

**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, AN IMPACT FEE ANALYSIS AND IMPOSING IMPACT FEES
PERTAINING TO THE SOUTH WILLARD PHASE 1 CULINARY WATER SYSTEM
WITHIN THE SOUTH WILLARD CULINARY SYSTEM PHASE 1 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 February 20, 2013, to consider, among other things, adopting an impact fee facilities plan, adopting an impact fee analysis and imposing water system impact fees for the South Willard Phase 1 Culinary Water System within the South Willard Culinary System Phase 1 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 provisions 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, the area to be served by the new drinking water system is referred to herein as the “*South Willard Culinary System Phase 1 Service Area*,” and the location of the South Willard Culinary System Phase 1 Service Area is depicted on the map attached hereto as Exhibit “A”; and

WHEREAS, on January 9, 2013, 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 an impact fee facilities plan with respect to the District’s South Willard Culinary System Phase 1 Service Area that meets the requirement of Section 11-36a-302 of the Utah Code; and

WHEREAS, on February 5, 2013, the District posted on the District’s Website and on the Utah Public Notice Website a notice of the District’s intent to enter into a contract for the preparation of an impact fee analysis with respect to the District’s South Willard Culinary System Phase 1 Service Area that meets the requirements of Section 11-36a-304 of the Utah Code; and

WHEREAS, the District has caused to be prepared: (a) a water system impact fee facilities plan for the South Willard Culinary System Phase 1 Service Area to be prepared by Hansen Allen & Luce, Inc. (the “*Plan Consultant*”), a copy of which is attached hereto as Exhibit “B” (the “*Impact Fee Facilities Plan*”); (b) a water system impact fee analysis for the South Willard System Phase 1 Service Area to be prepared by Zions Bank Public Finance (the

“*Analysis Consultant*”), a copy of which is attached hereto as Exhibit “C” (the “*Impact Fee Analysis*”); and (c) a Summary of the Impact Fee Analysis by the Analysis Consultant, which is designed to be understood by a lay person, a copy of which is attached hereto as Exhibit “C” (the “*Summary*”); and

WHEREAS, on February 6, 2013, the District posted notice of a public hearing with respect to the Impact Fee Facilities Plan and the 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, and on February 6, 2013, the District published notice of such public hearing in the Box Elder News Journal and The Leader; and

WHEREAS, on February 20, 2013, the Board of Trustees held a public hearing regarding the South Willard Culinary System Phase 1 Service Area Impact Fee Facilities Plan and the Impact Fee Analysis and the proposed South Willard Culinary System Phase 1 Service Area Impact Fee Enactment Resolution; 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 South Willard Culinary System Phase 1 Service Area within the District (a) to approve and adopt the findings and recommendations of the Plan Consultant as set forth in the Impact Fee Facilities Plan as proposed, (b) to approve and adopt the findings and recommendations of the Analysis Consultant as set forth in the Impact Fee Analysis and the Summary thereof as proposed, (c) to adopt culinary water impact fees for the South Willard Culinary System Phase 1 Service Area, (d) to provide for the calculation and collection of such impact fees, and (e) 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 The improvements for the water delivery system (the “*System*”) that have been or will be constructed by the District for the South Willard Culinary System Phase 1 Service Area include the acquisition of certain water rights, the purchase of certain land, the drilling of Well No. 3 and Well No. 4, the construction of a pump station for Well No. 3 and a pump station for Well No. 4, the construction of a 1,000,000 gallon water storage tank and the installation of pipelines for the System, all as more particularly described in the Impact Fee Facilities Plan. As of February 20, 2013, the District has already incurred costs totaling approximately \$2,935,389 to construct the System, which includes the acquisition of certain water rights, the purchase of certain land, the drilling of Well No. 4, the construction of a pump station for Well No. 4, the construction of a 1,000,000 gallon water storage tank and the construction of certain pipelines. When the number of connections to the System reaches 100, the District will be required to

develop Well No. 3 as another source of water. The estimated cost to be incurred by the District to develop Well No. 3, which includes the drilling of Well No. 3 and the construction of a pump station for Well No. 3 and the related pipelines for that portion of the System are estimated to be approximately \$1,937,818 (2021 FV cost). Consequently, the total costs to be incurred by the District in the construction of the System are estimated to be approximately \$4,873,207. The System will have the capacity when completed to provide a total of approximately 1,360 equivalent residential connections (“ERCs”). The term equivalent residential connection or ERC is a term used to express the estimated water demand expected for a typical residential unit within the South Willard Culinary System Phase 1 Service Area, which is calculated to be the capacity to deliver an average of 400 gallons of water per day.

1.3 Based on the information set forth in the Impact Fee Facilities Plan and the Impact Fee Analysis, the Plan Consultant and the Analysis Consultant recommend that the District adopt an impact fee for the South Willard Culinary System Phase 1 Service Area based on an impact fee of \$3,410 per equivalent residential connection or ERC, as set forth and explained in the following tables:

Meter Size	Meter Class	Meter Flow Rate (gpm)	Equivalent ERCs	Equivalent Impact Fees
3/4"	Displacement	<13gpm (Res. Indoor)	1.00	\$ 3,410
3/4"	Displacement	13 to 25 gpm	1.92	6,547
1"	Displacement	40	3.08	10,502
1 1/2"	Displacement	50	3.85	13,127
2"	Displacement	100	7.69	26,220
3"	Class I Turbine	350	26.92	91,788

Non-Standard Users Impact Fee Formula
Step 1: Average Day Demand divided by 400 gallons = Equivalent ERCs
Step 2: Multiply Equivalent ERCs by Impact Fee per ERC of \$3,410

1.4 Impact fees are necessary to achieve an equitable allocation of the costs incurred by the District in the construction of the System within the South Willard Culinary System Phase 1 Service Area.

1.5 The provisions of this Resolution 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 “*South Willard Culinary System Phase 1 Service Area*” shall mean that geographic area located within Box Elder County identified by the District as the South Willard Culinary System Phase 1 Service Area, which is more particularly described as follows:

Beginning at the Northwest Corner of Section 12, Township 2 North, Range 2 West, Salt Lake Base and Meridian, said point being at an approximate

topographic elevation of 4,480 feet; thence West approximately 2,600 feet to the center of Highway 89, thence South along Highway 89 approximately 1,100 feet, thence West approximately 2,000 feet to the East right of way line of the I-15 freeway, thence Southeasterly along the East right of way line of the I-15 freeway and its interchange, to the Box Elder County line, thence Easterly along the Box Elder County line to a point on the line corresponding to topographic elevation 4,480 feet; thence Northerly along the topographic elevation 4,480 feet line to the Point of Beginning, as identified and depicted on the Map of the Bear River Water Conservancy District South Willard Culinary System Phase 1 Service Area attached hereto as Exhibit "A."

Section 3. Adoption.

The Board of Trustees hereby approves and adopts the Impact Fee Facilities Plan attached hereto as Exhibit "B," and the Impact Fee Analysis attached hereto as Exhibit "C" and the analysis reflected therein and the Summary of the Impact Fee Analysis attached hereto as Exhibit "D"). 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 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 South Willard Culinary System Phase 1 Service Area and delivery by the District of water service within the South Willard Culinary System Phase 1 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 South Willard Culinary System Phase 1 Service Area. The fees imposed are \$3,410 per equivalent residential connection or ERC.

4.2 Impact Fees Calculated. The Impact fees imposed by this 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 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 dedicates 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 the 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. 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 Resolution 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 Resolution 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) an absolute date by which the fees will be expended.

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 fees, 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 5. **Fee Exceptions and Adjustments.**

5.1 Waiver for “Public Purpose.” The Board of Trustees may, on a project by project basis, authorize exceptions or adjustments to the then impact fee rate structure for those projects the Board of Trustees determines to be of such benefit to the South Willard Culinary System Phase 1 Service Area as a whole to justify the exception or adjustment.

5.2 Adjustments. The Board of Trustees may adjust the standard impact fees imposed pursuant to this Resolution, at the time the impact fee is charged, as necessary in order to (i): respond to (a) unusual circumstances in specific areas; or (b) a request for a prompt and individualized impact fee review for the development activity of the State of Utah, a school district, or a charter school and an offset or credit for a public facility for which an impact fee has been or will be collected; and (ii) ensure that impact fees are imposed fairly. Also, the Board of

Trustees, in calculating the amount of the impact fees to be imposed on a particular development may adjust the amount of the impact fees based upon studies and data submitted by a developer. The Board of Trustees may also adjust impact fees to respond to a request for a prompt and individualized impact fee review for the development activity of an agency of the State of Utah, a school district or a charter school.

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 and 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 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 (2) weeks after receipt of the request for information.

6.4 Appeal to the District before Payment of the Impact Fee. Any affected or potentially affected person or entity who wishes to challenge an impact fee under this 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 Limitations for Failure to File. Any person or entity that has paid an impact fee under this 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 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 seek 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 Resolution shall be declared invalid for any reason, such decision shall not affect the remaining provisions of this Resolution, which shall remain in full force and effect, and for this purpose, the provisions of this Resolution are declared to be severable.

Section 8. **Effective Date**. This Resolution shall become effective on May 23, 2013. (A date 90 days or more after the adoption of the ordinance).

PASSED AND APPROVED this 20th day of February, 2013.

**BEAR RIVER WATER CONSERVANCY
DISTRICT**

By: _____
CLINT BURT, CHAIRMAN

ATTEST:

VONEENE J. JORGENSEN,
GENERAL MANAGER

**EXHIBIT “A”
TO
IMPACT FEE ENACTMENT RESOLUTION**

Map of the South Willard Culinary System Phase 1 Service Area

**EXHIBIT “B”
TO
IMPACT FEE ENACTMENT RESOLUTION**

Impact Fee Facilities Plan

**EXHIBIT “C”
TO
IMPACT FEE ENACTMENT RESOLUTION**

Impact Fee Analysis

**EXHIBIT “D”
TO
IMPACT FEE ENACTMENT RESOLUTION**

Impact Fee Analysis Summary