adjust to Drought Conditions

Given the likelihood of state and locally-imposed water restrictions and then penalties for noncompliance, some communities need to look at more permanent ways to reduce water consumption. Real change may require Associations to invest in their infrastructure. Landscape irrigation accounts for the great majority of water use and water waste. Outdated irrigation systems, poor drainage systems, and similar common area components may require upgrade or the infusion of capital to modernize these components with more efficient systems. Such items include new irrigation lay out, drip or low flow sprinklers, updated system controllers, capping off areas to reduce water use and provide for more effective control of when and how often common areas are watered. Slopes, berms, swales and landscape medians may require redesign and replanting to prevent excessive water

run off or waste. Before considering any capital improvement, look to see if reserve funds can be used to make needed changes in landscape design or irrigation systems. And of course, always consider the CC&Rs to determine if owner approval is required for any common area modification of the size and scale contemplated here.

Large scale communities should consider the use of reclaimed water to meet extensive common area water needs. For those communities where individual resident water use is provided by the Association transitioning to sub-metering is an effective water conservation method. The shift to sub-meters transfers the obligation from the Association to the individual user and transfers the burden of monitoring water use to the unit owner. In most communities, switching to a sub-metered water system will require a capital improvement assessment (and member approval) to cover the cost of the sub-meters and installation. Once installed, the use and billing are handled by a third party for the Association. Despite the obvious benefits of sub-metering, convincing owners to accept the burden of monitoring and paying for their own water use requires an effective public relations campaign. Owners are slow to accept that by paying for their own water usage they avoid paying for everyone else's water use. And while change is often difficult, before too long owners will embrace being responsible for their water consumption and will no longer take the unlimited water flow for granted.

Of course, with sub-metering comes enforcement. And unlike public utilities, associations do not have the right to shut off water for nonpayment. Further, unless the CC&Rs provide for a utility assessment, associations will be left with fines for nonpayment of water bills and will need to adopt procedures in place to enforce an owner's delinquent water bill.

Educate and Motivate for Conservation

Educating owners on water conservation empowers them to join in the cause. Meeting the challenge of a statewide drought requires a community-wide effort but will require the Board of Directors and management to team up to provide residents the tools they need to be effective. Provide owners with incentives to reduce water use through conversion to water-wise plumbing fixtures or drought tolerant plants. Invite local water conservation experts to board or town hall meetings to educate and inform your residents about water use and reduction and seek out state and local rebate programs on such items as plumbing fixtures, irrigation, low flow fixtures and turf removal and offer those to owners who participate. And finally, monitor your community's progress and acknowledge those who have made significant contributions to the association's conservation efforts. In these ways, your association's water conservation efforts will become less of an immediate reaction to a statewide drought emergency and more of a new appreciation for a precious limited natural resource.