

1 **BEAR RIVER DEVELOPMENT ACT**

2 2006 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: J. Stuart Adams**

5 Senate Sponsor: Lyle W. Hillyard

6

7 **LONG TITLE**

8 **General Description:**

9 This bill amends the Bear River Development Act to allow funds to be spent on
10 preconstruction activities even though certain construction funding requirements have
11 not been met and to make developed water available to Cache County.

12 **Highlighted Provisions:**

13 This bill:

- 14 ▶ defines preconstruction costs;
- 15 ▶ authorizes the expenditure of funds on preconstruction costs;
- 16 ▶ authorizes water to be made available to Cache County;
- 17 ▶ limits the amount of water made available to Cache County; and
- 18 ▶ makes technical changes.

19 **Monies Appropriated in this Bill:**

20 None

21 **Other Special Clauses:**

22 None

23 **Utah Code Sections Affected:**

24 AMENDS:

25 **73-26-103**, as enacted by Chapter 251, Laws of Utah 1991

26 **73-26-104**, as last amended by Chapter 182, Laws of Utah 2002

27 **73-26-201**, as enacted by Chapter 251, Laws of Utah 1991



28 73-26-202, as enacted by Chapter 251, Laws of Utah 1991

29 73-26-301, as last amended by Chapter 182, Laws of Utah 2002

30 73-26-302, as enacted by Chapter 251, Laws of Utah 1991

31

32 *Be it enacted by the Legislature of the state of Utah:*

33 Section 1. Section 73-26-103 is amended to read:

34 **73-26-103. Definitions.**

35 As used in this chapter:

36 (1) "Board" means the Board of Water Resources.

37 (2) (a) "Construction costs" means all costs related to the development of a project,
38 except the costs of environmental mitigation.

39 (b) Construction costs include:

40 ~~(a)~~ (i) planning;

41 ~~(b)~~ (ii) engineering and legal work;

42 ~~(c)~~ (iii) permitting;

43 ~~(d)~~ (iv) acquisition of land and rights-of-way;

44 ~~(e)~~ (v) rebuilding and relocation of highways or other facilities affected by the
45 project;

46 ~~(f)~~ (vi) compensation for impairment of existing water rights;

47 ~~(g)~~ (vii) construction of the dam, reservoir, and associated facilities; and

48 ~~(h)~~ (viii) expenses of the division related to the project.

49 (3) "Developed waters" means surface water developed by projects authorized under
50 this chapter.

51 (4) "Division" means the Division of Water Resources.

52 (5) "Environmental mitigation costs" means costs that may be required by federal,
53 state, or local governmental agencies for project environmental permitting, including:

54 (a) planning;

55 (b) environmental and engineering studies;

56 (c) permitting;

57 (d) acquisition of land and rights-of-way; and

58 (e) operation, maintenance, and repair of facilities associated with project

59 environmental mitigation.

60 (6) "Preconstruction costs" means any of the following costs incurred before project
 61 construction begins:

62 (a) planning;

63 (b) design;

64 (c) engineering studies;

65 (d) legal work;

66 (e) permitting;

67 (f) acquisition of land and rights-of-way;

68 (g) compensation for impairment of existing water rights;

69 (h) environmental studies; or

70 (i) any combination of Subsections (6)(a) through (h).

71 ~~[(6)]~~ (7) "Project costs" include preconstruction costs, construction costs,
 72 environmental mitigation costs, and costs of operation, maintenance, repair, and replacement.

73 ~~[(7) "Environmental mitigation team" means the team identified in the environmental~~
 74 ~~impact statement (EIS) and chaired by the EIS lead agency.]~~

75 Section 2. Section **73-26-104** is amended to read:

76 **73-26-104. Bear River development projects.**

77 (1) The division shall:

78 (a) develop the surface waters of the Bear River and its tributaries through the planning
 79 and construction of reservoirs and associated facilities as authorized and funded by the
 80 Legislature;

81 (b) own and operate the facilities constructed; and

82 (c) market the developed waters.

83 (2) Potential projects include:

84 (a) Hyrum Dam;

85 (b) Avon;

86 (c) Mill Creek;

87 (d) Oneida Narrows;

88 (e) North Eden Creek; ~~[and]~~

89 (f) Washakie[-]; and

90 (g) an interconnection from the Corinne area to Willard Reservoir.

91 (3) The division may develop sites other than those listed in Subsection (2) if those
92 projects are authorized and funded by the Legislature.

93 (4) The purchase of real property does not constitute water development.

94 Section 3. Section **73-26-201** is amended to read:

95 **73-26-201. Entities eligible to receive developed water -- Selling or leasing water**
96 **outside entity boundaries.**

97 (1) Water developed by projects authorized under this chapter, except water reserved
98 for wildlife or public recreation, shall be made available by contract exclusively to the
99 following entities:

100 (a) the Bear River Water Conservancy District;

101 (b) the Salt Lake County Water Conservancy District;

102 (c) the Weber Basin Water Conservancy District; and

103 (d) [~~municipalities, water companies,~~] Cache County and any water conservancy
104 district in Cache County.

105 (2) A county or conservancy district that purchases or leases developed water may
106 lease the water to any person.

107 [~~(3) A municipality that purchases or leases developed water may sell or lease the~~
108 ~~water to any person located:]~~

109 [~~(a) within the boundaries of the municipality; or]~~

110 [~~(b) outside the boundaries of the municipality:]~~

111 [~~(i) but within the county in which the municipality is located; or]~~

112 [~~(ii) into a state adjacent to the county in which the municipality is located, subject to~~
113 ~~state law and approval by the state engineer.]~~

114 [~~(4)~~] (3) A [~~municipality, water company,~~] county or conservancy district that
115 purchases or leases developed water may use the water directly or by exchange in accordance
116 with Section 73-3-20.

117 Section 4. Section **73-26-202** is amended to read:

118 **73-26-202. Limits on amount of water available to any entity or area -- Exception.**

119 (1) Except as provided in Subsection (2), the total amount of water from projects
120 authorized under this chapter that may be made available to any entity or area is limited as

121 follows:

122 (a) The Salt Lake County Water Conservancy District and Weber Basin Water
123 Conservancy District each may purchase or lease no more than 50,000 acre-feet a year.

124 (b) The Bear River Water Conservancy District may purchase or lease no more than
125 60,000 acre-feet a year.

126 (c) The total cumulative amount of developed waters purchased or leased by
127 [~~municipalities, water companies,~~] Cache County and any water conservancy [~~districts~~] district
128 in Cache County may not exceed 60,000 acre-feet a year.

129 (2) An entity or area may purchase or lease water in excess of the limits specified in
130 Subsection (1) on a temporary basis, if water is available from a project and no other entity
131 eligible to receive water has offered to purchase or lease it.

132 Section 5. Section **73-26-301** is amended to read:

133 **73-26-301. Authorized projects -- Work subject to legislative appropriations.**

134 The division [~~is authorized to~~] may develop the potential projects listed under
135 Subsection 73-26-104(2) and associated works[~~, including an interconnection from the Corinne
136 area to Willard Reservoir, and shall proceed with design work, environmental assessments,
137 acquisition of land and rights-of-way, and construction, subject to:~~].

138 [~~(1) the appropriation of funds for those purposes by the Legislature; and]~~

139 [~~(2) fulfillment of the requirements specified in Section 73-26-302.~~]

140 Section 6. Section **73-26-302** is amended to read:

141 **73-26-302. Construction contingent upon sale or lease of water.**

142 (1) [~~The~~] Except as provided in Subsection (3), the division may not [begin
143 construction of] expend monies for construction costs on any $\hat{H} \rightarrow$ phase of a $\leftarrow \hat{H}$ project until:

144 (a) contracts have been made for the sale or lease of $\hat{H} \rightarrow$ at least $\leftarrow \hat{H}$ 70%

144a $\hat{H} \rightarrow$ [~~or more~~] $\leftarrow \hat{H}$ of the $\hat{H} \rightarrow$ water $\leftarrow \hat{H}$ developed

145 $\hat{H} \rightarrow$ [~~water~~] by that phase $\leftarrow \hat{H}$; and

146 (b) all [~~required~~] permits required by the environmental impact statement have been
147 obtained [~~which shall include the development of an environmental mitigation plan by the
148 environmental mitigation team~~].

149 (2) Construction of the project and implementation of the environmental mitigation
150 plan shall proceed concurrently.

151 (3) The division may make expenditures for preconstruction costs if monies are

152 expressly appropriated or earmarked by statute for that purpose by the Legislature.

Legislative Review Note
as of 11-28-05 3:58 PM

Based on a limited legal review, this legislation has not been determined to have a high probability of being held unconstitutional.

Office of Legislative Research and General Counsel

Interim Committee Note
as of 12-20-05 1:49 PM

The Natural Resources, Agriculture, and Environment Interim Committee recommended this bill.

Fiscal Note
Bill Number HB0045

Bear River Development Act

16-Jan-06

8:13 AM

State Impact

No fiscal impact. Expenditures for preconstruction may be incurred only if monies are expressly appropriated or earmarked for that purpose by the Legislature.

Individual and Business Impact

No fiscal impact.

Office of the Legislative Fiscal Analyst