

UPDATE OF WATER BANKING IN THE ARKANSAS PRESENTED TO THE
INTERIM WATER RESOURCES REVIEW COMMITTEE

August 21, 2013

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History & Notes:

The Water Bank Statute was enacted in 2001, and the Ark. Water Bank Pilot Program was established and rules promulgated effective July 1, 2002. The original statute contained a sunset provision and only included the Arkansas Basin.

The operator of the Pilot Program was the South Eastern Colorado Water Conservancy District.

Few deposits were made. It resulted in no transactions.

SUGGESTED REASONS FOR FAILURE:

- The asking prices were higher than the existing market rates.
- This was a virtual bank with no firm storage for physically banking the water.
- Deliverability of water to various regions was questionable.

In 2006 the present Water Bank Statute was adopted making the water bank permanent and including all basins within Colorado.

In the Arkansas Basin the Upper Arkansas Water Conservancy District was delegated the responsibility as the Arkansas Basin Water Bank Operator.

Rules were promulgated on October 2006 and decreed in Case Number 06CW118 pursuant to 37-80.5-101 et seq., C.R.S. on June 30, 2010.

Many important distinctions exist between the previous pilot program and the present rules:

1. The option agreement allows a buyer to pay the seller for the option to use an amount of stored water in the future at a specified price for a defined amount but is not obligated to exercise the option. If the buyer is not exercising this option the seller by have the water released for his use.
2. The water bank operator is given the power to act outside its geographic boundaries to administor the bank.
3. The bank may lease, exchange, or loan water from the bank only within its Division – Division 2 in the Arkansas Basin.
4. The bank must operate within the existing requirements of Colorado Water Law, However the State Engineer may approve temporary uses of water rights for leasing through the bank.

5. As a term and condition of eligibility to place water in the bank a suggested minimum asking price shall be determined by the Operator based on relevant sales or leases of water within the basin.

Other transactional procedures:

Water may be placed in the bank by application which includes an engineering analysis by a professional engineer to determine the amount of transferable CU and Return Flow impacts.

All persons who subscribe to a Water Bank Notification List must be notified of all pending transactions. Persons or entities have 30 days to submit written comments on the transaction. Within 5 days after close of the comment period the State and Division Engineer will provide to commenters and the seller and buyer with any terms and conditions required for implementation of the transaction and to prevent injury of vested water rights.

Expedited Transactions - Decreed Fully Consumable water

Notice provision is same

7 days after notice State and Division Engineer will provide terms and conditions for implementation.

Winter Water – Acceptable Quantification Factors or presumed factors may be used by water rights included in the Arkansas River Winter Water Storage Program.

NECESSARY STEPS TO MAKE THE BANK WORKABLE:

1. Modifications of the Rules from the Pilot Project - Mostly completed with new rules of 2006
2. Need to move from a Virtual Bank to a Physical Bank – i.e. Firm Storage
3. Understanding that water would normally be banked during wet periods and leased during dry periods making firm (non-spillable) storage imperative.
4. Transactional costs and storage costs must be minimal - Alluvial Storage seems to be optimal for accomplishing this-need to develop alluvial aquifer storage infrastructure. (i.e. UAWCD's proposed Trout Creek Multi-Use Project)
 - a. Cost of maintenance is lower than traditional storage
 - b. Evaporative loss is less
5. An integrated storage system compiled of several vessels throughout the basin would be optimal.
6. Lease-Fallowing with good criteria and guidelines will help foster a viable bank by providing a water supply.