

FLEX Water Market



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FLEX Market

- Agreement to change the use of senior water right to include multiple uses
- Platform to facilitate voluntary leases, trades between market members
- Example: Ag User, M&I User, E/C User
- Goals
 - **Permit** a portion of the senior right to be used for M&I and EC uses pursuant to voluntary contractual arrangements
 - **Maintain** the economic benefit of the senior water right in its region of origin
 - **Retain** sufficient water supply in the region of origin to sustain agricultural activities.



Photo Credit: Wusel007



Photo Credit: Jeffrey Beall



Farmers Independent Ditch Co. (FIDCO) Diversion Dam

Photo Credit: CCWCD

- = Municipal & Industrial
- = Environmental Conservation
- = Agriculture



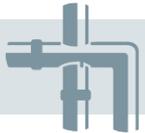
PARTICIPANTS



OWNERSHIP



WATER COURT APP.



INFRASTRUCTURE



ADMINISTRATION



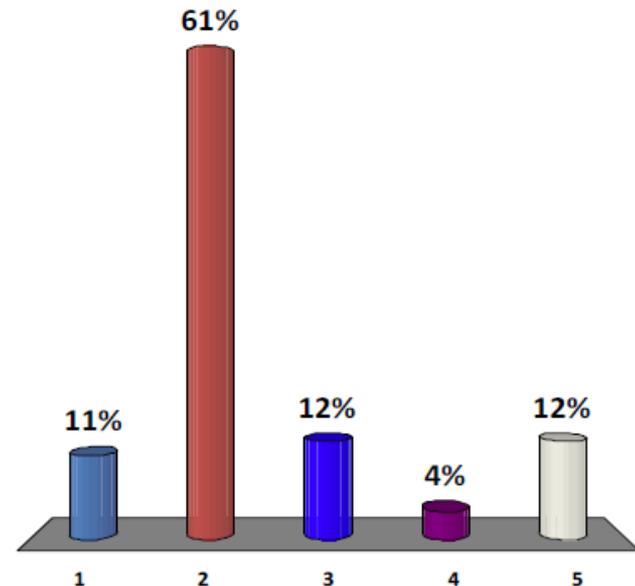
TERM



FLEX Summit

What is the single greatest barrier to multiple uses of senior decreed rights?

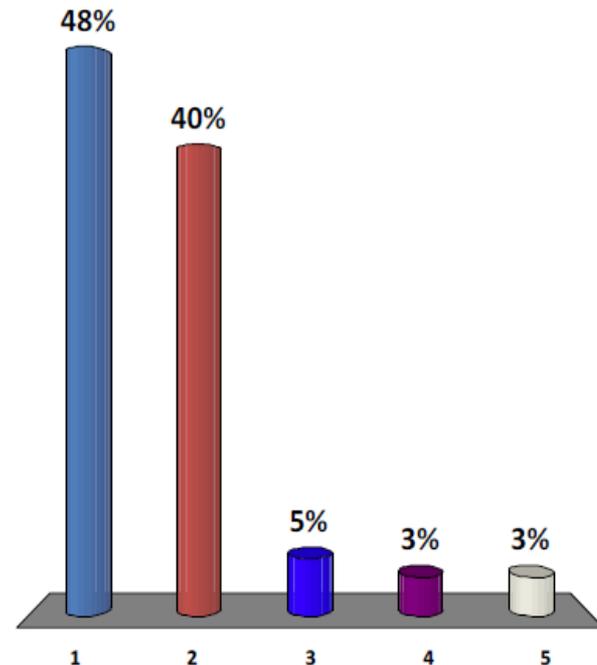
1. Transactional Costs
2. Legal issues
3. Price point for sale or lease of water
4. Delivery infrastructure
5. Other



FLEX Summit

Water court/administrative costs are a substantial barrier to implementation of alternatives to buy and dry like the FLEX market.

1. Strongly Agree
2. Agree
3. Neutral
4. Disagree
5. Strongly Disagree



FLEX Study Lessons

- Water Transfers Should Preserve Economic Benefit in Local Economies
- Keep it Simple
- Promote Ditch Wide Changes in Use to Multiple End Uses
 - Statutory Amendments
 - Standardized Approaches
 - Funding



FLEX Study Lessons

- Develop New Models of Ownership
 - Shared Ownership
 - Market Based Interventions
- Distinguish Between ATM Market Types
 - OTC Market
 - Permanent Supply
 - Blended Market
- Use Land Use and Policy Tools
 - Conservation Easements
 - Prioritizing Food and Fiber Production Areas
- Investigate Indexed Pricing Mechanisms
- Education



Legislative Recommendations

- FLEX Use
- Partially irrigated property tax
- Crop insurance covering ATM practices
- Ditch Wide Change in Use
- FLEX Development Zones



FLEX Use

- “FLEX Use”
 - Issue: current statutory statement of anti-speculation prevents quantification and flexible use
 - Create statutory “FLEX” use or “use types” to substitute for end users in water court and administrative applications
 - Allow quantification of CU for “FLEX” uses, delivery at identified river locations
 - Water “wild card” usable in a broad range of applications



FLEX Use

- Amend 37-92-103 (definitions)
 - 10.9 Define flex consumptive use
 - 10.10 Define flex use
 - 3(a) Limited exception to anti-speculation doctrine for flex use
 - 4(d) Add flex use as beneficial use
- Amend 37-92-305 (change in use)
 - 4(a)(VII) Add key elements of flex decree
 - Historical CU and return flows
 - Terms and conditions for fallowing, regulated deficit irrigation, reduced CU cropping
 - Defined point of delivery for FLEX CU
 - Applicant must prevent injury



On the Cache La Poudre River, 1876



On the Cache La Poudre River, 1876
Worthington Whittredge (1820-1910)

Colorado Constitution

ART 16 § 5. Water of streams public property

The water of every natural stream, not heretofore appropriated, within the state of Colorado, is hereby declared to be the property of the public, and the same is dedicated to the use of the people of the state, subject to appropriation as hereinafter provided.

ART 16 § 6. Diverting unappropriated water--priority preferred uses

The right to divert the unappropriated waters of any natural stream to beneficial uses shall never be denied....

37-92-103(3)

(3)(a) “Appropriation” means the ***application of a specified portion of the waters of the state to a beneficial use pursuant to the procedures prescribed by law***; but no appropriation of water, either absolute or conditional, shall be held to occur when the proposed appropriation is based upon the speculative sale or transfer of the appropriative rights to persons not parties to the proposed appropriation, as evidenced by either of the following:

(I) The purported appropriator of record does not have either a legally vested interest or a reasonable expectation of procuring such interest in the lands or facilities to be served by such appropriation, ***unless such appropriator is a governmental agency or an agent in fact for the persons proposed to be benefited by such appropriation***.

(II) The purported appropriator of record does not have a specific plan and intent to divert, store, or otherwise capture, possess, and control a specific quantity of water for specific beneficial uses.

(b) ***Nothing in this subsection (3) shall affect appropriations by the state of Colorado for minimum streamflows*** as described in subsection (4) of this section.

High Plains Case

120 P3d 710

We hold that, in defining “[c]hange of water right” to include “a change in the type, *place*, or time of use” and “a change in the point of diversion” in [section 37–92–103\(5\), C.R.S.](#) (2005)(emphasis added), and in defining “appropriation” in [section 37–92–103\(3\)\(a\)](#), ***the 1969 Act anticipates***, as a basic predicate of an application for a decree changing the type and place of use, that the ***applicant will sufficiently demonstrate an actual beneficial use to be made at an identified location or locations under the change decree***, if issued.

FLEX Bill

(3) (b) Nothing in this subsection (3) ~~shall affect~~
AFFECTS appropriations by the state of Colorado
for minimum streamflows as described in
subsection (4) of this section **OR APPROVAL OF
FLEX USE.**

Governmental entities- instream flow – FLEX use