

Association of Gallatin
Agricultural Irrigators

**CHECKLIST AND
SAMPLE BYLAWS FOR
ORGANIZING DITCH
COMPANIES AND
CANALS**

The Association of Gallatin Agricultural Irrigators (AGAI) has created this guide for ditches and canals to help decide whether to organize and/or update the bylaws of a ditch or canal company. The guide includes a checklist and sample bylaws.

Ditches and canals in the Gallatin Valley are encouraged to consider whether they should organize if they have not already done so, and to use the checklist to help guide their discussions and decisions. Canals and ditches are free to use the checklist and sample for reference to begin the process of reviewing and updating their own bylaws. Each ditch and canal company must consider its own unique history, use, and goals in the process of drafting these documents. Drafting bylaws is not a “one size fits all” exercise. There may be provisions in this sample that do not work for some companies, and some companies may need provisions that are not included here.

For ditches and canals that have already organized as a ditch or canal company, it is a good idea to review bylaws periodically to see if the provisions work for current law and how the ditch operates or seeks to operate. It is possible to create completely new bylaws or update existing ones. However, it is advisable to get legal assistance when making major changes to bylaws in order to make sure everything will work as you intend if challenged in court.

DISCLAIMER:

The sample bylaws and checklist are for informational purposes only and are intended solely as informal guidance. None of the information provided by AGAI in this sample or the checklist should be construed as legal advice, or creates an attorney-client relationship. The information provided here is general in nature and may not apply to each situation. Although attorneys are not required for ditches and canals to organize or update bylaws, AGAI recommends that ditches and canals with legal questions should seek professional advice before taking any action that may result in liability, legal action, or litigation.

Because laws and rules may change periodically, information in this guide may become outdated. Nothing stated in this guide should be substituted for professional legal advice. AGAI and its members assume no liability for action taken based upon the information contained here.

A CHECKLIST TO HELP WATER USERS, DITCHES AND CANALS DECIDE WHETHER TO ORGANIZE, AND/OR TO UPDATE BYLAWS

The purpose of the checklist is to create a starting point to facilitate discussion on options and opportunities for water conveyance organizations. It should serve as a worksheet for canals and ditches for their own use. Water users should be aware that these documents, if shared with third parties, could be used as evidence in the upcoming adjudication. These are intended as guides for water users, not to collect or verify data for legal or administrative proceedings.

Water Conveyance Short Form Checklist

The purpose of this checklist is to serve as a starting point to facilitate discussions on options and opportunities for water conveyance organizations.

1. What are your top 3 goals for your water conveyance and use?
 - a. .
 - b. .
 - c. .

2. What do you see as the three biggest challenges facing your water conveyance today:
 - a. .
 - b. .
 - c. .

3. What do you see as the three biggest challenges facing your water conveyance in the next 5 years?
 - a. .
 - b. .
 - c. .

4. What do you see as the three biggest opportunities for your system today?
 - a. .
 - b. .
 - c. .

5. What do you see as the three biggest opportunities for your system in the next 5 years?
 - a. .
 - b. .
 - c. .

Business Structure

It is important that the current board fully understand the underlying documents and what they contain. This understanding is important so that discussions can be held regarding any need for adjustments or changes.

- Review Articles of Incorporation or other organizational documents
- Review By-Laws
- Membership Structure
- Records

Operational Structure:

Each entity has its own historical practices. Understanding and detailing current practices will help identify any potential needs that may need to be addressed.

- How is water distributed?
- Does the conveyance facility convey water that it doesn't own?
- Measuring devices – yes or no.
- Season of use (i.e. months when water is needed by users)
- Ditch and Infrastructure Maintenance and Easements
- Water Conveyance Efficiency

Legal Position

The Statewide Water Adjudication is a giant statewide lawsuit. Depending on where a basin is located water users may not have been subject to reexamination and the next decree being issued. Each of these legal processes have timelines associated with them so it is important to understand where a conveyance structure stands. With regard to new appropriations and changes it is often beneficial to have a policy on how the conveyance facility will handle any objections, etc.

- Adjudication
- New Appropriations and Change in Appropriations

SOME ADVANTAGES OF ORGANIZING YOUR DITCH OR CANAL

1. Your ditch or canal becomes a legal entity, with rules to govern a wide range of things such as how your members share costs for ditch maintenance and repair, consequences for nonpayment, who can adjust and deliver water in the ditch, and other things ditch members can and cannot do.
2. You have a businesslike process to make decisions about your ditch or canal.
3. You may be able to enter contracts and share liability as an entity.
4. New property owners will have a better ability to understand their responsibilities and rights in the ditch or canal.
5. It may be easier to collect fees and assessments.
6. It may be easier for water commissioners to bill your ditch or canal for costs of river water.
7. Your ditch or canal may be able to work with government entities on projects more effectively, and may have access to certain types of grant funding.
8. You may have increased opportunities for bank or government loans to do repairs, maintenance or other projects related to your ditch or canal.

SOME REASONS NOT TO ORGANIZE YOUR DITCH OR CANAL

An unorganized ditch or canal is one where landowners or water users share the same ditch or canal as individuals, but have never created a company or corporation of any kind. The advantage of not being organized in a formal manner is that it is informal and you do not have to file any papers with the State. For smaller ditches or canals that prefer to operate less formally and/or are unwilling to pay the filing fees to the state, it might not make sense to organize.

If you decide to organize your ditch or canal, several steps will be involved, including choosing a type of entity. Many ditches choose to incorporate, but there are several legal entities available, and you may want to seek professional advice regarding the best type of entity for your ditch or canal. The law and tax codes change from time to time, so there may not be one answer that applies for all time.

Once you decide on a type of entity, you will file forms with the Montana Secretary of State. You can also read about different entity types at the Montana Secretary of State website:

<https://sosmt.gov/>

If you decide to incorporate, you will need articles of incorporation and bylaws.

Bylaws are the rules for governing and operating an organization. Bylaws do not have to change the way a ditch or canal is run; rather they can provide certainty and clarity when disagreements arise regarding how the ditch or canal should be run. For example, bylaws can prevent conflict by specifying the procedures for ditch cleaning and rights of access along the ditch for cleaning and repair. This can be increasingly helpful with new property owners joining or buying property along the ditch. Bylaws can also be used to describe how shares of water in a ditch or

canal company can be transferred and used, which is helpful to existing, new, and prospective water right owners.

Below are sample bylaws, modeled from those of some ditch companies in the Gallatin Valley, initially inspired by the Grass Valley French Ditch Company. The Grass Valley French Ditch Company presented the following statement to AGAI in a past presentation:

Grass Valley French Ditch Company provides senior water rights to buyers looking to mitigate the impacts of development in the Missoula area. The Grass Valley French Ditch Company is one of Missoula's oldest and largest irrigation companies. Now, as Montana's first permitted water bank, the Company is proud to bring its substantial senior rights and long history successfully managing water to buyers looking for mitigation water in the Missoula area.

SAMPLE BYLAWS

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BYLAWS
of
(Name of Ditch or Canal Company)

ARTICLE I

Offices

Section 1. The principal office of (insert ditch or canal company name) shall be located in Gallatin County, Montana, and the corporate activity shall be located in the state of Montana.

Section 2. The corporation shall maintain a registered office which shall be designated by the president and recorded in the minutes of the board of directors.

Section 3. The registered agent for the corporation shall be designated by the president and his name and address recorded in the minutes of the board of directors.

ARTICLE II

Stockholders

Section 1. Series and Classes of Stock. The capital stock of this company shall be divided into shares of three series, numbered first, second and third.

The first series of stock shall relate to and represent (describe)

The second series shall relate to and represent (describe)

The third series of stock shall relate to and represent any water or water rights not before referred to, that may be hereafter acquired by the said company.

No series of stock not already issued shall hereafter be issued, except by a two-thirds vote of the stockholders of this company at the annual meeting, or a special one called for that purpose.

The company has issued shares of stock evidenced by stock certificates. There are two (2) classes of stock in the company. Each share of Class A stock shall entitle the holder thereof to the delivery of, and beneficial use of, a pro rata share of the water which is available to the company for irrigation purposes, all in a manner consistent with the bylaws, policies, rules and regulations of the company, and consistent with the best interests of all stockholders. Each share of Class A stock in the company shall entitle the holder thereof to one (1) vote.

Each share of Class B stock shall entitle the holder thereof to the delivery of, and beneficial use of, a pro rata share of the water which is available to the company for non-irrigation purposes, all in a manner consistent with the bylaws, policies, rules and regulations of the company, and consistent with the best interests of all stockholders. Class B stock does not entitle the holder to voting rights.

Notwithstanding the historical delivery of water by the corporation, or the class designation of shares, the Board of Directors shall reasonably determine how water is to be delivered, including timing, piping, combining or re-routing ditches, or authorizing alternations in delivery points from one ditch to another. Any water right owner that is not a stockholder of this corporation but is receiving water through the delivery system owned by this corporation shall execute a water delivery agreement, comply with the terms of the water delivery agreement and the bylaws of this company, and to provide notice to the corporation within thirty (30) days of any change authorization, water right amendment, termination of claim, or other water right

modification with the potential to impact water delivery.

ARTICLE III

Stockholders' Meetings

Section 1. Annual Meeting. The annual meeting of the stockholders shall be held on or before March 31 of each year for the purpose of electing directors and for the transaction of such other business as may come before the meeting. If the election of directors is not held on the day designated here, any annual meeting of the stockholders, or at any adjournment thereof, the board of directors shall cause the election to be held at a special meeting of the stockholders as soon thereafter as is convenient.

Section 2. Special Meetings. Special meetings of the stockholders, for any purpose or purposes, unless otherwise prescribed by statute, may be called by the president or by the board of directors, and shall be called by the president at the request of the holders of not less than one-fourth (25%) of all the outstanding shares of the corporation entitled to vote at the meeting.

Section 3. Place of Meeting. The board of directors may designate any place within or without the state of Montana, as the place of meeting for any annual meeting or for any special meeting called by the board of directors. A waiver of notice signed by all stockholders entitled to vote at a meeting may designate any place, either within or without the state of Montana, as the place for the holding of such meeting. If no designation is made, or if a special meeting is otherwise called, the place of meeting shall be the principal office of the corporation in the county of Gallatin, state of Montana.

Section 4. Notice of Meeting. Written or printed notice stating the place, day, and hour of the meeting and, in case of a special meeting, the purpose or purposes for which the meeting is called, shall be delivered not less than ten nor more than fifty days before the date of the meeting, either personally or by mail, by or at the direction of the president, or the secretary, or the officer or persons calling the meeting, to each shareholder or record owner entitled to vote at such meeting. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail, addressed to the shareholder at his address as it appears on the stock transfer books of the corporation, with postage thereon prepaid. Notice of each meeting shall also be mailed to holders of stock not entitled to vote, as herein provided, but lack of such notice shall not affect the legality of any meeting otherwise properly called and noticed.

Section 5. Closing Transfer Books or Fixing Record Date. For the purpose of determining stockholders entitled to notice of, or to vote at, any meeting of stockholders or any adjournment thereof, or stockholders entitled to receive payment of any dividend, or to make a determination of shareholders for any other proper purpose, the board of directors of the corporation may provide that the stock transfer books shall be closed for a stated period, but not to exceed fifty days. If the stock transfer books shall be closed for the purpose of determining stockholders entitled to notice of, or to vote at, a meeting of stockholders, such books shall be closed for at least ten days immediately preceding such meeting. In lieu of closing the stock transfer books, the board of directors may fix in advance a date as the record date for any such determination of stockholders, such date in any event to be not more than fifty days, and in case of a meeting of stockholders, not less than ten days prior to the date on which the particular action requiring such determination of stockholders is to be taken.

If the stock transfer books are not closed and no record date is fixed for the determination of stockholders entitled to notice of, or to vote at, a meeting of stockholders, the date that notice of

the meeting is mailed shall be the record date for such determination of stockholders. When a determination of stockholders entitled to vote at any meeting of stockholders has been made as provided in this section, such determination shall apply to any adjournment thereof except where the determination has been made through the closing of the stock transfer books and the stated period of closing has expired.

Section 6. Quorum. One third of the stockholders of the corporation entitled to vote, represented in person or by proxy, shall constitute a quorum at the meeting of the stockholders. If less than a majority of such outstanding shares are represented at a meeting, a majority of the shares so represented may adjourn the meeting from time to time without further notice. At such adjourned meeting at which a quorum is present or represented, any business may be transacted that might have been transacted at the meeting as originally notified. The stockholders present at a duly organized meeting may continue to transact business until adjournment, notwithstanding the withdrawal of enough stockholders to leave less than a quorum.

Section 7. Proxies. At all meetings of stockholders, a stockholder may vote by proxy executed in writing by the stockholder or by his duly authorized attorney in fact. Such proxy shall be filed with the secretary of the corporation before or at the time of the meeting. No proxy shall be valid after eleven months from the date of its execution unless otherwise provided in the proxy.

Section 8. Voting of Shares. As set out in the articles of incorporation every stockholder who is not delinquent on the books of this corporation in the payment of assessments levied for maintenance, or payment of indebtedness, shall be entitled to one ballot for each share of stock standing in that stockholder's name on the secretary's books, and in the event of any stock holder holding less than one share, that stockholder shall be entitled to vote a fractional vote

equivalent to the amount of stock they hold. Every owner of stock in this company is eligible to any office in the company.

Section 9. Voice Vote. All voting, except for the election of directors, may, by majority vote on motion, be by voice vote.

ARTICLE IV

Board of Directors

Section 1. Powers. The board of directors shall have power to levy and enforce any and all assessments both for maintenance and payment of any other indebtedness, to employ a superintendent and ditch tender, and all other necessary help; to supply and to provide all equipment necessary to the operation of the properties of this corporation; to provide material and designs for all flumes, pipes, headgates and bridges on the canal system, to conduct all litigation, and carry out all duties imposed upon them by these bylaws or the articles of incorporation; and they shall have control of all matters pertaining to the management of the affairs of the company . Requests for bridges, culverts, or structures to the canal must be approved by the board of directors. These structures, including but not limited to bridges and culverts, become the responsibility of the landowner. The Company will be held harmless, and the property owner assumes all liability.

Section 2. Number, Tenure, and Qualifications. The number of directors of the corporation shall be three. Two of the three directors shall be stockholders of the corporation owning stock in their own names as shown by the records of the company. The third director, if not a stockholder, must be currently leasing land on which shares are used. At each annual meeting

of stockholders there shall be elected one director who shall serve as such director for a period of three years until his successor is elected and qualified. No entity owning stock in Farmer's Canal Company may have more than one representative on the board of directors.

The election of directors at the annual meeting shall be by ballot and the person receiving the largest number of votes shall be declared elected.

Section 3. Regular Meetings. A regular meeting of the board of directors shall be held without notice other than this bylaw immediately after and at the same place as the annual meeting of stockholders. The board of directors may provide, by resolution, the time and place for holding additional regular meetings without other notice than such resolution. Additional regular meetings shall be held at the principal office of the corporation in the absence of any designation in the resolution.

Section 4. Special Meetings. Special meetings of the board of directors may be called by or at the request of the president or any two directors, and shall be held at the principal office of the corporation or at such other place as the directors may determine.

Section 5. Notice. Notice of any special meeting shall be given at least ten days before the time fixed for the meeting, by written notice delivered personally or mailed to each director at their business address, or by email or fax. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail so addressed, with postage thereon prepaid, not less than ten days prior to the commencements of the above-stated notice period. Any director may waive notice of any meeting. The attendance of a director at a meeting shall constitute a waiver of notice of such meeting, except where a director attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any

regular or special meeting of the board of directors need be specified in the notice or waiver of notice of such meeting.

Section 6. Quorum. A majority of the number of directors fixed by these bylaws shall constitute a quorum for the transaction of business at any meeting of the board of directors.

Section 7. Board Decisions. The act of the majority of the directors present at a meeting at which a quorum is present shall be the act of the board of directors.

Section 8. Vacancies. Any vacancy occurring in the board of directors may be filled by the affirmative vote of the majority of the remaining directors though less than a quorum of the board of directors. A director elected to fill a vacancy shall be elected for the unexpired term of his predecessor in office. Any directorship to be filled by reason of an increase in the number of directors shall be filled by election at an annual meeting or at a special meeting of stockholders called for that purpose.

Section 9. Compensation. The directors of the corporation shall receive their actual expenses while engaged in the services of the corporation and shall be allowed for said services the same rate of pay per day as is paid to the ditch tender.

Section 10. Presumption of Assent. A director of the corporation who is present at a meeting of the board of directors at which action on any corporate matter is taken shall be presumed to have assented to the action taken unless his dissent shall be entered in the minutes of the meeting or unless he shall file his written dissent to such action with the person acting as the secretary of the meeting before the adjournment thereof or shall forward such dissent by registered mail to the secretary of the corporation immediately after the adjournment of the

meeting. Such right to dissent shall not apply to a director who voted in favor of such action.

Section 11. Special Duties. In addition to the general duty of managing the business and affairs of the corporation, the following shall be the special duties of the directors:

- (a) It shall be the duty of the directors to take such action as they may deem advisable to prevent damage being done to the canal by waste water from users of water above the canal, and also from any other source whatsoever.
- (b) It shall be the duty of the board of directors to, at all times, keep said canal in good repair, and in a condition at all times to carry with safety at least the waters which said company shall be entitled to flow in said canal, and to assess each member his proportionate share of the cost of maintenance as needed. When they have not sufficient funds available, and an amount is required in excess of the limit herein placed on the amount the board may expend, they shall call a meeting of the stockholders for the purpose of obtaining authority to expend such sum as may be necessary to properly do such work as may be needed.
- (c) For matters involving lateral ditches, the Company Board of Directors shall be authorized to act on behalf of the Company, by majority approval of the Board of Directors, to be involved with decisions regarding lateral ditches by request of lateral ditch users.

ARTICLE V

Officers

Section 1. Number. The officers of the corporation shall be a president, a vice president, and a secretary-treasurer. The president and vice president shall be chosen from among the members of the board of directors. Such other officers and assistant officers as may be deemed

necessary may be elected or appointed by the board of directors. Any two or more offices may be held by the same person, except the offices of president and secretary.

Section 2. Election and Term of Office. The officers of the corporation to be elected by the board of directors shall be elected annually at the first meeting of the board of directors held after each annual meeting of the stockholders. If the election of officers is not held at such meeting, such election shall be held as soon thereafter as is convenient. Each officer shall hold office until his or her successor has been duly elected and qualifies or until his or her death or until he or she resigns or is removed in the manner hereinafter provided.

Section 3. Removal. Any officer or agent elected or appointed by the board of directors may be removed by the board of directors whenever in its judgment the best interests of the corporation would be served thereby, but such removal shall be without prejudice to the contract rights, if any, of the person so removed.

Section 4. Vacancies. A vacancy in any office because of death, resignation, removal, disqualification or otherwise, may be filled by the board of directors for the unexpired portion of the term.

Section 5. Powers and Duties. The powers and duties of the several officers shall be as provided from time to time by resolution or other directive of the board of directors. In the absence of such provisions, the respective officers shall have the powers and shall discharge the duties customarily and usually held and performed by like officers of corporations similar in organization and business purposes to this corporation, including, but not exclusively, the following:

- (a) The president shall be the chief executive officer of the corporation; shall preside at all of the meetings of the stockholders or directors, shall report all of his official acts to the board of directors at any regular or special meeting of said board, and shall at all times be subject to control of the board. He or she shall sign all documents, deeds and contracts authorized by the board of directors, and all certificates of stock duly issued. He or she shall perform such other duties which may be required of him by the statutes of the state of Montana and the bylaws of this company. He or she shall sign all orders drawn on the secretary-treasurer.
- (b) The vice president, in absence of the president, or in case of the inability of the president to act, shall take the place of the president and perform his or her duties.
- (c) It shall be the duty of the secretary-treasurer to attend all meeting of the stockholders and of the board of directors and to record the proceedings of any and all such meetings, either regular or special, in a clear and concise manner in a book furnished for that purpose. He or she shall have the custody of the seal and of the books, papers and other documents of the company pertaining to his office. He or she shall keep the books of account. He or she shall comply with the corporation laws of Montana, and perform such other duties as may be required by the laws of the state of Montana, the board of directors, or these bylaws. He or she shall furnish a statement of the condition of affairs, finances, receipts and expenditures of the company to the board of directors not later than January 31st, of each year, to be acted upon the stockholders at their annual meeting. He or she shall collect all money due the corporation, including all assessments that the board of directors may levy, giving and taking proper receipts therefore. He or she shall countersign all orders drawn upon the depository of the corporation's funds stating for what purpose such order is drawn. He or she shall receive the seal, all books and papers and other documents of the company at the commencement of his or her term of office, and the same shall be at all times, during the business hours, be open for

inspection by any stockholder, and, at the expiration of his term of office, all thereof shall be delivered to his successor. The secretary-treasurer shall have charge of all moneys collected from the stockholders, and shall deposit the same with a depository designated by the board of directors, and shall countersign all orders, checks or warrants drawn on said fund. Said depository shall pay out said moneys only upon order, warrant or check signed by the president and countersigned by the secretary-treasurer. He or she shall keep a correct account of all funds received and paid out by him, stating for what purpose and through what source received, taking all necessary vouchers for the same; he shall make a full and complete report of the business of the company to the stockholders at the annual meeting, and to the board of directors when required. He or she shall, at all times, permit his or her books and papers to be inspected by the board of directors, or by a committee appointed by them for that purpose, or by any stockholder, and shall turn over the same, together with all moneys and properties under his or her control belonging to the corporation to his successor at the expiration of his or her term of office. The secretary-treasurer shall give bond for the faithful performance of his or her duties in such form and amount as the board of directors may from time to time require and approve.

Section 6. Salaries. Salaries of the officers shall be fixed from time to time by the board of directors and no officer shall be prevented from receiving such salary by reason of the fact that the officer is also a director of the corporation.

ARTICLE VI

Superintendent and the Ditch Tender

Section 1. Superintendent's Duties. The superintendent shall, under the orders and direction

of the board of directors, have charge of all improvements, repairing, maintenance and operation of the entire canal system, subject, always, to the inspection of the board of directors. The superintendent shall keep in his or her custody, during the term of his employment, all tools and implements of the company, and shall deliver such tools and implements to the board of directors upon his discharge from employment, or to their successors, as shall be ordered by the board of directors. The superintendent shall see that all pipes, flumes, head gates, waste gates, check gates and all other parts of the canal are kept in good repair and, at the close of each irrigating season, shall take out, raise or close, as required by the board of directors, all head gates or waste gates necessary for the proper protection of the canal or other property along the line of the canal where the company may become liable for damages.

The superintendent shall have power to require any stockholder to furnish one individual, or an individual, team and outfit and automotive powered equipment, on demand for each share owned, to repair any breaks or damages that may happen to the canal during any Irrigating season, and shall, on demand, issue a time-check for such labor performed at such rate as the board of directors may determine.

The superintendent shall report all cases of failure to comply with such order and the cause as near as can be ascertained, to the board of directors at their next meeting.

The superintendent shall be appointed by the board of directors and shall receive such compensation as shall be agreed upon from time to time with the board of directors.

Section 2. Ditch Tender's Duties. The ditch tender shall be employed during the irrigating season for such length of time as the board of directors shall from time to time determine, and shall be under the orders and direction of the superintendent, subject to the supervision of the board of directors, at all times when a superintendent is employed and in active charge of the canal, and when there is a superintendent in active charge of the canal, if a ditch tender is not employed or on duty, the duties of the ditch tender shall be performed by the superintendent.

During the irrigating season, the ditch tender or the superintendent shall, on twenty-four hour's notice, turn out to each stockholder his respective share or shares of water belonging to the corporation in the canal, each stockholder shall, without complaint, accept that stockholder's pro rata share of what there is, the same to be determined and the head gate set accordingly by the ditch tender. If, for any cause there be an over- plus of water in the canal, said over-plus shall on request, be apportioned among the water users desiring an extra supply of water. The ditch tender shall examine, set and regulate head gates and measure the water of the several stockholders as often as may be necessary to properly apportion the water among the users.

The ditch tender shall report to the president or to the superintendent, if one is actively in charge, any interference by any of the stockholders or any other person with any head gate or any portion of the canal system, and shall keep a record of and report to the board of directors the amount of water used daily by each stockholder.

The ditch tender shall receive such compensation as shall be agreed upon from time to time with the board of directors.

ARTICLE VII

Operations

Section 1. Interference with Water Flow. In case of an improper interference with canal, head gates or any portion thereof by any person whomsoever, the superintendent or ditch tender, if there shall be no superintendent in charge, shall report the same to the president with all the facts and incidents as known by or reported to the president, and thereupon, the president must call the board of directors together for their action thereon. For an improper interference, the board of directors shall have power, after having given to the accused a hearing before the

board, if the accused be found guilty, to levy a fine not exceeding \$50.00, and when such fine has been imposed, such stockholder's water supply, at the discretion of the board of directors, may be cut off until the fine shall be paid.

Section 2. Rental of Waters. Any stockholder having no use for all or any portion of the water called for by his stock for an entire season, may rent such share or portion of water for such entire season or any portion thereof, to any other person, whether he be a stockholder or not, provided said person so renting said water shall be farming land belonging to a stockholder, and not otherwise, in which case said renter of water succeeds to the rights of the stockholder for every purpose excepting that of voting the stock representing said water, and provided, however, that the stockholder shall, in all cases, be held responsible for the assessments made against said water, and provided further, however, that said water shall not be delivered to any person other than the stockholder, except upon an order in writing to the superintendent or ditch tender or the president of the board of directors directing such delivery, provided stockholders may exchange the use of water among themselves or with others owning water available at time of exchange.

Section 3. Care of Waters. Every user of water shall handle and care for any water turned to him or her without unnecessary waste. Whenever, in the course of irrigating his crop, he or she cannot use the water, or any portion thereof, and the supply of water is short or low, he shall not permit said water to run to waste for any longer time than is reasonably necessary for said stockholder to notify the ditch tender of his intention to do so and to go to the canal and shut said water back into the canal. Any violation of this rule may be punished by a fine to be imposed by the board of directors as in the case of interference with a canal or head gate. Any shares that have not been cared for through application to a use, including shares which cannot receive delivery of water due to disrepair of conveyance or distribution facilities, in 3

consecutive years may be forfeited to the canal company at the discretion of the board. If the shareholder repairs their conveyance or distribution facility and uses water by December 31, 2017, the shareholder shall retain that share. The 2017 deadline may be extended at the discretion of the board. The board shall note any extension and reasons for the extension in the board meeting minutes. The Company shall pay par value for any shares or portion thereof that are forfeited.

Section 4. Discovery of Weakness or Break. In case any stockholder or water user shall at any time discover a weak place in the canal where a break is likely to occur, that stockholder shall forthwith notify the superintendent or ditch tender or the president or any member of the board of directors.

Section 5. Payment of Assessments or Fines. The secretary shall furnish to the ditch tender a list of all stockholders, specifying the amount of stock owned by each and also specifying any who may be delinquent in the payment of any assessments or fines levied, and no stockholder shall be entitled to or allowed to have any water whatsoever during any irrigating season, until that stockholder shall have paid in full all assessments levied which have become delinquent or any fines imposed previous to said irrigating season, unless by order of the board of directors, after satisfactory arrangements are made for the payment of any such delinquent assessment or fine, in which matter the board of directors shall be allowed reasonable discretion.

Section 6. Notice of Assessments. Upon levying an assessment, the secretary- treasurer shall give notice, in writing, to each stockholder by mailing same to his post delinquent, which shall in no case be until ten days shall have elapsed from the date of mailing and notice. Assessments shall draw interest at the highest local rate chargeable under the laws of the state of Montana, from delinquency date to date of payment.

Section 7. Delinquent Accounts. In the case of sever delinquencies on accounts, once a shareholder's delinquent amount equals the par value amount of the shareholder's share of stock in the Company, said company will assume ownership of the delinquent stock.

Section 8. Season. The irrigating season shall commence on the 15th day of May of each season, and any stockholder may, upon application to the president, have water sufficient to supply his demands turned into the canal earlier, if such demand does not conflict with the welfare of the corporation, in the judgment of the board of directors.

Section 9. Head Gates. Every lateral or ditch which diverts water from the main canal shall be provided with a substantial head gate, which shall be built or placed in repair and maintained by the corporation, under the supervision of the superintendent, and in accordance with plans and specifications approved by the board of directors, and each and every head gate shall be numbered.

Section 10. Weirs or Measuring Boxes. Below each head gate and within a convenient distance from the same, in every lateral or ditch which diverts water from the main canal, there shall be erected and maintained a weir or water measuring box, set in the manner provided by law, so that the water flowing in each lateral from the main canal can be measured, and such weirs or measuring boxes shall be built by the company under the supervision of the superintendent, and in accordance with plans and specifications approved by the board of directors, and each weir or measuring device under the supervision of the superintendent, and in accordance with plans and specifications approved by the board of directors, and each weir or measuring box shall be numbered. That the board of directors shall be allowed reasonable discretion in the placing of any weir or measuring box, and said weirs or measuring boxes may

be ordered constructed by the board of directors within any reasonable time after the adoption of these bylaws.

Section 11. Shortage of Water. That, when there is a shortage of water in the Canal, any stockholder in good standing may have the privilege of running any acquired water in the canal under the supervision of the directors and the expense of running same shall be paid pro rata by such stockholders to the treasurer of the corporation. Delinquency in payment of same is to prohibit such delinquents from using any water from the canal during such delinquency.

ARTICLE VIII

Contracts, Loan, Checks, and Deposits

Section 1. Contracts. The board of directors may authorize any officer or officers, agent or agents, to enter into any contract or execute and deliver any instrument in the name of and on behalf of the corporation, and such authority may be general or confined to specific instances.

Section 2. Loans. No loans shall be contracted on behalf of the corporation and no evidences of indebtedness shall be issued in its name unless authorized by a resolution of the board of directors, such authority may be general or confined to specific instances.

Section 3. Extent of Expenditures. The board of directors shall at no time be permitted, without the authority of the stockholders, to expend for any one purpose an amount exceeding \$20,000.00 , or to create an indebtedness in excess of that sum, exclusive of current expenses.

Section 4. Checks, Drafts, or Orders. All checks, drafts, or other orders for the payment of money, notes, or other evidences of indebtedness issued in the name of the corporation shall

be signed by such officer or officers, agent or agents of the corporation and in such manner as shall from time to time be determined by resolution of the board of directors.

Section 5. Deposits. All funds of the corporation not otherwise employed shall be deposited from time to time to the credit of the corporation in such banks, trust companies, or other depositories as the board of directors may select.

ARTICLE IX

Certificates for Shares; Transfers

Section 1. Certificates for Shares. Certificates representing shares of the corporation shall be in such form as shall be determined by the board of directors. Such certificates shall be signed by the president or a vice president and by the secretary or an assistant secretary. All certificates for shares shall be consecutively numbered or otherwise identified. The name and address of the person to whom the shares represented thereby are issued, with the number of shares and date of issue, shall be entered on the stock transfer books of the corporation. All certificates surrendered to the corporation for transfer shall be canceled and no new certificate shall be issued until the former certificate for a like number of shares shall be surrendered and canceled, except that in case of a lost, destroyed, or mutilated certificate a new one may be issued therefore on such terms and indemnity to the corporation as the board of directors may prescribe.

The corporation shall maintain stock transfer books, and any transfer shall be registered thereon only on request and surrender of the stock certificate representing the transferred shares, duly endorsed. The corporation shall have the absolute right to recognize as the owner of any shares of stock issued by it, the person or persons in whose name the certificate

representing such shares stands according to the books of the corporation for all proper corporate purposes, including the voting of the shares represented by the certificate at a regular or special meeting of stockholders, and the issuance and payment of dividends on such shares.

Section 3. Fractional Shares. This corporation shall not hereafter issue any certificate or certificates of stock for less and one-half share, except where the issuance is the result of a transfer of a previously issued fractional share of less than one-half share.

Section 4. Transfers to an Organized Association. In transfers of shares to an organized association, there will be one individual or representative of that association on record that will be responsible for receiving correspondence, billings of annual assessments and who will be responsible for keeping all accounts paid in full to the Canal Company.

ARTICLE X Fiscal Year

The fiscal year of the corporation shall be the calendar year.

ARTICLE XI Nonprofit Provisions

Section 1. Distribution on Dissolution. Upon the dissolution of the corporation, either voluntarily or involuntarily, the corporation shall proceed to collect its assets, convey and dispose of its properties, distribute the right to water equal to that evidenced by each share in the corporation to the owner of each share, pay, satisfy and discharge its liabilities and

obligations and do all other acts required to liquidate its business and affairs, and after paying or adequately providing for the payment of all of its obligations, distribute the remaining assets in the following manner:

First: To shareholders equal to the equitable interest of each in the corporation, determined by the value of the total assessments of each member as compared to the total of all members' assessments paid by the successive interests of the stock as shown on the corporate records.

Second: After the distribution above, should there be any surplus as a result of the inability to locate any share hold interest after reasonable effort, then any surplus shall not be distributed to the shareholders but shall be distributed to such nonprofit charitable corporation, municipal corporation or organization as may be selected by the board of directors of this corporation.

Section 2. Income and Assessments. Income, exclusive of assessments, from whatever source, shall not be more than fifteen percent of the total income of the corporation. At least eighty-five percent of the corporate income must be derived from amounts collected from members for the sole purpose of meeting losses and expenses. There shall be an annual minimal assessment of each shareholder or partial shareholder of \$5.00. Assessments shall be levied pursuant to the requirements set out in Title 15, Chapter 22, Section 136, of the Revised Codes of Montana (R.C.M. 1947 Edition - 15-22-36). Advance assessments may be levied and may be retained at the end of the year along with other income to meet losses and expenses or they shall be returned to members.

Section 3. Negation of Pecuniary Gains. This corporation is not organized for a profit. It shall not have the power to declare dividends and no part of its net earnings shall inure to the benefit of any member, director or individual except by a determination of each stockholder's equity

interest based upon his proportion of service purchased by each member insofar as practical.

ARTICLE XII

Books and Records

The corporation shall keep correct and complete books and records of account and shall also keep minutes of the proceedings of its members, board of directors, committees having and exercising any of the authority of the board of directors, and shall keep at the principal office a record giving the names and addresses of the stockholders from which their equitable interest in the assets of the corporation can be determined.

ARTICLE XIII

Waiver of Notice

Whenever any notice is required to be given to any stockholder or director of the corporation under the provisions of these bylaws or under the provisions of the articles of incorporation or under the provisions of law, a waiver thereof in writing, signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be deemed equivalent to the giving of such notice.

ARTICLE XIV

Amendment of Bylaws

These bylaws may be amended by the board of directors at any regular or special meeting. The board of directors must notify the stockholders of any amendment at the next regular or special meeting of the stockholders following the amendment.

