

## **Chapter 26**

### **Bear River Development Act**

#### **Part 1**

#### **State to Develop the Bear River**

##### **73-26-101 Short title.**

This chapter is known as the "Bear River Development Act."

Enacted by Chapter 251, 1991 General Session

##### **73-26-102 Findings.**

- (1) The Legislature finds that:
  - (a) the Board of Water Resources has significant filings for water of the Bear River that could be developed;
  - (b) the continued growth and prosperity of communities in the Bear River Basin and the Wasatch Front will be enhanced by the development and utilization of the Bear River, one of the last major sources of developable water in the state; and
  - (c) Bear River water developed by the state should be apportioned in an equitable manner taking into consideration:
    - (i) the increasing water needs of the state's growing urban population; and
    - (ii) preservation of future supplies for areas:
      - (A) where the water originates; or
      - (B) that are adjacent to the water and can be conveniently supplied by it.
- (2) Therefore, it is the purpose of this chapter to:
  - (a) direct the Division of Water Resources to develop the surface waters of the Bear River and its tributaries covered by filings of the board, filings acquired from the Bureau of Reclamation, or new filings, as approved by the state engineer;
  - (b) allocate the developed waters among various regions and entities; and
  - (c) provide protection for existing rights.
- (3) Nothing in this chapter shall:
  - (a) cover groundwater; or
  - (b) be construed to prevent any person from developing:
    - (i) groundwater pursuant to state law; or
    - (ii) the surface waters of the Bear River or its tributaries at any site including sites studied by the state.

Enacted by Chapter 251, 1991 General Session

##### **73-26-103 Definitions.**

As used in this chapter:

- (1) "Board" means the Board of Water Resources.
- (2)
  - (a) "Construction costs" means all costs related to the development of a project, except the costs of environmental mitigation.
  - (b) Construction costs include:
    - (i) planning;

- (ii) engineering and legal work;
  - (iii) permitting;
  - (iv) acquisition of land and rights-of-way;
  - (v) rebuilding and relocation of highways or other facilities affected by the project;
  - (vi) compensation for impairment of existing water rights;
  - (vii) construction of the dam, reservoir, and associated facilities; and
  - (viii) expenses of the division related to the project.
- (3) "Developed waters" means surface water developed by projects authorized under this chapter.
- (4) "Division" means the Division of Water Resources.
- (5) "Environmental mitigation costs" means costs that may be required by federal, state, or local governmental agencies for project environmental permitting, including:
- (a) planning;
  - (b) environmental and engineering studies;
  - (c) permitting;
  - (d) acquisition of land and rights-of-way; and
  - (e) operation, maintenance, and repair of facilities associated with project environmental mitigation.
- (6) "Preconstruction costs" means any of the following costs incurred before project construction begins:
- (a) planning;
  - (b) design;
  - (c) engineering studies;
  - (d) legal work;
  - (e) permitting;
  - (f) acquisition of land and rights-of-way;
  - (g) compensation for impairment of existing water rights;
  - (h) environmental studies; or
  - (i) any combination of Subsections (6)(a) through (h).
- (7) "Project costs" include preconstruction costs, construction costs, environmental mitigation costs, and costs of operation, maintenance, repair, and replacement.

Amended by Chapter 84, 2006 General Session

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

- (1) The division shall:
- (a) develop the surface waters of the Bear River and its tributaries through the planning and construction of reservoirs and associated facilities as authorized and funded by the Legislature;
  - (b) own and operate the facilities constructed; and
  - (c) market the developed waters.
- (2) Potential projects include:
- (a) Hyrum Dam;
  - (b) Avon;
  - (c) Mill Creek;
  - (d) Oneida Narrows;
  - (e) North Eden Creek;
  - (f) Washakie; and
  - (g) an interconnection from the Corinne area to Willard Reservoir.

- (3) The division may develop sites other than those listed in Subsection (2) if those projects are authorized and funded by the Legislature.
- (4) The purchase of real property does not constitute water development.

Amended by Chapter 84, 2006 General Session

**73-26-105 Transmission and treatment facilities.**

Entities purchasing developed water shall develop any facilities necessary for the transmission or treatment of the water.

Enacted by Chapter 251, 1991 General Session

**73-26-106 Participation of the federal government and other states.**

- (1) The division may allow the federal government or the states of Idaho or Wyoming to participate in a project authorized under this chapter for the purpose of developing their water rights.
- (2) Any participating entity shall pay for all project costs represented by its share of the project.

Enacted by Chapter 251, 1991 General Session

**73-26-107 Development of hydropower generating works -- Power offered to public utilities or municipalities.**

- (1) In association with a project authorized under this chapter, the division may:
  - (a) construct and own hydroelectric generating works and incidental electrical facilities for the purposes stated in Subsection (2); or
  - (b) enter into an agreement with a public utility or municipality for the development and operation of hydroelectric generating works and incidental electrical facilities.
- (2) Power and energy derived from any hydroelectric generating works owned by the division, except for power and energy needed for project operations, must be offered to public utilities or municipalities in the state for distribution to electric consumers.

Enacted by Chapter 251, 1991 General Session

## **Part 2**

### **Allocation of Developed Waters**

**73-26-201 Entities eligible to receive developed water -- Leasing developed water -- Use of developed water.**

- (1) Water developed by projects authorized under this chapter, except water reserved for wildlife or public recreation, shall be made available by contract exclusively to the following entities:
  - (a) the Bear River Water Conservancy District;
  - (b) the Salt Lake County Water Conservancy District;
  - (c) the Weber Basin Water Conservancy District; and
  - (d) Cache County and any water conservancy district in Cache County.
- (2) A county or conservancy district that purchases or leases developed water may lease the water to any person.

- (3) A county or conservancy district that purchases or leases developed water may use the water directly or by exchange in accordance with Section 73-3-20.

Amended by Chapter 84, 2006 General Session

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

- (1) Except as provided in Subsection (2), the total amount of water from projects authorized under this chapter that may be made available to any entity or area is limited as follows:
- (a) The Salt Lake County Water Conservancy District and Weber Basin Water Conservancy District each may purchase or lease no more than 50,000 acre-feet a year.
  - (b) The Bear River Water Conservancy District may purchase or lease no more than 60,000 acre-feet a year.
  - (c) The total cumulative amount of developed waters purchased or leased by Cache County and any water conservancy district in Cache County may not exceed 60,000 acre-feet a year.
- (2) An entity or area may purchase or lease water in excess of the limits specified in Subsection (1) on a temporary basis, if water is available from a project and no other entity eligible to receive water has offered to purchase or lease it.

Amended by Chapter 84, 2006 General Session

**73-26-203 Time period for submission of offers to purchase or lease water --  
Oversubscription of water -- Allocation procedure.**

- (1) When a project authorized under this chapter is under development, the division shall establish a period of time during which the entities specified in Section 73-26-201 may offer to purchase or lease water developed by the project.
- (2)
- (a) If, in the time period established under Subsection (1), the division receives offers to purchase or lease more water than can be made available through the project, the board shall allocate the water among the interested purchasers.
  - (b) In determining the allocations, the board:
    - (i) shall give priority in the following order to:
      - (A) municipal and industrial water needs;
      - (B) agricultural water needs; and
      - (C) all other water uses; and
    - (ii) may proportionately reduce each offer.

Enacted by Chapter 251, 1991 General Session

**Part 3  
Project Development**

**73-26-301 Projects authorized.**

The division may develop the potential projects listed under Subsection 73-26-104(2) and associated works.

Amended by Chapter 84, 2006 General Session

**73-26-302 Construction contingent upon sale or lease of water -- Preconstruction may proceed if funded.**

- (1) Except as provided in Subsection (3), the division may not expend money for construction costs on any phase of a project until:
  - (a) contracts have been made for the sale or lease of at least 70% of the water developed by that phase; and
  - (b) all permits required by the environmental impact statement have been obtained.
- (2) Construction of the project and implementation of the environmental mitigation plan shall proceed concurrently.
- (3) The division may make expenditures for preconstruction costs if money is expressly appropriated or earmarked by statute for that purpose by the Legislature.

Amended by Chapter 342, 2011 General Session

**Part 4  
General Provisions**

**73-26-401 Powers of division.**

The division may:

- (1) enter into contracts and agreements for the development, operation, maintenance, repair, and replacement of projects authorized under this chapter; and
- (2)
  - (a) set prices for the sale or lease of water made available by the project, in accordance with Section 73-26-506 and rules made by the board; and
  - (b) enter into contracts for the sale or lease of the water.

Enacted by Chapter 251, 1991 General Session

**73-26-402 Rulemaking power of the board.**

In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the board may make rules to:

- (1) determine water charges as provided in Section 73-26-506;
- (2) administer and operate the reservoirs and associated facilities constructed in accordance with Section 73-26-301;
- (3) establish procedures for reviewing offers to contract for the sale or lease of developed water; and
- (4) set the interest rate for repayment of construction and environmental mitigation costs.

Amended by Chapter 382, 2008 General Session

**73-26-403 Immunity from suit -- Exception.**

Activities engaged in under authority of this chapter are governmental functions. The state and its officers and employees are immune from suit for any injury or damage resulting from those activities, except as provided in Section 63G-7-301.

Amended by Chapter 382, 2008 General Session

**73-26-404 Eminent domain.**

In order to construct the reservoirs and other facilities authorized under this chapter, the division may exercise eminent domain as provided in Title 78B, Chapter 6, Part 5, Eminent Domain.

Amended by Chapter 3, 2008 General Session

**Part 5**  
**Financing and Cost Recovery**

**73-26-502 Analysis of benefits and costs -- Allocation of costs.**

The division shall:

- (1) identify the uses and calculate the economic benefits and costs of the developed water; and
- (2) allocate project costs according to the following purposes:
  - (a) municipal and industrial;
  - (b) agricultural;
  - (c) hydropower;
  - (d) recreation;
  - (e) fish and wildlife; and
  - (f) flood control.

Enacted by Chapter 251, 1991 General Session

**73-26-503 Payment of project costs.**

- (1) Construction and environmental mitigation costs allocated to municipal or industrial uses shall be entirely repaid by the entities contracting for water designated for those uses.
- (2) Twenty-five percent of construction and environmental mitigation costs allocated to agricultural use shall be repaid by entities contracting for agricultural water.
- (3) The full costs of operation, maintenance, repair, and replacement allocated to municipal, industrial, and agricultural uses shall be charged to the entities contracting for water for those uses.
- (4) Project costs allocated to recreation, fish and wildlife, and flood control are not reimbursable and shall be paid entirely by the state.
- (5)
  - (a) The division shall negotiate charges with any person receiving hydropower benefits from a project.
  - (b) The charges shall, at a minimum, be sufficient to pay all project costs allocated to hydropower.
  - (c) Charges in excess of the amount necessary to pay project costs allocated to hydropower shall be deposited in the Water Resources Conservation and Development Fund.

Amended by Chapter 334, 1995 General Session

**73-26-504 Agreement for delivery -- Period for repayment of construction and environmental mitigation costs.**

- (1) The division and the contracting entity shall, by contractual agreement, establish when and in what amount water developed by the project will be delivered to the contracting entity.
- (2) If a contract was made before completion of the project, the contracting entity shall repay the construction and environmental mitigation costs as follows:
  - (a) any developed water taken by the contracting entity during the first 10 years after the project is completed shall be repaid within 50 years from the date the developed water is delivered to the contracting entity; and
  - (b) any developed water taken by the contracting entity after the tenth anniversary date of the project's completion shall be repaid within 50 years from the date the project was completed.
- (3) If a contract was made after the project was completed, the contracting entity shall repay the construction and environmental mitigation costs within a period not to exceed 50 years from the date the contract was made.

Amended by Chapter 102, 1997 General Session

**73-26-505 Interest.**

Interest on the unpaid balance of reimbursable construction and environmental mitigation costs shall be charged at a rate set by the board.

Enacted by Chapter 251, 1991 General Session

**73-26-506 Water charges.**

The division shall set prices for the sale or lease of developed water sufficient to:

- (1) recover the reimbursable construction and environmental mitigation costs within the time period specified in Section 73-26-504 and pay for the interest on those costs;
- (2) pay for operation and maintenance costs; and
- (3) accumulate an adequate reserve for repair and replacement.

Amended by Chapter 102, 1997 General Session

**73-26-507 Repayments returned to Water Resources Conservation and Development Fund -- Deposit of remaining revenue -- Division of Finance authorized to establish accounts.**

- (1) Repayments of construction and environmental mitigation costs, the interest charged, and excess hydropower charges shall be deposited in the Water Resources Conservation and Development Fund.
- (2) The Division of Finance shall establish an enterprise fund, in accordance with Section 51-5-4 and generally accepted accounting principles, for the deposit of revenues designated for operation, maintenance, repair, and replacement.
- (3) The Division of Finance may establish accounts as necessary or desirable to accomplish the purposes of this chapter.

Amended by Chapter 334, 1995 General Session