

Water Banking

Water Banks are typically a mechanism in which a water right holder can “deposit” a water use entitlement with a private or public entity (the bank) that can make the entitlement available for lease on a temporary basis by another person for use in another location. The bank itself is an institutional mechanism that facilitates the legal transfer and market exchange of various types of surface, groundwater, and storage entitlements.

The following are some questions and considerations regarding a potential water bank in Wyoming’s Green River Basin:

- The purpose of the bank needs to be clear. Is it to facilitate water transfers between willing buyers and sellers (an intrastate water market), or is the bank for interstate compact compliance (such as for demand management water in our part of the Colorado River Basin)? Or both? Or other purposes?
- If the water banked is intended to help with Compact compliance, to what extent do we need to coordinate with the UCRC and the other Upper Basin States? Coordination with other states may be needed to achieve this purpose. Need to consider who decides whether compact compliance achieved.
- Is the bank only for use in times of water scarcity such as drought, or will it operate continuously? Would water banking only be allowed during regulation/curtailment?
- Might banked water be used for Endangered Species Act compliance?
- Vulnerability to abandonment should be addressed so that any water right is not jeopardized by participating in a bank. The underlying right must be protected.
- We need to know how much water can be banked. This will vary depending on the bank's purpose (intrastate willing buyer-willing seller versus robustly quantified demand management or curtailment volumes in an interstate situation like we see elsewhere in the Colorado River Basin).
- Will there be limits on how often a water right can be banked, or how much of the deposits to a bank can be withdrawn in any year?
- In general only a water right's consumptively used portion will be bankable, and when banked, that original use must be foregone.
- As consumptive use changes year to year would an average be allowed or would only the consumptive use looking back be considered? Need for

acceptance of intrastate rules such as measurement of conserved consumptive use. Banked water for compact compliance may be futile if other compacting states do not agree that it can be used for compact compliance.

- Need to consider ease or difficulty of administration. Presumptions (such as 50% return flows) may be easier and less burdensome on participants than involved studies for each participating water right.
- Conveyance losses should be assessed when the water is delivered to the bank and from the bank.
- If the resulting 'conveyance' and 'storage' of a water right causes high losses (conveyance/evaporative) in comparison to what the historical place of use and beneficial use historically observed, should that water right qualify for a water bank? If an objective is to increase the efficiency of our water use does some percentage make the action moot/futile?
- Should there be a limit, by years, how long water can remain in a bank? Banked water should receive its share of annual losses (like evaporation), but if not used could remain banked until used or evaporated away.
- Should a banking authority be created? It could be separate from the WWDC and SEO, but likely contain members from both agencies.
- Who is involved in establishing and participating in a water bank? Should there be one or more Water Banking Work Group(s)?
- A public involvement process may bring out other considerations too. An important task in writing water banking legislation (if needed) will be to determine how much specificity to include in the bill itself, versus how much flexibility and autonomy can be left to the banking authority
- How will banking operations be funded? By a state appropriation, or seed money replaced with an administration fee added to the banking transaction costs?
- Criteria for authorized buyers should be established, as should criteria for willing seller transactions, and pricing procedures. What role will the priority of a banked water right play?
- The activities of a water bank must be transparent.
- Where can banked water be used, and for what beneficial uses? Can it be used outside the basin of origin or outside of the state? Can it be used for both consumptive and nonconsumptive uses?
- How will banking be pursued in relation to organized irrigation districts or other similar entities? In what way will their consent be considered if banking involves water rights held by them or their members?
- Can groundwater be banked? Generally this is only applicable in areas with overdrafted aquifers.

- Consider impacts to other economic sectors. If banking reduces herd sizes, restricts (or enhances) recreational opportunities, exacerbates (or mitigates) endangered species issues, or hurts (or helps) other economic sectors (tax base), those impacts should be weighed.
- Consider social impacts (quality of life, regional heritage, reduction in agricultural revenues) as appropriate.
- Existing water rights cannot be injured by the operation of a water bank. What would the anticipated impacts be to neighbors of appropriators be as a result of drying up adjacent lands?
- Would late season impacts occur earlier as a result of lost irrigation and return flows?
- Are water quality impacts to be considered?
- What is the review process; is notice to other users required? Publication notice?
- Dispute resolution process; ability to contest. What is the process if another water user asserts injury due to the banking of water?
- Consideration of potential harm to other owners in jointly owned ditches.
- There are water banks around the west, with some more successful than others. Some efforts in neighboring states have been attempted, and failed. In the interest of getting the best result for Wyoming, those efforts in other states should be examined and considered.
- In what order will water accounts be filled once water is 'leased'?
- Are leases time limited to a water year? Can they be carried over year to year or will they reset if the leased water is unused?
- Is there a cap for any one entity/industry/beneficial use to 'purchase' water in any given year?
- If there is more demand than supply, how is banked water apportioned? First come first served, shared or proportionate sharing, other?
- Will the bank include headgate to headgate exchanges?
- What qualifies a storage facility to participate as bank storage?
- Will water banking be statewide or only in the Colorado River basin? Can there be more than one bank within the Colorado River Basin?
- Which areas within the basin would be allowed to water bank?
- Who is responsible for the conveyance losses, the 'buyer' or 'seller'?
- How are conveyance losses best measured?
- Are different types of water banking appropriate? Are there more than the concepts of 'Contract Bank' & 'Statutory Bank' as authorized in Utah that Wyoming would be interested in exploring?
- Who will be responsible for shepherding the banked water both to and from the bank, and how will shepherding be done?

- How would water be shepherded outside of a curtailment?
- How would banked water be accounted for during a “free river” situation?
- Regarding storage space made available through the Demand Management Storage Agreement, how is that space (currently 500,000 af in federal facilities) divided among the 4 UB states?
- How many additional state employees would be needed to administer a banking program and what authorities would they need to shepherd the water?