

Water Banking: Pilot Project Sub-Committee

October 15, 2018

DNR RM 314

1:00 -2:00

Attendance:

Marcelle Shoop: Audubon Society mshoop@audubon.org

Elizabeth Kitchens: The Nature Conservancy ekitchens@TNC.ORG

Paul Burnett: Trout Unlimited Paul.Burnett@tu.org

Rich Tullis: Central Utah Water Conservancy District Rich@cuwcd.com -

Representative Tim Hawkes: thawkes@le.utah.gov

Megan Nelson: The Nature Conservancy megan.nelson@TNC.ORG

Candice Hasenyager: Division of Water Resources candicehasenyager@utah.gov

Meeting Summary:

The meeting was a relatively short one-hour meeting. The Committee recapped several discussion points raised at the last water banking new legislation meeting regarding recommended edits to the proposed water banking bank creation and water distribution DRAFT legislation.

The majority of the discussion focused on Senator Iwamoto's upcoming request to the Appropriations Committee for a one-time non-lapsing appropriation of \$400,000 to fund the water banking pilot project. The request is intended to either act as standalone state money for a pilot study or as part of a matching contribution for any successful BOR WaterSmart Grant Application.

The Committee also discussed the next steps for moving the Pilot Program forward. We determined that the Provo River and Cache Valley could be good "working" pilot areas to focus on. However, the group did not make an exclusive determination yet as other areas, such as the Price River drainage, may prove beneficial to study/participate. The group agreed that meeting with BOR WaterSmart representatives to begin to discuss the specifics of the grant application would be the best way to frame next steps.

Assignments for Next Meeting:

EELewis convey talking points to Steve Clyde re Appropriations Committee request. DONE

Elizabeth Kitchens make contract with Denver BOR WaterSmart representatives for Webinar on the Application process.

EELewis contact Justin Record at BOR to attend meeting to discuss BOR WaterSmart grant. DONE

EELewis contact Don Barnett to see if Water Banking can be put on the March Water Law and Policy Seminar

Next Meeting:

Next meeting date for Pilot Committee - TBD pending schedule of BOR representatives (ideally late October).

Next Large Group meeting is

Monday October 29, 2019

9:00 AM – DNR

MINUTES:

These minutes are taken contemporaneously as a courtesy record of the group's conversation. Please

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excuse any inadvertent attributions, accidental misstatements, or omissions.

Group: Recap of Appropriations Meeting held on 10/8/18

- Steve Clyde, Jani Iwamoto, and Nathan Bracken met to discuss Pilot Group's recommendation to pursue a legislative appropriation for a Pilot project
- Appropriation Committee to meet 10/16/18
- \$400,000 appropriation was requested to meet the top matching contribution for the BOR WaterSmart Grant, if successful
- Appropriation was requested as a one-time non-lapsing appropriation
- Appropriation intended to either be a standalone state appropriation for Pilot Study or used as a matching contribution for a successful WaterSmart application
- Steve Clyde and Nathan Bracken to give testimony on the need for the appropriation
- **UPDATE 10.17.18:**
 - o Sen. Iwamoto and Steve Clyde presented the appropriation request to the Appropriation Committee on 10.6.18
 - o Sen. Iwamoto presented the history of the water banking project starting with its initiation as an Instream Flow project and moving to water banking
 - o Discussed the scope of the stakeholders involved, purpose of project, and how this appropriation would work with BOR WaterSmart Grant
 - o Steve Clyde emphasized the context of why water banking is needed in the state: growing population; environmental needs; protecting ag. community by avoiding buy and dry, using split season uses. etc.;
 - o Steve Clyde also emphasized need for funding for personnel support to move the project forward and matching contribution for BOR WaterSmart grand
 - o There were several questions regarding the extent of the appropriation request and how that worked with BOR funding
 - o There were a couple of clarifying questions regarding the function of a water bank – primarily focusing on the long term benefit to agricultural community
 - o There was no overt opposition to the project and Steve Clyde indicated he felt positive about the presentation but would have to wait to see how the committee acted
 - o Rep. Barlow, who assisted Sen. Iwamoto on the original 2017 Instream Flow resolution, has indicated support to help with this 2019 Water Banking resolution and appropriation request

Group: Recap of last New Legislation Committee meeting

- The group discussed the last New Legislation meeting held on 9.25.18
- At that meeting two pieces of DRAFT Legislation were discussed: Creation of a Water Bank and Intranbank Transfers
- The pertinent issues recapped primarily focused on the Creation of a Water Bank materials:
 - o Water Bank Form:
 - The New Legislation group stepped away from requiring new water banks be formed as shareholder Non-Profits under Utah Code Title 16a. The concern was that the requirements of being a non-profit were too onerous for irrigation companies to comply with it – it would be similar for water bank entities.
 - There was some discussion of potentially creating a new entity under the non-

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- profit code that had the beneficial elements of being a non-profit shareholder company, but without the onerous compliance components
- The group also discussed trying to keep the path for multiple kinds of water banks open and not restricting them to one form (i.e. inter-local agreements or contract banks)
- Role of Water Resources Board
 - It was discussed that if water banking entities were not to be non-profits then there needed to be central check on the form of the entity to make sure it complied with the transparency and fairness goals of the water banking project
 - It was proposed to have the Board of Water Resources perform a review of proposed banks to determine if they met the relevant criteria
 - It was also discussed that Water Resources could potentially take over other aspects of water banking that would prove to be onerous for banks such as handling the financial transactions involved with banking, housing on-line materials are resources, and acting resolving grievances
 - The Board of Water Resources was thought to be well suited for this role due it is trust in the local water community and expertise in financial dealings and water matters
 - It was agreed additional funding would be needed to fund an employee in the Division of Water Resources to assist with water banking
 - Water Resources has not yet been officially been presented with these ideas and to date has not yet endorsed taking on these responsibilities
- Nathan Bracken agreed to take these suggestions and reformat the Water Bank Creation statute for redistribution
- Nathan Bracken was to make recommended changes to the Intrabank transfer legislation as well
- Members of the Pilot Committee requested an additional meeting prior to the Large Group Meeting on October 29th to discuss the new round of legislation

(the Committee then turned to discussing Pilot Project matters)

EELewis:

- Lots of good discussion in other groups – now need to move the pilot project forward
- Which areas should we focus on for potential pilot projects
- Sen. Iwamoto was under the impression we had chosen as working areas Cache Valley and the Provo River System

Paul Burnett:

- Constraining ourselves to specific geographies may not arbitrarily limit ourselves
- There are might be other folks out there that have information to help us

Group:

- Yes those two areas had been discussed
- Cache Valley makes sense because of the Bear River and USU activities
- But, don't want to limit ourselves

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Rich Tullis:

- Provo River
 - o The Provo could be a good source for piloting direct flows but won't be administering storage water without changes to federal law –
 - Currently working through with Federal Government on Warren Act adjustments
 - o There are some folks who are interested in the area who we could lease water from to get a pilot study working
 - o We have a lot monitoring and data collection to trouble shoot the implementation of the shepherding banked water
 - o Need to make sure the River Commissioners have tools and technology to assist with this project
 - o May also need additional funds for time

EELewis:

- Do you think it is time to reach to the River Commissioners to see what their needs are and incorporate them?

Rich:

- This Group needs to get things a little more defined for the pilot before presenting to the River Commissioners so we can thoroughly explain scope of the project and they not be overwhelmed
- Also may need to present under auspices of Division of Water Rights/Pilot Legislation/part of existing duties
- We may need more money to:
 - o Study and implement the pilot project
 - o Learn how the water is going to be administered under the new water banking code (i.e. the expedited Change Application)
 - o Need a way to test the distribution and administration of the water once in the bank
 - o Support River Commissioners with technology/support
- For presenting to Appropriation Committee - bullet points on why we need the money and what the pilot project is going to do
 - o Education
 - What Water Banking is and how it is going to work
 - Quell fears in water community before they get started – i.e. water users assessments are not going to go up, we are not taking AG's water
 - o Understand barriers to physical distribution - troubleshoot what we need to do move water around
 - o Barriers to implementation – are the right parties successfully taking to each other?
 - o What technology is needed to alleviate stress of banking
- Provo River modeling:
 - o Add the water banking into the current model will throw whole model off – need to talk with State Engineer ahead of time to make sure we can account for banking

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Rep. Hawkes:

- Need to stress that the timing on the appropriation is important because we need the money in hand to help with BOR funding
- Need to demonstrate that eventually banks will be self-sustaining and there is not a need for ongoing appropriations

Elizabeth Kitchens:

- What is Idaho doing for distribution? – can we call them to ask what the physical means they are using to track distribution?
- No need to reinvent the wheel
- EELewis: Need to call Remington Beyer to discuss

Rich Tullis:

- Is this funding realistic?
- Rep. Hawkes:
 - o Odds look good:
 - Part of the water strategy report
 - One time appropriation
 - Wide Stakeholder participation

Rep Hawkes:

- We need to make sure we stay ahead of misinformation
- Also need to put best foot forward for asking for appropriation – want to have legislator bring request and not have it appear as a private entity bringing request (may want to adjust contact information on appropriations request)

EELewis:

- Ok now that appropriations request is in, what do we want to do move the actual pilot project forward
- My recommendation is to circle back around to the BOR folks to more specifically discuss what is needed for the BOR WaterSmart application
- Give us a framework to guide next steps

Elizabeth Kitchens:

- The Denver folks who will be reviewing the application offer a webinar on the Grant process ask them to schedule something in the near future
- Best timing would be before early November when things start picking up for the Holidays

EELewis:

- I'll contact Justin Record at the Utah BOR Office to walk through the pieces of grant application and – end of November
- We may also want to contract Don Barnett/Jeff Gittins to see if we can get on the March Water Law and Policy to start in on the education with the legal community