

IBCC/CAWA  
AGRICULTURAL WATER SUMMIT  
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**THREE CRITICAL ELEMENTS  
FOR ATM SUCCESS**

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# THREE CRITICAL ELEMENTS FOR ATM SUCCESS

#1

An organization with the expertise, resources,  
and commitment to develop, nurture and  
implement an ATM

# THREE CRITICAL ELEMENTS FOR ATM SUCCESS

#2

An organization that represents irrigators

# THREE CRITICAL ELEMENTS FOR ATM SUCCESS

#3

A municipality who wants to make a deal

# WHAT WE ALREADY KNOW ABOUT FOLLOWING-LEASING

Ground plowed by the Lower Arkansas Valley Water  
Conservancy District

Groundwork laid by the Lower Arkansas Valley  
Super Ditch Company

[www.lavwcd.com](http://www.lavwcd.com)  
Super Ditch Company

# WHAT WE ALREADY KNOW ABOUT FOLLOWING-LEASING

- There are no anti-trust bars
  - Antitrust Implications Of Plan By Lower Arkansas Valley Super Ditch Company To Collectively Lease Water Rights (Thomas P. McMahon, Jones & Keller, P.C., July 15, 2008) <sup>Hollander, Lisa</sup>
- Legal options for a following-leasing entity are clear
  - Notes Regarding [Alternative Legal] Structure[s] Of A Super Ditch (Anthony Van Westrum, LLC, Jan. 2007)

# WHAT WE ALREADY KNOW ABOUT FOLLOWING-LEASING

- There are tax consequences to farmers of various organizational forms and lease structures
  - [Tax Consequences For] Lower Arkansas Valley Super Ditch Company (Dennis B. Clanahan, Kris Boyle P.C., Feb. 13, 2008)
  - Lower Arkansas Valley Super Ditch Company— [Tax Treatment of] Contributions To Capital (Dennis B. Clanahan, Kris Boyle P.C., Feb. 18, 2008)
- A for-profit Colorado corporation is the initial step, but it could become a coop
  - [Unofficial Restated] Articles Of Incorporation Of Lower Arkansas Valley Super Ditch Company (Anthony Van Westrum, LLC, June 20, 2011)
  - Bylaws Of The Lower Arkansas Valley Super Ditch Company (Anthony Van Westrum, LLC, June 20, 2011)

# WHAT WE ALREADY KNOW ABOUT FOLLOWING-LEASING

- Some ditch company bylaws must be changed
  - Land Following–Water Leasing Program, Feasibility Investigation, Articles Of Incorporation And Bylaw Review (Analysis Of Bessemer Ditch, Rocky Ford Highline Canal, Oxford Farmers Ditch, Otero Canal, Catlin Canal, Holbrook Canal, Fort Lyon Canal) (Trout Raley Montañó Witwer & Freeman, P.C., June 17, 2011)
- Some county 1041 regulations apply
  - [Third Revised] Land Following–Water Leasing Program, Feasibility Investigation, 1041 County Regulations (Trout Raley Montañó Witwer & Freeman, P.C., June 28, 2011)



# WHAT WE ALREADY KNOW ABOUT FOLLOWING-LEASING

- Multi-ditch Following-Leasing is feasible
  - Lower Arkansas Valley Water Leasing Potential Preliminary Feasibility Investigation (HDR Engineering, Inc., Aug. 2006)
  - Rotational Land Following–water Leasing Program Engineering And Economic Feasibility Analysis, Executive Summary (HDR Engineering, Inc., Nov. 2007)
  - Rotational Land Following–water Leasing Program Engineering And Economic Feasibility Analysis, Final Report (HDR Engineering, Inc., Nov. 2007)

# WHAT WE ALREADY KNOW ABOUT FOLLOWING-LEASING

- Following-Leasing requires Engineering
  - Super Ditch Rotational Following–Water Leasing Program, CWCB Water Supply Reserve Account Grant—Exchanges (Aqua Engineering, Inc., Dec. 30, 2010)
  - Alternative Water Transfer Methods – Task B, Storage Facilities (AECOM, Apr. 15, 2010).
  - Alternative Water Transfer Methods—Conveyance Alternatives and Delivered Water Quality (AECOM, June 10, 2011, rev'd)
  - Phase 4 Task D, Potential Injury Analysis Final (Leonard Rice Engineering, Inc., June 15, 2011).

# WHAT WE ALREADY KNOW ABOUT FOLLOWING-LEASING

- Specific following-leasing programs require specific analyses
  - Arkansas River Renewable Water Economic Feasibility Study – Part 1 Water Supply Near Stonewall Springs (PPRWA, Sept. 2008)
  - Arkansas River Renewable Water Economic Feasibility Study—part 2 Water Supply From The Arkansas River Between Las Animas And La Junta (PPRWA, Oct. 2008)
  - Avoided Water Supply Costs For PPRWA (Draft) (Honey Creek Resources, Nov. 3, 2009).

# WHAT WE ALREADY KNOW ABOUT FOLLOWING-LEASING

- Following-Leasing can be better than Selling
  - Comparison Of Purchasing Bessemer Ditch Shares With Leasing Water (Honey Creek Resources, July 16, 2007)
  - Sell, Lease, Or Continue Farming: Comparison Of The Net Returns (Honey Creek Resources, Nov. 13, 2007)
  - Potential Benefits Of Collective Action By Super Ditch Participants (Honey Creek Resources, July 25, 2007)
  - Economic Returns To The Rotational Fallow Leasing Program [PowerPoint Presentation] (Honey Creek Resources, Jan. 2008)

# WHAT WE ALREADY KNOW ABOUT FOLLOWING-LEASING

- Economics and Finance are significant issues
  - Super Ditch Finance Plan (Honey Creek Resources, June 30, 2011)
  - Price Escalators For Adjusting Lease Prices Over Time (Draft) (Honey Creek Resources, June 30, 2011)

# WHAT WE ALREADY KNOW ABOUT FOLLOWING-LEASING

- It works
  - Fort Morgan Reservoir and Irrigation Company lease to Xcel Energy (1990)
  - Super Ditch leases to Fountain (2012) and Security (2012) and Fowler (2015)
    - Catlin Pilot Project (2015 – 2025)

# WHAT WE ALREADY KNOW ABOUT FOLLOWING-LEASING

- Buy-and-dry has a “Tipping Point” where there is not enough water and agricultural production left to support ag services and rural communities
  - Draft Report: A Proposed Method For Incorporating Rural Population-business Thresholds, Or “Tipping Points,” In Water Transfer Evaluations (Honey Creek Resources, et al., May 2010).
  - Draft Report: Incorporating Rural Population-business Thresholds, Or “Tipping Points,” In Water Transfer Evaluations: Phase 2 (Honey Creek Resources, et al., Oct. 2010).