

WATER BANKING CONCEPTS AND GUIDELINES:

Drafting Project Goals:

Each drafting group is to draft a water banking bill tailored to suit the needs of their designated watershed. The goal for this process is for each group to determine how best to match the specific needs of their sample watershed with the broader water banking concepts and guidelines. At the end of the drafting period, the groups will meet to compare water banking programs and to discuss how to apply what was learned to a statewide program.

Water Banking Drafting Groups:

The larger Instream Flow/Water Banking Group chose four sample watersheds to draft a water banking program for.

- Bear River: Jon Mabey jmabey@mwjlaw.com
 - o The Bear River was chosen because it has potential for additional storage and is a multi-state water body that will need to work with the Idaho Water banking system.
- Provo River: Steve Clyde sec@clydesnow.com and Scott Martin shm@scmlaw.com
 - o The Provo River was chosen because the group will need to address storage in Federal Facilities and has several groups are already engaged in looking at or working on water banking concepts.
- Chalk Creek: Paul Burnett: pburnett@tu.org
 - o Chalk Creek was chosen to explore water banking on a smaller scale and a system that has storage potential at the bottom of the system.
- Sevier River System: Jay Olsen jayolsen@utah.gov and Nathan Bracken nbracken@shutah.law
 - o The Sevier System was chosen because it involves ground and surface water and has an existing network for water leasing amongst water users.
- Colorado Drainage: nbracken@shutah.law
 - o Though not discussed at the meeting, Nathan Bracken has volunteered to captain a group to look at a water banking program for the Colorado drainage.

If you would like to work on a specific watershed group contact your drafting group captain directly.

It is anticipated groups will be organized by the end of November, hold their first soon after, and be drafting throughout the 2018 legislative session.

The larger Instream Flow/Water Banking Group will reconvene two weeks after the 2018 Legislative Session to closes. Meeting date and location forthcoming.

Water Banking Concepts and Guidelines:

The larger Instream Flow/Water Banking group has identified the following concepts and guidelines each working group should consider or address in drafting a sample water banking program in for their watershed. This list is not exclusive and please add or address any other pertinent topics.

- Water Banking Regional Council:
 - o Who sits on the Regional Council?
 - o How is the council organized?
 - o What are the Council's defined duties and obligations?

- Priority Date of Underlying Water Rights:
 - o How does the Bank address the underlying priority dates of water rights placed in the bank and leased out of the Bank?
- Priority for Banked Water:
 - o Does the bank prioritize or distribute water based on when water was first placed into the bank?
- Economic Incentives:
 - o How does the Bank protect against the regional council picking “winners and losers” and ensure the economic benefits are equally available to all who want to participate?
 - o What economic incentives should those placing water into the bank receive?
 - o What should the cost be for those who want to take water out of the bank?
- Beneficial Use:
 - o How does the bank address the beneficial use of water?
 - o Does it try to “match” beneficial uses going in and going out?
 - o Does banked water become “stored” water available for any use?
 - o Are instream flows an allowed beneficial use for water coming out of the bank?
- Storage:
 - o How and where is water to be physically stored?
 - o What considerations need to be addressed to make that storage be a reality?
 - o Is there a mechanism for “banking” surface flows when there is not a storage facility on the system?
- Groundwater:
 - o Is there a role for ground water in the water banking program?
- State Oversight/Involvement:
 - o What role does the State Engineer or other State Entity play in the water bank?
 - o Is the water bank supported by official staff at the State level?
 - o How do the State Engineer’s distribution systems fit into the local water bank?
- Mechanics for Putting Water Into/Taking Out of the Bank:
 - o What kind of review process does the Bank make when taking rights into the bank (i.e. Idaho does a quasi-Change Application review)?
 - o How are rights leased out of the bank?
 - o How do water users know about or participate in the bank?
 - o What is the length of time for a lease?
 - o Does the bank allow for split season leasing (both placing water into the bank and taking water out of the bank)?
 - o Is there a review process for water bank decisions?
 - o Who can take water out of the bank?
 - o How does the water bank ensure transparency in its processes?
 - o What are the documents involved and are they legally binding?
 - o How does the bank keep transaction costs low?
- Quantity Impairment/Non-Use:
 - o How does the Bank ensure water rights in the Bank are “good” water rights and protect the Bank from being a mechanism for resurrecting rights lost or limited by non-use?
 - o Does storage in the bank act as a waiver for non-use?

- Enforcement/Sheparding:
 - o How does the Bank ensure banked water is not concurrently being used by the owner?
 - o How does the Bank ensure water going into the banks is accurately accounted for and those taking water out of the bank is accounted for?
 - o How is water coming out of the bank sheparded through the system?
 - o If instream flows are an allowable beneficial use, how to actualize those stream flows in the system and ensure that water is not used to fulfill existing water rights?