

**BEAR RIVER WATER CONSERVANCY DISTRICT
IMPACT FEE ENACTMENT RESOLUTION NO. _____**

**RESOLUTION OF THE BOARD OF TRUSTEES OF BEAR RIVER WATER CONSERVANCY DISTRICT
APPROVING AND ADOPTING AN IMPACT FEE FACILITIES PLAN AND IMPACT FEE ANALYSIS AND
IMPOSING IMPACT FEES PERTAINING TO THE BOTHWELL M&I WATER SYSTEM WITHIN THE BOTHWELL
SERVICE AREA, PROVIDING FOR THE CALCULATION AND COLLECTION OF SUCH IMPACT FEES,
PROVIDING FOR APPEAL, ACCOUNTING AND SEVERABILITY OF THE SAME, AND OTHER RELATED
MATTERS**

WHEREAS, the Board of Trustees (the “Board of Trustees”) of Bear River Water Conservancy District met in regular session on December 30, 2014 to consider, among other things, adopting an impact fee facilities plan, adopting an impact fee analysis and imposing water system impact fees for the Bothwell M&I Water System within the Bothwell Service Area within the Bear River Water Conservancy District, providing for the calculation and collection of such fees, and providing for appeal, accounting and severability of the same, and other related matters; and

WHEREAS, the Bear River Water Conservancy District (the “District”) is a local political subdivision of the State of Utah, authorized and organized under the provision of Utah law and is authorized pursuant to the Impact Fee Act, Sections 11-36a-101 *et seq.* of the Utah Code (the “Impact Fee Act”) to establish impact fees; and

WHEREAS, in November 2005 the District completed an Impact Fee Study for the Bothwell Municipal and Industrial (M&I) Water System in the Bothwell Service Area within the Bear River Water Conservancy District. The District proposes to update the November 2005 Impact Fee Study.

WHEREAS, the area to be served by the Bothwell M&I Water System is referred to herein as the “Bothwell Service Area”, and the location of the Bothwell Service Area is depicted on the map attached hereto as Exhibit “A”; and

WHEREAS, on February 12, 2014, the District posted on the District’s Website and on the Utah Public Notice Website created under Section 63F-1-701 of the Utah Code, a notice of the District’s intent to prepare and impact fee facilities plan with respect to the District’s Bothwell Service Area that meets the requirement of Section 11-36a-302 of the Utah Code; and

WHEREAS, the District has caused a water system impact fee facilities plan and an impact fee analysis for the Bothwell Service Area to be prepared by Hansen Allen & Luce, Inc. (“Consultant”), a copy of which is attached hereto as Exhibit “B” (the “Impact Fee Facilities Plan and Impact Fee Analysis”); and a Summary of the Impact Fee analysis designed to be understood by a lay person, a copy of which is attached hereto as Exhibit “C” (the “Summary”); and

WHEREAS, on December 12, 2014, the District posted notice of a public hearing with respect to the Impact Fee Facilities Plan and Impact Fee Analysis and the proposed Impact Fee Enactment Resolution on the District’s Website, on the Utah Public Notice Website and in at least three public places within the District, placed copies of the plan and summary in all libraries in the District’s service area and on December 17, 2014, the District published notice of such public hearing in the Box Elder News Journal and The Leader; and

WHEREAS, after careful consideration and review of the comments at the public hearings, the Board of Trustees has determined that it is in the best interest of the health, safety and welfare of the inhabitants of the Bothwell Service Area within the District to adopt the findings and recommendations of the Consultant set forth in the Impact Fee Facilities Plan as proposed, to approve the Impact Fee Analysis and the Summary thereof as proposed, to adopt culinary water impact fees for the Bothwell Service Area, to provide for the calculation and collection of such impact fees, and to provide for the calculation and collection of such impact fees, and to provide for appeal, accounting and severability of the same.

NOW, THEREFORE, IT IS HEREBY RESOLVED by the Board of Trustees of the District as follows:

Section 1. **Findings: The Board of Trustees finds and determines as follows:**

1.1 All required notices have been given and made and public hearings have been conducted as required by the Impact Fee Act with respect to the Impact Fee Facilities Plan, the Impact Fee Analysis, the Summary and this Impact Fee Enactment Resolution (this "Resolution").

1.2 As set forth in the Impact Fee Facilities Plan and Impact Fee analysis, the proposed impact fees are calculated on the costs of future projects attributable to retail connections (\$1,409,000) and on the value of the existing system that will benefit future retail connections (\$528,459). Only future project expected to be needed within the next 10 years were used to calculate the impact fee. Total build out retail connections (500) were used to calculate the impact fees (\$3,875) for each future equivalent residential connection (ERC). Forty (40) Existing retail connections were included in total build out. Impact fees for future retail connections will not provide for current benefits available to existing retail connections. The consulting engineer has certified that the impact fee facility plan and the impact fee analysis complies in each and every relevant respect with the Impact Fees Act.

1.3 Impact fees are necessary to achieve an equitable allocation of the costs incurred by the District in the construction of the water system within the Bothwell Service Area.

1.4 The provision of this impact Fee Enactment shall be liberally construed in order to carry out the purpose and intent of the Board of Trustees in adopting the impact fee program.

Section 2. **Definitions.**

2.1 Except as provided within this Resolution, words and phrases that are defined in the Impact Fee Act shall have the same meaning when used in this Resolution.

2.2 "Bothwell Service Area" shall mean that geographic area designated as Bothwell Service Area on Exhibit "A" attached hereto.

Section 3. **Adoption.**

3.1 The Board of Trustees hereby approves and adopts the Impact Fee Facilities Plan and the Impact Fee Analysis attached hereto as Exhibit "B" and the analysis reflected therein and the Summary of the Impact Fee Analysis attached hereto as Exhibit "C". The Impact Fee Facilities Plan and the Impact Fee analysis and the Summary are incorporated herein by reference as though fully set forth

herein. Based on the board of Trustees's approval and adoption of the Impact Fee Facilities Plan and Impact Fee analysis and the Summary, the board of trustees hereby imposes the impact fees specified herein and enacts this Impact Fee Enactment Resolution to require payment of the impact fees specified herein as a condition to connection to the District's current or future water system within the Bothwell Service Area and delivery by the District of water service within the Bothwell Service Area.

Section 4. Impact Fee Imposed.

4.1 Impact Fees. Impact fees are hereby imposed as a condition of the connection by future users to the District's culinary water delivery system within the Bothwell Service Area. The fees imposed are \$3,875 per equivalent residential connection.

4.2 Impact Fees Calculated. The Impact fees imposed by this Impact Fee Enactment Resolution are calculated as set forth in the Impact Fee Facilities Plan and Impact Fee Analysis, and as summarized in Sections 1.2 and 1.3 of this Impact Fee Enactment Resolution.

4.3 Developer Credits/Developer Reimbursements. A developer, including a school district or charter school, may be allowed a credit against or proportionate reimbursement of impact fees if the developer dedicated land for a system improvement, builds and dedicates some or all of a system improvement, or dedicates a public facility that the District and the developer agree will reduce the need for a system improvement. A credit against impact fees shall be granted for any dedication of land for, improvement to, or new construction of, any system improvements provided by the developer if facilities are system improvements, or are dedicated to the public and offset the need for an identified system improvement.

4.4 Impact Fees Accounting. The District shall establish a separate interest-bearing ledger account for each type of public facility for which an impact fee is collected pursuant to this Resolution, the impact fees collected pursuant to this Impact Fee Enactment. Interest earned on each fund or ledger account shall be allocated to that account.

- (a) **Reporting.** At the end of each fiscal year, the District shall prepare a report on each fund or ledger account showing the source and amount of all money collected, earned and received by the fund or ledger account and each expenditure from the fund or ledger account. The report shall also identify impact fee funds by the year in which they were received, the project from which the funds were collected, the impact fee projects for which the funds were budgeted, and the projected schedule for expenditure and be provided in a format approved by the State Auditor and certified by the District Chief Financial Officer.
- (b) **Impact Fee Expenditures.** The District may expend impact fees covered by this Impact Fee Enactment only for a system improvement (i) identified in the Impact Fee Facilities Plan; and (ii) for the specific public facility type for which the fee was collected.
- (c) **Time of Expenditure.** Impact fees collected pursuant to this Impact fee Enactment are to be expended or encumbered for a permissible use within six (6) years of receipt thereof by the District, unless the board of Trustees directs otherwise. For purposes of this calculation, the first funds received shall be deemed to be the first funds expended.

(d) Extension of Time. The District may hold impact fees for longer than six (6) years if it identifies in writing (i) an extraordinary and compelling reason why the fees should be held longer than six (6) years; and (ii) the fees have not been spent or encumbered; and (iii) no impact has resulted.

4.5 Refunds. The District shall refund any impact fees paid by a developer, plus interest actually earned when (i) the developer does not proceed with the development activity and has filed a written request for a refund; (ii) the fees have not been spent or encumbered; and (iii) no impact has resulted.

4.6 Additional Fees and Costs. The impact fees authorized hereby are separate from and in addition to user fees and other charges lawfully imposed by the District, such as engineering and inspection fees, building permit fee, hook-up fees, connection fees, review fees, and other fees and costs that may not be included as itemized component parts of the impact fee.

Section 6. **Appeal Procedures.**

6.1 Application. The appeal procedure set forth in this Section 6 applies both to challenges to the legality of impact fees, to similar ad related fees of the District and to the interpretation and /or application of those fees.

6.2 Declaratory Judgment Action. Any person or entity residing in or owning property within the District, and any organization, association or corporation representing the interests of persons or entities owning property within the District may file a declaratory judgment action challenging the validity of an impact fee only after having first exhausted their administrative remedies as set forth in this Section 6.

6.3 Request for Information Concerning the Fee. Any person or entity required to pay an impact fee under this Impact Fee Enactment Resolution who believes the impact fee does not meet the requirements of law may file a written request for information concerning the impact fee with the District. The District will provide the person or entity with the District's written Impact Fee Facilities Plan and Impact Fee analysis and other relevant information relating to the impact fee within two (20) weeks after receipt of the request for information.

6.4 Appeal to the District before Payment of the Impact Fee. Any affected for potentially affected person or entity who wishes to challenge an impact fee under this Impact Fee Enactment Resolution prior to payment thereof may file a written request for information concerning the fee and proceed under the District's appeal procedure.

6.5 Appeal to the District after Payment of the Impact Fee; Statute of Limitation for Failure to File. Any person or entity that has paid an impact fee under this Impact Fee Enactment Resolution and that wishes to challenge the fee shall file a written request for information concerning the fee within thirty (30) days after having paid the fee and shall proceed under the District's appeal procedure. If thirty (30) days have passed after payment of the impact fee and a written request for information or challenge has not been filed with the District, the person or entity is barred from filing an administrative appeal with the District or seeking judicial relief.

6.6 Appeals to the District. Any developer, landowner or affected party desiring to challenge the legality of any impact fee or related fee or exaction under this Impact Fee Enactment resolution may appeal directly to the District by filing a written challenge with the District, provided that the affected party does so in writing within thirty (30) days after the action or decision to which the appeal relates. If no written challenge is filed with the District within the said thirty (30) day period, the affected party may neither process an administrative appeal with the District nor see judicial relief.

- (a) Hearing. An informal hearing will be held not sooner than five (5) days nor more than twenty-five (25) days after the written appeal to the District is filed.
- (b) Decision. After the conclusion of the informal hearing, the Chairman of the board of Trustees for the District shall affirm, reverse, or take action with respect to the challenge or appeal as the Chairman deems appropriate. The decision of the Chairman will be issued within thirty (30) days after the date the written challenge was filed. In light of the statutorily mandated time restriction, the District shall not be required to provide more than three (3) working days prior notice of the time, date and location of the informal hearing, and the inconvenience of the hearing to the challenging party shall not serve as a basis of appeal of the District's final determination.

6.7 Denial Due to Passage of Time. Should the District, for any reason, fail to issue a final decision on a written challenge to an impact fee, its calculation or application, within thirty (30) days after the filing of that challenge with the District, the challenge shall be deemed to have been denied, and any affected party to the proceedings may seek appropriate judicial relief from such denial.

6.8 Judicial Review. Any party to the administrative action who is adversely affected by the District's final decision must petition the district court for a review of the decision within ninety (90) days of the District's final decision upholding an impact fee, its calculation or application, or within one hundred twenty (120) days after the written challenge to the impact fee, its calculation or application, was filed with the District, whichever is earlier. After having been served with a copy of the pleadings initiating the court review, the District shall submit to the court the record of the proceedings before the District, including minutes, and if available, a true and correct transcript of any proceedings.

Section 7: **Severability.** If any section, subsection, paragraph, clause or phrase of this Impact Fee Enactment resolution shall be declared invalid for any reason, such decision shall not affect the remaining provisions of this Impact Fee Enactment Resolution, which shall remain in full force and effect, and for this purpose, the provisions of this Impact Fee Enactment Resolution are declared to be severable.

This Impact Fee Enactment Resolution shall become effective on March 30, 2014.
(A date 90 days or more after the adoption of the ordinance.)

EXHIBIT "A"
TO
IMPACT FEE ENACTMENT RESOLUTION

Map of the Bothwell Service Area

EXHIBIT "B"
TO
IMPACT FEE ENACTMENT RESOLUTION

Impact Fee Facilities Plan and Impact Fee Analysis

EXHIBIT "C"
TO
IMPACT FEE ENACTMENT RESOLUTION

Summary