Regional Water Banks Note

Storing and allocating water continues to be an issue in the West, particularly during drought conditions. At least three states have enacted laws to establish water banks to facilitate storing and allocating water: Arizona, Colorado and Kansas.

Arizona

Chapter 308 of 1996 established a Water Banking Authority to:

- Coordinate the storage of water and distribution and extinguishment of long-term storage credits;
- Coordinate the purchase, delivery and storage of Colorado River water;
- Coordinate and confer with state agencies, municipal corporations, special districts, authorities, other political subdivisions, private entities, Indian communities and the United States on matters within their jurisdiction relating to water;
- Determine, on an annual basis, the quantity of Colorado River water to be stored by the authority and where that storage will occur;
- Account for, hold and distribute or extinguish long-term water storage credits;
- Make and execute all contracts, including intergovernmental agreements concerning water;
- Obtain for storage Colorado River water delivered through the Central Arizona project;
- Store Colorado River water at permitted storage facilities;
- Distribute long-term storage credits earned by the authority to make water available to municipal and industrial users of Colorado River water in the state;
- Store Colorado River water in Arizona on behalf of appropriately authorized agencies in California and Nevada;
- Cause a decrease in Arizona diversions from the Colorado River, ensuring that Arizona will use less than its full entitlement to Colorado River water in years in which California and Nevada agencies are contractually authorized to call on the water stored on their behalf by the authority; and
- Distribute long-term storage credits earned by the authority on behalf of agencies in California and Nevada to Colorado River water users in Arizona to use in place of Colorado River water that would have otherwise been used by those Arizona users.

Colorado

Chapter 284 of 2001 directs the state engineer to promulgate rules to establish and administer a water-banking pilot program intended to simplify and improve the approval of water leases, loans, and exchanges of stored water within the Arkansas River basin, reduce the costs associated with such transactions, and increase the availability of water-related information. It requires the state engineer to report to the governor and the general assembly, on or before November 1, 2005, regarding the effectiveness of the program. It provides for judicial review of the rules. It allows local governments, irrigation districts, ditch companies, and conservancy districts to use heritage-planning grants to develop plans regarding water banking.

Kansas

Kansas enacted its Water Banking Act as Chapter 160 of 2001. According to a Supplemental Note by Kansas legislative staff, under the Act, a “water bank” means a private, non-profit corporation that leases water from water rights that have been deposited in the bank and provides safe deposit accounts. A water bank may be a groundwater bank or a surface water bank or both. Water banks may provide services to facilitate the sale or lease of water rights and would be prohibited from owning, buying, or selling water rights.
Before a water bank is authorized to operate in the state, the bank’s charter must be approved by the Chief Engineer of the Division of Water Resources. One of the features of the provisions relating to the charter of a water bank is that the operations of the bank will result in a savings of 10 percent or more in the total amount of groundwater consumed for a representative past period pursuant to water rights deposited in the bank, excluding groundwater located in certain intensive groundwater use control areas. In addition, before water rights or portions of water rights can be accepted for deposit or deposited in a safe deposit account, the bank, with the assistance of the Division of Water Resources, must determine the water right to be bankable according to provisions of the law. Another aspect of the law requires that the charter ensure that the total amount of groundwater leased each year from each hydrologic unit does not exceed 90 percent of the historic average annual amount collectively diverted pursuant to all deposited water rights or portions of water rights from the unit for a representative past period. Water banks will be chartered for a period of not more than seven years at which time the bank will be subject to a review by an evaluation team described below.

The governing body of a water bank will have at least five members who are reasonably representative of public and private interests in water within the bank boundary.

Prior to July 1, 2002, there will be one groundwater bank chartered. After July 1, 2002, there could be another bank chartered that would have surface water as a component of the bank charter.

Water banks can contract with holders of water rights for deposit in the bank of all or a portion of any water right from a hydrologic unit within the bank boundary. A “bank boundary” means the geographic area where a water bank operates and conducts the function of a water bank and may encompass more than one hydrologic unit. A “hydrologic unit” means a defined area where water rights authorizing diversion of water from a source of supply may be deposited and water from the same source of supply may be leased, in accordance with the provisions of the law, without causing impairment of existing water rights or a significantly different hydrological effect to other users of water from the same source or hydraulically connected sources of supply. Water rights must be deposited for a period of not more than five years; be subject to terms and conditions provided by contract; and be subject to terms and conditions imposed by the Chief Engineer.

When a water right, or a portion of a water right, has been deposited in the bank, water from that water right may be leased for use if it will be used within the bank boundary and in the same hydrologic unit from which the water right authorizing diversion of the water is deposited. Leased water is subject to all provisions of the state Water Appropriations Act, including all requirements relating to term permits. A water bank’s decision of whether or not to lease water cannot be based on the proposed use of the water.

With respect to safe-deposit accounts in water banks, a holder of a water right may place unused water from the right for future withdrawal. The law limits the water to be deposited in the savings account to water that was unused in the immediate past calendar year. Only water from one water right can be placed in a safe-deposit account and water from a water right cannot be placed in more than one safe-deposit account, except that water from linked water rights may be placed in a single safe-deposit account. The law requires that each calendar year that the water remains in a safe-deposit account, the amount of water held in the account will decrease by a percentage established by the charter of the bank but in no case less than 10 percent annually of all amounts deposited. It allows depositors of water in water safe-deposit accounts to withdraw water subject to the provisions of the state’s Water Appropriation Act, including but not limited to all requirements relating to term permits and other conditions outlined in the law.

On or before February 10 of each year, a water bank must submit to the Chief Engineer a report containing various information. The information to be contained in the report would be used to determine whether the conservation requirements of the law are being reached. The Chief Engineer may require owners of water rights deposited in a water bank, owners of water rights that have placed water in safe-deposit accounts, and persons leasing water from a water bank to file water-use reports at a date earlier than March of each year.

The law authorizes the Director of the state Geological Survey (SGS) to convene a team to evaluate the operation of a water bank not later than five years after the establishment of a water bank. The staff of the state SGS can provide staff assistance to the evaluation team. The team must submit a report of its evaluation and recommendation to the Governor, the state Water Office, the state Water Authority, the Secretary of
Agriculture, the Chief Engineer, the Senate Committee on Natural Resources, and the House Environment Committee.

Unless otherwise provided by law, the Chief Engineer may extend the charter of a water bank for an additional period not to exceed seven years or permit the bank charter to lapse under the terms recommended by the evaluation team. The law grants the Chief Engineer the authority to suspend the use of water for failure to comply with the provisions of the bill subject to notice and hearing in accordance with the provisions of the state Administrative Procedure Act.