Attendance (partial list):
Marcelle Shoop: Audubon Society  mshoop@audubon.org
Elizabeth Kitchens: TNC  ekitchens@TNC.ORG
Rich Tullis: CUWCD  Rich@cuwcd.com
Chris Finlinson: CUWCD  Christine@cuwcd.com
Nathan Bracken: Smith Hartvigsen  nbracken@shutah.law
Jordan Neilson: Trout Unlimited  Jordan.Nielsen@tu.org
Paul Barnett: Trout Unlimited  Paul.Burnett@tu.org
Erica Gaddis: Division of Water Quality  egaddis@utah.gov
Sen. Jani Iwamoto: jiwamoto@le.utah.gov
Sterling Brown: Utah Farm Bureau  sterling.brown@fbfs.com
Boyd Clayton: Division of Water Rights  boydclayton@utah.gov
Jay Olsen: State Department of Ag.  jayolsen@utah.gov
Claudia Cottle: Bear Lake Watch  bearlakewatch@aol.com
Emily E. Lewis: Clyde Snow – eel@clydesnow.com
Jon Schutz: Mabey Wright & James - jschutz@mwjlaw.com
Steve Clyde – sec@clydesnow.com

Meeting Summary:
The large group met to report on the activities of the three smaller working groups:

1) Changes Needed to Existing Law to Facilitate Water Banking (Wendy Crowther);
2) New Legislation Needed to Facilitate Water Banking (Nathan Bracken)
3) Potential Pilot Water Banking Project (Steve Clyde)

Generally – all groups are making good progress on their respective tasks.

Assignments for Next Meeting:
Each sub-group will continue to meet and work on their respective topics and tasks.

Next Meeting:
August 20, 2018
9:00 – 11:00 AM
Department of Natural Resources – Room TBD
- Overlap with other groups

Wendy Crowther: Existing Legislation Group:
- 73-1-4: Public Water Supplier
  - Currently – the best fit for a Change Application is currently a municipal use
    - Need to add banks as municipal water suppliers?
  - One question is whether we want to have water rights deemed municipal use- do we want to talk with State Engineer on this?
  - Boyd: Municipal use is something we created – we should get something titled Banked Water so there is not confusion that its actually municipal
  - May want to look at what municipal is in general
  - Rich: Do these really need to be municipal or have this involve SB 51?
  - Steve: exempt from forfeiture – just need to add banked water as a beneficial use

- 73-1-4: Forfeiture
  - Boyd: as long as this gets used that is the most important
  - Protected from forfeiture while it is in the bank

- 73-3-8: Change Applications
  - Change Application does not become permanent until it has proof filed on it
  - Boyd: Common process that people file Change Applications and let them lapse or withdraw them
  - If we did a fixed time Change Application it could expire when the banking lease ends
  - Steve: could do a special banked Water Change Application – want to stay away from annual Temporary Change Applications
  - Rich: year to year is too quick – some people want to have their water for 3 years, some people want it for 20 years
  - Wendy: allow the fixed time application to match the contract time – flexibility for the bank and certainty for the bank

- General Discussion
  - Boyd: Proof Due Dates – we intentionally set Proof Due dates at short increments to stay in contact with owner – pay attention to the water right – we will need to find a way to stay in contact with banked water users

New Legislation Needed:
Sub-Committee Chair Nathan Bracken identified two key areas where new legislation is needed:
1) Water Banking Criteria: What criteria water users need to meet to have a water bank approved for use (i.e. what is the “checklist” of required issues water users need to address in forming a bank such as boundary of bank, pricing mechanism, potentially use preferences, organization of governing body, etc)
2) Water Bank Governance: What legislation is needed to govern water use once water rights have entered a water bank (i.e. how do banks shepherd water, lines of communication with the State Engineer etc.).

Pilot Water Bank: The group discussed filing for a BOR Water Smart Grant to fund Pilot Water Bank. Though much effort was expended to define the goals and key
- **Nathan:** We will need it to be fixed term in the bank to make people feel comfortable with the water not being permanently co-opted by the bank – maybe just have it be an extension process to stay in the bank
- **Boyd:** We can just add something to the extension form similar to the public water supplier that having a banked right constitutes due diligence
- **Boyd:** We will need to have communication with the bank which may be enough
- **Nathan:** We had thought that there would be no need for proof
- **Boyd:** What if they want to sell the water after 30 years—make him file a new Change Application?
- **Jon Schutz:** Why can’t we have both — have contracts for 30 years and then no new change application?
- **Mark Stratford:** If you want to transfer the water right to the City then you should do your own Change Application when you take the water out of the bank or sell to a municipality using the bank
- **Mark Stratford:** Should it be the bank filing the Change Application or the water right owner — might want to be co-applicants?
- **Steve Clyde:** We have had all the anguish with share owners — don’t want to open door to non-title owners file Change Application
- **Steve Clyde:** Is the Bank going to have to be some kind of legal entity?
- **Mark Stratford:** County and cities have building authorities
- **Steve Clyde:** Idaho has a built in funding mechanism — and operates through the state. Going to need some kind of legal status so they can be sued — legally responsible for operating the bank. Inter-local Agreements are only going to be governmental entities

- **State Engineer Authority:**
  - Need to bolster the authority of the State Engineer on enforcement and shepherding
- **Boards of Water Companies:**
  - A little out of the field but shareholder companies — can’t bank their underlying water right without a majority or super majority not the Board
  - Rich Tullis: history of shareholder change applications — same process for shareholder process for filing a Change Application
Nathan: don’t want to prohibit this if it works for Company
Scott Martin: have to be careful that this is contractual matter – ultimately a company is a contract. Want to be careful of trying to create a statutory mandated relationship between the Company and the Shareholder.
Wendy/Scott: Bylaws could say something different –
Jon Schutz/Scott Martin: can the shareholder opt out of having the company decide to enter their water rights
?????: Orchard v. alfalfa
Nathan: Does Title 16 already address this- can we leave it to the Companies – or do we need to do more to address concerns of Shareholders?
Sterling Brown: it’s the transaction costs and simplicity that are going to be key to its success. The roll out is not going to work if it’s too difficult to comprehend
Sterling Brown: the 5 acre guy v. 500 acre guy. The 500 acre guys have the Board seat but there are more of the 5 acre guys
Wendy: We should add in the word “bank” to Utah Code 16-6a-1201, 1202

Nathan: New Legislation Group
- We were not so specific - identify the issues we will need to address:
  1) How do we create a bank:
     o Watershed size
     o Use preference
     o Organization of the governing body: what other models are out there (Mt. Nebo; local district; water commissioners)
     o Trick will be coming up with a checklist to make sure the banks are operated competently and effectively
  2) How do we regulate the bank once we have created the bank?
     o To what extent do we need to the State to participate?
     o There will need to be some involvement:
       ▪ Communications with the State Engineer
       ▪ Shepard water
- Overriding themes:
  o Trying to create a spot market for water
  o Maintain local control – needs to be empowering and have them engaged
- Utilize existing templates – surgical approach and create a little new legislation
- Federal v. State Law: this group is to focus primarily on state late
- Funding and Resources: how do we get these banks up and running and sustainable
- Don’t Upset the Boat: this is not an overarching one size fits all – here is one of many ways to share water

- Mark Stratford:
  - What about overlapping banks – is that ok?
- Nathan Bracken:
  - Similar to issues of inter-basin. The bank can design its own roles and limits.
  - Helpful to have the watershed group give an update
- Boyd:
  - Once the water is in the bank – the best place to use it is downstream.
- Sterling:
  - Laundry list of potential new language – fairly lengthy and potential getting longer
  - Can we go to the basins that are already doing this – and ask them what they are doing and what they need from new legislation?
  - Worry about education curve – don’t want to be educating and legislating at the same time
- Mark Stratford:
  - Only convene about going to existing system is that those groups are doing to meet their own interests
  - If we are trying to create a spot market is not going to work to go those groups
- Nathan Bracken:
  - The stage we are at is to get some conceptual language and work with the stakeholders once we have something
  - There is no real timeframe
- Sen. Jani Iwamoto:
  - We got to the point of deciding we needed something solid and concrete to shop out in the country
- Group:
  - Get it organized and then take the concepts on the road