

Development of the Water Banking Concept

The Stakeholder Working Group met regularly throughout 2018 and 2019 to develop a Utah water banking concept and to eventually draft the Utah Water Banking Act. Key to the Stakeholder Working Group's efforts was an early push to study and understand what kinds of water marketing or "water banking" activities were already occurring in Utah and its sister states. Subcommittees were formed to talk to local water users in key Utah watersheds. These subcommittees summarized local water marketing activities and asked local water users what obstacles were present in the existing law that depressed water marketing activities. The subcommittees found that most water marketing in Utah consisted of independent water leases with a few formally organized water markets such as water auctions and local irrigation company rental pools.

The Subcommittee's most important finding was that local water users wanted water marketing activities that honored three key concepts:

Local

Water users wanted local solutions and did not want a top-down or state-administered water marketing program. Users wanted to keep their water in the local community and under local control.

Voluntary

Water users were very clear that any water marketing activity needed to be voluntary. Concepts that deprived water users of dominion over their water were non-starters and would not receive the necessary public buy-in and support.

Temporary

Water users were most interested in water leasing programs and were not interested in water markets that permanently sold water. Temporary transactions were preferred because they kept the water's economic value with the water right owner and avoided the "buy and dry" transactions known to devastate rural communities in other Western states.



Using these three guiding principles, the Stakeholder Working Group went to work designing a Utah water banking concept that reflected the needs of the water user community.

In addition to the cornerstone concepts of local, voluntary, and temporary, the Stakeholder Working Group endeavored to address other water user desires/wants. In particular, agricultural users wanted to protect water rights from forfeitures to address development in their historical places of use. This desire was particularly acute as Utah previously granted forfeiture protections to municipal water rights held for future public use. Additionally, there was a strong desire to expedite the State Engineer's Change Application process. At the time, the pace of the Change Application process prevented quick changes in water use or the development of any "spot market" for water transactions. A third primary consideration was to increase the ability to use water for environmental and instream flows. Utah's prior instream flow statute was challenging to use and had limited application. Fourth, water users wanted condemnation protections for leased water to avoid speculative practices or targeting leased water.

Between 2018 and 2019, the Stakeholder Working Group spent hundreds of hours debating water law concepts, balancing a diverse set of wants and desires, and drafting what would become the Utah Water Banking Act. To vet their ideas, the Stakeholder Working Group conducted a Statewide "road show," giving over 40 presentations to solicit feedback on the working concepts. This iterative working model proved incredibly valuable in troubleshooting potential pitfalls and ensuring the concepts truly reflected the values and desires of local water users. The Stakeholder Working Group kept the Legislature apprised of its work by seeking a Joint Resolution in 2019 endorsing the continued study and development of the Utah Water Banking concept and appropriating \$400,000 to support and pilot the eventual Water Banking Act, discussed below.



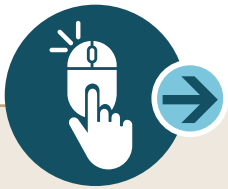
Most importantly, the ubiquitous nature of the discussion created a community of engaged participants. The extensive efforts led to widespread buy-in and acceptance from the water user community. By the time the final Water Banking Act Bill (SB 26) was voted on in the 2020 Legislative Session, discussed below, it only received one “no” vote.

The Utah Water Banking Act

The efforts of the Stakeholder Working Group resulted in the creation of the Utah Water Banking Act. The Utah Water Banking Act focused on promoting the three guiding principles of creating local, voluntary, and temporary water transactions: in other words, promoting water leasing. The Water Banking Act also addressed the different policy priorities noted above. The Utah Legislature passed the Water Banking Act in 2020, codified as Utah Code Ann. Title 73 Chapter 31.

The Utah Water Banking Act operates under the general premise that qualifying leasing arrangements can be approved by the Utah Board of Water Resource as a Utah Water Bank and thereafter extend defined benefits under the Act. Importantly, local water users strongly desired autonomy in designing their own leasing arrangements. As a result, the Board of Water Resources’ review of Water Bank applications is solely a completeness review, and the Board does not opine on the substance or structure of a proposed water bank. It is approved as long as the Water Bank Application meets the statute’s criteria.

The Water Banking Act primarily works by establishing two kinds of water banks under which leasing arrangements can be organized: Contract Water Banks and Statutory Water Banks.



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Utah Water
Banking Act.

