

Water Banking: Large Group
October 29, 2018
DNR 9:00-11:30

ATTENDANCE:

Nathan Bracken – nbracken@water.law
Sterling Brown – sterling.brown@fbfs.com
Boyd Clayton – boydclayton@utah.gov
Wendy Crowther – wcrowther@parsonsbehle.com
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Peter Gessel – pgessel@utah.gov
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Emily Lewis – eel@clydesnow.com

John Mabey – jmabey@mwjlaw.com
Scott Martin – shm@scmlaw.com (by phone)
Megan Nelson – megan.nelson@tnc.org
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Rich Tullis – rich@cuwcd.com
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Rick Smith – ricks@davisweber.org
Lacey Moore – lmoore@utah.gov

MEETING SUMMARY:

This was a Large Group Water Banking meeting to discuss the status of the various working Subcommittees: New Legislation; Existing Legislation; and the Pilot Project. A lot of work has occurred in the last several weeks and a summary of each group's activities is below

ASSIGNMENTS FOR NEXT MEETING:

- **New Legislation Subcommittee:**
 - o Finalize and distribute a working draft of the water banking criteria legislation
 - o Meet with Board of Water Resources to discuss role and support for project
 - o Begin work with Existing Legislation Subcommittee on "water banking provisions"
- **Pilot Project:**
 - o Define and delegate tasks to coordinate with the BOR WaterSMART Grant criteria
 - o Finalize DRAFT Joint Resolution on Water Banking for 2019 Legislative Session
- **All Water Banking Members:**
 - o Maintain a tally of the number of hours spent on project as potential in-kind contributions to match future BOR WaterSMART Grant funding

NEXT MEETING:

December 10, 2018
9:30-10:30 a.m.
DNR – Room TBD

MEETING NOTES:

These notes are more comprehensive than normal and not in the typical "minute format" to reflect the large amount of activity on the project and Clyde Snow time to present substantive material.

Existing Legislation: No new report. This subcommittee is waiting on the New Legislation Subcommittee to complete its work. The New Legislation and Existing Legislation Subcommittees will soon need to have a joint meeting to begin refining the various "water banking provisions" that will govern water banks once approved by the Board of Water Resources. Date for a joint meeting is pending.

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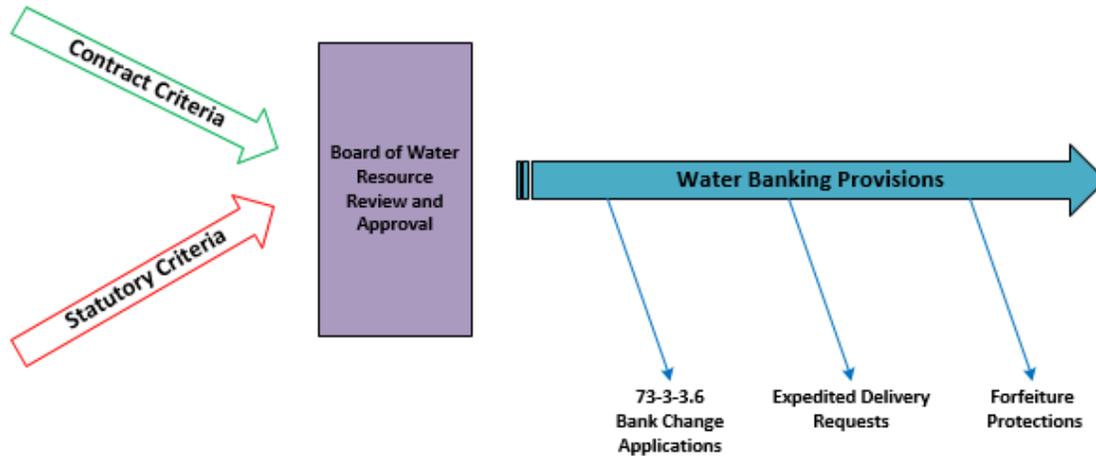
New Legislation: Much of the Large Group meeting focused on the status of draft water banking legislation and a request for input on the following issues:

- Role of the Water Resources Board: (See graphic below)
 - At the prior New Legislation Subcommittee meeting, it was proposed to have new water banks be “approved” by the Utah Water Resources Board (“Board”) before being able to take advantage of the other water banking provisions
 - Board approval would aid in transparency for bank operations, create an opportunity for public comment, and hopefully thwart “speculator banks.” The group discussed the scope of this review and whether it is to be merely an administrative check for completion or extend to a discretionary review of bank proposals
 - The group also discussed expanding the role of the Board to oversee and conduct bank financial transactions and oversee grievance issues
 - Candice Hasenyager and a small group of water banking representatives are going to meet with the Water Resources leadership in mid-November to discuss current water banking concepts and to gauge Water Resources support for exploring the project

- “Path” to Water Resources Board Approval: (see graphic below)
 - A primary issue of discussion was whether to draft the water banking criteria to be generally applicable to all entities seeking to be approved as a water bank or whether to create “two” or more parallel paths of review
 - “Statutory banks” would need to meet specific statutory criteria intended to promote transparency and confidence in the efficacy of the banks (“Red Path”)
 - “Contract banks” or similar party specific banks (i.e. inter-local agreements) would meet a different set of criteria as issues of transparency and scope of participation would be defined by contract (“Green Path”)
 - In attempting to make a singular path it became clear that there are fundamental differences between how “statutory banks” and the “contract banks” will function and merging the two into one review process may not meet some of the stated goals of the water bank such as:
 - Maintaining equal access to water banks for local water users
 - Accounting for environmental considerations

- Next Steps:
 - Nathan Bracken agreed to rework the current version of the draft legislation to include two review paths
 - CUWCD will meet in mid-November to draft and provide Nathan specifics on the contract bank criteria (“Green Path”)
 - Nathan Bracken will redistribute the most current draft legislation prior to December 10
 - The New Legislation and Existing Legislation Subcommittees will set a date to begin to refine the “water banking provisions” governing approved water banks

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Pilot Subcommittee: The Subcommittee has also been working on a number of activities. Legislative efforts are included as Pilot Subcommittee activities.

- Legislative Activities:
 - o *Appropriations Request:*
 - On October 16, Sen. Jani Iwamoto and Steve Clyde presented a one-time appropriations request for \$400,000 to support water banking efforts
 - This money, or whatever amount is approved, is intended to act as either a matching in-kind contribution for a successful BOR WaterSMART Grant, or as standalone State funding for a pilot program
 - Appropriations Committee Chair Sen. Stewart Barlow has also expressed support for the project and appropriation and will assist with the efforts
 - o *Joint Resolution:*
 - It was determined a new Joint Resolution was desired to update/reframe the existing 2017 Instream Flow Joint Resolution that initiated the study efforts.
 - The new Joint Resolution is intended to explicitly authorize a study group to review possible options for creating and developing water banks to further the 2017 State Recommended Water Strategy and prepare recommendations for the Legislature to consider for the 2020 General Session
 - The Joint Resolution will be used to support a BOR WaterSMART Application.
 - Nathan Bracken circulated a proposed Resolution. Brian Alred of Legislative Council is currently reviewing the draft resolution and group comments
 - The final Joint Resolution language will be distributed at the next Large Group meeting in December
- BOR WaterSMART Grant:
 - o The Pilot Group met with representatives from the BOR Denver and Provo Offices to discuss the WaterSMART Grant program and application process.

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- The group is now working to define and delegate tasks to fulfill the relevant application criteria. BOR slides are posted on the Study Committee website
- A key requirement of the WasterSMART program is raising matching in-kind contributions. Some amount of time spent on the project prior to grant approval can be counted toward the in-kind contribution requirement. **All water banking members should keep a tally of time contributed to the project.**
- The WaterSMART Grant program has a rolling deadline where requests for proposals may come as early as January 2019. Once a request for proposal has been issued applicants have **60 days** to complete and submit the application

- **Pilot Project Areas:**
 - The group is still wary of prematurely choosing specific pilot project areas but is tentatively looking at the Provo River, Cache County, and potentially the Price River drainage

- **Utah Rural Water Technology Alliance:**
 - For the next Pilot Group meeting we will have Amy Green of the Utah Rural Water Technology Alliance come and discuss a potential collaboration and the ExacTraq software used to real-time track and monitor water diversions and movement
 - The goal of the meeting is to start the conversation on how the Pilot Project might approach the distribution and monitoring needed to facilitate a water bank

Other Water Banking Matters:

- **Public Information:** One of the stated goals of the group is to engage in robust public education as early as possible. The following are potential speaking opportunities:
 - Weber River Symposium: (confirmed)
 - January 15, 2019 – Ogden Eccles Conference Center
 - Morning Session
 - 20 Minute Presentation – followed by 20-30-minute panel discussion
 - Utah Rural Water Technology Alliance Conference: (confirmation pending but likely)
 - Early March –
 - BOR Offices
 - 1 Hour presentation
 - Water Law and Policy Seminar: (confirmation pending but likely)
 - March 18, 2019 – Dixie Center St. George
 - Panel Discussion
 - Utah Water Users Association Workshop: (confirmed)
 - March 19 or 20
 - 1 Hour Panel Discussion
 - On-going table or exhibition booth?
 - SJ Quinney College of Law – Stegner Center: (confirmation pending but likely)
 - April – Date TBD
 - 1 Hour panel presentation