

1 **LAKE POWELL PIPELINE DEVELOPMENT**

2 **ACT**

3 2006 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: Thomas V. Hatch**

6 House Sponsor: David Clark

7

8 **LONG TITLE**

9 **General Description:**

10 This bill authorizes the Board of Water Resources to build the Lake Powell Pipeline
11 project.

12 **Highlighted Provisions:**

13 This bill:

- 14 ▶ enacts the Lake Powell Pipeline Development Act;
- 15 ▶ defines terms;
- 16 ▶ authorizes the Board of Water Resources to:
 - 17 • make rules;
 - 18 • build the Lake Powell Pipeline project; and
 - 19 • contract for the sale of developed water and operation of the project;
- 20 ▶ creates the Project Management Committee;
- 21 ▶ authorizes the building of hydroelectric generating works;
- 22 ▶ authorizes the water districts to use, exchange, or sell developed water; and
- 23 ▶ establishes an enterprise fund for the operation and maintenance of the project.

24 **Monies Appropriated in this Bill:**

25 None

26 **Other Special Clauses:**

27 None

28 **Utah Code Sections Affected:**

29 ENACTS:

- 30 **73-28-101**, Utah Code Annotated 1953
- 31 **73-28-102**, Utah Code Annotated 1953
- 32 **73-28-103**, Utah Code Annotated 1953
- 33 **73-28-104**, Utah Code Annotated 1953
- 34 **73-28-105**, Utah Code Annotated 1953
- 35 **73-28-201**, Utah Code Annotated 1953
- 36 **73-28-202**, Utah Code Annotated 1953
- 37 **73-28-203**, Utah Code Annotated 1953
- 38 **73-28-301**, Utah Code Annotated 1953
- 39 **73-28-302**, Utah Code Annotated 1953
- 40 **73-28-401**, Utah Code Annotated 1953
- 41 **73-28-402**, Utah Code Annotated 1953
- 42 **73-28-403**, Utah Code Annotated 1953
- 43 **73-28-404**, Utah Code Annotated 1953
- 44 **73-28-405**, Utah Code Annotated 1953

45

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

47 Section 1. Section **73-28-101** is enacted to read:

48 **CHAPTER 28. LAKE POWELL PIPELINE DEVELOPMENT ACT**

49 **Part 1. General Provisions**

50 **73-28-101. Title.**

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

52 Section 2. Section **73-28-102** is enacted to read:

53 **73-28-102. Scope.**

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

56 Section 3. Section **73-28-103** is enacted to read:

57 **73-28-103. Definitions.**

- 58 As used in this chapter:
- 59 (1) "Board" means the Board of Water Resources.
- 60 (2) "Committee" means the Project Management Committee created in Section
- 61 73-28-105.
- 62 (3) (a) "Construction costs" means all costs related to the construction of the project,
- 63 including the environmental mitigation costs.
- 64 (b) Construction costs include:
- 65 (i) acquisition of land and rights-of-way;
- 66 (ii) board and division expenses related to the project;
- 67 (iii) compensation for impairment of existing water rights;
- 68 (iv) construction of the project;
- 69 (v) design;
- 70 (vi) engineering;
- 71 (vii) environmental studies;
- 72 (viii) legal work;
- 73 (ix) permitting;
- 74 (x) planning; and
- 75 (xi) rebuilding and relocating highways or other facilities affected by the project.
- 76 (4) "Developed water" means surface water developed by the project.
- 77 (5) "District" means:
- 78 (a) the Central Iron County Water Conservancy District;
- 79 (b) the Kane County Water Conservancy District;
- 80 (c) the Washington County Water Conservancy District; or
- 81 (d) any combination of those districts listed in Subsections (5)(a) through (c).
- 82 (6) "Division" means the Division of Water Resources.
- 83 (7) "Environmental mitigation costs" means costs associated with obtaining permits
- 84 required by federal, state, or local governmental agencies.
- 85 (8) "Preconstruction costs" means any of the following costs incurred before project

86 construction begins:

87 (a) planning;

88 (b) design;

89 (c) engineering studies;

90 (d) legal work;

91 (e) permitting;

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

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

94 (h) environmental studies; or

95 (i) any combination of Subsections (8)(a) through (h).

96 (9) (a) "Project" means the Lake Powell Pipeline project and associated facilities,

97 including:

98 (i) facilities associated with environmental mitigation;

99 (ii) hydroelectric generating works and incidental electrical facilities;

100 (iii) pipelines; and

101 (iv) pumping stations.

102 (b) Notwithstanding Subsection (9)(a), associated facilities does not include the local
103 facilities necessary for the treatment and local delivery of the developed water.

104 (10) "Project costs" include preconstruction costs, construction costs, and project
105 operation, maintenance, repair, and replacement costs.

106 Section 4. Section **73-28-104** is enacted to read:

107 **73-28-104. Powers of the board.**

108 (1) The board may contract with:

109 (a) a district for the sale of developed water;

110 (b) a qualified entity for the development or construction of the project; or

111 (c) a district or other qualified entity for the operation, maintenance, repair, or
112 replacement of the project.

113 (2) By following the procedures and requirements of Title 63, Chapter 46a, Utah

114 Administrative Rulemaking Act, the board may make rules to:

115 (a) establish prices, in consultation with the committee and in accordance with Section
116 73-28-403, for:

117 (i) developed water sold to the districts; and

118 (ii) electricity made available by the project;

119 (b) establish procedures for reviewing offers to contract for the sale of developed water
120 and electricity;

121 (c) establish the interest rate for repayment of preconstruction and construction costs;

122 (d) establish a reasonable time period for the districts to offer to purchase water; and

123 (e) administer and operate the project.

124 (3) The board may exercise eminent domain, as provided in Title 78, Chapter 34,
125 Eminent Domain, to construct the project.

126 Section 5. Section **73-28-105** is enacted to read:

127 **73-28-105. Project Management Committee created.**

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

129 (2) (a) The committee shall be comprised of one representative appointed by:

130 (i) the division director;

131 (ii) the board; and

132 (iii) each of the participating districts.

133 (b) The division representative is the chair of the committee.

134 (3) (a) The members shall serve a four-year term.

135 (b) When a vacancy occurs in the membership for any reason, the replacement shall be
136 appointed for the unexpired term in the same manner as the vacated member was appointed.

137 (4) (a) A majority of the members of the committee constitute a quorum of the
138 committee.

139 (b) The action of a majority of a quorum constitutes the action of the committee.

140 (5) The committee shall:

141 (a) consult with the board on a regular basis concerning:

- 142 (i) the development and construction of the project;
- 143 (ii) the operation, maintenance, repair, and replacement of the project; and
- 144 (iii) the prices of developed water and electricity; and
- 145 (b) approve all expenditures from the fund created in Section 73-28-404.

146 Section 6. Section **73-28-201** is enacted to read:

147 **Part 2. Board of Water Resources to Construct the Lake Powell Pipeline**
148 **73-28-201. Lake Powell Pipeline project.**

149 (1) The board shall:

- 150 (a) construct the project as funded by the Legislature;
- 151 (b) own, operate, and maintain the project until the title is transferred under Section
152 73-28-405; and
- 153 (c) consult with the committee on a regular basis concerning the development,

154 construction, operation, maintenance, repair, and replacement of the project.

155 (2) (a) The board may contract with the state of Arizona to participate in the project to
156 develop its water rights.

157 (b) The board shall ensure that the contract requires the state of Arizona to pay for all
158 project costs represented by its share of the project.

159 Section 7. Section **73-28-202** is enacted to read:

160 **73-28-202. Construction contingent upon sale of water.**

161 (1) Except as provided in Subsection (3), the board may not expend monies for
162 construction costs for any phase of the project until:

- 163 (a) the board has contracted with the districts for the sale of at least 70% of the water
164 developed by that phase of the project; and
- 165 (b) all permits required by the environmental impact statement have been obtained.

166 (2) Construction of the project and implementation of any environmental mitigation
167 requirements may proceed concurrently.

168 (3) The board may make expenditures for preconstruction costs if monies are expressly
169 appropriated or earmarked by statute for that purpose by the Legislature.

170 Section 8. Section **73-28-203** is enacted to read:

171 **73-28-203. Development of hydroelectric generating works -- Electricity offered to**
172 **public utilities or municipalities.**

173 (1) The board may construct and own hydroelectric generating works and incidental
174 electrical facilities in association with the project.

175 (2) (a) Except for electricity needed for project operations, the board shall first offer to
176 sell electricity derived from any hydroelectric generating works owned by it to public utilities
177 or municipalities providing electricity to consumers in Utah.

178 (b) The board, in consultation with the committee and in accordance with Section
179 73-28-403, shall establish the prices at which the electricity is sold.

180 (3) In accordance with Section 51-4-1, the board shall deposit:

181 (a) revenues received from the sale of electricity designated for the repayment of
182 preconstruction and construction costs and interest into the Water Resources Conservation and
183 Development Fund;

184 (b) revenues received from the sale of electricity designated for project operation,
185 maintenance, repair, and replacement costs into the Lake Powell Pipeline Project Operation
186 and Maintenance Fund; and

187 (c) any additional revenues received from the sale of electricity into the Water
188 Resources Conservation and Development Fund.

189 Section 9. Section **73-28-301** is enacted to read:

190 **Part 3. Allocation of Developed Water**

191 **73-28-301. Entities eligible to receive developed water.**

192 (1) Except for developed water reserved for wildlife or public recreation, the board
193 shall make the developed water available by contract exclusively to the districts listed in
194 Subsection 73-28-103(5).

195 (2) A district that purchases developed water may:

196 (a) use the water directly;

197 (b) exchange the water by following the procedures and requirements of Section

198 73-3-20; or

199 (c) sell the water to any entity or person.

200 (3) Districts purchasing developed water shall build any facilities necessary for the
201 treatment and local delivery of the developed water.

202 Section 10. Section **73-28-302** is enacted to read:

203 **73-28-302. Limits on amount of water available to any district -- Exception.**

204 (1) Except as provided in Subsection (2), the total amount of developed water that the
205 board may make available to any district is limited as follows:

206 (a) The Kane Water Conservancy District may purchase no more than 10,000 acre-feet
207 of developed water per calendar year.

208 (b) The Washington County Water Conservancy District may purchase no more than
209 69,000 acre-feet of developed water per calendar year.

210 (c) The Central Iron County Water Conservancy District may purchase no more than
211 the amount of Colorado River water it acquires.

212 (2) (a) A district may purchase developed water in excess of the limits specified in
213 Subsection (1) for that calendar year if:

214 (i) developed water is available; and

215 (ii) no other district eligible to receive the developed water has offered to purchase it.

216 (b) The board may expand the size of the project and exceed the limits in Subsection
217 (1) if the board or a district acquires additional water rights.

218 (3) Before beginning the final design of the project, the board shall make rules
219 establishing a reasonable time during which the districts may offer to purchase developed
220 water.

221 (4) If the Central Iron County Water Conservancy District acquires water rights and
222 participates in the project, the board shall ensure that:

223 (a) the project is sized and constructed to transport the Central Iron County Water
224 Conservancy District's water from Lake Powell; and

225 (b) facilities from Washington County to Cedar City are included in the project.

226 Section 11. Section **73-28-401** is enacted to read:

227 **Part 4. Financing and Cost Recovery**

228 **73-28-401. Analysis of benefits and costs -- Allocation of costs.**

229 (1) The board shall allocate project costs based on the economic costs and benefits of
230 the developed water and electricity among the following water uses:

231 (a) municipal and industrial;

232 (b) electricity;

233 (c) public recreation; and

234 (d) fish and wildlife.

235 (2) The state shall pay the nonreimbursable project costs allocated to recreation and
236 fish and wildlife.

237 Section 12. Section **73-28-402** is enacted to read:

238 **73-28-402. Agreement for delivery -- Period for repayment of costs.**

239 (1) The board and each district shall establish by contract the timing and amount of
240 developed water to be delivered to the district.

241 (2) If a contract was made before the project's completion, the district shall repay the
242 preconstruction and construction costs within 50 years from the date of:

243 (a) the delivery of developed water to the district during the first ten years after the
244 project is completed; or

245 (b) the project's completion for any developed water delivered to the district after the
246 tenth anniversary date of the project's completion.

247 (3) If a contract was made after the project's completion date, the district shall repay
248 the preconstruction and construction costs within a period not to exceed 50 years from the date
249 that the contract was made.

250 (4) The board shall establish and charge a reasonable interest rate for the unpaid
251 balance of reimbursable preconstruction and construction costs.

252 Section 13. Section **73-28-403** is enacted to read:

253 **73-28-403. Water and electricity charges.**

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

256 (1) recover the reimbursable preconstruction costs, construction costs, and interest on
257 those costs within the time period specified in Section 73-28-402;

258 (2) pay for operation and maintenance costs;

259 (3) accumulate an adequate reserve for repair and replacement; and

260 (4) allocate the proportionate cost of the project facilities required to deliver the
261 developed water to each district.

262 Section 14. Section **73-28-404** is enacted to read:

263 **73-28-404. Repayments returned to Water Resources Conservation and**
264 **Development Fund -- Establishment of an enterprise fund.**

265 (1) The board shall deposit, in accordance with Section 51-4-1, into the Water
266 Resources Conservation and Development Fund:

267 (a) repayments of preconstruction and construction costs; and

268 (b) the interest charged.

269 (2) (a) There is created an enterprise fund, as defined in Subsection 51-5-4(8), entitled
270 the "Lake Powell Pipeline Project Operation and Maintenance Fund."

271 (b) The fund consists of:

272 (i) revenues received from the sale of developed water that is designated for project
273 operation, maintenance, repair, and replacement costs;

274 (ii) revenues received from the sale of electricity that are deposited in the fund in
275 accordance with Subsection 73-28-203(3); and

276 (iii) all interest earned by the fund.

277 (3) (a) Any unexpended monies remaining in the fund at the end of the fiscal year are
278 nonlapsing.

279 (b) Notwithstanding Section 63-38-3.6, the Legislature may not appropriate any monies
280 from the Lake Powell Pipeline Project Operation and Maintenance Fund.

281 (4) The state treasurer shall:

282 (a) invest the monies in the enterprise fund by following the procedures and
283 requirements of Title 51, Chapter 7, State Money Management Act; and

284 (b) deposit all interest or other earnings derived from those investments into the Lake
285 Powell Pipeline Operation and Maintenance Fund.

286 (5) The committee shall approve the expenditure of fund monies to cover the project
287 operation, maintenance, repair, and replacement costs, subject to:

288 (a) monies available in the fund; and

289 (b) rules established by the board under Subsection 73-28-104(2).

290 (6) If title to the project is transferred under Section 73-28-405, the agreement shall
291 direct the disposition of the monies remaining in the fund.

292 Section 15. Section **73-28-405** is enacted to read:

293 **73-28-405. Transfer of title to project and water rights to districts.**

294 (1) The board shall convey the project's title and its associated water rights to the
295 districts if:

296 (a) the state has been fully compensated for all of its reimbursable costs;

297 (b) the board finds that the conveyance of the project's title would be in the best interest
298 of the state, the districts, and those receiving developed water; and

299 (c) the districts enter into an agreement with each other and the board that would
300 ensure the continued operation, maintenance, repair, and replacement of the project.

301 (2) The board shall convey the project's title and its associated water rights to the
302 districts in proportion to the amount each district paid for the developed water it received.