Deschutes Basin Water Collaborative

Working Group Meeting Notes

July 25, 2025 | 10:30-12:30 PM | Hybrid

Tri-Chairs: Commissioner Phil Chang

Members: Mike Buettner, City of Bend; Gary Young, Upper Crooked River Council; Scott Aycock, Regional Solutions; Yancy Lind, Citizen; Jon Skidmore, COID; Becky Powell, League of Women Voters, Deschutes County; Erin Kilcullen, DCSWCD; Janna Guzman, ODFW; Kate Haarberg, JCSWCD; Rex Barber, Water for Life; Carolyn Sufit, OWRD; Kimberley Priestley, WaterWatch; Nancy Gilbert, Sierra Club; Lori Faha, City of Bend; Mike Britton, NUID; Mike Tripp, Trout Unlimited – Deschutes County; Jeremy Austin, COLW; Joe Kemper, OWRD; Owen McMurtrey, COCO; Skuyler Herzog, OSU-Cascades; Tim Deboodt, Crook County

Other Attendees: Hayley Siltanen, Legal Representation for DBBC; Jim, High Desert Village; Jim Powell, Citizen

Staff: Jenn Greco, COIC; Alex Ehrens, Lisa Seales, Kate Fitzpatrick DRC; Andrew Purkey, AMP Insights; Angella Rinehold, OWRD

Draft Notes

10:30-10:40 **1. Welcome & Introductions** *Lisa Seales, DRC*

Lisa Seales opened the meeting with welcome and introductions. Commissioner Chang gave a few words about the legislation that passed and the important work being done.

10:40-10:45 **2. Public Comment**

There were no public comments.

10:45-10:50 **3. April Meeting Recap & Agenda Overview** *Lisa Seales, DRC*

- Recap and Overview ***Attachment A: Apr Meeting Notes***

Lisa reviewed the notes from April's Working Group Meeting. There were no edits to the meeting minutes.

10:50-11:30 **4. Water Bank Discussion** *DRC Staff*

- Legislation Passed – What This Means ***Attachment B: Legislation***

Lisa and Alex provided background and further details on HB 3806. The presentation they used is both available online and in the recording.

The Water Bank Bill was signed into law on July 18. The goals of this bill are to:

- Firm up NUID's water supply
- Restore instream flows in the Middle and Upper Deschutes
- Create water supply for cities
- Support COID operations
- Support voluntary patron choices through fallowing and efficiency

The Water Bank Bill is NOT:

- A fix or change to the mitigation program
- A way to protect or move district carry water
- An alternative to the allocation of conserved water program
- An alternative to the alternative pathway
- A way for outside investors to buy up water

Overall, the established tools used in the basin will continue, which include instream leases, permanent instream transfers, and the mitigation program. HB 3806 enables two new authorities for the sharing of water in the basin: pooled-fallowed acres and split rate/split duty. The legislation allows water freed up from pooled-fallowed acres to be moved to NUID in bulk with 25% of the water remaining in the Middle Deschutes in the summer months. For split rate/split duty, previously, if you wanted to move water off your property, you had to move 100% of the water of the acres, drying them up. This bill allows people to make their operations more efficient, save water, and move that saved water to NUID in exchange for 100% of that volume of water being released to the Upper Deschutes in the winter.

Water Bank Bill Q&A

Commissioner Chang, Deschutes County: You're offering patrons this process, but they'll still need approval from their district to participate?

Lisa Seales, DRC: Correct

Commissioner Chang: Do we have districts like COID already established or is it open right now?

Jon Skidmore, COID: My understanding is that we would let folks approach the district, I can't see us having any issues. Most likely it would be folks along the Pilot Butte Canal. Most water on the Central Oregon Canal is spoken for and in use.

Kimberley Priestley, WaterWatch: While this does offer flexibility, it offers protection to transfers. As far as injury, you can't injure other water rights whether in stream or out of stream. The statute also provides that you can't reduce scenic waterway flows.

Jim Powell, Citizen: Does the fallowed acres just apply to duty water, or does it apply to diversion water as well?

Lisa Seales: I believe it's duty only.

Kate Fitzpatrick, DRC: This whole program only applies to duty water. Anything to do with district transmission loss would go through either the conserve water statue or the alternative pathway, or some other arrangement.

Jeremy Austin, Central Oregon Land Watch: There was a conversation in the past about how we may or may not be able to use the pooled-fallowed acres to shape flows in the Middle Deschutes, has there been any further discussion on that?

Kate Fitzpatrick: No, but that could be possible.

Mike Britton, NUID: There is a baseline amount needed before any water can go to NUID. I think it's 1500 acres before the water can go to NUID.

Lisa Seales: Yes, that's 1800 acres of leasing before these tools can be used. This is to protect existing flows in the Middle Deschutes through the instream leasing program.

Split Rate/Split Duty Q&A
Commissioner Chang: There will still be carry water considerations around this?

Lisa Seales: Yes, this doesn't apply to carry water. None of these authorities do.

Commissioner Chang: So, to get that patron the 2.2 acre feet, you'll need whatever necessary amount of carry water to get that there.

Lisa Seales: Yes, there will need to be measurement devices. To be able to fully take advantage of this we need metered deliveries. There are only a small number of people who can take advantage of this because most deliveries are still unmetered. We don't want to increase consumptive use or spread water.

Kate Fitzpatrick: To add to that, COID is a complex system. Not only do you have to be able to measure savings, you have to be able to track those savings to make sure they make it to the spill. So, it really makes the most sense in areas where they've been piped closer to the North Unit spill, and then over time more opportunities will arise. It will take a little while to scale this.

Jon Skidmore: Data and metrics on a 120-year-old system can be hard to track.

Jeremy Austin: Could we get a better sense of where meters exist today?

Jon Skidmore: Sure, whether patrons want to take advantage of it is another question. But we can definitely focus, or at least point out where we have the most modernized system.

Jeremy Austin: In advertising these new tools, that could be a helpful educational resource to have.

Kate Fitzpatrick: This could be a potential Chapter 5 Implementation Plan.

Yancy Lind: We all know the lack of carry water was a big deal in previous efforts with a water bank, now that the carry water is not part of the bank, I wonder about the comment that the main canal is allocated but the Pilot Butte canal is not. Why would there be any limitations on patrons participating if carry water is protected?

Jon Skidmore: My hunch is folks along the Pilot Butte canal would be more interested, those along the main canal use all their water. It's just an opinion.

Yancy Lind: Reframe the question: there were situations where patrons who wanted to participate in this sort of bank were not allowed to because it would impact the delivery of water to other patrons down the canal. Now that the carry water is protected, it seems like that limitation would be eliminated. What am I missing?

Jon Skidmore: Not having been around for past iterations, it does sound like it would be open. I'll check with Jessi. ACTION ITEM

Yancy Lind: Other than COID, what other senior districts are thinking of participating in this?

Kate Fitzpatrick: Currently it's mostly COID, others are hanging back and watching. Swalley might be interested in the future. Tumalo has concerns about forbearing water, which is a requirement of this, because they do have water rights.

ACTION ITEM: Follow Up with Yancy on questions.

Commissioner Chang: Wanted to follow up on one of Yancy's questions, and pick up on something that Jon said: on the CO canal, water is mostly fully utilized. When all the analyses were done, was the savings broken down by canal in the basin study? If a CO Canal farmer does some on farm work, besides the carry water, what do we need to think about to be able to allow that farmer to participate in this split rate/split duty?

Lisa Seales: Measurement and some sort of metering. Need to verify that they're using less water.

Kate Fitzpatrick: Need to track that it makes it to NUID.

Kate then went through the HB flow chart to share more specifics on the program and what some of the sideboards are. The legislation authorizes the Water Resources Commission to review and approve a charter for a pilot program in the Deschutes. The first step, if partners want to move forward, is to submit a charter to the Water Resources Commission, most likely by the December meeting. This charter also has to be approved by the Confederated Tribes of Warm Springs. Once the charter is approved, partners are required to have an annual operating plan that gets more specific on the pathways within the pilot program. Finally, there are reporting requirements. There are a lot of sideboards to the program and there are incentives to senior water rights holders.

Jeremy Austin: How will the price points be set?

Kate Fitzpatrick: The legislation does not speak to the price points. We would discuss with bank signatories, using available data on price points we have already.

Jeremy Austin: Is there flexibility to change those parameters during the season?

Kate Fitzpatrick: Once per season. You have to get all deals lined up in advance. But we have information from the instream leasing program, temporary transfers, and past pilots.

Andrew Purkey, AMP Insights: Thinking about the potential for enrolling fallowing acres next year – how many acres are instream this year through the annual water leasing program?

Alex Ehrens, DRC: There are about 2,000 acres on the Middle Deschutes this year.

Kate Fitzpatrick: There are parallel processes happening with the state and the irrigation districts that are reducing their water rights certificates. We're hoping to hit 1800 but there's a lot of other processes playing out in the basin that have the potential to impact how quickly and how much we can scale this program.

Yancy Lind: I have two questions. You mentioned a pathway other than fallowing; I'd like to hear more detail on that. The second question is that there's a municipal component to this, what's the idea around muni participation?

Kate Fitzpatrick: To answer the first question, the split rate/split duty pathway is reducing your water use, but still using water on the acres, and then you can market that and put the extra water in the bank that you're not using.

Yancy Lind: So to make sure I understand, let's say you changed your crop so it needs less water, the total acres would be the same but the water placed on the acres would be lower and that would free up some water for the program?

Kate Fitzpatrick: That's right. If you think about it, the allocation of conserved water statute already allows for this. It's not being used with on-farm water in our districts, but it is being

used in other places in the state. You can reduce your water rate, and you can do new things with the water under the conserved water statute.

Owen McMurtrey, COCO: I think the key thing from our perspective is this is a program that has the potential to do both, you know, reduce the consumptive use of water and protect water instream. And to me, those are the two ingredients of a mitigation credit and so there is a potential pathway there, which the law allows for. But like Kate said, it's going to a while for us to figure out exactly how this tool could be used.

Becky Powell, League of Women Voters: Where does the money come from?

Kate Fitzpatrick: Great question, Becky, and some of that has yet to be sorted out.

Mike Buettner, City of Bend: We've had some water reuse conversations over the last couple of years. Does 3806 create an opportunity for us to bring that conversation back? The idea of using treated wastewater in canals to offset water use or potentially assist North Unit. Or is that scope creep and completely separate?

Kate Fitzpatrick: There are lots of different tools you can put under the water bank umbrella, and these are just two new authorities. If the reuse situation fit, you could rope that water into the bank if the city is willing.

Mike Buettner: Okay, we're going to stay on the sidelines and not complicate the conversation because there is HB 2169, which really asked DEQ to take the lead with OWRD to continue the state's efforts towards greater water, reuse, and water reuse projects. But as we participate in that process, we're sort of in the back saying we're the only city here talking about water reuse from a scarcity standpoint.

Carolyn Sufit, OWRD: I'm curious to see how the funding works out and what timeline that presents for us. There might be some questions down the line about how we're tracking the water that gets to North Unit.

11:30-12:10 **5. <u>Muni-Tools Update</u>** *DRC Staff*

The Planning Team has been meeting over the summer to discuss municipal tools. Alex went through what was previously discussed at the last Working Group meeting, and then went into the muni tools that were discussed since the last Working Group meeting, which includes municipal conservation, infrastructure, access to mitigation credits, access to groundwater rights, and artificial aquifer recharge.

In trying to be more efficient with Planning Team's time, Alex and Lisa determined some tools that don't require as in-depth of a discussion because they're already in use. While verbal conversations have occurred to date, this is not in writing and has not been shown to the

Planning Team for approval. So, while there is broad agreement and support, it's not a done deal.

Muni-Conservation Tools Q&A
Scott Aycock, Governor's Regional Solutions: Clarifying question, this list of tools, are all of the cities doing all of these?

Owen McMurtrey: The simple answer is no; there are different approaches to conservation. These are required of a water management conservation plan, so major suppliers follow this. All municipalities are doing this. The second bullet is something that Prineville, Redmond, and Bend have gone through, but not sure about other cities.

Becky Powell: Why not include the Quasi-municipal water service? Also include a waterwise/other/notification system?

Owen McMurtrey: There are specific triggers in the law for having to create a water management conservation plan. So if you're a smaller, quasi-municipal supplier, and you got your permit 30 years ago, and you've never had to do anything else, you wouldn't. But Avion does, for example, and they probably serve 85% of quasi-municipal customers.

Mike Buettner: The notification systems for water use happen lots of different ways through frequency. Sometimes it's a billing mailer, sometimes it's a phone call. I think what Becky is referring to is sort of the automatic notifications for water use that's really tied to a water utility. There is a big infrastructure investment in metering technology, but it won't happen overnight.

Municipal Infrastructure Tools
These tools were also discussed quickly and include construction of treated water, storage reservoirs, recycle to reclaimed water projects, and gray water and storm water projects. This is not in the plan yet, and once it's on paper there will be more opportunity for feedback and further discussion as needed. These are expensive tools that won't change the basin water balance. Investment could be better spent on implementing flow restoration to generate mitigation credits to allow cities to increase pumping to meet demands.

Muni-Infrastructure Q&A
Kimberley Priestley: I have heard where they talk about the cost and I understand that. From our perspective, the conversation about the reservoirs plays into new water rights. Keep this in the back of your mind if it makes it into Chapter 5. If a city has room under their existing water right to store, but they cannot get a new water right then there is water there for the city to utilize.

Owen McMurtrey: One minor clarification, if the demands are high in the heat of the day in the summer, that's a municipal code violation, they spike in early morning. To Kimberley's point about reservoirs, the muni groundwater rights in the Deschutes Basin, like everywhere,

are rate based, they're not pumping the full rate 24/7. When you run up against it, you can get another water right or you can pump and store it. We couldn't do it during winter. We couldn't build reservoirs big enough for treated water.

Municipal Water Supply
This was a more in-depth of a conversation with the group. There is a need for additional groundwater rights to help meet projected demands. This isn't as easy as the city saying they want more groundwater and the state handing it over. There are existing laws in place that govern whether they're able to get out additional groundwater rights. Under this grouping, we discussed access to mitigation credits and access to groundwater credits. The mitigation program was created to maintain state scenic waterway flows and senior instream water rights, acknowledging the connected nature of groundwater and surface water in the Deschutes Basin. Under this program any new uses of groundwater in the Deschutes Basin have to be mitigated, and it's either by instream flow projects or through the cancellation of existing groundwater permits. The cities have done this so far by canceling existing groundwater permits or permanently or temporarily transferring instream water rights or transferring water rights to instream flow and protecting that in the river as a way to generate mitigation credits to allow for pumping.

The other considerations discussed was that this program is slated to sunset in January of 2029, and it will need to be re-evaluated before then. There is also the cap of 200 CFS, and we are sitting at almost 160 CFS.

Municipal Water Supply Q&A
Jeremy Austin: How many of those CFS under the cap have mitigation credits?

Alex Ehrens: I'm not sure.

Owen McMurtrey: You provide mitigation credits for the volume of water you use, rather than for the rate of water you use. If you're applying for a permit for any use except quasi-municipal or municipal you have to provide all of your mitigation credits upfront. So anything for municipal would be fully mitigated at the time the permit is issued. The pending applications probably don't have mitigation, and that's probably why they're pending in part for municipalities and quasi-municipalities. You mitigate incrementally, so you're providing mitigation for the volume of water that you're pumping under the permit.

- Example: A water user might be pumping at 5 cubic feet per second for a week, and so that would be about 350 acre-feet of pumping at a consumptive use of, let's just say 50%. That'd be 175 mitigation credits. But you might have a permit that's much larger than that that you're growing into. Hopefully that answers the question as a proportion like 200 cubic feet per second is you know, if that was 24/7/365, we're not using even a small fraction of that total volume. I think pumping under the mitigation program is still under 10,000 acre-feet per year, which would be about 10-12 CFS.

Jeremy Austin: To put it in my own words, there's 160ish CFS approved on the mitigation program, but only about 12 CFS actually being used under the mitigation program.

Owen McMurtrey: On an annual average basis. So you might have 100 CFS being used at the peak of summer, but on an annual average basis the pumping under those permits amounts to 10-12 CFS.

Yancy Lind: That's based on the consumptive use, right?

Owen McMurtrey: This is all in the OWRD report on the status of the mitigation program, and I think the most recent one was 2022.

Yancy Lind: These details are really important but I'm going to point out again that I think there's zero scientific basis for the consumptive use calculations. As an environmentalist, this distinction, I think, is appalling because if we pump a hundred acre-feet but only need mitigation credits on 50 of them with the assumption that half of that water is seeping back to the aquifer.

Lori Faha, City of Bend: I'll answer a little bit to Yancy. I agree it's hard to figure out exactly how much is recharging back but the municipalities are all discharging their treated wastewater, such that it's recharging. So, if we weren't going to get some sort of credit on that in terms of mitigation credits, then maybe we should have an opportunity to get credits in some other way for that recharge that we're providing in the basin.

Yancy Lind: Lori, I agree with you. It's just that right now the consumptive use calculations are based on, as far as I can tell, spit balling something decades ago and they're not including municipalities wastewater recharging. The whole thing is kind of flimsy. So when we talk about all this data like Owen was, what's the actual pumping rate and volume and all that kind of stuff?

Skuyler Herzog, OSU-Cascades: Based on Owen's description of the current cap, is that instantaneous?

Owen McMurtrey: That's a cap on the permits issued, so it's not like if one person's not pumping on Wednesday afternoon someone else could pump some of the 200 CFS under the cap, it's on permits issued.

Skuyler Herzog: So this slide is accurate, then there's no way we are close to the cap.

Owen McMurtrey: I don't know when OWRD plans to process all the pending applications, or you know, some of those might have had a final order issued, but they can't find mitigation credits to buy it, so how all of that is managed is still an open question for OWRD. There's a possibility that in the next few years we get to a point where OWRD stops approving groundwater permit applications.

Kimberley Priestley: I wanted to follow up on Owen's point about the municipal incremental mitigation development. My understanding is it's done by stage, but I thought you were saying it's as they use it. It's not as if they pump next week at whatever they have to mitigate. It's more that there are blocks of water under their permit that move forward in stages, and if this city is going to use the next block of water, they have to have mitigation in place.

Owen McMurtrey: That's right. Once we've used a volume of water, we have to mitigate for it, then we're done.

Kate Fitzpatrick: I wish Gen Hubert was here, but my understanding is that because of that incremental nature of mitigation, as well as some of the reserve criteria for temporary mitigation, we're protecting a fair amount instream, more water than is actually being pumped by cities and consumptively used right now, so it might be interesting to sit down and hear what it looks like from her side.

Jeremy Austin: Right now, we're close to the cap in terms of permits, but not very close to the cap in actual mitigation credits to allow use of those full permits.

Owen McMurtrey: Yeah, absolutely. That's a good way to describe it.

Alex continued the presentation by reviewing Groundwater Allocation Rules that went into effect in September 2024. Planning Team discussed Access to Mitigation Credits, which will need a deeper conversation before going into the chapter. The plan also encourages discussing the mitigation credit program's future as the sunset date is fast approaching.

Commissioner Chang: Do we have a sense of when people will be pursuing those legislative efforts and what it might look like?

Angella Rinehold, OWRD: Now that I'm in this role, I will be picking up where Emelie left off with these discussions.

Owen McMurtrey: I don't think we know at this point whether there would be a legislative change or not. I think we have to have the conversations to know. Would there be changes we would want to address in rulemaking and we could get there that way, or would we need legislative changes?

Kimberley Priestley: Just to clarify for folks, there are standards for raising the cap, so while this group could express interest in gathering data, there are standards in rules that the State would need to meet before they can lift the cap.

Jim Powell: Alex, could you remind me about the Groundwater Subcommittee? My memory is that the mitigation process was not officially part of that subcommittee. My understanding of water basin planning is that OWRD can make subsets of rules or administrative decisions

that apply to specific basins and would that apply to something like the mitigation program? And would it also apply to transmission water, or the allocation of conserved water act?

Alex Ehrens: I do have slides later on the Groundwater Subcommittee. The scope of that committee did not include making decisions on changing the mitigation program. The committee was more focused on gathering and figuring out what information and data are lacking.

Kate Fitzpatrick: I think the Deschutes mitigation program is a basin program rule, so that is the vehicle through which we could do something a bit different.

Kimberley Priestley: It's one thing for this group to ask for more information and analysis, but in my mind I would not think it would be appropriate for this planning committee to endorse an exception to the statewide rules.

Alex wrapped up the presentation by reviewing artificial recharge. There are a lot of things we need to define and figure out on this topic. Due to timing, the group will revisit this at another meeting.

12:10-12:20 **6. <u>Groundwater Sub-Committee Update</u>** *DRC Staff*

- What's Next?

The Groundwater Sub-Committee's purpose was twofold. One was to develop an understanding of what existing research we have on groundwater resources and spring discharge in the Deschutes Basin. The second part is identifying data gaps and formulating research questions, what we don't know or what we need to know, that would help inform future water management decisions. Alex is almost done writing the groundwater section of Chapter 5 and will send to the sub-committee for feedback and then follow the formal review process with the Planning Team, and then the Working Group.

There will be a Groundwater Info Session at the end of August.

12:20-12:30 **7. <u>Roundtable</u>**

- As Time Allows

The group ran out of time for Roundtable.

12:30 **8. <u>Adjourn</u>**