

## Chapter 28 Lake Powell Pipeline Development Act

### Part 1 General Provisions

#### **73-28-101 Title.**

This chapter is known as the "Lake Powell Pipeline Development Act."

Enacted by Chapter 216, 2006 General Session

#### **73-28-102 Scope.**

Nothing in this chapter may be construed to prevent any person, subject to other provisions of law, from developing the waters of the Colorado River.

Enacted by Chapter 216, 2006 General Session

#### **73-28-103 Definitions.**

As used in this chapter:

- (1) "Board" means the Board of Water Resources.
- (2) "Committee" means the Project Management Committee created in Section 73-28-105.
- (3)
  - (a) "Construction costs" means all costs related to the construction of the project, including the environmental mitigation costs.
  - (b) Construction costs include:
    - (i) acquisition of land and rights-of-way;
    - (ii) board and division expenses related to the project;
    - (iii) compensation for impairment of existing water rights;
    - (iv) construction of the project;
    - (v) design;
    - (vi) engineering;
    - (vii) environmental studies;
    - (viii) legal work;
    - (ix) permitting;
    - (x) planning; and
    - (xi) rebuilding and relocating highways or other facilities affected by the project.
- (4) "Developed water" means surface water developed by the project.
- (5) "District" means:
  - (a) the Central Iron County Water Conservancy District;
  - (b) the Kane County Water Conservancy District;
  - (c) the Washington County Water Conservancy District; or
  - (d) any combination of those districts listed in Subsections (5)(a) through (c).
- (6) "Division" means the Division of Water Resources.
- (7) "Environmental mitigation costs" means costs associated with obtaining permits required by federal, state, or local governmental agencies.
- (8) "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 (8)(a) through (h).
- (9)
- (a) "Project" means the Lake Powell Pipeline project and associated facilities, including:
    - (i) facilities associated with environmental mitigation;
    - (ii) hydroelectric generating works and incidental electrical facilities;
    - (iii) pipelines; and
    - (iv) pumping stations.
  - (b) Notwithstanding Subsection (9)(a), associated facilities do not include the local facilities necessary for the treatment and local delivery of the developed water.
- (10) "Project costs" include preconstruction costs, construction costs, and project operation, maintenance, repair, and replacement costs.

Enacted by Chapter 216, 2006 General Session

**73-28-104 Powers of the board.**

- (1) The board may contract with:
- (a) a district for the sale of developed water;
  - (b) a qualified entity for the development or construction of the project; or
  - (c) a district or other qualified entity for the operation, maintenance, repair, or replacement of the project.
- (2) By following the procedures and requirements of Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the board may make rules to:
- (a) establish prices, in consultation with the committee and in accordance with Section 73-28-403, for:
    - (i) developed water sold to the districts; and
    - (ii) electricity made available by the project;
  - (b) establish procedures for reviewing offers to contract for the sale of developed water and electricity;
  - (c) establish the interest rate for repayment of preconstruction and construction costs;
  - (d) establish a reasonable time period for the districts to offer to purchase water; and
  - (e) administer and operate the project.
- (3) The board may exercise eminent domain, as provided in Title 78B, Chapter 6, Part 5, Eminent Domain, to construct the project.

Amended by Chapter 3, 2008 General Session

Amended by Chapter 382, 2008 General Session

**73-28-105 Project Management Committee created.**

- (1) There is created a Project Management Committee within the division.
- (2)

- (a) The committee shall be comprised of one representative appointed by:
  - (i) the division director;
  - (ii) the board; and
  - (iii) each of the participating districts.
- (b) The division representative is the chair of the committee.
- (3)
  - (a) The members shall serve a four-year term.
  - (b) When a vacancy occurs in the membership for any reason, the replacement shall be appointed for the unexpired term in the same manner as the vacated member was appointed.
- (4)
  - (a) A majority of the members of the committee constitute a quorum of the committee.
  - (b) The action of a majority of a quorum constitutes the action of the committee.
- (5) The committee shall:
  - (a) consult with the board on a regular basis concerning:
    - (i) the development and construction of the project;
    - (ii) the operation, maintenance, repair, and replacement of the project; and
    - (iii) the prices of developed water and electricity; and
  - (b) approve all expenditures from the fund created in Section 73-28-404.

Enacted by Chapter 216, 2006 General Session

## **Part 2**

### **Board of Water Resources to Construct the Lake Powell Pipeline**

#### **73-28-201 Lake Powell Pipeline project.**

- (1) The board shall:
  - (a) construct the project as funded by the Legislature;
  - (b) own, operate, and maintain the project until the title is transferred under Section 73-28-405; and
  - (c) consult with the committee on a regular basis concerning the development, construction, operation, maintenance, repair, and replacement of the project.
- (2)
  - (a) The board may contract with the state of Arizona to participate in the project to develop its water rights.
  - (b) The board shall ensure that the contract requires the state of Arizona to pay for all project costs represented by its share of the project.

Enacted by Chapter 216, 2006 General Session

#### **73-28-202 Construction contingent upon sale of water.**

- (1) Except as provided in Subsection (3), the board may not expend money for construction costs for any phase of the project until:
  - (a) the board has contracted with the districts for the sale of at least 70% of the water developed by that phase of the project; and
  - (b) all permits required by the environmental impact statement have been obtained.

- (2) Construction of the project and implementation of any environmental mitigation requirements may proceed concurrently.
- (3) The board 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

**73-28-203 Development of hydroelectric generating works -- Electricity offered to public utilities or municipalities.**

- (1) The board may construct and own hydroelectric generating works and incidental electrical facilities in association with the project.
- (2)
  - (a) Except for electricity needed for project operations, the board shall first offer to sell electricity derived from any hydroelectric generating works owned by it to public utilities or municipalities providing electricity to consumers in Utah.
  - (b) The board, in consultation with the committee and in accordance with Section 73-28-403, shall establish the prices at which the electricity is sold.
- (3) In accordance with Section 51-4-1, the board shall deposit:
  - (a) revenues received from the sale of electricity designated for the repayment of preconstruction and construction costs and interest into the Water Resources Conservation and Development Fund;
  - (b) revenues received from the sale of electricity designated for project operation, maintenance, repair, and replacement costs into the Lake Powell Pipeline Project Operation and Maintenance Fund; and
  - (c) any additional revenues received from the sale of electricity into the Water Resources Conservation and Development Fund.

Enacted by Chapter 216, 2006 General Session

**Part 3  
Allocation of Developed Water**

**73-28-301 Entities eligible to receive developed water.**

- (1) Except for developed water reserved for wildlife or public recreation, the board shall make the developed water available by contract exclusively to the districts listed in Subsection 73-28-103(5).
- (2) A district that purchases developed water may:
  - (a) use the water directly;
  - (b) exchange the water by following the procedures and requirements of Section 73-3-20; or
  - (c) sell the water to any entity or person.
- (3) Districts purchasing developed water shall build any facilities necessary for the treatment and local delivery of the developed water.

Enacted by Chapter 216, 2006 General Session

**73-28-302 Limits on amount of water available to any district -- Exception.**

- (1) Except as provided in Subsection (2), the total amount of developed water that the board may make available to any district is limited as follows:
  - (a) The Kane Water Conservancy District may purchase no more than 10,000 acre-feet of developed water per calendar year.
  - (b) The Washington County Water Conservancy District may purchase no more than 69,000 acre-feet of developed water per calendar year.
  - (c) The Central Iron County Water Conservancy District may purchase no more than the amount of Colorado River water it acquires.
- (2)
  - (a) A district may purchase developed water in excess of the limits specified in Subsection (1) for that calendar year if:
    - (i) developed water is available; and
    - (ii) no other district eligible to receive the developed water has offered to purchase it.
  - (b) The board may expand the size of the project and exceed the limits in Subsection (1) if the board or a district acquires additional water rights.
- (3) Before beginning the final design of the project, the board shall make rules establishing a reasonable time during which the districts may offer to purchase developed water.
- (4) If the Central Iron County Water Conservancy District acquires water rights and participates in the project, the board shall ensure that:
  - (a) the project is sized and constructed to transport the Central Iron County Water Conservancy District's water from Lake Powell; and
  - (b) facilities from Washington County to Cedar City are included in the project.

Enacted by Chapter 216, 2006 General Session

## **Part 4**

### **Financing and Cost Recovery**

#### **73-28-401 Analysis of benefits and costs -- Allocation of costs.**

- (1) The board shall allocate project costs based on the economic costs and benefits of the developed water and electricity among the following water uses:
  - (a) municipal and industrial;
  - (b) electricity;
  - (c) public recreation; and
  - (d) fish and wildlife.
- (2) The state shall pay the nonreimbursable project costs allocated to recreation and fish and wildlife.

Enacted by Chapter 216, 2006 General Session

#### **73-28-402 Agreement for delivery -- Period for repayment of costs.**

- (1) The board and each district shall establish by contract the timing and amount of developed water to be delivered to the district.
- (2) If a contract was made before the project's completion, the district shall repay the preconstruction and construction costs within 50 years from the date of:

- (a) the delivery of developed water to the district during the first 10 years after the project is completed; or
  - (b) the project's completion for any developed water delivered to the district after the tenth anniversary date of the project's completion.
- (3) If a contract was made after the project's completion date, the district shall repay the preconstruction and construction costs within a period not to exceed 50 years from the date that the contract was made.
- (4) The board shall establish and charge a reasonable interest rate for the unpaid balance of reimbursable preconstruction and construction costs.

Enacted by Chapter 216, 2006 General Session

**73-28-403 Water and electricity charges.**

The board, in consultation with the committee, shall establish prices for the developed water sold to the districts and electricity sufficient to:

- (1) recover the reimbursable preconstruction costs, construction costs, and interest on those costs within the time period specified in Section 73-28-402;
- (2) pay for operation and maintenance costs;
- (3) accumulate an adequate reserve for repair and replacement; and
- (4) allocate the proportionate cost of the project facilities required to deliver the developed water to each district.

Enacted by Chapter 216, 2006 General Session

**73-28-404 Repayments returned to Water Resources Conservation and Development Fund -- Establishment of an enterprise fund.**

- (1) The board shall deposit, in accordance with Section 51-4-1, into the Water Resources Conservation and Development Fund:
- (a) repayments of preconstruction and construction costs; and
  - (b) the interest charged.
- (2)
- (a) There is created an enterprise fund, as defined in Subsection 51-5-4(8), entitled the "Lake Powell Pipeline Project Operation and Maintenance Fund."
  - (b) The fund consists of:
    - (i) revenues received from the sale of developed water that is designated for project operation, maintenance, repair, and replacement costs;
    - (ii) revenues received from the sale of electricity that are deposited in the fund in accordance with Subsection 73-28-203(3); and
    - (iii) all interest earned by the fund.
- (3) Notwithstanding Section 63J-1-211, the Legislature may not appropriate any money from the Lake Powell Pipeline Project Operation and Maintenance Fund.
- (4) The state treasurer shall:
- (a) invest the money in the enterprise fund by following the procedures and requirements of Title 51, Chapter 7, State Money Management Act; and
  - (b) deposit all interest or other earnings derived from those investments into the Lake Powell Pipeline Operation and Maintenance Fund.
- (5) The committee shall approve the expenditure of fund money to cover the project operation, maintenance, repair, and replacement costs, subject to:

- (a) money available in the fund; and
  - (b) rules established by the board under Subsection 73-28-104(2).
- (6) If title to the project is transferred under Section 73-28-405, the agreement shall direct the disposition of the money remaining in the fund.

Amended by Chapter 303, 2011 General Session

Amended by Chapter 342, 2011 General Session

**73-28-405 Transfer of title to project and water rights to districts.**

- (1) The board shall convey the project's title and its associated water rights to the districts if:
- (a) the state has been fully compensated for all of its reimbursable costs;
  - (b) the board finds that the conveyance of the project's title would be in the best interest of the state, the districts, and those receiving developed water; and
  - (c) the districts enter into an agreement with each other and the board that would ensure the continued operation, maintenance, repair, and replacement of the project.
- (2) The board shall convey the project's title and its associated water rights to the districts in proportion to the amount each district paid for the developed water it received.

Enacted by Chapter 216, 2006 General Session