



May 31, 2024

**Build America Buy America Act Proposed Public Interest Waiver:  
The Weber Basin Water Conservancy District's  
Davis Aqueduct Reach 1 Parallel Pipeline, 2021 BRIC Grant Project**

**1. Summary**

Agency: Federal Emergency Management Agency (FEMA)

Waiver: FEMA is proposing a public interest previously planned project waiver of the requirements of section 70914 of the Build America, Buy America Act (BABAA) included in the Infrastructure Investment and Jobs Act (Pub. L. No. 117-58) for the Weber Basin Water Conservancy District's Davis Aqueduct Reach 1 Parallel Pipeline. This waiver is to be in effect through the completion of the project.

Applicability: This proposed waiver action permits the use of non-domestic iron, steel, construction materials and manufactured products in the Davis Aqueduct Reach 1 Parallel Pipeline project. These products will be obtained by the Weber Basin Water Conservancy District and incorporated into the subject project.

Waiver Type: Public interest waiver of the BABAA requirement for a previously planned project that initiated planning and design prior to the effective date of BABAA.

Waiver Level: Project-specific waiver.

Waiver Justification Summary: The Weber Basin Water Conservancy District is requesting a waiver of the BABAA requirement for its Davis Aqueduct Reach 1 Parallel Pipeline. Weber Basin applied for FEMA BRIC funding based on a 2021 BRIC Notice of Funding Opportunity (NOFO). As this was prior to BABAA being signed into law, the NOFO did not include any reference to BABAA requirements. In addition, significant planning and design occurred prior to May 14, 2022, the implementation date of the BABAA requirement.

It is in the public interest to waive the BABAA requirement for this project because at the time of the funding application, the NOFO did not include a reference to BABAA. Additionally, redesigning with consideration of BABAA would impose significant delays to the project, risk failure to deliver water in a seismic event, and would impose an undue cost burden on the community.

The following outlines Weber Basin Water Conservancy District's project design and planning timeline:

1. An alignment study was completed in June 2018.
2. Project engineering design began in Sep. 2018.
3. The project began easement procurement in Jan. 2019 and completed this process in Dec. 2019.
4. Environmental assessments began in Oct. 2019 and were completed in Mar. 2022.
5. Weber Basin Water Conservancy District was granted a South Weber City conditional use permit in Nov. 2020.
6. Weber Basin Water Conservancy District applied for BRIC funding under the FY2021 NOFO.
7. Weber Basin Water Conservancy District was granted a steam alteration permit in Dec. 2022.
8. BRIC funding was obligated on Aug. 7, 2023.

Absent a public interest waiver issued by FEMA, the Weber Basin Water Conservancy District would be required to further revise the project timeline to incorporate BABAA requirements and address the increased cost of construction due to delay and rebidding. Since BABAA was not a consideration during planning and design, Weber Basin is learning that products are not available during the construction process, rather than determining availability earlier in the planning and design phase. As a result, the project is incurring additional costs due to starts, stops and delays versus being able to manage project resources efficiently. The project will fall behind on its milestones and continue to put the public at risk of a water shortage if a seismic event occurs. These impacts are all compounding in the absence of a waiver.

Length of the Waiver: This waiver will be in effect from the date of issue and will remain in effect until the end of the project, currently estimated to be Dec. 31, 2025.

## **2. Background**

The Buy America Preference set forth in section 70914 of the Build America, Buy America Act included in the Infrastructure Investment and Jobs Act (Pub. L. No. 117-58), requires all iron, steel, manufactured products, and construction materials used for infrastructure projects under Federal financial assistance awards be produced in the United States.

Under section 70914(b), FEMA may waive the application of the Buy America Preference, in any case in which it finds that: applying the domestic content procurement preference would be inconsistent with the public interest; types of iron, steel, manufactured products, or construction materials are not produced in the United States in sufficient and reasonably available quantities or of a satisfactory quality; or the inclusion of iron, steel, manufactured products, or construction materials produced in the United States will increase the cost of the overall project by more than 25%. All waivers must have a written explanation for the proposed determination; provide a period of not less than 15 days for public comment on the waiver; and submit the waiver to the Office of Management and Budget Made in America Office for review to determine if the waiver is consistent with policy.

Planning and Design: The Weber Basin Water Conservancy District, Davis Aqueduct Reach 1 Parallel Pipeline, has been in active development for approximately 5 years. The design began in 2018, prior to BABAA requirements being signed into law in Nov. 2021. BABAA allowed for a 6-month implementation period and the law became effective May 14, 2022. FEMA subsequently waived application of BABAA to FEMA-funded awards until Jan. 2, 2023. Substantial planning, design, and funding applications were completed prior to Jan. 2023.

In most cases BABAA requirements can be accounted for in the early planning and design stages. However, compliance can be costly when addressing these requirements past these early stages. Weber Basin Water Conservancy District's goal is to ensure resiliency as quickly as possible, and any delays would most likely result in putting public health and safety at further risk.

### **3. Description of Award**

BRIC Program Description: The program aims to categorically shift the federal focus away from reactive disaster spending and toward research-supported, proactive investment in community resilience. Examples of BRIC projects are ones that demonstrate innovative approaches to partnerships, such as shared funding mechanisms, and/or project design. For example, an innovative project may bring multiple funding sources or in-kind resources from a range of private and public sector partners. Or an innovative project may offer multiple benefits to a community in addition to the benefit of risk reduction. Through BRIC, FEMA continues to invest in a variety of mitigation activities with an added focus on infrastructure projects benefitting disadvantaged communities, nature-based solutions, climate resilience and adaption and adopting hazard resistant building codes.

Title of Project: Davis Aqueduct Reach 1 Parallel Pipeline

Infrastructure Project Description and Location: The Davis Aqueduct Reach 1 Parallel Pipeline is the construction of a parallel pipeline and appurtenances to increase the resiliency of the Davis Aqueduct. This project is being constructed in Layton, Utah. The proposed project is to construct 2.2 miles of earthquake resistant, 72-inch welded steel pipeline to provide a resilient water supply to the existing Davis North Water Treatment Plant. Additional appurtenances include the construction of two pump stations to provide the necessary resiliency to the system. The overall project will be built in several phases that will be determined by funding availability.

The project consists of the following major components:

- Construction of a parallel pipeline and appurtenances to increase the resiliency of the Davis Aqueduct.
- Construct 2.2 miles of earthquake resistant, 72-inch welded steel pipeline to provide a resilient water supply to the existing Davis North Water Treatment Plant.
- Construction of two pump stations to provide the necessary resiliency to the system.

Recipient Name: Weber Basin Water Conservancy District

Unique Entry Identifier (UEI): KNKAVN81K1P9

Federal Award Identification Number (FAIN): Federal Emergency Management Agency

Federal Financial Assistance Program: Building Resilient Infrastructure and Communities (BRIC)

BRIC Portion of funding: \$21,586,182.00

Total Cost of Infrastructure Expenditures: \$87,446,134.00

#### **4. Waiver Justification Summary**

Basis for Public Interest Determination: It is in the public interest to waive the BABAA requirements for this previously planned project for the reasons outlined below.

BABAA not required in the NOFO: On Aug. 9, 2021, FEMA's Building Resilient Infrastructure and Communities (BRIC) Program published a Notice of Funding Opportunity (NOFO). This project applied for funding under that NOFO and the BRIC Program later approved it for funding. That FY21 NOFO did not include the domestic preference requirements specified in BABAA.

Previous Planning and Design: This project was substantially planned and designed prior to May 14, 2022, the effective date of the BABAA requirements. According to the Weber Basin's waiver request, this project began engineering design in Sep. 2018. Between Sep. 2018, and Jan. 2, 2023 (FEMA's BABAA implementation date), most of the design was completed, and the design was 100% complete by May 2023. Redesigning the project would require, at minimum, an extensive engineering assessment of every product subject to BABAA to identify if there is a domestic option that meets the technical specifications.

Anticipated Impact if No Waiver is Issued: The Davis Aqueduct Reach 1 Parallel Pipeline project will address three primary challenges: Lack of Redundancy, Lack of Resiliency, and Hydraulic Deficiency. The completion of the project will result in the needed resiliency in the event of a natural disaster that will ultimately compromise the operation of the existing Davis Aqueduct.

Projects that initiate design planning prior to subsequent BABAA requirements are in jeopardy as they may be required to revise funding strategies due to the delays caused by redesigning elements of the project, revising engineering drawings and bid specifications, and resubmitting plans and specifications for approval, thereby substantially delaying the initiation of construction and adding to the cost of the project. Projects that advertise and open bids may be required to rebid the project, or submit change orders to comply which would delay initiation of construction and substantially affect the cost, schedule and viability of planned designed projects.

The Davis Aqueduct is the primary source of water for Davis County, Utah and it is within the best interest of the public to ensure the project is completed on time. Delaying this project would require revising the entire project timeline to account for delays in obtaining other funding, to address increased cost of funding, and increased cost of construction from delay or rebid.

Additionally, any delay due to domestic lead times continues to put the public at risk of a water shortage if a seismic event occurs. Therefore, FEMA has determined it is in the public interest to issue this previously planned project waiver.

The Weber Basin Water Conservancy District is encouraged to purchase, acquire, or use, to the greatest extent practicable, goods, products, and materials produced in the United States. During the period the waiver is active, FEMA will directly support the Weber Basic Water Conservancy District with technical assistance and market research to help identify goods, products, and materials produced in the United States for use in the project.

## **5. Assessment of Cost Advantage of a Foreign-Sourced Product**

Under OMB M–24–02, agencies are expected to assess “whether a significant portion of any cost advantage of a foreign-sourced product is the result of the use of dumped steel, iron, or manufactured products or the use of injuriously subsidized steel, iron, or manufactured products” as appropriate before granting a public interest waiver. FEMA’s analysis has concluded that this assessment is not applicable to this waiver as this waiver is not based on the cost of foreign-sourced products.

## **6. Solicitation for Comments**

The proposed waiver will be posted on [FEMA’s public facing webpage](#) on May 31, 2024, and a notice of the proposed waiver was also posted to the [Made in America website](#) on May 31, 2024, to satisfy the requirement to publish any Build America, Buy America Act Project Waiver and provide the public with fifteen (15) days to submit comments. FEMA is seeking public and industry comments from all interested parties. For more information on the Build America, Buy America Preference, please reference <https://www.fema.gov/grants/policy-guidance/buy-america> or [MadeinAmerica.gov](#).