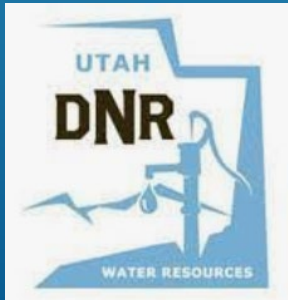




# STATEWIDE WATER MARKETING DEVELOPMENT STRATEGY

**Natural Resources and Environment Committee:  
Interim November 16, 2022**






# PURPOSE

## LEGISLATIVE UPDATE

### STATEWIDE WATER MARKETING DEVELOPMENT REPORT (AKA “WATER BANKING”)

- 1) What Are We Doing?
  - 2) Why Does it Matter?
  - 3) How is it Going?
  - 4) What Are We Learning?
  - 5) What's Next?
- 
- A series of white diagonal lines of varying lengths and thicknesses are positioned in the bottom right corner of the slide, creating a modern, abstract graphic element.



# 1) WHAT ARE WE DOING?

We are in the middle of a 3-4 year effort to review and assess opportunities for water marketing in Utah by piloting the Utah Water Banking Act (2020).

Project deliverable is a Statewide Water Marketing Development Strategies Document and associated materials and guides.

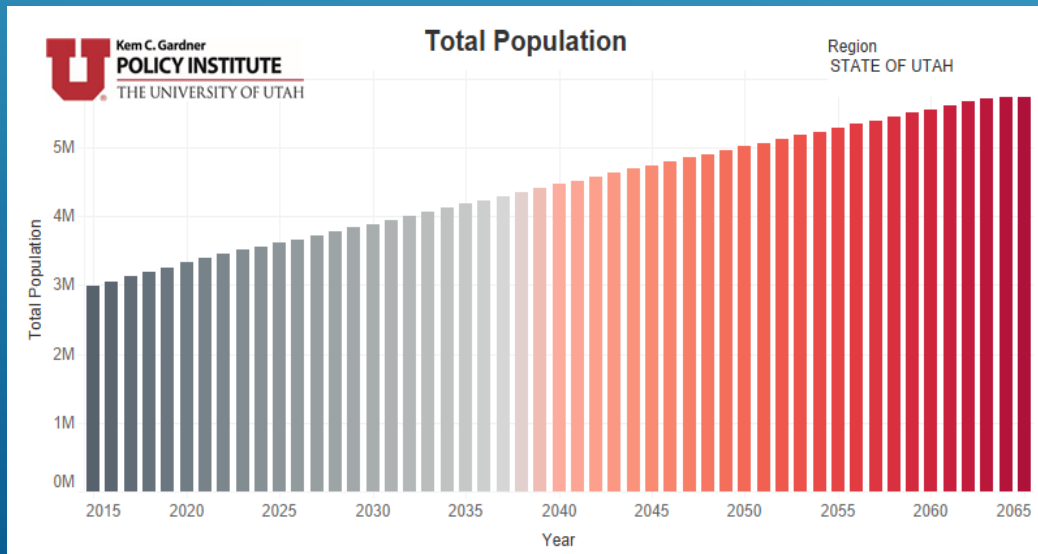


# LOOKING AHEAD CHALLENGING CONDITIONS

- Increased population
- Development
- Recreation
- Environment and Water Quality
- Agricultural production and efficiency
- Drought and climate
- ??? New Demand/Pressures

To address these challenges, **activities to buy and sell or lease water are increasing** across the West.

With high demand for water, **local communities are concerned about maintaining control** over the terms and conditions of market activities.





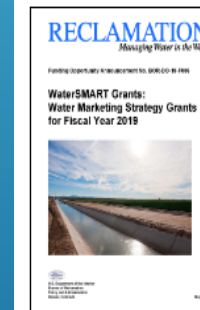
# WATER BANKING/ WATER MARKETING STRATEGIES

## BRIEF HISTORY

- 2017: All roads Lead to “Water Banking”
  - Ag. Optimization Working Group
  - Sen. Iwamoto Municipal Instream Flow Bill
  - Central Utah Water Conservancy District Bonneville Bank efforts
  - 2017 Governors Water Strategy Report
- 2018-2019
  - Water Banking Working Group Meetings – **70 Participants**
  - SJR 1 (2019) - \$400,000 Water Banking Appropriation
  - BOR WaterSMART Water Marketing Grant (\$400,000)
  - DRAFT Consensus Legislation
  - Statewide Roadshow – **60+ speaking events**
- 2020
  - SB 26 – Water Banking Amendments (2020)
  - Statewide Water Marketing Development Strategy Project
    - Pilot the Water Banking Act
    - Develop a Statewide Water Marketing Strategy



### Reclamation makes up to \$3 million available for 2019 Water Marketing Strategy Grants funding opportunity



The 2019 Water Marketing Strategy Grants funding opportunity is now available from the Bureau of Reclamation. This funding opportunity is available to water entities to establish or expand water markets or water marketing activities. Reclamation will make available up to \$200,000 for simple projects that can be completed within two years and up to \$400,000 for more complex projects that can be completed in three years. Up to \$3 million is available for this funding opportunity. [Read More →](#)



# **VOLUNTARY – TEMPORARY – LOCAL**

To better support Utah's growing water demands, water banking could facilitate local, voluntary, and temporary transfers of water that generate income for water right owners and increase access to water.

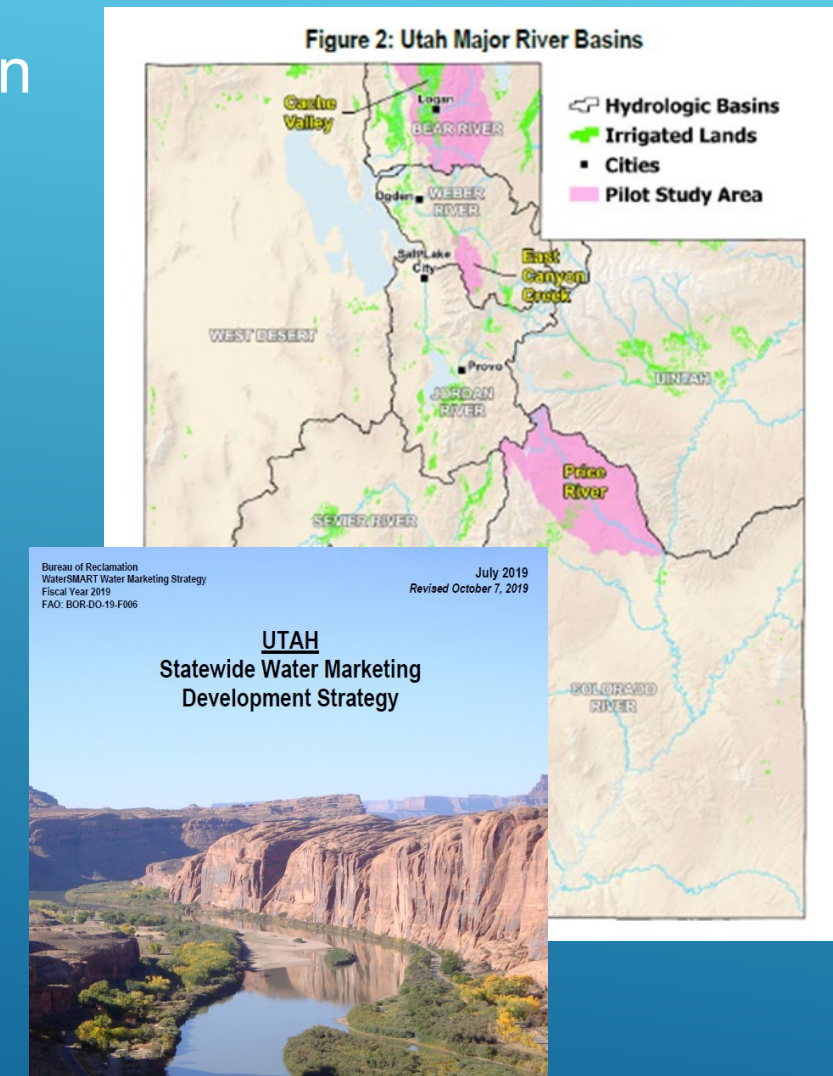
(Working Group thesis)



# STATEWIDE WATER MARKETING STRATEGIES DEVELOPMENT STRATEGY

Review and assess opportunities for water marketing in Utah by piloting the Utah Water Banking Act.

- Three to four years.
- \$800,000 Federal and State funding
- 3 Pilot Areas
- Statewide Water Marketing Strategies Report
  - Assessment of Water Marking in Utah
    - NOT JUST WATER BANKING – best fit marketing tools
    - Requirements; Barriers; Opportunities; Guidance Documents
  - Recommendations
  - Functional Tools – Applications/Forms; Web site





# SO WHAT ARE WE DOING.....?

## Kicking the tires on what it looks like to lease and move water in Utah.

- Engaging Stakeholders interested in water marketing
- Identifying local water market conditions
- Testing the Water Bank Act
  - Administration; concepts; intent
- Implementing different leasing options
  - (Water Bank; Rental Pool; contract)
- Filing Complicated Change Applications
  - Administrative; Technical
- Utilizing Advanced Shepherding and Distribution Tools
- All the unknowns and “Ah-Hahs”





## 2) WHY DOES THIS MATTER.....?

Developing useful water market tools and strategies helps build a resilient water future.



# **WATER MARKETS INCENTIVIZE WATER CONSERVATION**

=

## **MULTIPLIER EFFECT**

**Water markets facilitate movement of water – implement Water Policy goals and Programs.**

- Regional Conservation Goals
- Agricultural Optimization Efforts
- Great Salt Lake Water Trust
- Colorado River Compact Compliance
- Watershed Councils
- Protect private property rights/local users
- Instream Flows (HB 33)
- Water Quality Trading/Compliance
- Water Transitions (power; agricultural; conservation)
- Emergency Allocation – Beneficial Use Preferences

**Water markets ask new questions - identifies where to expend resources.**

- Shepherding – Point A to Point B
  - Telemetry; modeling; distribution systems
- Administrative Efficiencies/Processes
- Infrastructure Improvements/Opportunities
  - LEPA; Canal Lining;
- Establish Baseline Hydrologic Conditions
- Legal Advancements – clarify law and evolve
- Private/Public Partnerships
- Demand for “water skills”/water economy



# 3) HOW IS IT GOING?

**Good! Making slow but steady progress on numerous fronts – on pace and on budget.**

- **Unwrapping the Statute – Administrative Forms and Process**
- **Pilot Projects**
- **Structural/Administrative**



# THE WATER BANKING ACT

## UTAH CODE TITLE 73 CHAPTER 31

- ▶ Addresses barriers and extends benefits requested by water users.
- ▶ Locals design a leasing arrangement to meet local conditions
  - ▶ size and scale of a bank's service area, participants
  - ▶ lease prices and terms
  - ▶ distribution of proceeds, etc..
- ▶ Interested water users apply to the Utah Board of Water Resources to have qualifying leasing arrangements be approved as a "Water Bank."
- ▶ Exploratory - initial 10 year window - sunset date of 2030.



# BENEFITS OF WATER BANKING ACT

## **LOCAL CONTROL:**

- Without local interest there is no water bank

## **Streamlined Administrative Process:**

- One time Change Application – front loaded

## **Forfeiture Protections:**

- Water rights deposited in a bank are exempt from forfeiture

## **Environmental Flows :**

- Banked water can be leased environmental or water quality needs

## **Condemnation Protections:**

- Banked water protected from condemnation while in the bank + 5 years

## **Flexibility “On/Off” Switch:**

- If allowed by bank, use in bank service area or original place of use



# UNWRAPPING THE ACT:

- ▶ Contract Water Bank: 73-31-301
  - ▶ Water users already use contracts to lease water
  - ▶ Set terms and conditions between discrete parties
  - ▶ Submit information and a copy of the contract.
  - ▶ Applicant must be a **non-federal public entity**
  - ▶ Annual report to Board of Water Resources
  - ▶ Most banks will **start out as contract banks**
- ▶ Contract Water Bank Application
  - ▶ Complete Application Form and Process!!
  - ▶ Support materials



# UNWRAPPING THE ACT:

## ▶ Statutory Water Bank:

- ▶ A legal entity organized for the purpose of administering leasing activity between potentially unknown parties
- ▶ modeled after private irrigation companies
  - ▶ Articles, Bylaws, and similar documents
- ▶ A statutory water bank application is robust
  - ▶ Covers a number of areas needed to protect water users
- ▶ The applicant of a statutory bank must be the owner of a perfected water right.
- ▶ Participation in a statutory bank, either by depositing water rights into or leasing water out of, must be **open to all interested water users** - Can't discriminate
- ▶ **More complicated** - lots of statutory criteria
- ▶ DRAFT Application – no approved projects



# UNWRAPPING THE ACT:

## ► Change Application:

- To place a water right into a water bank still need to comply with the Utah Code Ann. 73-3-8 Change Application
- Conduct an Impairment Analysis
- Public ability to protest
- Work through shepherding and distribution matters
- Set coordination of use with Utah State Engineer



# PROJECT PROGRESS



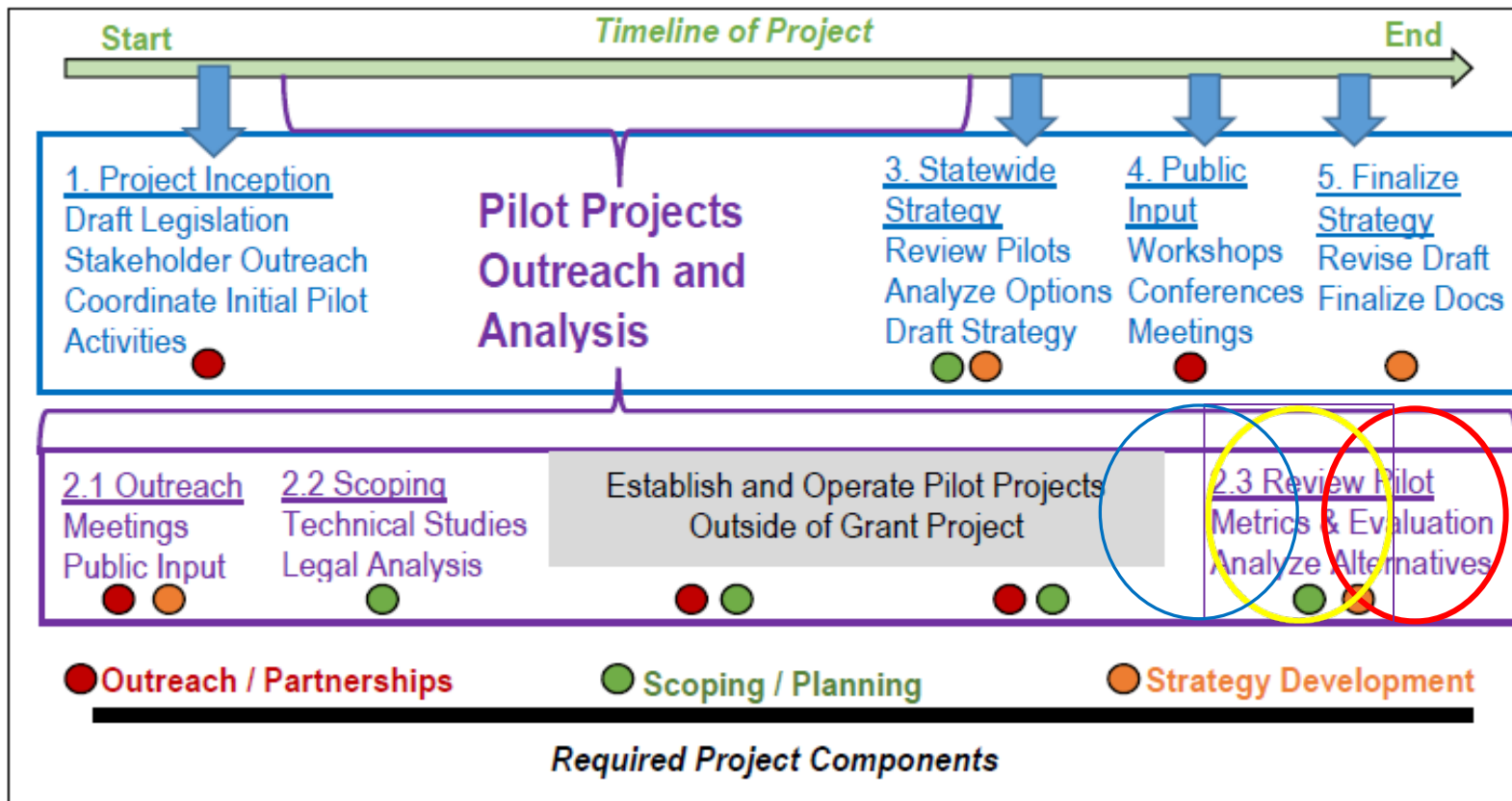
\*Not the Olympics but it is a test of strength and teamwork

(<https://www.pinterest.com/pin/416794140491609296/>)



# PROJECT TIMELINE (3 YEARS STARTING 7/1/2020)

Figure 3: Organization of Project Work Plan



Blue =  
Snyderville  
Basin

Red = Price  
River

Yellow =  
Cache  
County



# CACHE VALLEY: HYRUM RESERVOIR LATE SEASON LEASING POOL



## ► Initial Discussions:

- 4-5 Party Discussions Southeast Cache Valley entities
- Original concept: “knit” together several company systems
- No Demand/No supply – everyone wants water at the same time

## ► Final Concept: Two Party Lease

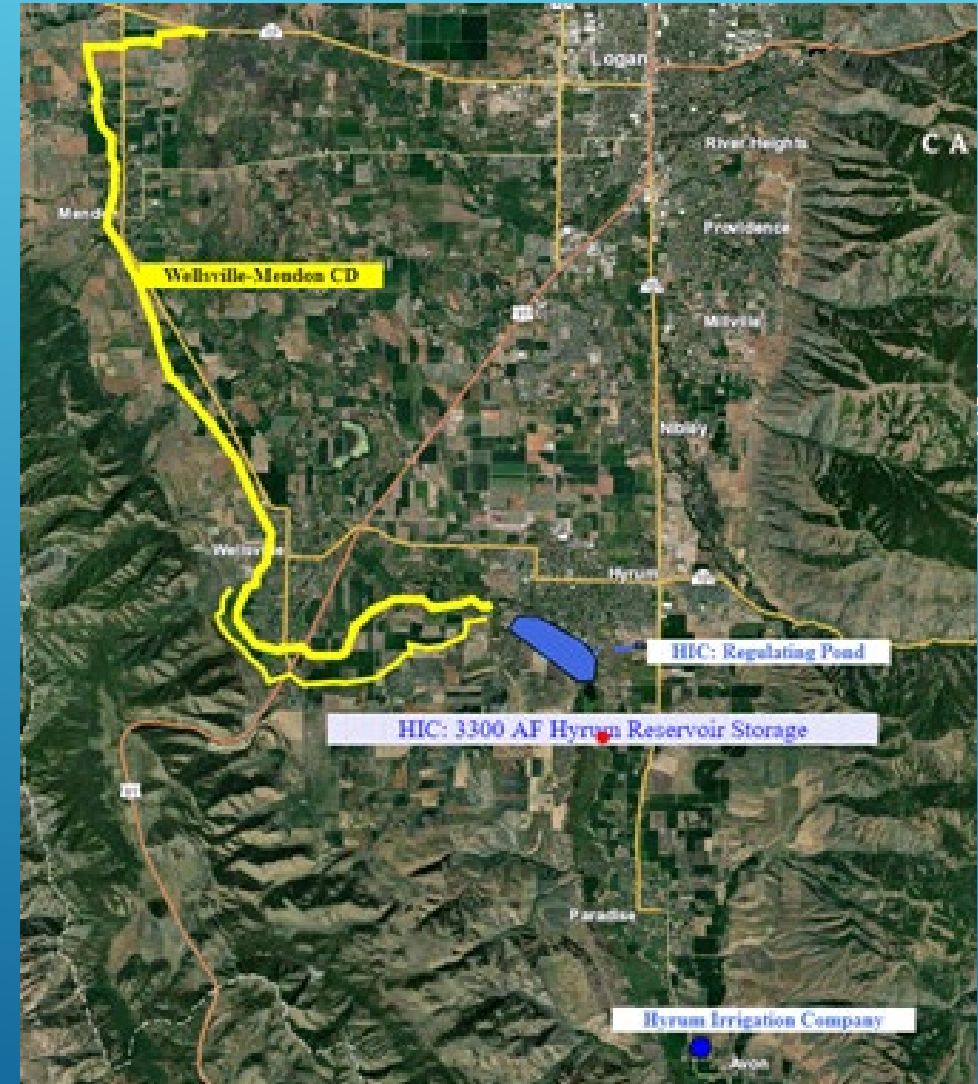
- Hyrum Irrigation Company and Wellsville Mendon Conservation District
- HIC's → excess **late season storage** allotment to WMCD

## ► Issues:

- Water Bank as best fit? **NO**
  - No –Change Application; no need for benefits of ACT
- Role of Federal Facilities/Warren Act
  - Ok under South Cache Water Users Association's Warren Act
  - Same purpose and project use

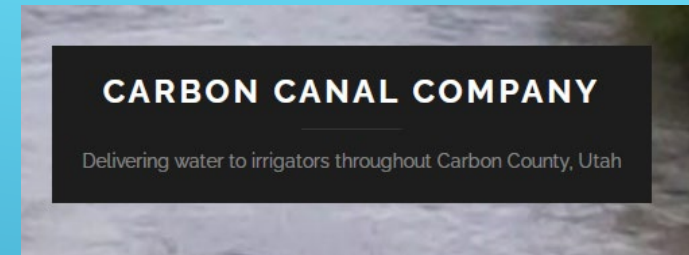
Status:

- **Contract Signed and Run water summer 2023 (if available)**





# PRICE RIVER PILOT STUDY AREA CARBON CANAL COMPANY BANK



## ► Concept:

- Carbon Canal Company Shareholders fallow to land and lease the consumptive portion of their Shares to Lessees

## ► Participating Parties:

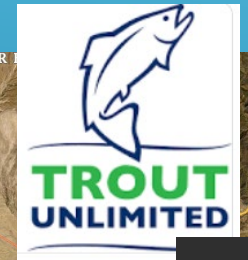
- Carbon Canal Company The Nature Conservancy; Trout Unlimited; Division of Wildlife Resources

## ► Bank Applicant:

- Price River Watershed Conservation District

## ► Status:

- Water Bank Application approved – no protests
- Change Application Protests – hesitation about water banking
- Change Application – shepherding questions
- Bank participants committed to moving forward





# SNYDERVILLE BASIN PILOT STUDY AREA

## INSTREAM FLOW LEASE



### ► Original Working Concept:

- A water bank organized to facilitate instream flows for fish flows and water quality

### ► Issues:

- Substantial Multi-party discussions to understand and trying to set up a Statutory water bank
- Substantial time looking for source of water:
  - Distribution coordination
  - Surplus import water from Park City
  - Private Rights
  - Spring Creek Water Treatment Plant/pump project
- Distribution Telemetry – installed 7 Telemetry sites to get a base line - \$35,000:

### ► RESULT:


- **Not a candidate for a statutory water bank – TOO BIF A LIFT**
- **LIKELY A PRIVATE INSTREAM FLOW LEASE UNDER HB 33 WITH NEW INFRASTRUCTURE**

### ► Timeline:

- Winter 2022 – Finish Recap Items
- Spring 2023 Parties Continue Private Leasing Activities
- Summer 2023 Run a wet water instream flow test with new infrastructure







Statutory Water Bank Tasks & Responsibilities Supplemental Flow Chart



Statutory Water Bank  
Tasks & Responsibilities  
Survey

### Statutory Water Bank Tasks:

Group identified tasks were organized :

1. Tasks required to complete the rec
2. Tasks likely needed to complete th  
but not explicitly required by the Statut
3. Tasks helpful for completing a wat

### Task Review:

For each task there are 5 simple questions that can be accomplished without outside assistance. Ground Rules for Review:

- Asses for a single transaction of w
  - Respond with your organization in
  - Assume there is a working definiti
- organization can complete the task to :
- Assume that if you agree to lead o
- completion of the task - this does not r
- delegate the task to others

eelewisatwork@gmail.com Switch acc

\* Required

- 1. Expertise?: No
  - 2. Capacity?: No
  - 3. Hours?: 15
  - 4. Engagement?: Support Capacity
  - 5. Making a map of the East Canyon Creek watershed? Swaner has some mapping capabilities but not exceptionally advanced.
- iii. Task iii: Determine the form of leasing arrangement the bank will facilitate between interested parties (required)
- Responses:
- 1. Expertise?: No
  - 2. Capacity?: No
  - 3. Hours?: 50
  - 4. Engagement?: Support Capacity
  - 5. Swaner can help facilitate the creation of governing documents and guidelines of the bank in formation discussions, but does not have expertise or experience in this. Maybe Swaner could host bulletin-board style webpage if needed.
- iv. Task iv: Determine form of legal entity (required)
- Responses:
- 1. Expertise?: No
  - 2. Capacity?: No
  - 3. Hours?: 40
  - 4. Engagement?: Support Capacity
  - 5. Swaner has experience in the non-profit management world, but not in other forms that the bank could take. Swaner could assist in determination of the legal entity in discussions but does not have expertise to add here.
- b. Bank Incorporation Tasks
- i. Task i: Prepare Governance Documents (required)
- Responses:
- 1. Expertise?: No
  - 2. Capacity?: No
  - 3. Hours?: 40



# 4) WHAT ARE WE LEARNING?

So many useful things:

- Water Rights Issues/Distribution Matters
- Tweaks to the Water Banking Statute
- Assessing Fit and Form - Market Forces
- Marketing Tools and Techniques
- Key Elements/Structure of Water Lease
- Water Rights Issues/Distribution Matters
- Pricing



# WATER RIGHTS AND DISTRIBUTION

## IT ALL COMES DOWN TO DISTRIBUTION!!!

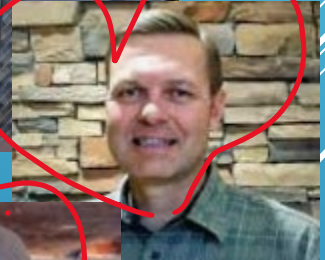
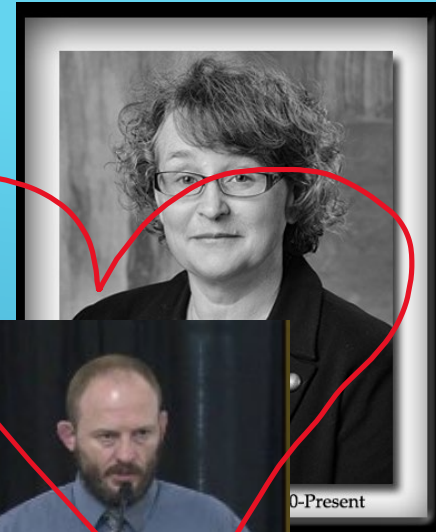
## GETTING WATER FROM POINT A TO POINT B

- **Available Water to Lease**
  - Direct Flow Water Rights + Storage Contract
  - Consumptive portion leasable
- **Change Applications:**
  - Goal = PREVENT IMPAIRMENT
  - Water Banking = First of a series of complicated applications to come
  - Approval = Almost 1 year
  - Standards of Proof:
    - Balance prudence with expediency
    - How much to require?
- **Protests!!**
  - **We did not expect protests**
  - Did not raise concerns about the 73-3-8 Criteria
  - Concerns about changing communities
  - Public outreach is still key

- **Distribution**
  - Instream Flows: SE needs to be able to determine how to distribute the consumptive portion of a water right **on a daily basis** – aggregate is easy
  - **Need more data all over the state**

### Costs

- 6 miles of Creek
  - **\$35,000** to install **7 Sites** with Telemetry
  - 6 Min real time distribution
  - set alerts for certain conditions
  - CANNOT DO AN INSTREAM FLOW WITHOUT THIS INFORMATION
- **Coordinated Distribution**
    - Don't take it all at the same time in small streams



**Give them all the \$\$\$\$  
and everything they  
ask for**

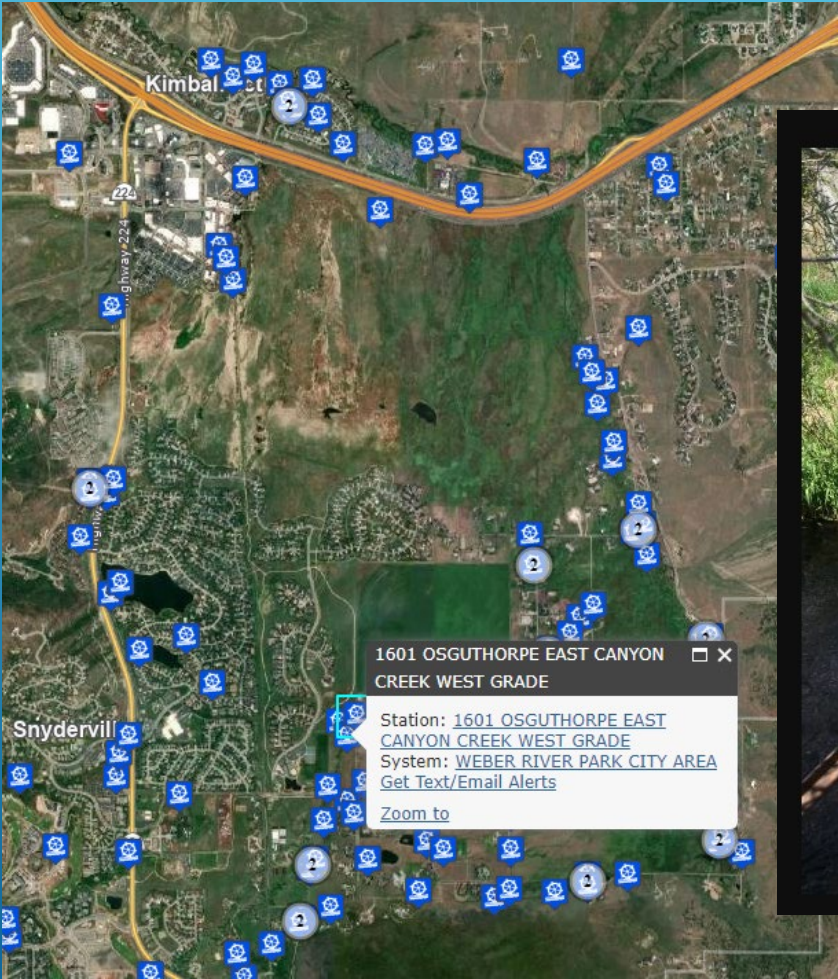


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# WATER RIGHTS AND DISTRIBUTION

## IT ALL COMES DOWN TO DISTRIBUTION!!!

## GETTING WATER FROM POINT A TO POINT B



Site	EQUIPMENT	Amount	Unit \$	Total \$
Quarry Mt	Level sensor	1	662	662
	Radio	1	439.29	439.29
	datalogger	1	860	860
	Yagi antenna	1	72.08	72.08
	10W panel & mount	1	81.03	81.03
	lightning arrestor	1	37.67	37.67
	Solar controller	1	62.38	62.38
	Stilling well/lid	1	555.55	555.55
	Battery	1	72.59	72.59
	Weatherproof box	1	123.38	123.38
	Protective box	1	353.63	353.63
	Post	1	93.98	93.98
	Total		\$	3,413.58
	Flume & stilling well	0	1500	0
	Level sensor	1	662	662
	Radio	1	439.29	439.29
	datalogger	1	860	860
	Yagi antenna	1	72.08	72.08
	10W panel & mount	1	81.03	81.03
	lightning arrestor	1	37.67	37.67
	Solar controller	1	62.38	62.38



# HOW IS THE WATER BANK ACT WORKING?

## GETTING THE CONVERSATION GOING!!

- **NOT A FIT EVERYWHERE – place to start**
- Necessary?:
  - Instream Flows - HB 33 Alternatives
  - Change Application Efficiencies – Temp./Fixed Time
  - Forfeiture Protections – Non-use Applications
- Ground and surface restrictions (WBWCD Exchanges)
- Contract Bank Notice – Onerous
- Administrative Burdens – professional services heavy
- Still comes down to local interest and participation
  - Cache – sailed through
  - Price – Bank Approved, local hesitation
  - Snyderville – Determined technical issues



# WATER MARKETING TOOLS:

## KINDS OF LEASING TRANSACTIONS

- **Direct Water Leases**
  - Carbon Canal Company Water Bank - 5 parties (Water Bank)
  - Cache - 2 parties Federal Government
  - Other: Central/Kennecott/Audubon Society Leases
- **Water Auctions**
  - Price setting by bidding: side
    - Selah-Moxee Irrigation District's Surplus
    - Deschutes Water Conservancy District
    - PacifiCorp/PRWUA Auction
- **Rental Pools: Statutory Water Bank(?)**
  - Supply of water rent process
    - Idaho Water Resources Bank and Local Rental Pools
    - Bear River Canal Company Lease Pool;
    - MT. Nebo Water Authority
- **Water Trusts:**
  - Government adjacent organization facilitating leasing of water for a specific purpose
    - Great Salt Lake Trust
    - Washington Water Trust
- **Federal Conservation Programs:**
  - System Conservation Pilot Program -



Colorado River System  
Conservation Pilot Program





# ELEMENTS/STRUCTURE FOR A WATER LEASE DRAFT TEMPLATE FORMS AND TERMS

- Participants
- Activity Schedule
- Price Setting Mechanism
- Lease Term
- Water Source
- Water Availability
- Delivery/Distribution
- \*Water Bank Items
- Governance
- Reporting/Accounting
- Enforcement
- Supporting Documents

6-2-2022

**MEMBER AGREEMENT FOR LEASING  
SOUTH CACHE WATER USERS' ASSOCIATION SHARES  
BETWEEN  
HYRUM IRRIGATION COMPANY &  
WELLSVILLE-MENDON CONSERVATION DISTRICT**

This water leasing agreement ("Agreement") is made and entered into ("Effective Date"), by and between the Hyrum Irrigation Company ("HIC"), the Wellsville-Mendon Conservation District ("WMCD"), and the South Cache Water Users' Association ("SCWUA"), collectively referred to herein as the "Parties."

**RECITALS**

A. WHEREAS, WMCD is a Limited Purpose Local Government conservation district under Utah Code Title 17D Chapter 3 for the purpose of distributing water to water users within its designated service boundary; and

B. WHEREAS, HIC is a mutual shareholder irrigation company under Utah Code Title 16 Chapter 6a of the Utah Revised Nonprofit Corporation Act for the purpose of delivering irrigation water to its shareholders; and

C. WHEREAS, SCWUA is a water user association organized under Chapter 16 Uniform Limited Cooperative Association Act for the purpose of contracting with the United States, through the Bureau of Reclamation (the "BOR"), for the storage, diversion, and delivery of water to the Little Bear River and its tributaries for irrigation and other reservoirs on the Little Bear River near Hyrum, Utah, known as the Hyrum Project, and the associated canals known respectively as the Wellsville Canal (including connection therewith), the Hyrum-Mendon Canal, and the Hyrum Feeder Project; and

D. WHEREAS, the BOR has acquired for and in connection with water and water rights in and from the Little Bear River and its tributaries water supplies ("Hyrum Project Water") to water 6,800 acres of private project lands; and

E. WHEREAS, in 1933 SCWUA entered into a contract (the "Contract") with the BOR for the construction, repayment, and operation of the Hyrum Project and to furnish to its members, through the issuance of stock in SCWUA, the water to the Reclamation Act of 1902 (Act of Congress of June 17, 1902, 32 Stat. 3866); and

F. WHEREAS, HIC and WMCD represent two of three members of SCWUA and have entered both Mortgage Agreements securing SCWUA's

**CONTRACT AGREEMENT  
CARBON CANAL COMPANY WATER BANK**

This Agreement for a Carbon Canal Company Water Bank ("Agreement") is made and entered into effective as of December 1, 2021 ("Effective Date"), by and between Price River Watershed Conservation District, a political subdivision of the State ("District"), Carbon Canal Company, a Utah nonprofit mutual benefit corporation ("CCC"), The Nature Conservancy, a District of Columbia nonprofit corporation ("TNC"), Trout Unlimited, a Michigan nonprofit corporation ("TU"), and the State of Utah, Department of Natural Resources, Division of Wildlife Resources ("Wildlife") collectively referred to herein as the "Parties". TU, TNC, and Wildlife may also be referred to herein collectively as "Leasing Entities" or individually as a "Leasing Entity." District, CCC, and the Leasing Entities may also be referred to as Parties or individually as a Party.

**RECITALS**

A. The Parties wish to enter into this Agreement to establish a contract water bank ("Water Bank") as provided for under Utah Code 73-31-101 et seq. ("Act") so that CCC may take advantage of the benefits of a Water Bank, including protection of its water rights from forfeiture, and the Leasing Entities may utilize the water for environmental purposes.

B. This Agreement is intended to define the Parties' commitments, rights, and obligations in establishing the Water Bank.

C. The Parties intend that this Agreement be submitted as part of a contract water bank application to the Utah Board of Water Resources. The District is a public entity and will be the applicant to the Utah Board of Water Resources under section 73-31-302 of the Utah Code.

D. The Parties acknowledge that approval by the Utah State Engineer of an Application for Permanent Change of Water for all or a portion of CCC's existing water rights allowing the water rights to be used for banking purposes ("Change Application") are required to implement the Water Bank.

E. Herein, "Irrigation Season" is defined as beginning on the date that irrigation water from the CCC becomes available for the season at the CCC diversion and ending on the date that water ceases to be available for the season at the CCC diversion.

**AGREEMENT**

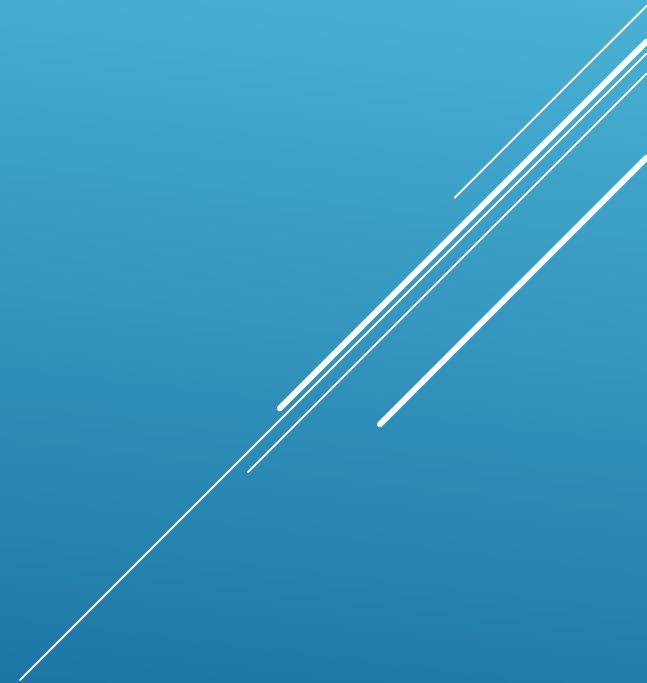
Now, therefore, incorporating the foregoing recitals herein, the Parties agree to the following terms and conditions:

1. **Water Bank Approval Required.** Performance under this Agreement is contingent upon approval of the Water Bank by the Utah Board of Water Resources ("Board") of an application submitted pursuant to Utah Code 73-31-301, et seq. If the Board denies the application under Utah

1



# PRICE RIVER WATER BANK – LEASE PROCESS





# NEXT STEPS?

- **1) Statutory Water Bank Application:**
    - Mt. Nebo Water Authority
  - **2) Pilot Project Review and Outreach:**
    - DRAFT and Distribute Pilot Project Reports to Stakeholders
    - Finalize
  - **3) Publish Beta Tools and DRAFT Report**
    - Lease Structure Outlines
    - Website Upgrades
  - **4) “Road Show”**
    - 4 stops to discuss DRAFT Report Findings/collect feedback
    - General Market Considerations in Area
  - **5) Final State Report**
    - Report
    - Practice Tools and Guides
    - Approved Administrative Forms
    - Website
- 



# OPEN FORUM

So . . . . What are we thinking?

Several thin, parallel white lines of varying lengths are positioned in the bottom right corner of the slide, angled upwards from left to right.