

**Water Banking Drafting Group – Large Group Meeting**  
**April 30, 2018**  
**DNR 9:00**

**Attendance:** Jani Iwamoto – State Senator; Wendy Crowther – Parsons, Behle, & Latimer; Steve Clyde, Emily E Lewis – Clyde Snow & Sessions; Boyd Clayton – State Engineer’s Office; Paul Burnett, Jordan Nielson, Andy Rasmussen – Trout Unlimited; Jay Olsen, Peter Gessel – Utah Dept. of Ag.; Elizabeth Kitchens, Megan Nelson – The Nature Conservancy; Marcelle Shoop – Audubon Society; John Mabey – Mabey, Wright & James; Rich Tullis, Chris Finlinson – Central Utah Water Conservancy District; Nathan Bracken – Smith Hartvigsen; Mark Stratford – Ogden City; Sterling Brown – Utah Farm Bureau

**Meeting Summary:** The meeting primarily focused on what a “contractual” water bank would look like and the concerns and considerations to be taken into account to make the bank successful. Several of the groups presented on their progress.

**Assignments for Next Meeting:**

- All sub-groups are to send to Nathan Bracken their various independent proposals and summaries they are working on by May 4, 2018
- Sub-Groups are to highlight any potential legislative changes necessary to facilitate their proposal or ideas discussed in the larger group
- The Provo River Group will send DRAFT Key Concepts for Contract Provisions/Sections
- Nathan will make a summary of the key issues for distribution and discussion at next meeting

**Next Meeting:**

Tuesday, May 29, 2018  
 9:00 DNR – Room TBD

<b>MINUTES:</b> These minutes are taken contemporaneously as a record of the group’s conversation. Please excuse any inadvertent attributions, accidental misstatements, or omissions.	<b>MAIN THEMES/USEFUL TOOLS:</b>
<p>Jani Iwamoto:</p> <ul style="list-style-type: none"> <li>- Welcome and request for each sub-group to discuss what they have been working</li> </ul> <p>EELewis:</p> <ul style="list-style-type: none"> <li>- Provo River Water User Sub-Group</li> <li>- Discussed time delays and Warren Contract limitations as restricting use of federal storage projects as a component of water bank</li> <li>- Group discussed using Central Utah’s Bonneville Water Bank concept as a model for creating a “contract bank”</li> <li>- Contract Water Bank would need to address several issues:               <ul style="list-style-type: none"> <li>o Define “service area” of contract and goals/objectives/mechanics of moving water around</li> <li>o Agreed to monetary exchange amongst parties</li> </ul> </li> </ul>	<p><b>Contract Water Banks:</b></p> <ul style="list-style-type: none"> <li>- Moving away from concept of centrally managed state bank like Idaho and exploring contractually based water bank</li> <li>- Contract banks are voluntary agreements between the water users who are actually moving water between the parties</li> <li>- Will need some government oversight to protect against enlargement of rights and impairment – but generally run and designed by participating parties</li> </ul>

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<ul style="list-style-type: none"> <li>- This can be/needs to be a tool in the tool box for farmers to use the water (take water out of the bank)</li> <li>- Environmental aspects are still going to govern and need to participate too</li> </ul> <p>Marcelle Shoop:</p> <ul style="list-style-type: none"> <li>- Is this going to have a ..... (sorry Marcelle)</li> </ul> <p>Jordan Neilson:</p> <ul style="list-style-type: none"> <li>- Why move away from the central State run water bank?</li> </ul> <p>Rich Tullis:</p> <ul style="list-style-type: none"> <li>- Those that have “skin in the game” control their own destiny</li> <li>- We are already starting to play with this concept</li> <li>- Much of what we want to do can already happen – it is just the Change Application process that is too slow</li> <li>- We are still working through administration of the contract</li> </ul> <p>Nathan Bracken:</p> <ul style="list-style-type: none"> <li>- Concept of local control – you have the statutory framework for each of the areas to make their own system</li> <li>- Define a basin and then each of the basins can create their own banks to meet their needs</li> </ul> <p>Peter Gessel:</p> <ul style="list-style-type: none"> <li>- We don’t want unintended consequences – it would be nice to have a pilot project on this concept</li> </ul> <p>Mark Stratford:</p> <ul style="list-style-type: none"> <li>- Only concern – contractually the operations look good</li> <li>- However, don’t want the contractual nature to limit water users who want to participate but either taking water out of the bank or putting water into the bank</li> </ul> <p>Steve Clyde:</p> <ul style="list-style-type: none"> <li>- Environmental needs have problems playing in the a broader market place</li> <li>- A smaller contractual system might be to their benefit</li> </ul> <p>Mark Stratford:</p> <ul style="list-style-type: none"> <li>- Can we get some kind of Tax Credit?</li> <li>- Can an environmental group give a tax credit for water “donations”</li> <li>- Farmers? Can farmers get tax credit for putting water into the bank?</li> <li>- Tax credits would needs to be on an annual basis – not permanent</li> </ul> <p>Nathan Bracken:</p> <ul style="list-style-type: none"> <li>- I worked on this with the IRS – concept of a water right was difficult for them to understand and apply</li> </ul>	<p>and efficiently be moved once inside the bank</p> <ul style="list-style-type: none"> <li>- 1) Full Change application process to get water rights into the bank</li> <li>- 2) more limited notice process to move water around once inside the bank</li> </ul> <p><b>Working List of Necessary Legislative Changes:</b></p> <ul style="list-style-type: none"> <li>- Forfeiture/use requirements for rights in bank</li> <li>- Expand list of entities that can hold instream flow rights</li> <li>- Expedited Change Application process</li> </ul>
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<p>- Recently, Western States Water Council has made headway on this – can check back in</p> <p>- Ideally would like a IRS white-paper/advisory opinion</p> <p>Mark Stratford:</p> <p>- Start working from the State tax side</p> <p>Nathan Bracken:</p> <p>- Legislation: If you want to create a bank here are some of thoughts or ideas</p> <p>- You can do whatever as you like as you check these boxes</p> <p>- We are going to need some legislation to make the non-use and forfeiture issues</p> <p>Jani:</p> <p>- Bill files are due next week – we should put some general bill file names to hold the priority</p> <p>Boyd:</p> <p>- The Provo has some challenges that are difficult (decree where awardees shares priority dates but not equal rights)</p> <p>Wendy:</p> <p>- Possible Process for making this work:</p> <p>- Two Change Applications:</p> <ul style="list-style-type: none"><li>o 1) Full Change Application to get right into the bank</li><li>o 2) Expedited change inside the bank</li></ul> <p>Rich:</p> <p>- We really need an expedited process to start in and then there needs to have a very quick process for administering the rights inside the contract service area</p> <p>- We will need some kind of impairment analysis</p> <p>Nathan:</p> <p>- Move the consumptive portion in</p> <p>- Second stage is that it's a rebuttable process that you can do it unless someone raises a concern – presumed usable</p> <p>Elizabeth Kitchens:</p> <p>- Will have a second stage open the door to have people slow down the process/mechanics of contract</p> <p>Nathan:</p> <p>- After the initial Change Application - could have internal change presumed valid</p> <p>- 30 day notice period to challenge it after the bank is in operation - onus on those actually impaired to bring it up (but most issues should be addressed at first state</p> <p>Jani:</p> <p>- What would the standard be for the rebuttable presumption?</p> <p>Nathan:</p>	
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<ul style="list-style-type: none"><li>- First - Big bite at the apple with Change Application</li><li>- Second - smaller bite at the apple</li><li>- The concept of putting things into the bank is that you can move the water into the bank and it can be used where it is needed inside the bank service areas</li></ul> <p>Sterling Brown:</p> <ul style="list-style-type: none"><li>- If I am a public water supplier –can I lease instream flows for water quality purposes from the Bank?</li><li>- Is a contractual water banking process a work around for any constitutional limitation’s on alienability?</li><li>- For water treatment you are far more incentivized to get banked water than build a new treatment plant and would be willing to pay more \$\$\$</li></ul> <p>Peter Gessel:</p> <ul style="list-style-type: none"><li>- Would we have to tackle the instream flows</li><li>- We will have to have a change to allow for the holding of instream flows</li></ul> <p>Sterling:</p> <ul style="list-style-type: none"><li>- Concerned that competing interests will out price each other</li><li>- Ag. not be able to compete to buy water when municipalities have incentive and money to purchase bank water</li></ul> <p>John Mabey:</p> <ul style="list-style-type: none"><li>- You are talking about water rate and pricing</li><li>- In Idaho they have they have a rate set</li></ul> <p>Nathan:</p> <ul style="list-style-type: none"><li>- Totally a free market and unfettered might price some participants out</li><li>- The goal is for each bank to design what works</li></ul> <p>Rich:</p> <ul style="list-style-type: none"><li>- Central is looking at this really seriously – right now we are spot leasing</li></ul> <p>Peter:</p> <ul style="list-style-type: none"><li>- This is an alternative to outright buy and dry</li></ul> <p>Jordan:</p> <ul style="list-style-type: none"><li>- Could we add a priority where ag. to ag. gets its first?</li></ul> <p>Wendy:</p> <ul style="list-style-type: none"><li>- There is going to be a timing issue – who gets what when</li><li>- Deadlines for those participating to get in their water lease requests?</li></ul> <p>Jay Olsen:</p> <ul style="list-style-type: none"><li>- We can either take the water from Ag. - willing buyer willing seller or Ag. can farm the Bank</li></ul> <p>Jordan:</p>	
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<ul style="list-style-type: none"><li>- This is looking very similar to the Colorado Pilot Program</li><li>- One of the issues there is that we need to move the benefits around to lots of other users</li></ul> <p>Peter Gessel:</p> <ul style="list-style-type: none"><li>- This is a little larger than individual farmers getting what they need more holistically looking at where the water goes and the many needs its meeting</li></ul> <p>Nathan Bracken:</p> <ul style="list-style-type: none"><li>- If we get the foundational principals correct the other details will fall into place</li><li>- Local control is the primary issues – those who have the water rights will figure out what works best for them</li></ul> <p>Sterling:</p> <ul style="list-style-type: none"><li>- Just want to make sure that those who are putting water into the bank are not getting steam rolled</li><li>- The financial and political pressure will build and the bank will cave and the Ag. water gets dedicated to other uses</li></ul> <p>Chris Finlinson:</p> <ul style="list-style-type: none"><li>- if the financial pressures are mounting the Farmer will do a onetime sell</li><li>- This is to allow him to have an ongoing income stream –</li></ul> <p>Wendy:</p> <ul style="list-style-type: none"><li>- Functioning banks will allow us to push some of the pressures back for years</li></ul> <p>EELewis:</p> <ul style="list-style-type: none"><li>- We can also get multiple uses than off the same tranche of water</li></ul> <p>Peter Gessel:</p> <ul style="list-style-type: none"><li>- One questions that has to be addressed:</li><li>- This contract is conception going to be just for specific buyers and sellers?</li><li>- Or is this the sellers band together and find buyers?</li><li>- The whole universe of buyers and sellers?</li></ul> <p>Wendy:</p> <ul style="list-style-type: none"><li>- How do we avoid the contracts picking winners and losers?</li></ul> <p>Mark Stratford:</p> <ul style="list-style-type: none"><li>- We can legislate around this</li><li>- The water is owned by the public ultimately</li><li>- The Legislature still maintains control of the scope of private water rights</li><li>- For the privilege of using the public water we are going to let you do something you could not do before</li></ul> <p>Jani:</p>	
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<ul style="list-style-type: none"><li>- This a great conversation – do any of the other groups have things to report on?</li></ul> <p>Weber River:</p> <ul style="list-style-type: none"><li>- A couple of things going on: mostly limited</li><li>- Individual peer to peer leasing</li><li>- WBWCD is approaching individual water users (usually those with lower priority date) and leasing them to allow a longer storage period<ul style="list-style-type: none"><li>o Reporting the agreements to the river commissioner and is he is doing the accounting</li></ul></li><li>- Some small leasing going from limited Chalk Creek storage</li></ul> <p>Mark Stratford:</p> <ul style="list-style-type: none"><li>- Don't really need change applications because these are essentially delivery contracts</li></ul> <p>Paul Burnett:</p> <ul style="list-style-type: none"><li>- John Mabey: any instream flows projects?</li><li>- Yes – but limited to individual irrigation projects</li></ul> <p>(computer died – lost some communications)</p> <p>Next Meeting:</p> <ul style="list-style-type: none"><li>- Distribute summaries</li><li>- Do we want to make a stab at what general legislative changes will needed:<ul style="list-style-type: none"><li>o Abandonment and forfeiture</li><li>o Instream Flows</li><li>o Change Application process</li></ul></li><li>- Administrative Changes</li><li>- We can get a couple of reports from each of the groups</li><li>- Send to Nathan to review and consolidate</li></ul> <p>Jani – open a bill file</p>	
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