



July 25, 2024

**Build America Buy America Act Approved 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 issuing 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 December 31, 2025, the estimated end of the project.

Applicability: This waiver action permits the use of non-domestic iron, steel, construction materials and manufactured products in the Long Term Sustainability for Davis Aqueduct Reach 1 Parallel Pipeline, with the following exception: iron pipes and non-stainless steel pipes. Iron pipes and non-stainless-steel pipes are expected to comply with the BABAA requirements. 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 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 requested 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, requiring full BABAA compliance at this stage 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. 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. 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.

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 potential rebidding.

Length of the Waiver: This waiver will be in effect from July 25, 2024, and will remain in effect until December 31, 2025, the estimated end of the project.

## **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.

The Weber Basin Water Conservancy District, Davis Aqueduct Reach 1 Parallel Pipeline, has been in active development for approximately 5 years. 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 could put public health and safety at 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 adaptation 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 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.

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 the 2021 NOFO and FEMA's BRIC program later approved the project for funding. The 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. Full BABA compliance for the project at this stage 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.

The Weber Basin Water Conservancy District will 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.

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.

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.

## **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 was 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 proposed Build America, Buy America Act project waiver and provide the public with 15 days to submit comments. FEMA sought public and industry comments from all interested parties through the proposed waiver closing date on June 15, 2024.

FEMA received one public comment on the waiver request that stated that FEMA should not issue this waiver as it is not in the public’s interest. The commenter stated that the Weber Basin Water Conservancy District had sufficient time to make any necessary adjustments to comply with the BABAA requirements and that the design for substantial components of the project were not completed until 2023. The commenter also stated that the waiver would allow taxpayer dollars to be spent on imported products for the entire project and until its completion.

FEMA appreciates the input the commenter provided and will continue to evaluate how BABAA requirements may place financial burdens and challenges for its partners. However, the justification described above in Part 4: *Waiver Justification Summary* were not unsubstantiated by the public’s comments. As such, FEMA still finds that it is in the public interest to waive the BABAA requirements for this previously planned project, is issuing the waiver more targeted

than the version that was posted for public comment, by excluding iron pipes and non-stainless steel pipes.

For more information on the Build America, Buy America Act domestic preference, please reference <https://www.fema.gov/grants/policy-guidance/buy-america> or [MadeinAmerica.gov](http://MadeinAmerica.gov).



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Robert A. Farmer  
Acting Deputy Assistant Administrator  
Grant Programs Directorate