



## 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 always voluntary.

# Water Marketing Foundational Questions

## Purpose

This document presents key foundational questions for the development of water marketing. Its purpose is to guide potential water marketing participants in the early stages of setting up a water bank so that lease arrangements and the water bank application and change application can proceed efficiently. Foundational considerations are presented as questions and organized sequentially with the key water marketing milestones identified.



# Milestone 1 People

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Before any water marketing activities can commence, interested parties must identify and assemble the right people. It is critically important that key individuals join the discussion early in the process. This initial stage of exploring water marketing can be time intensive.

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## 1 Why are you here?

- There are several reasons to explore water marketing, including:
  - You need more water.
  - You want money for water you own.
  - You want to test the water banking concept.
  - You want to keep water rights in good standing.

## 2 Is there a team invested in exploring water marketing?

- Are the right people in the room to make decisions?
- Who are the right people?
  - Local water rights owners whose water may be leased
  - Local water right users who want to lease water
  - People in decisions making positions about water
  - People who are going to have input on how water is moved
- Examples of individuals to engage:
  - Regional State Engineer
  - Local Water Users Association Leadership
  - Local irrigation Company Board members/President
  - Entities interested in leasing water (NGOs; farmers; etc.)
  - Division of Water Resources personnel



### 3 Do you need professional assistance to establish a water market?

- Examples of outside expertise that may assist setting up a water market include:
  - Attorneys
  - Engineers
  - Water policy experts
  - Other consultants (economists; individuals with experience building local water markets)

### 4 Is the team invested?

- Creating a local water market or completing a water marketing transaction can take substantial time.
- Are you able to meet critical deadlines?
- Is there funding available to support external consultants and attorneys?
- Are there funding sources (grants, loans) to secure outside funding for the project?

### 5 What other interested parties should be engaged?

- Are there individuals or groups in the community who will want to be kept apprised or informed of your water marketing activities? Examples include:
  - Other water users
  - Potential protestants to Change Applications
  - Concerned community members

## Team Exercise

- Create a long-list of potential interested parties and potential participants
- Create a list of other water users in the market area



# Milestone 2 Markets



An important step in setting up a water market is to evaluate water demands available and water supplies so that potential lessors and lessees can be matched. For a water market to work well, local water resources and water rights should be well understood.

## 6 Is there a local demand for water? Is “there a there”?

- Are there water users in the area who want water but do not have it?
- When do they want that water?
- How much water do they want?
- What do they want the water for?

## 7 Are water supplies available?

- Is there available water currently available to meet that demand?
- What type of supply is available? Examples include:
  - Surface water
  - Groundwater (note: a groundwater management plan or other groundwater studies may be available to inform the availability of groundwater)
  - Storage rights
  - Non-consumptive water rights
  - Other
- Are there water users who do not want to use their water?
- Are there irrigation company water rights not able to be fully used due to development/urbanization of the ditch service area?
- Is there a municipality with surplus water it is not using?
- Are there industrial user(s) (e.g. power plants) with water they are not using?
- Is “saved-water” (i.e reduced depletions or reduced diversions) available?



## 8 Can available water supplies be used to meet demands?

- Are the water supplies available when water users need it?
- If not, when do shortages occur? Are all water users dry at the same time?
- How often and over what term is additional water needed?
- For irrigators, is supplemental water needed to provide full-season irrigation? Is water needed for later season irrigation?

### Supply / Demand Exercise

- List five transactions that you think would work in your area.

## Milestone 3 Logistics



For a water market to work, it must be physically and legally possible to move water from lessors to lessees. The conveyance system and water right regime should be well understood.

## 9 Conveyance: Can available water get to where it is wanted?

- Do diversion, conveyance, and distribution structures exist to move water the way you want?
  - Are interested water users connected by an irrigation company system?
  - Is there a natural stream or river that can deliver the water?
  - Is there a municipal/district system available to use as a means of leased water?
- Do canals and pipes have capacity to handle additional water?
- Can wells and surface water work together?
- Is there a storage facility in the area that can be used to store and release available water?



**10 Distribution: Can leased water be distributed to end users?**

- Is there an existing State Engineer distribution system in the area where you want to lease water?
  - If not, are the interested parties willing to conduct additional studies to demonstrate the water can be distributed?
- Can the transferred water be physically measured?
  - Are there proper meters and monitoring equipment to measure the water to ensure users get the water they are leasing?
- Is the reach/gain loss understood in area?
  - Will water naturally get to where it is intended?
  - What conveyances losses are expected?

**11 From a water rights perspective, can you legally move the water the way you want to move water?**

- What is the priority date of the potentially leased water and will that priority date yield the water desired?
- Are there intervening diversions between the source of supply and the end user?
  - Are intervening diversions senior to the leased water?

**12 Are there governance or legal limitations that would prohibit movement or condition leasing of water?**

- Examples of state and local limitations could include:
  - Existing water right approval conditions
  - State regulations
  - Irrigation company, municipal, or water district charter, bylaws, or regulations
- Examples of Federal restrictions could include:
  - Warren Act Federal Reservoir Storage limitations
  - Federal project restrictions (appurtenances)
  - Reclamation Reform Act requirements (agricultural v. municipal designations)

**Team Exercise**

- Look at a map and mark canals, stream, and pipelines that might be used to deliver water between lessors and lessees



# Milestone 4 Transactions

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There are many methods to transfer water; water banks are but one example. The structure of a water market should be tailored to meet the specific objectives of the local market participants.

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## 13 Are potential lessees well known or are they undefined?

- For known lessees, potential transactions include:
  - Direct leases
  - Contract water banks
  - Exchanges (swap of supply)
- For undefined lessees, potential transactions include:
  - Auctions
  - Reverse auctions
  - Bulletin boards
  - Rental pools
  - Statutory water banks

## 14 How often is the water needed and over what lease duration?

- Is the lease needed during specific periods of the year?  
For example:
  - Late season
  - Split season
  - Year-round
- Is the lease frequency hydrologically dependent? For example:
  - Late season leases to irrigation
  - Leases for highwater events
- What duration is the lease needed - annual or multi-year?



## 15 What are expected lease prices?

- What prices do users expect?
  - Are there comparable markets in the state with known pricing?

## 16 How will lease prices be set?

- There are several options for setting lease prices:
- Lessors determine price:
  - Fixed price
- Is there an active water lease market with known pricing already in place?
  - Receive bids from prospective lessors
    - Propose asking price then negotiate
  - Lessees determine price
    - Fixed price
    - Propose bid price then negotiate
    - Price is agreed to be agreed
  - Price setting mechanism is formulaic and non-negotiable
  - Some combination of the above

## 17 How will lease negotiations take place?

- Who determines what price is acceptable?
  - All lessees or lessors must agree
  - Bid/ask determined between individuals
- Who participates in negotiations?
- At what point in the approval process will lease prices be set?
- What is the annual process for adjusting lease prices?



# Milestone 5 Approvals



Many water market transactions require local, state, and/or federal approval. Requirements for approval will vary depending on market structure.

## 18 Would moving water impair other water users or water rights?

- What other water users or water rights could potentially be impacted by the leases?
  - Surface water users
  - Groundwater users
  - Non-consumptive users
- How might moving the leasable water cause impairment? For example, if the lease would cause:
  - A reduction in yield to senior water rights holders
  - A potential expansion of use of the leased water
  - A reduction in groundwater levels that impact other well users
- Would the leases conflict with any existing water right approval conditions?
- Do impairment concerns impact the amount of water available to lease?

## 19 What can be done to mitigate potential impairment, actual or perceived?

- Is an agreement with potentially impaired parties possible? Such agreements could:
  - Provide limitations on quantity, timing, or duration of leases
  - subordinate leases to other uses
  - Compensate potentially impaired parties
- What outreach to other water users should be taken to address concerns before a water market is established?



**20. For approval of contract water banks, the following questions must be resolved:**

- What is the service area of the bank?
  - A contract water bank can be a groundwater bank or a surface water bank, but not both.
  - A map of the service area is required for approval of the bank. Groundwater users
- Who will be the water bank applicant?
  - The bank applicant must be public entity
- Who are contracted water bank participants?
  - A mutually executed contract among the water bank applicant, borrowers, and depositors must be developed and submitted to the Board of Water Resources for approval
- How will the governing body that administers the contract water bank be organized?
  - What is the structure of the governing body's board of directors?
  - Who will serve on the board and will the board members be elected or appointed?
  - What are the voting procedures of the board?
- What will be the procedures governing water transactions in the statutory water bank?
  - How will transactions be reviewed, accepted or rejected, and managed?
  - What are the criteria for participation in the bank?
  - How will prices be determined (see Question 16)?
  - How will potential depositors and borrowers be notified whether their requests have been approved or denied?
  - What will be the deadlines for water bank participants to deposit or borrow water from the bank?
- How will the public be notified when the application is submitted and considered a public meeting of the public entity?



- What process will the water bank follow if the water bank is terminated, dissolved, or has its permission to operate revoked by the Board of Water Resources, and what will be the process to return banked water rights to depositors?
- How will depositors work with the water bank to file a joint change application to deposit water rights to the bank?

**21 For approval of statutory water banks, the following questions must be resolved:**

- What is the service area of the bank?
  - A statutory water bank can be a groundwater bank or a surface water bank, but not both.
  - A map of the service area is required for approval of the bank.
- Who are the possible bank participants in the service area?
- Who will be the water bank applicant?
  - The bank applicant must be a record holder of a perfected water right (one that is listed in a decree, a certificate of appropriation, or a proposed determination or court order issued in a general adjudication) or valid diligence claim that is encompassed within the proposed service area of the bank.
  - An applicant cannot be the Federal Government.
- Who will be the legal entity that administers the bank?
  - The legal entity must be “recognized under Utah law.”
  - Examples include non-profit corporations, cooperative associations, or an interlocal entity.
- How will the legal entity that administers the statutory water bank be organized?
  - How will the governing board of the legal entity be structured, who can serve on the board, and will the board members be elected or appointed?
  - If the legal entity already exists, are its existing governing documents and policies sufficient to meet the requirements for a statutory water bank?
  - Legal and regulatory analysis may be required to identify the legal entity that can best meet local needs.



- How will the legal entity that administers the statutory water bank be funded? Notes:
  - What are the costs of operating the water bank?
  - What are the procedures for funding administrative costs, including change application reviews, staff time, materials, and legal and regulatory analysis.
  - How will payments by water bank users be determined?
- What will be the procedures governing water transactions in the statutory water bank?
  - How will transactions be reviewed, accepted or rejected, and managed?
  - What information must be provided by water users seeking a transaction through the water bank?
  - How will potential depositors and borrowers be notified whether their requests have been approved or denied?
  - Will there be an appeals process for denied deposits, and if so, what will be the appeal process?
  - What conditions will the water bank place on potential deposits before the water can be used?
  - What will be the deadlines for water bank participants to deposit or borrow water from the bank?
  - What will be the deadlines and public notice provisions for review and approval of deposits and withdrawals?
- What procedures will the statutory water bank have regarding complaint resolution, termination, and state coordination?
  - What process will the water bank take to resolve potential complaints by other water users regarding administration of the water bank?
  - What process will the water bank follow if the water bank is terminated, dissolved, or has its permission to operate revoked by the Board of Water Resources, and what will be the process to return banked water rights to depositors?
- How will depositors work with the water bank to file a joint change application to deposit water rights to the bank?



**22 Are federal approvals required to establish the water market?**

- Is the transacted water provided by a federal project or otherwise subject to any federal authorization or restrictions?
- What is the federal agency with oversight authority?
- What is the process for seeking federal approval?

**23 Are internal governance approvals to establish the water market?**

- Governance approvals for contract and statutory water banks are described above.
- For other types of water market, what agreements are needed among the market participants?
- Do there need to be any new or adjustments to existing internal governance documents to set up and operate the water market?

**24. What water right administration and reporting is required for the water market?**

- What water right accounting information is needed to operate the water market?
- How will water transactions be reported to the State Engineer?
- Who will collect transaction records and any measurements required?

More information can be found at [utahwaterbank.org](http://utahwaterbank.org).

