

# Water Banking in the West

Using Water Banks to Create Water  
Markets in the Arkansas Valley

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Troy Lepper



# Legal Foundation for Prior Appropriations

There are three major legal decisions creating the legal framework for the Prior Appropriations Doctrine.

- 1) *Yunker v. Nichols* (1872),
- 2) *Coffin v. Left Hand Ditch Company* (1882),
- 3) *Armstrong v. Larimer Ditch Company* (1891).



# First in Time, First in Right

The Doctrine of Prior Appropriations establishes a legal framework for the determination of water as a conditional property right. The two main components of Prior Appropriations Doctrine are the legal recognition of a water right, and an illustration of how that water will be put to a beneficial use.



# Legislating and Administering Prior Appropriations

Colorado State Constitution article XVI, sections 5 and 6.

To carry out this new task, the State of Colorado created the state water court to adjudicate legal claims to water based on the Doctrine of Prior Appropriations, and they created the State Engineers office to administer the laws passed down by the state water court.



# Creating the Physical Infrastructure

There are three major phases to the development of the physical water infrastructure.

- 1) Mutual Ditch Company
- 2) Reservoir and Dam Building
- 3) Well Pumping



## According to Justice Hobbs, Prior Appropriation Law is egalitarian, equitable, and efficient

- 1) Beneficial uses are recognized without regard to the economic value which will be produced there from (e.g., the individual subsistence farmer and the manufacturing corporation are equally entitled to appropriate un-appropriated water);
- 2) Access to the available supply is based on the need for a beneficial purpose; and
- 3) No more water belongs to the water right than the amount reasonably necessary under the circumstances to effectuate the use.

# Colorado Water Markets

“Colorado has one of the most active water markets in the world, with tens of thousands of acre-feet of water traded each year through private, voluntary transactions...During the last few years, the market has grown considerably, providing a reliable source of water for farmers as well as thirsty residents of Denver, Fort Collins, and Colorado Springs.”[\[1\]](#)



# Three Types of Water Market Transactions

- 1) Water Exchanges
- 2) Water Transfers
- 3) Groundwater Augmentation



# Competing Beneficial Uses Create Competitive Markets

Traditionally the main beneficial uses for Colorado water were irrigation, municipal, and commercial uses, but recently hydropower, flood control, fish and wildlife preservation, and recreation have been added to the list.



# What is a Water Bank?

According to Larry Mac Donnell, “a water bank is an institutionalized process specifically designed to facilitate the transfer of developed water to new uses.” Water banks are a popular solution to the changing water use patterns in the west.



# Water Banking cont...

“Water districts and ditch companies long have facilitated “rotation” of water among users within their system. The important difference of modern water banks is that they act to facilitate transfers to uses outside of their original delivery system and for uses other than irrigation.”[\[1\]](#)



# 3 Tragedies in the Valley

- 1) The Land is starting to fail from overproduction.
- 2) Colorado's failure to comply with Arkansas River Compact.
- 3) Water transfers out of the valley.



# HR 1354: Water Banking in the Arkansas Valley

**“The pilot water bank program created by this article is intended to simplify and improve the approval of water leases, loans, and exchanges, including interruptible supply agreements, of stored water within the Arkansas River Basin, reduce the costs associated with such transactions...It is also the purpose of this pilot water bank to assist farmers and ranchers by developing a mechanism to realize the value of their water rights asset without forcing the permanent severance of those water rights from the land.”[\[1\]](#)**



# Concluding Remarks

Nobody knows what is going to happen in the valley. Water banks are a proposed solution, but no one knows whether a water bank will create water markets, or whether those water markets will solve the problems in the Valley.

Only time will tell.

