



## **Statewide Water Marketing Strategy Project:**

Exploring the development of market tools favorable to local water users by piloting the Utah Water Banking Act. The Act promotes water leasing arrangements that are locally controlled, temporary in nature, and voluntary. For more information see

[utahwaterbankk.org](http://utahwaterbankk.org).

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# **THE UTAH WATER BANKING ACT LOCAL PILOT PROJECTS AND STATEWIDE WATER MARKETING STRATEGY REPORT**

## **Background:**

Utah has limited water to meet growing demand. Water users constantly face challenging and changing conditions. To navigate uncertainty, water users need tools that bring flexibility and stability to their operations.

To address these challenges, activities to buy and sell or lease water are increasing across the West. With high demand for water, local communities are concerned about maintaining control over the terms and conditions of these activities.

The Water Banking Act is a stakeholder effort to facilitate the development of water market activity that is **locally controlled, temporary in nature and always voluntary**. The Act addresses several barriers impeding more flexible water use and extends benefits requested by the water user community. The Act will be used by, and be for the benefit of, local water users.

The Act is the result of a three-year effort and reflects collaboration and feedback from multiple water interests. It is exploratory and water users will have an initial 10 year window to test the Act before it sunsets in 2030. At that time, the Act can be extended, modified or let to lapse.

The Water Banking Project Team, discussed below, is here to assist local water users explore the Act and implement a water bank in select pilot areas. The Project Team is solely interested in learning about how the Act functions in practice and whether it can be of use to local water users. All efforts are intended to be responsive to local interest and requests.

## **The Water Banking Act: Utah Code Title 73 Chapter 31**

The Act promotes temporary, voluntary, and locally directed leasing arrangements for the use of water rights. Leasing arrangements retain local ownership of water rights, create income, and provide expanded water access.

The Act provides water users ultimate flexibility to design a leasing arrangement that meets local conditions. Local water users can determine the size and scale of a bank's service area, which water rights participate, lease prices, lease terms, conditions for leasing, distribution of proceeds, etc..



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### Water Bank Application:

Interested water users can apply to the Utah Board of Water Resources to have qualifying leasing arrangements be approved as a “Water Bank.” The approval process includes a public hearing. Applications are approved when deemed complete and in conformance with the Act.

The Act recognizes two forms of leasing arrangements eligible to be approved as a Water Bank:

- Contract Water Bank:
  - Water leasing contracts are voluntary arrangements that outline the terms and conditions for the use of water between a discrete set of parties.
  - Many water users already use contracts as a means to lease water.
  - Depending on locations conditions, contracts are likely to be a preferred means for organizing leasing arrangements for future water market transactions.
  - Contracts that meet the criteria of the Act are eligible to apply to be a water bank.
  - A contract water bank application asks water users to submit general information about the contract and a copy of the contract.
  - To prevent private speculation of water, the applicant for a contract water bank must be a non-federal public entity: other parties to the contract do not need to be public entities.
- Statutory:
  - A statutory bank is a legal entity organized for the purpose of administering leasing activity between parties in a defined area.
  - Statutory water banks are modeled after private irrigation companies and run on private governance documents such as Articles, Bylaws, and policy documents.
  - A statutory water bank application requires that the applicant demonstrate they have addressed a number issues needed for prudent management and leasing of water.
  - The applicant of a statutory bank must be the owner of a perfected water right.
  - Participation in a statutory bank, either by depositing water rights into or leasing water out of, must be open to all interested water users.

### Benefits of Water Bank:

The Act is intended to be one additional tool for water users. It is not intended to supersede or supplant existing leases or arrangements local water users are happy with.

Water users may be interested in creating a leasing arrangement that qualifies as a water bank to gain several benefits provided by the Act:

- Streamlined Administrative Process: Once water rights are approved to be deposited in a water bank, no additional Change Applications or state approvals are needed to move water to a new use within the approved bank service area. This is intended to facilitate quicker and cheaper movement of water on a temporary basis.



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- **Forfeiture**: Water rights approved to be deposited in a water bank are exempt from beneficial use requirements and protected from forfeiture while in the bank.
  - **Environmental/Instream-Flows**: Banked water can be leased for any purpose authorized by the Act, including instream flows for environmental or water quality needs.
  - **Condemnation Protections**: Banked water is shielded from any condemnation procedures while in the bank and for a period of time afterwards.
  - **Flexibility**: As long as bank policies allow for and proscribe a process for doing so, the Act allows water right owners the flexibility to choose whether water rights deposited in the bank are leased to others or whether the water right owner retains control over the water right for their own use. For example, once approved to be deposited in the bank, a bank may choose to allow water right holders the opportunity to determine on an annual basis whether their rights are to be leased or whether they wish to continue to use the rights under their original parameters.

### **Change Application and Water Distribution:**

For a water right to be “deposited” into a water bank and leased for other uses, the water right owner and the bank must file a Change Application with the State Engineer as outlined by existing statute. The Change Application process will conduct a “quantity impairment” analysis reviewing the impact of prior non-use of the water right. The Change Application will also assess potential impairments to local water users caused by changes to water right elements, such as location and type of use, that may occur due to water bank transactions.

Shareholders in non-profit mutual water companies seeking to bank company shares will need to comply with the Shareholder Change Application statute Utah Code Ann. § 73-3-3.5 and must first seek company approval to file a Change Application for company water.

Once approved, water banks are required to work with local river commissioners to distribute deposited water rights in accordance with Change Application approvals and delivery requests.

### **Water Banking Activities:**

The Utah Division of Water Resources received a total of nearly \$800,000 in state appropriations and grant funds to pilot the concepts of the Act and produce a Statewide Water Marketing Strategies Report.

The effort is a three year project to work with interested water users in three pilot areas: Price River Area, Snyderville Basin and Cache Valley. As a new statute, developing local interest in a leasing arrangement that can be approved as a water bank will take time, expertise and effort.

To assist local water users in the pilot areas, the Division of Water Resources has selected a Project Management Team consisting of Clyde Snow & Sessions, WestWater Research, HDR Engineering, and GovFriend (“Project Team”). The Project Team brings experience in



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engineering, economics, law, public facilitation, and familiarity with the water banking effort. The Project Team is also working closely with state agency partners like the State Engineer to develop administrative tools to accommodate water banking activities.

The Project Team will work with interested stakeholders to assess and scope local water demand and, if desired, develop a leasing arrangement eligible to be approved as a water bank under the Act. The Project Team is to assist local stakeholders in the three pilot areas with:

- Understanding the purpose and function of the Act
- Facilitating exploratory discussions between interested stakeholders
- Articulating the need and purpose for water leasing
- Identifying and completing necessary technical scoping tasks, such as preliminary hydrologic, water rights, and economic analysis.
- Providing limited funding to assist with pilot water bank development (\$25,000-\$40,000)
- Designing a leasing arrangement eligible to be approved as a water bank, if desired
- Assisting water user in preparing a Water Bank Application and a corresponding Change Application
- Corresponding with banks during their initial operation stages to assess efficacy of the water bank
- Assisting with initial annual reporting requirements to the Board of Water Resources

The Project Team has been organized solely to be of use to local water users. As a pilot project, the goal is to provide resources and expertise to explore the concepts and application of Act. Whether a water bank is ultimately established in each pilot area, is dependent on local interest and conditions. In exploring the Act, local water users may find a marketing tool other than a water bank is the preferred method for a water transaction. This activity still meets the general goal of promoting the development of market tools that benefit local water users. This is a process and not outcome driven effort.

Lessons learned and recommendations from the pilot projects will be summarized in a Statewide Water Marketing Strategies Report. The Report will provide guidance to other water users interested in developing water banks and recommendations for future water banking activity. Drafting and development of the Statewide Water Marketing Strategies Report will include broad stakeholder distribution and input.

The Project began in July 2020 and will conclude in June 2023.



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