

## FLEX Water Market



Photo Credit: Alex Kerney

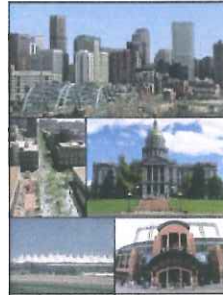


Photo Credit: Yassie (talk) Wikimedia Commons



Photo Credit: Public Domain



## FLEX Market

- Agreement to change the use of senior water right to include multiple uses
- Platform to facilitate voluntary leases, trades between market members
- Example: Ag User, M&I User, E/C User
- Goals
  - **Permit** a portion of the senior right to be used for M&I and EC uses pursuant to voluntary contractual arrangements
  - **Maintain** the economic benefit of the senior water right in its region of origin
  - **Retain** sufficient water supply in the region of origin to sustain agricultural activities.



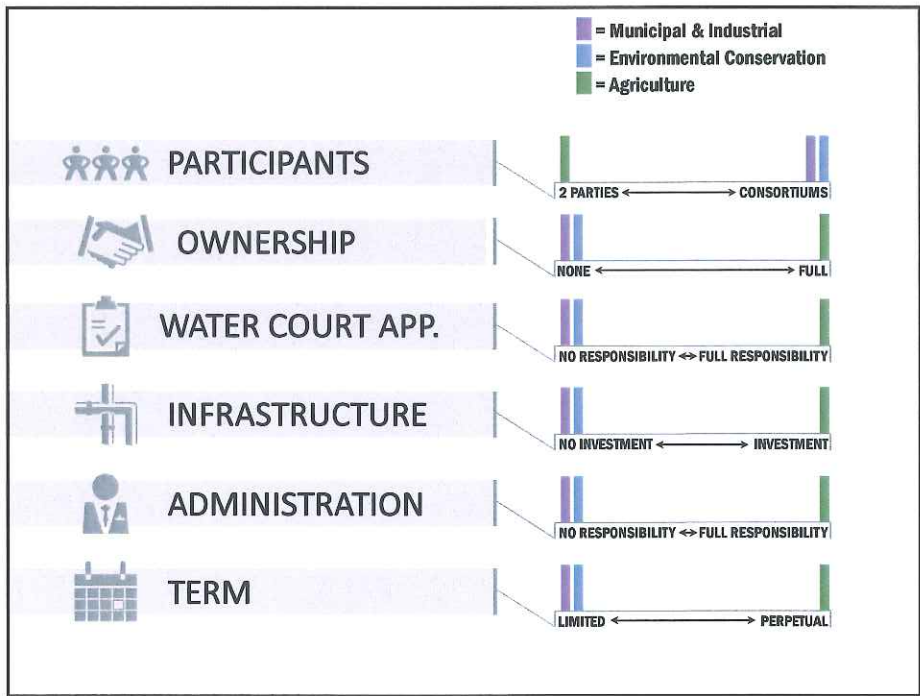
Photo Credit: Wusel007



Photo Credit: Jeffrey Beall



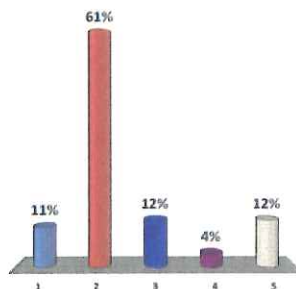
Photo Credit: CCWCD



## FLEX Summit

What is the single greatest barrier to multiple uses of senior decreed rights?

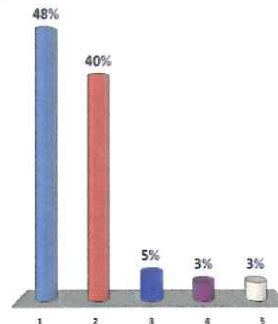
1. Transactional Costs
2. Legal issues
3. Price point for sale or lease of water
4. Delivery infrastructure
5. Other



## FLEX Summit

Water court/administrative costs are a substantial barrier to implementation of alternatives to buy and dry like the FLEX market.

1. Strongly Agree
2. Agree
3. Neutral
4. Disagree
5. Strongly Disagree



## FLEX Study Lessons

- Water Transfers Should Preserve Economic Benefit in Local Economies
- Keep it Simple
- Promote Ditch Wide Changes in Use to Multiple End Uses
  - Statutory Amendments
  - Standardized Approaches
  - Funding



## FLEX Study Lessons

- Develop New Models of Ownership
  - Shared Ownership
  - Market Based Interventions
- Distinguish Between ATM Market Types
  - OTC Market
  - Permanent Supply
  - Blended Market
- Use Land Use and Policy Tools
  - Real Covenants
  - Prioritizing Food and Fiber Production Areas
- Investigate Indexed Pricing Mechanisms
- Education



## Legislative Recommendations

- FLEX Use
- Partially irrigated property tax
- Crop insurance covering ATM practices
- Ditch Wide Change in Use
- FLEX Development Zones



## FLEX Use

- “FLEX Use”
  - Issue: anti-speculation doctrine prevents quantification and flexible use
  - Create statutory “FLEX” use or “use types” to substitute for end users in water court and administrative applications
  - Allow quantification of CU for “FLEX” uses, delivery at identified river locations
  - Water “wild card” usable in a broad range of applications



## FLEX Use

- Amend 37-92-103 (definitions)
  - 10.9 Define flex consumptive use
  - 10.10 Define flex use
  - 3(a) Limited exception to anti-speculation doctrine for flex use
  - 4(d) Add flex use as beneficial use
- Amend 37-92-305 (change in use)
  - 4(a)(VII) Add key elements of flex decree
    - Historical CU and return flows
    - Terms and conditions for fallowing, regulated deficit irrigation, reduced CU cropping
    - Defined point of delivery for FLEX CU
    - Applicant must prevent injury





## Tax and Insurance

- Partial Irrigation: Tax and Insurance Issues
  - Property tax category for “partially irrigated”
  - Crop insurance for partially irrigated crops



## Property Tax Reduction

- Amend 39-5-105 : Water Rights Valuation
  - Valuation of ag land to account for reductions in water supply for flex use or CWCB pilot projects
  - Intended to trigger revision of assessor’s property tax manual to make specifically responsive to ATM projects
  - Intended result: lower property taxes on ag land in ATM project



## Crop Insurance

- Intentional reduction in water delivery makes farm uninsurable under federal Multiple Peril Crop Insurance (“MPCI”)
- Risk Management Agency (“RMA”) is aware of the issue, is investigating, hired economic analysis firm
- Kansas– two pilot areas
- Action item: Colorado should contact RMA, join discussion, seek pilot projects



## Ditch Wide Quantification

- Ditch Wide Change in Use
  - Quantification is key, ditch wide is best
  - Incentives
    - Standardized CU and return flow requirements
    - Headgate wells
    - Abandonment protection
    - SWSP approval fast track
    - Water Trades
    - Funding
    - Docket Preference
  - Protections
    - Legacy protection
    - Delayed volumetric limits



## Ditch Wide Quantification

- Amend 37-92-103
  - Add 10.11, definition of ditch wide quantification
- New 37-92-307 -- Ditch Wide Quantification
  - Terms and Conditions
    - Defined study period 40/80
    - Collect previous changes in use
    - Standardized terms and conditions for future
    - Terms applicable upon actual change in water right
    - Flex use, fallowing, regulated deficit irrigation, reduced CU cropping
    - Identify information to implement future changes
  - Previous ditch wide quantifications may return to court to add terms
  - Ditch wide quantification binding : 40 years
  - Docket preference
  - Headgate Wells: within 100 feet of river
  - Quantification may be applied substitute water supply plans, trades, exchanges allowed by statute
  - Applicants eligible for CWCB funding (TBD)



## FLEX Development Zone

- FLEX “Water Development Zone”
  - Combine legislative strategies, focus on pilot projects
  - Communities identify key areas- food production, open space, water supply
  - Apply new concepts – FLEX Use, tax and insurance, ditch wide incentives and protections – in identified zones
  - Potential for Ag related economic development tie-ins- local food supply, food hubs etc.





## FLEX Development Zone

- New Provision patterned after “Urban and Rural Enterprise Zone Act”, 39-30-101 *et seq*
- Goals
  - Continue Irrigated Agriculture on Most Productive Lands
  - Generate Local Economic Benefits
  - Preserve Open Space
  - Develop Local Food Supply
  - Generate Sustainable Water Supplies for M&I and Conservation uses through Water Sharing and Alternatives to Permanent Dry Up



## FLEX Development Zone

- Geographical Area proposed by county or municipality
- Reviewed by CWCB (others?)
- Criteria for establishment
  - FLEX Zone
    - Major water right, highly productive land, buy and dry susceptible
  - Certified “FLEX Farms”
    - Full water supply 8/10 years
    - Fallowing, regulated deficit irrigation, reduced CU cropping
    - Change in use to flex uses
    - Approved conservation practices
  - FLEX M&I/ Conservation participant
    - Established ATM/FLEX program



## FLEX Development Zone

- **Benefits/Incentives**

- **FLEX Farms**

- **Income tax credit** (3% on qualified investments)
    - **Reduced or no state sales tax** on farm equipment, other qualifying purchases
    - **Property Tax** valuation adjustment or credit, potential for localities to waive property taxes for defined period
    - **Reduced state cap gains tax** for sale of land or water rights to FLEX program
    - Use of **“Colorado Certified FLEX Farm”** in advertising (state approved seal or logo?), coincides with state public education program



## FLEX Development Zone

- **Benefits/Incentives**

- **Certified M&I/ Conservation User Participants**

- **Matching grants from CWCB for FLEX related projects with public benefit**
      - Open space and parks
      - River improvements
      - Infrastructure improvements
      - Local Food Hub Projects
      - Public Education
    - **Participation/ CWCB support in statewide public education program encouraging water conservation, preservation of open space and water sharing.**



## On the Cache La Poudre River, 1876



On the Cache La Poudre River, 1876  
Worthington Whittredge (1820-1910)