

Metropolitan Water District of Salt Lake & Sandy  
Board Packet Information  
Last Update: May 10, 2011

**Agenda Item:** Consider approval of incorporation of Utah Lake Water Users Association

**Objective:** Seek board authorization for the District to become a member of the Utah Lake Water Users Association.

**Background:** The District has been involved with nine other agencies negotiating the terms of incorporation for a new entity (the Utah Lake Water Users Association or ULWUA) that will supersede the existing Board of Canal Presidents. The District's interest in ULWUA is driven by the need to have water pumped from Utah Lake into the Jordan River in order to meet exchange obligations between the District and Utah Lake Distributing Company (ULDC). These exchange obligations are pursuant to a contract in 1958 where the District received 15,200 shares of Provo River Water Users Association stock in exchange for agreeing to pump Utah Lake water to the ULDC. Since 1958, the District has been a "contract pumper" and did not have an ownership interest in the existing facilities. The existing pump station is due for replacement and is currently in the final design phase. The new entity will provide the necessary resources to build a new pump station.

Enclosed you will find a copy of the subscription agreement, articles of incorporation, and bylaws related to the creation of ULWUA. These documents are presented for approval by the District Board of Trustees. The District's interest will be 135 out of 769 shares or 17.56%. Based on current estimates for the pump station design and construction and a valuation of \$5,000,000 for existing facilities, the District's monetary participation will be \$2,414,894 (\$878,000 for buy in to existing facilities and \$1,536,894 for the new pump station). There is a chance that one of the parties (Sandy Canal Company) will choose not to participate. If this happens and none of the other entities choose to absorb their shares, the District's cost would increase to approximately \$2,442,833 (an increase of \$28,590).

**Committee Activity:** No specific committee activity has taken place but the board has reviewed this matter several times during the last year (April 19, 2010, May 17, 2010, June 14, 2010, October 18, 2010, and January 24, 2011). Some board members were able to visit the pump station site in April 2011. The District has entered into an Engineering Cooperation Agreement dated August 3, 2010 and a design contract dated August 4, 2010. Once ULWUA is established, the intent is for the design contract to be assigned to ULWUA and bids for construction to be solicited by the new entity.

**Recommendation:** Approval with authority granted to the General Manager and General Counsel to make minor, non-substantive changes to the documents and related matters in order to finalize the necessary transactions.

The approval should consider several items to facilitate the formation of the new entity. These include appointing a representative to the new organization (Mike Wilson), appointing alternative representatives (Mike DeVries and Wayne Winsor), authorizing the expenditure of up to \$2,414,894 related to the new entity (subject to approval of the District's FY 2012 budget), and authorizing the assignment of the design contract with Bowen Collins and Associates to the new entity.

# SUBSCRIPTION AGREEMENT

FOR SHARES IN

**UTAH LAKE WATER USERS ASSOCIATION, INC.**

This subscription agreement (Agreement) is made and entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, 2011, by and among **Utah and Salt Lake Canal Company**, a Utah non-profit corporation; **East Jordan Irrigation Company**, a Utah non-profit corporation; **Salt Lake City Corporation**, a municipal corporation of the State of Utah; **South Jordan Canal Company**, a Utah non-profit corporation; **North Jordan Irrigation Company**, a Utah corporation, **Jordan Valley Water Conservancy District**, a water conservancy district of the State of Utah organized under Utah Code Ann. §17B-2a-1001; **Kennecott Utah Copper LLC**, a Utah Limited Liability Company; **Draper Irrigation Company**, a Utah non-profit corporation; **Sandy Canal Company**, a Utah non-profit corporation; and, **Metropolitan Water District of Salt Lake & Sandy**, a metropolitan water district of the State of Utah organized under Utah Code Ann. §17B-2a-601, for the purpose of subscribing for the purchase of capital stock in **Utah Lake Water Users Association, Inc.** (Corporation), and to set forth the manner in which the parties will make their capital contributions for the purchase of stock in the Corporation. An individual party to this Agreement may be referred to herein as a Party or collectively as the Parties.

## RECITALS

- A. Some of the Parties have been affiliated through an unincorporated association of water users who have jointly owned and operated the Utah Lake Pumping Plant (located on the

Jordan River below the outlet of Utah Lake), the Turner Dam and other appurtenant diversion works, facilities and related real property (Existing Facilities) for the purpose of delivering both direct flow water from the Jordan River and storage water from Utah Lake to the Parties under their respective water rights or the water rights of others. This unincorporated association has been operating since the early 1900s. Others have had water delivered to them pursuant to various contractual relationships between themselves and certain of the Parties involved in the unincorporated association.

- B. Some of the Parties have equitable ownership interests (Equity Parties) in the Existing Facilities and certain equitable interests in the real property upon which the Existing Facilities and other support buildings owned by the unincorporated association are physically located.
- C. Some of the Parties have water delivered to or for them through the Existing Facilities, and they have paid a share of the costs of operation and maintenance of the Existing Facilities but have had no ownership interest in the Existing Facilities.
- D. The Existing Facilities are old and the Parties have agreed that they Existing Facilities should be replaced in order to continue making deliveries of water to the Parties in the future.
- E. The Parties desire to construct replacement facilities (Replacement Facilities) and to adjust their ownership of capacity rights in the Replacement Facilities based upon their current and foreseeable needs for pumping capacity in the Replacement Facilities.
- F. The Parties have concluded it is in their best interest to incorporate a non-profit corporation to acquire title to the Existing Facilities, to issue shares of stock to the Parties in proportion to their capital contribution to the new Corporation, to raise the capital

necessary to construct the Replacement Facilities, and to provide for the future operation, maintenance, repair and replacement of the Replacement Facilities.

**Now therefore**, in consideration of the mutual covenants and conditions set forth herein and for other good and valuable consideration, the Parties agree as follows.

**AGREEMENT**

1. **INCORPORATION.** The Parties agree to incorporate a new non-profit corporation to be known as **Utah Lake Water Users Association, Inc.** pursuant to the Articles of Incorporation (Articles), to which the Parties have agreed, and to be governed in accordance with the Articles and the Bylaws (Bylaws). A copy of each document is attached hereto and incorporated herein as Exhibits (A) and (B) respectively; both of which may be amended by the Parties from time to time in accordance with the Articles and Bylaws.

2. **SHARES TO EQUATE TO CAPACITY RIGHTS IN REPLACEMENT FACILITIES.** Shares will be issued in the Corporation at the rate of one (1) share per one cubic foot per second (“cfs”) of pumping capacity in the Replacement Facilities to be constructed by the Corporation and upon payment of each shareholder’s capital contribution to the Corporation. Parties will acquire shares of stock (Shares) in the Corporation in the amounts shown in Table 1 below and continuing onto the next page:

<b><u>Table 1</u></b>	
<b><u>Party</u></b>	<b><u>No. of Shares</u></b>
Utah and Salt Lake Canal Company	172

<u>Party</u>	<u>No. of Shares</u>
East Jordan Irrigation Company	135
Salt Lake City Corporation	55
South Jordan Canal Company	100
North Jordan Irrigation Company	15
Jordan Valley Water Conservancy District	47
Metropolitan Water District of Salt Lake & Sandy	135
Kennecott Utah Copper LLC	57
Draper Irrigation Company	44
Sandy Canal Company	9
Total	769

3. **AGREED UPON VALUATION OF EXISTING FACILITIES.** The Corporation is to be capitalized in part through the transfer of the Existing Facilities by the Equity Parties as partial payment of their required capital contribution for the subscription of Shares in the Corporation, and by the payment of cash by some of the Parties. The Parties, following the appraisal and valuation of the Existing Facilities, have agreed that the Existing Facilities have a value of \$5,000,000.00. The Equity Parties' respective percentages of ownership in the Existing Facilities, as inventoried in Exhibit (C) attached hereto and incorporated by reference, are valued as shown in Table 2, below:

<b>Table 2</b>		
<b>Equity Party</b>	<b>Percentage Ownership</b>	<b>Value of Interest</b>
Utah and Salt Lake Canal Company	30.53%	\$1,526,500.00
East Jordan Irrigation Company	22.41%	\$1,120,500.00
Salt Lake City Corporation	20.38%	\$1,019,000.00
South Jordan Canal Company	14.45%	\$722,500.00
North Jordan Irrigation Company	5.21%	\$260,500.00
Jordan Valley Water Conservancy District	7.02%	\$351,000.00
<b>Totals</b>	<b>100.00%</b>	<b>\$5,000,000.00</b>

4. **NEW EQUITY OWNERSHIP OF THE PARTIES.** The Parties' new percentages of equity ownership in the Corporation as reflected in the number of Shares to be issued to each Party as consideration for their respective capital contributions to the Corporation and their corresponding pumping capacity rights ("Capacity Rights") in the Replacement Facilities based on one cfs of Capacity Rights per Share in the Corporation are shown in Table 3:

<b>Table 3</b>					
<b>Equity Ownership of New Corporation</b>				<b>Shares</b>	<b>Percentage</b>
Utah and Salt Lake Canal Company				172	22.37%
East Jordan Irrigation Company				135	17.56%
Salt Lake City Corporation				55	7.15%
South Jordan Canal Company				100	13.00%
North Jordan Irrigation Company				15	1.95%
JVWCD				47	6.11%
MWDSLS				135	17.56%
Kennecott Utah Copper LLC				57	7.41%
Draper Irrigation Company				44	5.72%
Sandy Canal Company				9	1.17%
				<b>Totals</b>	<b>769</b>
					<b>100.00%</b>

The estimated cost of engineering, design and construction of the Replacement Facilities will be allocated to the shareholders of the Corporation in proportion to their new equity ownership interests in the Corporation.

5. **SUBSCRIPTION AND PAYMENT FOR SHARES.** The Corporation initially shall be capitalized at the value of \$5,000,000.00. By signing this Agreement, the Parties hereby subscribe for the Shares allocated to them as set forth above and have agreed to pay their required initial capital contribution in the amounts shown in Column #4 of Table 4 below (Initial Capital Contribution) through the contribution of cash and in some cases the equity value of the Existing Facilities:

Table 4							
Column # 1	Column # 2	Column # 3	Column # 4	Column # 5	Column # 6	Column # 7	Column # 8
Capital Contributions/Eng. Design and Construction Costs							
	Percentage New Equity Ownership	New Shares (equity)	Initial Capital Contribution	Estimated Construct, Eng & Design, Contingency	Value of New Equity Interest	Payment or (Credit) Due Old Equity Buy In	Total Share Project Costs, Less Payment or (Credit)
Utah Lake Water Users Association			\$5,000,000.00	\$8,752,246.00			
Utah and Salt Lake Canal Company	22.37%	172	\$1,118,500.00	\$1,957,877.43	\$3,076,377.43	(\$408,000.00)	\$1,549,877.43
East Jordan Irrigation Company	17.56%	135	\$878,000.00	\$1,536,894.40	\$2,414,894.40	(\$242,500.00)	\$1,294,394.40
Salt Lake City	7.15%	55	\$357,500.00	\$625,785.59	\$983,285.59	(\$661,500.00)	(\$35,714.41)
South Jordan Canal Company	13.00%	100	\$650,000.00	\$1,137,791.98	\$1,787,791.98	(\$72,500.00)	\$1,065,291.98
North Jordan Irrigation	1.95%	15	\$97,500.00	\$170,668.80	\$268,168.80	(\$163,000.00)	\$7,668.80
Welby Jacob Water Users Co	0.00%	0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
JVWCD	6.11%	47	\$305,500.00	\$534,762.23	\$840,262.23	(\$45,500.00)	\$489,262.23
MWDS&S	17.56%	135	\$878,000.00	\$1,536,894.40	\$2,414,894.40	\$878,000.00	\$2,414,894.40
Kennecott Utah Copper LLC	7.41%	57	\$370,500.00	\$648,541.43	\$1,019,041.43	\$370,500.00	\$1,019,041.43
Draper Irrigation Company	5.72%	44	\$286,000.00	\$500,628.47	\$786,628.47	\$286,000.00	\$786,628.47
Sandy Canal Company	1.17%	9	\$58,500.00	\$102,401.28	\$160,901.28	\$58,500.00	\$160,901.28
Totals	100.00%	769	\$5,000,000.00	\$8,752,246.00	\$13,752,246.00	\$0.00	\$8,752,246.00

Each Party's Initial Capital Contribution shall be paid at Closing, as defined below. The credits due to those specific Parties as set forth in Column #7 of Table 4 will be paid or applied to that Party's share of Replacement Facilities costs at a time or times to be determined by the Corporation's Board of Directors, or by the \_\_\_ day of \_\_\_\_, 20\_\_, whichever comes first.

a. The Parties have agreed to pay their equitable and proportionate share of the engineering and design costs as per the Engineering Cooperation Agreement of 3 August, 2010. The Parties have made some payments as the design and engineering work has proceeded based on the cost allocations contained in the Engineering Cooperation Agreement. The Parties agree to reconcile all prior payments and will pay the remaining balance of the engineering and design costs to the extent of approved invoices at Closing.

b. Upon completion of the engineering and design work, the final estimate of the construction costs will be determined by the design engineers. Thereafter, the Corporation will levy one or more assessments against all Shares for payment of their proportionate share of the costs of construction. As of the date of this Agreement, the estimated costs of construction, including the estimated costs of engineering and design, work are shown in Column #5 of Table 4. The assessment for estimated construction costs, net of the engineering and the design costs that will be paid in full at Closing, will be levied in accordance with the Bylaws and shall be payable as indicated in the assessment notice or notices. The Parties acknowledge the actual construction costs may vary from the current estimate due to changes that may occur during construction. The Replacement Facilities will not be constructed unless and until all assessments for the final estimated construction costs have been levied and paid in full or the Parties otherwise agree to fund the costs of construction. The Parties agree that the assessments to each Party will be

deemed a separate obligation of each Party to the Corporation, and that the Corporation may pursue separately the collection of any delinquent assessment against a delinquent Party without the necessity of joining all other Parties in any such enforcement action, whether pursued through litigation or otherwise.

**6. TRANSFER OF EXISTING ASSETS.** The current Equity Parties shall transfer title to the assets inventoried in Exhibit (C) hereto by appropriate bill of sale and quit claim deed upon incorporation and the initial capitalization of the Corporation.. The date of incorporation shall be the date of Closing for purposes of this Agreement. The bill of sale (Bill of Sale) and quit claim deed or deeds (QCD) shall be in the form attached hereto and incorporated by reference as Exhibits (D) and (E) respectively. Upon recordation of the QCD and delivery of the Bill of Sale, the Equity Parties shall be credited the value of their respective portions of the Existing Facilities against their Initial Capital Contributions to the Corporation.

**7. PROPERTY AND LIABILITY INSURANCE.** To ensure no gap in property damage and liability insurance coverage, the Corporation at its own expense shall purchase policies of property damage and general liability insurance and bind coverage as of the date of Closing in amounts no less than current insurance coverage held by the unincorporated association.

**8. CLOSING.**

a. Upon signing the Articles of Incorporation and execution of this Agreement the Parties and/or the Corporation, as appropriate, will deposit into escrow with attorney John H. Mabey, Jr., acting as escrow trustee:

i. Their Initial Capital Contribution, whether in the form of cash or contribution of the Existing Facilities by Bills of Sale and QCD as provided herein;

ii. Written escrow instructions (Escrow Instructions) signed by all Parties and the escrow trustee;

iii. Insurance binders as per paragraph 7; and,

iv. Such other documentation, if any, as may be reasonably required.

b. The escrow trustee shall hold these Initial Capital Contributions and other documents deposited in escrow until Closing. At Closing, all cash so paid shall be disbursed to the Corporation, less and excepting any Closing costs, including recording fees, and payment of any escrow fees and other costs imposed by the escrow trustee for the performance of his duties. The QCD will be recorded by the escrow trustee, and the recorded QCD, the Bill of Sale, and the insurance binders insurance shall be delivered to the Corporation.

c. Closing of the transactions contemplated in this Agreement shall occur on or before the \_\_\_\_\_ day of July, 2011, or such other date as the Parties may agree to from time to time. If upon the mutual agreement of the Parties this Agreement does not close, the escrow trustee will in accordance with the Escrow Instructions return to the Parties their Initial Capital Contributions and other documents deposited pursuant to this Agreement; subject to the Parties paying to the escrow trustee his customary fees and costs incurred while the escrow was open, in accordance with the Escrow Instructions agreed to by the Parties and the escrow trustee.

## **9. STATUS OF EXISTING CONTRACTS FOLLOWING THE INCORPORATION OF UTAH**

**LAKE WATER USERS ASSOCIATION, INC.** The Parties acknowledge that various contracts and

the Findings of Fact, Conclusions of Law and Decree of 1921 (1912 Decree)<sup>1</sup> are in existence that affect the rights of some but not all of the Parties to this Agreement. The Parties agree that the terms and conditions of this Agreement, the Articles, and Bylaws and the 1912 Decree shall govern the relationship of the Parties regarding the ownership, operation and maintenance of the Existing Facilities and the Replacement Facilities going forward, and that any inconsistent provision in any existing contract or agreement, by and between the Parties or some of the Parties, relating to the subject matter of this Agreement or the applicable provisions of the 1912 Decree, upon Closing are superseded by this Agreement. All other terms and conditions of existing contracts, agreements and the 1912 Decree remain in full force and effect.

**10. MUTUAL RELEASE OF CLAIMS.** By entering into this Agreement and for good and valuable consideration, the Parties mutually waive any and all known or unknown liens, claims, losses and liabilities, and waive any and all defenses that may have existed by or among them as of the date of this Agreement regarding the ownership, operation and maintenance of the Existing Facilities.

**11. ADDITIONAL PROVISIONS.**

a. NOTICE. Notice, if any is required under this Agreement, shall be given in writing either by written document or verifiable electronic transmission at mailing addresses, email addresses or fax numbers to be provided by the Parties from time to time. The Parties shall be responsible to provide the Corporation updated addresses for written and electronic communications.

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<sup>1</sup> Salt Lake City v. Salt Lake City Water & Electrical Power Company, Civil # 2861, Third Judicial District Court for Salt Lake County, Utah.

b. ATTORNEY'S FEES AND COSTS. In the event this Agreement or any provision hereof shall be enforced by an attorney retained by the Corporation or any Party hereto, whether by litigation or otherwise, all costs incurred, including court costs and reasonable attorneys' fees, and including all fees and costs incurred upon appeal or in bankruptcy court, shall be paid by the Party who breaches or defaults hereunder.

c. AMENDMENTS TO AGREEMENT. This Agreement may be amended only in writing signed by all of the Parties.

d. NO THIRD PARTY BENEFICIARIES. This Agreement is intended only for the benefit of the Parties and shall not be construed as a third party beneficiary agreement.

e. ASSIGNMENT OF INTERESTS IN AGREEMENT. The Parties may assign their interests in this Agreement in writing but only to the extent allowed in the Articles.

f. EXTENT OF BUSINESS RELATIONSHIP ESTABLISHED. The only business relationship created by this Agreement, the Articles and Bylaws is that of shareholders in a non-profit corporation and shall not create a partnership or any other business relationship among the Parties.

g. COUNTERPARTS. This Agreement may be signed in multiple counterparts with each such counterpart being considered an original and integrated into this Agreement.

h. BINDING ON SUCCESSORS AND ASSIGNS. This Agreement shall be binding upon and enforceable against the Parties hereto and their successors and assigns.

i. **AUTHORITY.** Each individual signing this Agreement hereby warrants that he or she is signing on behalf of the Party for which he or she signs, pursuant to authorization from their governing bodies, and that the Party is bound hereby.

j. **INTEGRATION CLAUSE.** This Agreement, the Articles, Bylaws, Escrow Instructions and the Engineering Cooperation Agreement constitute the entire understanding and agreement by and among the Parties hereto, and supersedes any and all other prior agreements, decrees, representations or understandings by and among them, whether written or oral, pertaining to the subject matter hereof, except as expressly set forth in Paragraph 10 herein.

**UTAH AND SALT LAKE CANAL  
COMPANY**

BY: \_\_\_\_\_

(PRINT NAME) \_\_\_\_\_

ITS: \_\_\_\_\_

ATTEST: \_\_\_\_\_

SECRETARY

**SALT LAKE CITY CORPORATION**

BY: \_\_\_\_\_

Ralph Becker

ITS: Mayor

ATTEST: \_\_\_\_\_

CITY RECORDER

**EAST JORDAN IRRIGATION COMPANY**

BY: \_\_\_\_\_

(PRINT NAME) \_\_\_\_\_

ITS: \_\_\_\_\_

ATTEST: \_\_\_\_\_

SECRETARY

**SOUTH JORDAN CANAL COMPANY**

BY: \_\_\_\_\_

(PRINT NAME) \_\_\_\_\_

ITS: \_\_\_\_\_

ATTEST: \_\_\_\_\_

SECRETARY

**NORTH JORDAN IRRIGATION**

**COMPANY**

BY: \_\_\_\_\_

Van King

ITS: President

ATTEST: \_\_\_\_\_

Boyd Simper, Secretary

**JORDAN VALLEY WATER**

**CONSERVANCY DISTRICT**

BY: \_\_\_\_\_

(PRINT NAME) \_\_\_\_\_

ITS: \_\_\_\_\_

ATTEST: \_\_\_\_\_

CLERK

**THE METROPOLITAN WATER**

**DISTRICT OF SALT LAKE & SANDY**

BY: \_\_\_\_\_

Michael L. Wilson

ITS: General Manager

**KENNECOTT UTAH COPPER LLC**

BY: \_\_\_\_\_

Van King

ITS: Manager Water Resources

**DRAPER IRRIGATION COMPANY**

BY: \_\_\_\_\_

(PRINT NAME) \_\_\_\_\_

ITS: \_\_\_\_\_

ATTEST: \_\_\_\_\_

SECRETARY

**SANDY CANAL COMPANY**

BY: \_\_\_\_\_

(PRINT NAME) \_\_\_\_\_

ITS: \_\_\_\_\_

ATTEST: \_\_\_\_\_

SECRETARY

**ARTICLES OF INCORPORATION  
OF  
UTAH LAKE WATER USERS ASSOCIATION, INC.**

The undersigned Incorporators, by authority of the Utah Revised Nonprofit Corporation Act, Title 16, Chapter 6a, Utah Code Annotated 1953, as amended, (the "Act") hereby adopt the following Articles of Incorporation (the "Articles") for the UTAH LAKE WATER USERS ASSOCIATION, INC.

**ARTICLE I  
Corporate Name: Non-Profit Corporation**

The name of the Corporation shall be UTAH LAKE WATER USERS ASSOCIATION, INC. (the Corporation). The Corporation shall be a nonprofit entity.

**ARTICLE II  
Duration**

The period of duration of the Corporation shall be perpetual unless sooner dissolved as provided under that Act.

**ARTICLE III  
Initial Incorporators**

The names and addresses of the Initial Incorporators are as follows:

Utah and Salt Lake Canal Company  
P. O. Box 1181  
West Jordan, UT 84084

East Jordan Irrigation Company  
13849 Lookout Peak Drive  
Riverton, UT 84096

Salt Lake City Corporation  
c/o Director Salt Lake City Public Utilities  
1530 South West Temple  
Salt Lake City, Utah 84115

South Jordan Canal Company  
P.O. Box 951022  
South Jordan, UT 84095

North Jordan Irrigation Company  
4788 Hidden Cove  
Taylorsville, UT 84123

Jordan Valley Water Conservancy District  
8215 South 1300 West  
P.O. Box 70  
West Jordan, Utah 84088

Kennecott Utah Copper LLC  
4700 Daybreak Parkway  
South Jordan, UT 84095

Draper Irrigation Company  
P. O. Box 156  
12421 S. 800 East  
Draper, UT 84020

Sandy Canal Company  
10000 Centennial Parkway  
Sandy, UT 84070

Metropolitan Water District of Salt Lake &  
Sandy  
3430 East Danish Road  
Cottonwood Heights, Utah 84093

**ARTICLE IV**  
**Purposes**

(1) In furtherance of and in no way in limitation of the powers now or hereafter conferred upon the Corporation by the Act, the nature of business of the Corporation, and the objects, purposes and powers to be transacted, promoted, exercised or carried on by the Corporation are as follows:

(2) To divert and distribute to or on behalf of the shareholders of the Corporation, the water available annually under the shareholders' respective water rights or agreements for beneficial use of the individuals and entities to which the Corporation's shareholders provide water within Salt Lake and Utah Counties, Utah. This authority includes without limitation the construction, ownership, management, operation, maintenance, repair and replacement of water diversions, pumps and re-diversion dams and all appurtenances, easements and facilities related thereto.

(3) To own and acquire, by purchase, condemnation, lease, contract, change, exchange or otherwise, all needful water diversion, gates, pumping, distribution and storage facilities necessary to regulate, control and distribute the water supply for the shareholders of the Corporation.

(4) To do all things necessary and proper in carrying out the business of a non-profit mutual water corporation.

(5) To acquire in any manner allowed by law and to hold, lease and sell real and personal property necessary or convenient to the carrying on of the business of a mutual water corporation.

(6) To make and perform contracts with the United States, the State of Utah and other governmental entities, and with other corporations, individuals and entities.

(7) To sell, lease, exchange, mortgage, pledge, or otherwise dispose of all or substantially all of the assets of the Corporation as and for security for loans for the construction, reconstruction, operation, maintenance, repair and replacement of all water diversion, pumping, storage and related facilities and appurtenances required or necessary for the Corporation to distribute water for its shareholders.

(8) The Corporation is incorporated as a nonprofit mutual water corporation engaged in distributing water only for its shareholders. The Corporation may not directly distribute water to the general public and therefore, it is not a public utility as defined in Title 52, Utah Code Annotated.

(9) The Corporation shall not carry on any activities not permitted to be carried on by a nonprofit mutual water corporation exempt from federal income tax under the Internal Revenue Code, Section 501 (c) (12) as amended or supplemented.

**ARTICLE V**  
**Membership**

The Corporation shall issue shares of the capital stock of the Corporation as evidencing membership therein and the members shall be referred to as (Shareholders).

**ARTICLE VI**  
**Shares**

(1) Authorized Shares. The Corporation is authorized to issue a single class of shares denominated Common Stock, taken together in the amount of 769 shares (Shares). The Shares will have no par value. Each Share shall have the entitlements as set forth below. The Corporation may authorize and issue additional shares or authorize the creation of classes of shares through the amendment of these Articles by a 2/3<sup>rd</sup>s majority vote of all Shares present in person or by written proxy and entitled to vote at a regular or a special meeting of the shareholders at which a quorum is present .

(2) Initial Issuance of Shares. In consideration of the conveyance and transfer of certain assets, including real and personal property, all fixtures, improvements and appurtenances thereto to the Corporation, and such additional capital contributions as required to fully capitalize the Corporation, Shares shall be issued to the Incorporators in the following amounts:

<u>Incorporator</u>	<u>No. of Shares</u>
Utah and Salt Lake Canal Company	172
East Jordan Irrigation Company	135
Salt Lake City Corporation	55
South Jordan Canal Company	100
North Jordan Irrigation Company	15
Jordan Valley Water Conservancy District	47
The Metropolitan Water District of Salt Lake & Sandy	135
Kennecott Utah Copper, LLC	57
Draper Irrigation Company	44
Sandy Canal Company	9
<b>Total</b>	<b>769</b>

(3) Entitlement. Each Share of Common Stock shall represent and secure to the owner thereof:

(a) The right to use one (1) cubic foot per second (cfs) of capacity in the existing pumping facilities and in any replacements thereto (Replacement Facilities) constructed or owned by the Corporation;

(b) A proportionate equitable and beneficial ownership interest in all associated real, personal property, and all appurtenances thereto identified in Exhibit A attached hereto, and any replacements or additions thereto;

(c) A proportionate equitable and beneficial right of each shareholder to have the water available to that shareholder delivered to or on behalf of such shareholder, to the appropriate distribution system through the Utah Lake Pumping Plant, to or through the Turner Dam, and any Replacement Facilities and all appurtenances thereto; and

(d) No new shares shall be issued in a manner that will reduce or dilute the capacity rights of any shareholder as described in these Articles without the express, written consent of the shareholder.

(4) Restrictions on Transfers of Stock. The Corporation only delivers water under water rights owned by its shareholders, or water available for use or distribution by the shareholders pursuant to contracts with others. Since the Corporation does not otherwise independently own water rights that it distributes, the transfer of Shares in the Corporation shall be subject to a right of first refusal, the terms and conditions of which are set forth in the Bylaws as they may be amended from time to time, which must be strictly followed.

(5) Lease of Shares Authorized. As prescribed by the Bylaws, a shareholder may lease its Shares and the capacity rights represented by the Shares to any other person or entity including an existing shareholder on such terms and conditions as the parties to the lease may agree, consistent with the terms and conditions of these Articles and the Bylaws. The leased Shares shall carry with them all rights to use the capacity associated with the leased Shares; provided however, that ownership of the Shares and all responsibility for payment of all assessments as levied and the associated voting rights shall remain with the lessor.

#### **ARTICLE VII** **Voting Rights**

(1) Voting Shares. Each Share shall have equal voting rights with each other, and each Share shall be entitled to one (1) vote on all matters brought before the shareholders for a vote in conformance with the requirements of the Act, these Articles, and the Bylaws adopted by the Corporation, or as the same may be amended in the future. No fractional Shares will be issued or recognized by the Corporation and no Shareholder may cast a fractional vote nor will a fractional vote be recognized by the Corporation.

(2) Voting Groups. The Corporation shall have no voting groups.

#### **ARTICLE VIII** **Board of Directors**

(1) Number of Directors and Term of Office. All corporate powers shall be exercised and the business affairs of the Corporation managed by the Board of Directors (the "Directors" or "Board"). The Board will have a total of ten (10) Directors whose qualifications, elections and terms of office shall be as set forth in the Bylaws. Each of the Initial Incorporators if it desires shall retain a seat on the Board for so long as it continues to own Shares in the Corporation.

(a) Each of the Initial Incorporators shall appoint as its representative on the Board a member of its respective governing body, or such other person as well as one or more alternates that the Initial Incorporator may designate from time to time. The individual Director's shall serve at the pleasure of the Initial Incorporator who appointed them, as set forth in the Bylaws.

(b) The number of Directors may be expanded from time to time upon a 2/3<sup>rd</sup> majority vote of all issued and outstanding shares at a regular or special shareholder meeting called for that purpose pursuant to notice, and at which a quorum is present.

**Comment [SEC1]:** Could go to 9 depending on Sandy Canal.

(2) Quorum. At any meeting of the Directors, seven (7) of the ten (10) Directors shall constitute a quorum for the transaction of business; provided, however, if less than a quorum is present at a meeting, a majority of those Directors present may adjourn the meeting to a later date. Notice shall be provided of any such rescheduled meeting in accordance with the Bylaws.

(3) Manner of Acting. Each Director is entitled to one (1) vote on all matters brought before the Board. If a quorum is present when the vote is taken, and except for those matters for which the Bylaws require a 7 out of 10 vote by the Board, the affirmative vote of the majority of the Directors present at a meeting shall constitute the act of the Board. No action of the Board shall be taken without a duly called meeting of the Board or upon execution of a Consent Resolution by all members of the Board pursuant to the Act.

Comment [SEC2]: May shift to 6 of 9

(4) Limitations on General Authority of Board. Except as prescribed by these Articles and the Bylaws the Board may exercise all powers of the Corporation and do all lawful acts and things not prohibited by the Act.

(a) The Board will convene an annual budget meeting no later than the second week in March of each year, or such other date as the Board may determine from time to time, for purposes of preparing a budget for the ensuing irrigation season. The Corporation may not make a contract, incur a debt or expend money except as authorized in the approved budget or any amended budget adopted by the Board in accordance with these Articles of Incorporation and the Bylaws. Emergency expenditures may be made as authorized in the Bylaws.

(b) The Officers may buy, sell, exchange, or dispose of the real and personal property of the Corporation if the transaction is approved and provided for in the annual budget and is not in excess of \$25,000.00, without further review of the Board. Regardless of prior budget authorization, the purchase, sell, exchange or disposal of any asset with a value in excess of \$25,000.00 will require an affirmative vote of a 7 out of 10 members of the Board. Any sale of assets that might render the Corporation incapable of continuing the purposes for which it was incorporated, shall require an affirmative vote of 2/3<sup>rd</sup> majority of all issued and outstanding Shares present in person or by written proxy and entitled to vote at a regular or a special meeting of the Shareholders called for that purpose and at which a quorum is present. No such sale of real or personal property by the Board shall reduce the capacity rights of any shareholder under these Articles without the express, written consent of that shareholder.

Comment [SEC3]: May need to modify depending upon Sandy Canal decision to 6 of 9

## **ARTICLE IX**

### **Officers**

(1) Officers and Term of Office. The Officers of the Corporation shall be elected by the Board, and shall consist of a president, vice-president, secretary and treasurer. Those persons to serve in the office of president and vice-president shall be elected from among the membership of the Board. Those persons to serve in the office of secretary and treasurer may but need not be members of the Board. One person may hold both the offices of secretary and treasurer. The term of office for all Officers shall be one year.

(2) Powers. The authority, powers and responsibilities of the Officers of the Corporation are as set forth in the Act, these Articles and the Bylaws of the Corporation.

**ARTICLE X**  
**Share Assessment**

The Shares shall be assessable at such times and in such amounts as the Board shall determine from time to time in accordance with the Bylaws. Assessments shall be equitable, but need not be equal. Assessments where appropriate may be considered for expenditures that are necessary for purposes that benefit less than all of the shareholders, that are made in consideration of contracts with the United States or other governmental entity or a specific shareholder, or to pay deficiencies caused by the failure of a shareholder or shareholders to pay assessments upon their shares of stock. Monies raised by assessment shall be expended in a manner consistent with the Bylaws. Assessments shall be levied and payments collected and enforced in conformance with the Bylaws.

**ARTICLE XI**  
**Limitation of Liability and Indemnification**

To the fullest extent permitted by the Act, or any other applicable law as now in effect or as it may hereafter be amended:

- (1) The private property of the shareholders of the Corporation and its directors and officers shall not be liable for the obligations of the Corporation.
- (2) The Corporation may indemnify, advance expenses to, and reimburse the directors, officers, employees and agents of the Corporation in accordance with the Act, and as described in the Bylaws, against any expense reasonably incurred in connection with any action, suit, or proceeding in which the director, officer or employee is made a party by reason of being, or having been, a director, officer or employee of the Corporation.
- (3) The Corporation may purchase and maintain liability insurance as provided by the Act.

**ARTICLE XII**  
**Bylaws**

The Board of Directors shall have the power, from time to time, to promulgate, amend and repeal Bylaws for the management of the internal affairs of the Corporation and the operation, maintenance, repair and replacement of the Corporation's water diversion, gates, pumping distribution and storage facilities, and all appurtenances thereto, as the Board shall deem necessary, and as governed in the Bylaws. Bylaws also may be amended by a 2/3<sup>rd</sup>s majority vote of all issued and outstanding shares at a regular or special meeting of the shareholders called for that purpose and at which a quorum is present. No Bylaw may be adopted or amended to reduce the capacity rights of any shareholder as described in these Articles without the express, written consent of the shareholder.

**ARTICLE XIII**  
**Amendments**

These Articles may be amended as provided in the Act, provided, however, that these Articles shall not be amended in any manner to change this Corporation from a non-profit corporation to a corporation organized or operated for pecuniary profit, nor shall the Articles be amended in any manner that would cause the Corporation to become regulated as a public utility. No amendment shall reduce the capacity rights of any shareholder as described in these Articles without the express, written consent of the shareholder.

**ARTICLE XIV**  
**Distributions**

No part of the net earnings of the Corporation shall inure to the benefit of, or be distributable to, its directors, shareholders, officers, or other persons, except that the Corporation shall be authorized and empowered to pay reasonable compensation for services rendered to the Corporation and to make payments and distributions in furtherance of the purposes set forth herein.

**ARTICLE XV**  
**Dissolution**

In the event of dissolution of the Corporation, each shareholder shall receive their proportionate share of the Corporation's property and assets based upon patronage insofar as is practicable, as their legal interest may appear, after paying or providing for payment of all the lawful debts and obligations of the Corporation. Dissolution shall require a 2/3rds majority vote of all issued and outstanding shares at a regular or special meeting called for that purpose pursuant to notice, and at which a quorum is present.

**ARTICLE XVI**  
**No Third Party Beneficiaries**

There shall be no third party beneficiaries of any Article of these Articles of Incorporation or any Bylaws adopted pursuant thereto.

**ARTICLE XVI**  
**Registered Office and Principal Place of Business; Registered Agent**

The street address of the Corporation's registered office and principal place of business in Utah, which may be changed from time-to-time by the Board of Directors without amendment to these Articles, and the name of the Corporation's registered agent at that address is:

John H. Mabey, Jr.  
Mabey, Wright & James  
175 S. Main Street, Suite 1330  
Salt Lake City, Utah 84111

I, John H. Mabey, Jr., hereby represent, affirm and acknowledge that I accept my appointment as the registered agent of the Corporation:

\_\_\_\_\_  
[Name, Registered Agent]

**DATED** and signed by the Initial Incorporators this \_\_\_\_ day of \_\_\_\_\_, 2011.

**Utah and Salt Lake Canal Company**

**Salt Lake City Corporation**

By: \_\_\_\_\_  
(*print name*) \_\_\_\_\_  
Its: \_\_\_\_\_  
Attest: \_\_\_\_\_  
Secretary

By: \_\_\_\_\_  
\_\_\_\_Ralph Becker  
Its: Mayor  
Attest: \_\_\_\_\_  
City Recorder

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May 5, 2011

**East Jordan Irrigation Company**

By: \_\_\_\_\_  
(print name) \_\_\_\_\_  
Its: \_\_\_\_\_

Attest: \_\_\_\_\_  
Secretary

**North Jordan Irrigation Company**

By: \_\_\_\_\_  
Van King \_\_\_\_\_  
Its: President

Attest: \_\_\_\_\_  
Boyd Simper, Secretary

**The Metropolitan Water District of Salt Lake & Sandy**

By: \_\_\_\_\_  
Michael L. Wilson  
Its: General Manager

**Draper Irrigation Company**

By: \_\_\_\_\_  
(print name) \_\_\_\_\_  
Its: \_\_\_\_\_

Attest: \_\_\_\_\_  
Secretary

**South Jordan Canal Company**

By: \_\_\_\_\_  
(print name) \_\_\_\_\_  
Its: \_\_\_\_\_

Attest: \_\_\_\_\_  
Secretary

**Jordan Valley Water Conservancy District**

By: \_\_\_\_\_  
(print name) \_\_\_\_\_  
Its: \_\_\_\_\_

Attest: \_\_\_\_\_  
Clerk

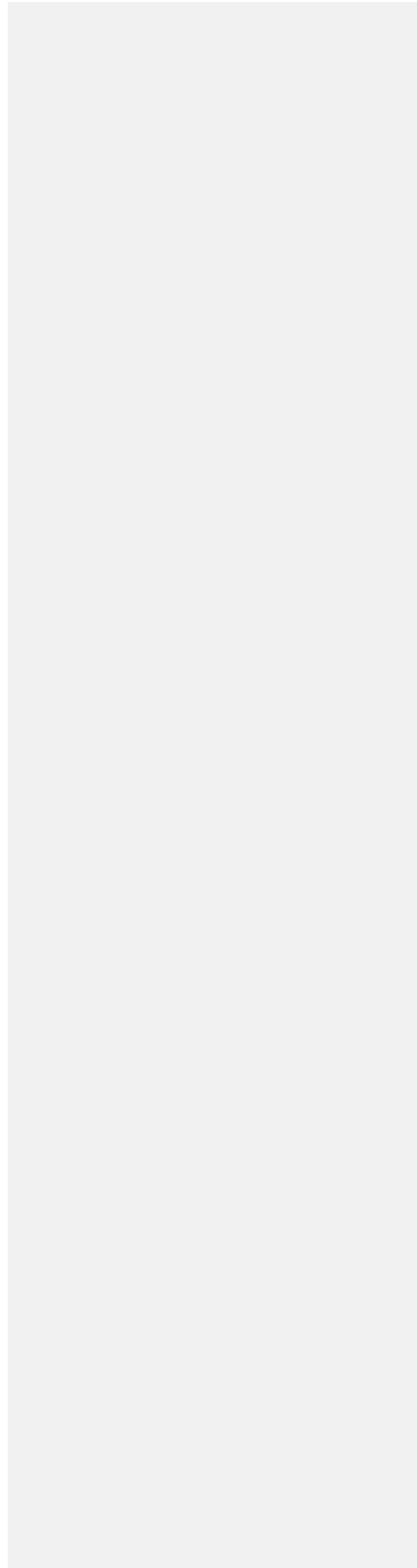
**Kennecott Utah Copper LLC**

By: \_\_\_\_\_  
Van King \_\_\_\_\_  
Its: Manager Water Resources

**Sandy Canal Company**

By: \_\_\_\_\_  
(print name) \_\_\_\_\_  
Its: \_\_\_\_\_

Attest: \_\_\_\_\_  
Secretary



**BYLAWS  
OF  
UTAH LAKE WATER USERS ASSOCIATION, INC.**

**WHEREAS**, the Board of Directors (the Board) of Utah Lake Water Users Association, Inc., (the “Corporation”) deems it necessary to adopt these Bylaws (Bylaws) pertaining to the administration and business affairs of the Corporation, the issuance and transfer of shares of stock in the Corporation, assessment of shares and procedures for the collection of delinquent assessments, and related matters for the purpose of assuring the orderly governance of the Corporation.

**NOW, THEREFORE, BE IT HEREBY RESOLVED** by the Board that the Bylaws governing the Corporation, are as follows:

**SECTION 1  
LEGAL AUTHORITY**

These Bylaws are promulgated pursuant to and in conformance with the Utah Revised Nonprofit Corporation Act, '16-6a-101 *et seq.*, Utah Code Ann. (2000) (the “Act”), and pursuant to authority granted to the Board as set forth the Corporation=s Articles of Incorporation (“Articles”).

**SECTION 2  
REGISTERED OFFICE AND AGENT**

2.1. Registered Office. The address of the Corporation=s initial registered office and principal business office is \_\_\_\_\_. The Corporation may maintain other offices, within or without the State of Utah, as the Board may from time to time designate.

2.2. Change of Registered Office or Registered Agent. The Corporation may change its Registered Office or Registered Agent upon filing with the State of Utah Division of Corporations a verified statement setting forth the facts required by '16-17-206 of the Act, executed on behalf of the Corporation by its President or Vice President.

**SECTION 3  
BOOKS AND RECORDS**

3.1. Books and Records. The Corporation shall keep as permanent records, at its principal office, the following books, records and documents:

- a. its Articles and all amendments thereto;
- b. its Bylaws and all amendments thereto;
- c. resolutions adopted by its Board;
- d. the minutes of all Shareholders’ meetings, for a period of three years;
- e. records of all action taken by Shareholders without a meeting, for a period of three years;
- f. all written communications to Shareholders generally as Shareholders, for a period of three

years;

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May 5, 2011

- g. a list of the names and business or home addresses of its current directors and officers;
- h. a copy of the most recent annual report delivered to the Division of Corporations;
- i. all financial statements prepared for periods ending during the last three years;
- j. minutes of all meetings of the Board;
- k. a record of all actions taken by the Board without a meeting;
- l. a record of all actions taken by a committee of the Board in place of the Board on behalf of the Corporation;
- m. a record of all waivers of notices of meetings of Shareholders and of the Board or any committee of the Board;
- n. a record of its Shareholders in a form that permits preparation of a list of the name and address of all Shareholders in alphabetical order, showing the number of votes each Shareholder is entitled to cast;
- o. shareholder registry and transfer record (“Shareholder Records”); and
- p. appropriate accounting records.

3.2. Inspection of Records. A director or Shareholder, or a duly appointed agent of a director or Shareholder, shall be entitled to inspect and copy any of the records of the Corporation during regular business hours, at the Corporation’s principal office, so long as the director or Shareholder gives the Corporation written demand at least five (5) business days before the date on which the director or Shareholder wishes to inspect and copy the records. A director or Shareholder may inspect and copy the records only if the demand is made in good faith, for a proper purpose, the director or Shareholder describes with reasonable particularity the purpose and the records that director or Shareholder desires to inspect, and the records are directly connected with the described purpose.

#### **SECTION 4 MEMBERSHIP; SHARES**

4.1. Membership and Share Issuance. Membership in the Corporation shall be evidenced by the issuance of Common Stock as prescribed by the Articles, and referenced in a book entry in the Shareholder Records rather than through the issuance of individual share certificates. The registered owners of the shares shall be referred to herein as shareholder (Shareholders).

4.2. Entitlement. Each share (“Share”) shall secure to the owner thereof the entitlements as set forth in the Articles as they may be amended from time to time.

#### 4.3. Transfer of Shares

a. Transfers of Shares. Shares shall be transferable in conformance with the requirements of the Act, the Articles and these Bylaws.

b. Right of First Refusal. Before any Shareholder (“Offering Shareholder”) may sell or transfer all or any portion of its Shares the Offering Shareholder must first offer in writing to all other Shareholders the right of first refusal to purchase those shares being offered for sale (“Offered Shares”) on the same terms and conditions as the Offering Shareholder has received from a third party purchaser. All other Shareholders shall have 30 days from the date of their receipt of written notice of the offer to purchase of the Offered Shares to agree to purchase the Offered Shares on the same terms and conditions as the third party offer. The offer may be accepted by any one or more of the Shareholders in writing, which acceptance must be received by the Offering Shareholder on or before the close of business on the 30<sup>th</sup> day of the notice period, unless that day falls on a weekend or holiday, in which case the acceptance must be received by the close of business on the next business day. If more than one Shareholder accepts the offer, the Offering Shareholder shall have the sole discretion to select the Shareholder to which it will sell its Offered Shares. If no Shareholder or group of Shareholders has accepted the offer to purchase the Offered Shares by the close of business on the 30<sup>th</sup> day of the notice period, the Offering Shareholder shall be free to conclude the sale of the Offered Shares to the third party purchaser on the offered terms. If the Offered Shares constitute less than all of the Shares owned by the Offering Shareholder, the right of first refusal will remain in effect as to all Shares retained (“Retained Shares”) by the Offering Shareholder. The Offering Shareholder shall be required to first offer its Retained Shares for purchase by the other Shareholders in accordance with the provisions and requirements of this Section, before the Offering Shareholder may sell the Retained Shares or any portion therefore to a third party purchaser.

c. Transfer Procedure.

(1) In order to transfer Shares upon the Shareholder Records of the Corporation, the Shareholder requesting the transfer shall present to the secretary one or more of the following documents:

(A) a properly endorsed written assignment of the Shares signed by the Shareholder and assigning all or a portion of the Shares to a transferee;

(B) if the person requesting the transfer of the Shares on the Shareholder Records of the Corporation is not the registered owner of the Shares, written documentation or undertaking demonstrating to the reasonable satisfaction of the Board that the claiming person is the rightful owner of the Shares through purchase, gift, inheritance, foreclosure, bankruptcy, reorganization or otherwise; or

(C) any combination of the foregoing, which in the opinion of the Board, is sufficient to justify the transfer of title of the Shares.

(2) Such of the above documents as shall be required by the Board to effect the transfer shall be surrendered to the secretary who shall file the same in the Shareholder Records of the Corporation. Thereafter the secretary shall enter the name of the newly registered Shareholder in the Shareholder Records of the Corporation.

(3) The Corporation may charge a share transfer fee which is to be paid by the Shareholder requesting the transfer prior to and as a condition of the transfer of the Shares on the Shareholder Records of the Corporation. The fee shall be set at an amount sufficient to cover all actual out-of-pocket costs, including printing costs, administrative costs, and legal costs, if any, incurred by the Corporation in connection with making the transfer, and may be

changed from time-to-time at the discretion of the Board.

4.4. Lease of Shares. Notwithstanding the provisions of Section 4.2 and Section 4.3 above:

a. The Shares of the Corporation may be leased by any Shareholder subject to all applicable limitations under the Act, the Articles and these Bylaws.

b. Shares may be leased by any Shareholder to any other Shareholder or to a non-Shareholder in conformance with the following:

(1) Any Shareholder desiring to lease all or a portion of its Shares shall provide the Board written notice confirming the existence of the lease, which written notice shall contain but not necessarily be limited to, the following information:

(A) name and address of the Shareholder leasing the Shares;

(B) name and address of the lessee;

(C) the number of Shares and corresponding capacity rights being leased;

(D) the term of such lease agreement, and

(E) the canal or other point of delivery where the lessee will take delivery of the water;

(2) Such other information as may be required at the discretion of the Board.

(3) The lessee of the leased Shares may not further sublease the Shares without providing prior written notice to the Board.

c. the Shareholder who leases its Shares shall remain responsible to the Corporation for payment of all annual and special assessments levied against any leased Shares as and when the same shall become due. It shall be the sole responsibility of the Shareholder who has leased its Shares to obtain reimbursement from the lessee of the Shares for assessments paid by the Shareholder.

d. all voting rights and Board representation with respect to any leased Shares of the Corporation shall be retained and exercised by the Shareholder who has leased its Shares.

e. all communication with the operation and distribution employees of the Corporation regarding flow rates and delivery of water shall be by the lessor who has leased all or some portion of its Shares and not by the lessee of such Shares.

f. all leases of Shares shall be subject to all provisions of the Articles and these Bylaws.

4.5. Holders of Shares. Only registered Shareholders shall be entitled to be recognized and treated by the Corporation as the holders in fact of the Shares standing in their respective names, and the Corporation shall not be bound to recognize any equitable or other claim to or interest in any Share on the part of any other person, whether or not it shall have express or other notice thereof, except as expressly provide by the laws of the State of Utah.

4.6. Fractional Shares. Fractional Share will not be issued or recognized by the Corporation.

**SECTION 5  
SHAREHOLDER'S MEETINGS**

5.1. Place of Meetings. All meetings of the Shareholders shall be held at such place as shall be determined from time to time by the Board, and the place at which such meeting shall be held shall be stated in the notice and call of the meeting.

5.2. Annual Meeting. An annual meeting of the Shareholders of the Corporation shall be held at such time and on such date as determined by the Board from time to time. The failure to hold an annual or special meeting at the time and date determined shall not affect the validity of any corporate action or work a forfeiture or dissolution of the Corporation.

5.3. Special Meetings. Special meetings of the Shareholders, for any purpose or purposes, including emergencies, unless otherwise prescribed by the Act, may be called by the president of the Corporation, or in the event of his failure or refusal to act, by a majority vote of the Board, and shall be called at any time by the president or vice president, or the secretary or treasurer, upon the request of Shareholders owning not less than fifty percent (50%) of the issued and outstanding Shares of the Corporation entitled to vote at such meeting. Business transacted at all special meetings shall be confined to the subjects stated in the notice.

5.4. Notice of Meetings.

a. Time and Manner of Notice. Notice of the date, time and place of any annual or special meeting of Shareholders shall be given to each Shareholder of record of the Corporation entitled to vote, in conformance with the following:

(1) Notice shall be given by mailing or by electronic transmission written or printed notice of the same at least ten (10) days prior to the meeting. Such notice shall be deemed to be delivered when deposited in the United States Mail, postage prepaid, and addressed to the Shareholder=s last known post office address or to the address appearing on the Shareholder Records of the Corporation, or when transmitted to a valid email address or other electronic account by which the Shareholder requests to receive notice. Notice may be waived in writing, signed by the Shareholder entitled to the notice and delivered to the Corporation for inclusion within the minutes or for filing with the corporate records.

(2) An emergency meeting may be called, upon 48 hour=s notice, using the most reasonable means of notice possible, including notice communicated in person, by telephone, by any form of electronic communication, by mail, by private carrier or any combination of the above.

b. Contents of the Notice. The notice shall include a description of any matter or matters that must be approved by the Shareholders or for which Shareholder approval is sought. The Corporation shall give notice of any matter a Shareholder intends to raise at the meeting if requested in writing to do so by a Shareholder, officer or director entitled to call a special meeting and the request is received by the secretary or president of the Corporation at least ten (10) days before the Corporation gives notice of the meeting. The notice of a special meeting shall include a description of the purpose or purposes for which the meeting is called and the time, place and date of such meeting.

c. Record Date. The Board may fix in advance a date, not exceeding ten (10) days preceding the date of any meeting of Shareholders, as a record date for the determination of the Shareholders entitled to notice of and to vote at any such meeting. If a record date is not established for the determination of Shareholders entitled to notice of or to vote at a meeting of Shareholders, the date on which notice of the meeting is mailed shall be the record date. When a determination of Shareholders entitled to vote at any meeting of Shareholders has been made as provided in this section, such determination shall apply to any adjournment thereof.

5.5. Quorum. A quorum at any annual or special meeting of Shareholders shall consist of Shareholders representing, either in person or by proxy, a majority of the issued and outstanding Shares of the Corporation. Once a Shareholder is represented for any purpose at a meeting, including the purpose of determining that a quorum exists, the Shareholder is considered present for quorum purposes for the remainder of the meeting and for any adjournment of the meeting.

5.6. Voting at Meetings.

a. Cumulative Voting. Cumulative voting is prohibited.

b. Manner of Voting. The voting at all meetings of Shareholders shall be by voice vote except where a Shareholder demands a written ballot vote, in which case the vote shall be taken by written ballot. The written ballot shall state the name of the Shareholder voting, the number of shares voted by such Shareholder, and the identity of the designated Voting Agent, as defined in subsection 5.6 c. below for the Shareholder.

c. Voting Agent. At any annual or special meeting of Shareholders, every Shareholder having the right to vote shall be entitled to designate in writing to the Board the agent ("Voting Agent") and one or more alternate Voting Agents authorized to vote for the Shareholder. The written designation of the Voting Agent and any alternates authorized to vote the Shares of a Shareholder shall be provided to the Board at least 10 days prior to any scheduled annual or special meeting of Shareholders. An agency designation once made shall stand until revoked in writing or superseded by another written Voting Agent designation by the Shareholder, which revocation or superseding designation is received by the Board at least 10 days prior to an annual or special meeting of the Shareholders.

d. Votes Per Share. Each Shareholder shall have one (1) vote for each Share registered in its name on the Shareholder Records of the Corporation.

e. Fractional Votes. No fractional votes may be cast by any Shareholder.

f. Shares owned by the Corporation. Shares of Corporation owned by the Corporation, or held by it in a fiduciary capacity, if any, shall not be voted, directly or indirectly, at any meeting, and shall not be counted in determining the total number of outstanding shares at any given time.

g. Shareholder Voting List. A complete list of the Shareholders and their appointed Voting Agents and any designated alternate Voting Agents entitled to vote at the ensuing meeting, arranged in alphabetical order, showing the address of each Shareholder entitled to notice of and to vote at the meeting, and the number of voting shares held by each, shall be prepared by the secretary who shall have charge of the Shareholder Records and be filed in the office where the meeting is to be held, at least two (2) days before every meeting. The Shareholder voting list during normal business hours and during the proceedings of the meeting shall be open to the examination of any Shareholder. Such list

shall also be produced and kept open at the time and place of the meeting and shall be subject to the inspection of any Shareholder during the whole time of the meeting. The original Shareholder Records shall be prima facie evidence as to the Shareholders entitled to examine such list or Shareholder Records or to vote at the meeting of Shareholders.

5.7. Meetings by Telecommunication. Any Shareholder may participate in an annual or special meeting of the Shareholders by, or the meeting may be conducted through the use of, any means of communication by which all persons participating in the meeting may hear each other during the meeting. A Shareholder participating in a meeting by a means permitted hereunder is considered to be present in person at the meeting.

5.8. Actions by Written Ballot without a Meeting.

a. Written Ballot Authorized. Any action that may be taken at any annual or special meeting of Shareholders may be taken without a meeting if the Corporation delivers in person, or by first class mail, a written ballot to every Shareholder entitled to vote on the matter.

b. Identify Proposed Action. Such written ballot shall set forth each proposed action and provide an opportunity to vote for or against each proposed action to be decided by written ballot.

c. Votes Required Validating Action. Action by written ballot pursuant to this section shall be valid only when the number of approvals equals or exceeds the number of votes that would be required to approve the matter at a meeting at which the total number of votes cast at the meeting was the same as the number of votes cast by ballot.

d. Solicitation for Written Ballot Votes. All solicitations for votes by written ballot shall:

(1) state the percentage of approvals necessary to approve each matter;

(2) specify the time by which a ballot must be received by the Corporation in order to be counted; and

(3) be accompanied by written information sufficient to permit each Shareholder casting the ballot to reach an informed decision on the matter.

e. Revocation of Written Ballot Vote. Once received by the Board, a shareholder may not revoke a written ballot.

f. Effect of Action by Written Ballot. Action taken under this section has the same effect as action taken at a meeting of Shareholders and may be described as such in any document.

g. Voting List. The Shareholders voting list for meeting and action by written ballot without a meeting shall be prepared in conformance with these Bylaws.

5.9. Record of Meeting. A written record of all actions taken at any annual or special meeting of the stockholders shall be made by the secretary of the Corporation and shall include a record of the establishment of a quorum of Shareholders, a record of all proxies represented at the meeting, and, a record of all votes by the Shareholders, including the number of affirmative and negative votes cast for each item brought before the Shareholders for a vote.

## SECTION 6

## BOARD OF DIRECTORS

### 6.1. Board of Directors, Number, Tenure and Qualifications.

a. Powers Vested in Board. All corporate powers shall be exercised and the business and affairs of the Corporation shall be managed by a Board of Directors (the "Board") consisting of ten (10) directors. Each of the Initial Incorporators, as identified in the Articles shall be entitled to have a representative on the Board and each Initial Incorporator shall appoint a director and one or more alternates who will serve as that Shareholder's representative on the Board and such director and the designated alternates so appointed, shall hold office until such time as a successor is appointed by the Shareholder. Each of the Initial Incorporators, if it desires, shall retain a seat on the Board for so long as it continues to own Shares in the Corporation.

Comment [SEC1]: Could go to 9 depending upon Sandy Canal.

b. Number of Directors. The number of directors to serve within the limits set forth herein and in the Articles may be expanded, from time to time, only upon the affirmative vote of 2/3rds of all the issued and outstanding Shares at an annual or special Shareholder meeting called for that purpose, subject to the notice requirements set forth herein, and at which a quorum is present. Such action must result in the formal amendment of the Articles and these Bylaws, pursuant to the provisions set forth in the Articles and Section 12 herein.

c. Director Qualifications. All directors must be natural persons of 18 years of age or older and be designated in writing by the Initial Incorporator or its successors and assigns they represent to sit as the director or as an alternate designee as that Initial Incorporator's or its successors and assigns representative on the Board.

6.2. General Powers. In addition to the powers and authorities expressly conferred upon the Board by the Articles, the Board may:

- a. regulates the transfer of Shares;
- b. prescribe the duties of its officers, agents, and employees;
- c. cause the repair, replacement, construction or reconstruction of water diversion, pumping and re-diversion dams and all appurtenances, easements and facilities related thereto;
- d. regulate the operation and management of the Utah Lake Pumping Facility, the Turner Dam, all other water diversion, distribution and storage facilities, and all facilities related thereto;
- e. adopt an annual budget as prescribed by the Articles, levy assessments on all Shares according to this budget and enforce and collect these assessments;
- f. employ engineers, attorneys, superintendents, and other subordinate officers, agents and laborers as in their judgment the business of the Corporation may require, prescribe their duties, and provide for their compensation; and
- g. make resolutions not inconsistent with the Act, the Articles or these Bylaws for the administration and regulation of affairs of the Corporation; and to have and exercise all powers necessary or convenient to effect any or all of the purposes for which the Corporation is organized so long as such actions are not inconsistent with the Act, the Articles or these Bylaws.

6.3. Meetings of the Board of Directors. The Board shall be authorized to meet in conformance with the following:

a. Annual Meeting. An annual meeting of the Board shall be held without notice other than this Bylaw immediately following, and at the same place as, the annual meeting of the Shareholders.

b. Regular Meetings. The Board may establish a schedule for the date, time and place for holding additional regular meetings. Regular meetings may be held on a monthly basis and notice of such meetings shall be given pursuant to Section 6.8 herein.

c. Special Meetings. Special meetings of the Board may be called at any time by the president, or in his absence, by the vice president, or by any two directors, to be held at the principal office of the Corporation or at such other place or places, within or without the State of Utah, as the directors may from time to time designate.

d. Action Without a Meeting.

(1) Any action required or permitted to be taken at a Board meeting may be taken without a meeting if each and every director in writing either votes for the action; votes against the action; executes a consent resolution; or, abstains from voting and waives the right to demand that action not be taken without a meeting.

(2) Action is taken under this section only if the affirmative vote for the action equals or exceeds the minimum number of votes that would be necessary to take the action at a meeting at which all of the directors then in office were present and voted.

(3) An action taken pursuant to this subsection is not effective unless the Corporation receives a written document satisfying the requirements hereof, signed by all directors, and which is not revoked pursuant hereto. The writing may be received by electronically transmitted facsimile or other form of wire or wireless communication providing the Corporation with a complete copy of the document, including a copy of the signature on the document. A director's right to demand that action not be taken without a meeting shall be considered to have been waived if the Corporation receives a writing satisfying the requirements of this subsection that has been signed by the director and not revoked pursuant hereto. Action taken pursuant to this subsection shall be effective when the last writing necessary to effect the action is received by the Corporation, unless the writings describing the action taken set forth a different effective date.

(4) If the writing is received by the Corporation before the last writing necessary to effect the action is received by the Corporation, any director who has signed a writing pursuant to this subsection may revoke the writing by a writing signed and dated by the director describing the action and stating that the director's prior vote with respect to the writing is revoked.

(5) Action taken pursuant to this subsection has the same effect as action taken at a meeting of directors and may be described as an action taken at a meeting of directors in any document.

6.4. Meeting by Telecommunication. Any director may participate in any meeting of the Board, or the meeting may be conducted through the use of, any means of communication by which all persons participating

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in the meeting may hear each other during the meeting. A director participating in a meeting by a means permitted hereunder is considered to be present in person at the meeting.

6.5. Quorum. At any meeting of the Board, the presence of seven (7) of the ten (10) directors or their duly designated alternatives in office immediately prior the beginning of the meeting shall constitute a quorum for the transaction of business, but if less than said number is present at a meeting, a majority of the directors present may adjourn the meeting from time to time without further notice. For the purpose of determining a quorum with respect to a particular proposal, and for purposes of casting a vote for or against a particular proposal, a director may be considered present at a meeting and to vote if the director has granted a signed written proxy to another director who is present and which authorizes the other director to cast the vote that is directed to be cast by the written proxy with respect to the particular proposal that is described with reasonable specificity in the proxy. A meeting at which a quorum is initially present may continue to transact business, notwithstanding the withdrawal of one or more directors, if any action taken is approved by at least a majority of the required quorum for the meeting.

Comment [SEC2]: Could go to 6 of 9 depending on Sandy Canal.

6.6. Voting. Each director shall be entitled to one (1) vote on all matters brought before the Board. This vote may be cast in person or by proxy. Except in the case where a Director demands a vote by written ballot, the voting at all meetings of the Board shall be by voice vote.

6.7. Manner of Acting. If a quorum is present when the vote is taken, and except for those situations when the Articles or the Bylaws require vote by 7 of the 10 directors the affirmative vote of a majority of the directors shall be the act of the Board for the day to day operations of the Corporation. The affirmative vote of 7 of the 10 directors shall be required to approve any action concerning the following matters:

- a. Addition of Shareholder. The addition of a new Shareholder to the Corporation if accomplished through the authorization and issuance of more Shares rather than through the sale of existing issued and outstanding Shares;
- b. Merger, Reorganization. The merger or reorganization of the Corporation;
- c. Amendment of Articles. The amendment of the Articles;
- d. Debt of the Corporation. The assumption or acquisition of debt on behalf of the Corporation subject to the requirements of Section 8.2 herein;
- e. Sale of Substantially All Assets: The sale of all or substantially all of the property of the Corporation.

6.8. Notice of Meetings, Form of Notice.

a. Regular Meeting. Regular meetings of the Board may be held without notice of the date, time, place and purpose of the meeting as set forth in Section 6.3(a) of this Bylaw, except that notice shall be given at least five (5) days prior to any meeting at which the Board intends to discuss: i) the addition of new Shareholders to the Corporation; ii) the merger or reorganization of the Corporation; iii) the amendment of the Articles or Bylaws; iv) the assumption or acquisition of debt on behalf of the Corporation; v) the sale of all or substantially all of the property of the Corporation; or vi) the adoption of the annual budget and any approval of any assessments there under.

(1) Where notice is required for a regular meeting as described in Section 6.8, notice shall be given by written notice mailed or emailed to each director at said director's home or

business address, or personally by telephone.

(2) If mailed, such notice shall be deemed to have been delivered when deposited in the United States Mail so addressed, postage prepaid. Such notice shall contain the date, time and place of the meeting and shall include a description of the matters to be discussed at such meeting.

(3) Defects in the notice given shall not invalidate any actions taken at such meeting.

b. Special Meetings. Special meetings of the Board shall be preceded by at least five (5) days notice of the date, time and place of the meeting by written notice mailed or emailed to each director at said director's home or business address, or personally by telephone. If mailed, such notice shall be deemed to have been delivered when deposited in the United States Mail so addressed, postage prepaid. The notice shall describe the purpose of the special meeting as well as the date, time and place of such special meeting. A director may waive any notice of a special meeting before or after the time and date of the meeting, which waiver shall be in writing, and signed by the director entitled to notice.

6.9. Waiver of Notice; Presumption of Assent. A director's attendance at or participation in a meeting waives any required notice to that director of the meeting unless at the beginning of the meeting or promptly upon the director's later arrival, the director objects to holding the meeting or transacting business at the meeting because of lack of notice or defective notice; and after objecting, the director does not vote for or assent to action taken at the meeting; or if special notice was required of a particular purpose the director objects to transacting business with respect to the purpose for which the special notice was required; and after objecting, the director does not vote for or assent to action taken at the meeting with respect to the purpose.

6.10. Committees. An executive committee may be appointed by resolution passed by a majority of the Board and shall have all the powers provided by the Act, except as specially limited by the Board. Additionally, other standing or temporary committees may be appointed from time to time by a majority of the Board. The members of such other committees may come from among the members of the Board or from among the Shareholders and their respective staff, and shall be invested with such power as the Board may see fit, subject to such conditions as may be prescribed by such Board. All committees so appointed shall keep regular minutes of the transactions of their meetings, and shall cause them to be recorded in books kept for that purpose in the office of the Corporation and shall report the same to the Board. All committees shall serve at the pleasure of the Board.

6.11. Compensation. The directors may be compensated by the Corporation for their services as determined by the Board from time to time. Directors shall be reimbursed, with approval of the Board, for any actual and reasonable expenses incurred by a director in the performance of his duties as a director, including the attendance of meetings. Directors and Shareholders who are members of special or standing committees may likewise be reimbursed upon approval of the Board.

6.12. Vacancy. If a vacancy occurs on the Board for any reason, that vacancy shall be filled through the appointment of a new director by the Shareholder whose appointed director created the vacancy.

6.13. Removal. A director serves at the pleasure of the Shareholder who appointed the director and may be removed and replaced at any time at the discretion of the appointing Shareholder.

## **SECTION 7 OFFICERS**

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7.1. Number, Election and Term of Office. The officers of the Corporation shall be a president, a vice-president, a secretary and a treasurer. The president and vice-president shall be members of the Board. Those who serve as secretary and treasurer may be but need not be members of the Board. Officers shall be elected for a term of one year by the directors at their first meeting after the annual meeting of Shareholders, and shall hold office until their successors are elected and qualify. An officer shall be a natural person 18 years of age or older. The Board may combine the offices and duties of secretary and treasurer in which case the office shall be referred to as the office of secretary/treasurer, which combined office may be held by a single person.

7.2. Duties.

a. President. The president shall be the principal executive officer of the Corporation and, subject to the control of the directors, shall have general supervision and control of the business affairs of the Corporation. The president shall when present, preside at all meetings of Shareholders and directors. He may sign or countersign with the secretary, or any other proper officer of the Corporation as authorized by the directors, any deeds, mortgages, bonds, contracts and other instruments of the Corporation as authorized by the Board, and shall perform all such other duties as are incident to his office or are properly required of him, from time to time, by the Board. He shall supervise all the officers and employees of the Corporation, see that their duties are discharged properly, and report to the Board any negligence or misconduct of such officers and employees.

b. Vice-president. In the absence of the president, or in the event of his death, inability or refusal to act, the vice-president shall perform and exercise the duties and functions of the president, and when so acting shall have all the powers of and be subject to all the restrictions upon the president. The vice-president shall perform and discharge such other and further duties as may be assigned from time to time by the president or by the Board.

c. Secretary. The secretary shall perform the duties of secretary, which shall include:

(1) keeping and maintaining, as custodian, the books, records and documents set forth in Section 3 herein, in written form or in another form capable of conversion into written form within a reasonable time;

(2) seeing that all notices regarding annual stock assessments, delinquencies and stock sales are duly given in accordance with the provisions of these Bylaws;

(3) having general charge of the stock transfer books of the Corporation; and

(4) performing all duties incident to the office of secretary and such other duties as may be assigned by the president or the Board from time to time.

d. Treasurer. The treasurer shall perform the duties of treasurer that shall include:

(1) having the charge and custody of and being responsible for all the funds and securities of the Corporation from any source whatsoever, and in such capacity depositing all such funds in the name of the Corporation in such banks, trust companies or other depositories as shall be selected in accordance with these Bylaws;

(2) keeping regular books of account;

(3) disbursing the funds of the Corporation in payment of the just demands against the Corporation, or as may be ordered by the Board, and taking proper vouchers for such disbursements;

(4) rendering to the Board from time to time as may be required an account of all transactions and of the financial condition of the Corporation; and

(5) performing all duties incident to the office of treasurer and such other duties as from time to time may be assigned by the president or the Board.

7.3. Absence or Inability to Act. In the case of absence or inability to act of any officer of the Corporation and of any person herein authorized to act in his place, the Board may from time to time delegate the powers or duties of such officer to any other officer or any director or other person whom it may select.

7.4. Vacancies. Vacancies in any office arising from any cause may be filled by the Board at any regular or special meeting.

7.5. Other Officers. The Board may appoint such other officers and agents as it shall deem necessary or expedient, and once appointed they shall hold their offices for such terms and shall exercise such powers and perform such duties as shall be determined from time to time by the Board.

7.6. Compensation. The officers of the Corporation may be compensated by the Corporation as determined by the Board from time to time. Officers shall be reimbursed, with approval of the Board, for any actual and reasonable expenses incurred by an officer in the performance of his duties as an officer of the Corporation.

7.7. Fidelity Bonds. The Board, by resolution, may require any and all of the officers, at the expense of the Corporation, to give bonds to the Corporation, with sufficient surety or sureties, conditioned for the faithful performance of the duties of their respective offices, and to comply with such other conditions as may from time to time be required by the Board.

7.8. Tenure and Removal from Office. The officers of the Corporation shall hold office until their successors are elected and duly qualify.

a. any officer elected or appointed by the Board may be removed at any time, with or without cause, by the affirmative vote of 7 of the 10 directors.

b. an officer or officers may be removed without cause by a 2/3<sup>rd</sup> majority vote of the issued and outstanding Shares either represented in person or by proxy at a meeting of Shareholders called for that purpose and pursuant to notice.

7.9. Resignation. Any officer may resign his office by giving written notice of resignation to the Board. Such resignation shall be effective when the notice is received unless the notice specifies a later effective date. Acceptance of the resignation shall not be necessary to make it effective.

## **SECTION 8 CONTRACTS, LOANS, CHECKS AND DRAFTS**

8.1. Contracts. The 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

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authority may be general or confined to specific instances.

8.2. Loans. The Board, upon resolution duly adopted by a majority of the Board, and as authorized in the Articles shall have the authority to incur indebtedness on behalf of the Corporation, in an amount not to exceed \$25,000.00 for any one loan, up to a total cumulative debt limit of \$75,000.00.

a. any loans or indebtedness in excess of said amounts shall be incurred by the Corporation only upon a 2/3<sup>rd</sup>s majority vote of the issued and outstanding Shares.

b. the Corporation shall be authorized to enter into contracts with the United States, the State of Utah and other governmental entities, or lenders, pursuant to which the Corporation shall be authorized to sell, lease, exchange, mortgage, pledge, or otherwise dispose of all or substantially all of the assets of the Corporation, as and for security for loans and the use, joint development of and/or improvements to all water diversion, distribution, pumping and storage facilities; except that such contract for the sale, lease, exchange, mortgage, pledge or other disposition of the assets of the Corporation shall only be authorized or valid if: (i) the Board shall adopt a resolution recommending the same to the Shareholders and directing that the resolution be submitted to a vote at a meeting of Shareholders, which may be either an annual or special meeting, (ii) written notice of such meeting shall have been duly given in conformance with the requirements of these Bylaws, and (iii) said resolution shall be approved by majority of the Shareholders.

c. no loan shall be made by the Corporation to any director or officer of the Corporation.

8.3. Checks and Drafts. All of the officers of the Corporation shall have authority to sign the checks, drafts or other orders for the payment of money, notes or other evidences of indebtedness issued in the name of the Corporation, and the signatures of any two officers shall be required on each.

8.4. Deposits. All funds of the Corporation not otherwise committed shall be deposited from time to time to the credit of the Corporation in such banks, trust companies or other depositories as the Board may elect.

## SECTION 9 ANNUAL BUDGET AND STOCK ASSESSMENTS

9.1. Adoption of Annual Budget. The Board shall convene a budget meeting annually as prescribed by the Articles and shall determine the amount of money necessary to cover the Corporation's estimated costs, for the coming year of:

a. Operation and Maintenance Expenses. Operating, repairing, and maintaining the Utah Lake Pumping Facility, the Turner Dam and any replacements thereto, as well as any other facilities or equipment necessary for the operation and management of the Corporation;

b. Authorized Reserves. Establishing and funding a reserve fund to cover major repairs, improvements and replacement of the facilities;

c. Construction and Capital Improvement. Sufficient funds to meet annual contract payments for construction of capital improvements and any authorized debt service incurred to finance construction.

d. Administrative and Management Expenses. Taxes, if any, salaries of employees, insurance, office overhead and related administrative expenses of the Corporation;

e. Necessary and Proper Expenditures. Other items or services considered by the Board to be necessary or desirable to enable the Corporation to perform or fulfill its obligations, functions and purposes under the Articles and these Bylaws. At the same meeting the Board shall determine the amount to be assessed per share, which shall be sufficient to cover the Corporation's estimated costs; and

f. Approval of Budget. The annual budget must be approved by 7 of 10 directors.

9.2. Modifications to Budget. The Board may, from time to time and at its discretion, amend or modify the budget upon a majority vote of the Board at any meeting at which a quorum is present, except that any modification to the Budget which will result in an increase or decrease in expenditures totaling \$50,000.00 (Fifty thousand dollars) or more shall require an affirmative vote of 7 of 10 directors.

9.3. Assessment of Shares. Each Shareholder shall be obligated to pay regular and special assessments that are hereby authorized to be levied by the Board against all Shares in conformance with the following:

a. Power to Levy Assessments. The Corporation shall have the power to levy assessments; and to take all steps necessary to collect assessments, including providing notice to the delinquent Shareholder, charging interest upon the delinquent payment, denying the delinquent Shareholder its pumping capacity, commencing legal action for specific performance to collect the unpaid assessment, including costs and reasonable attorney's fees. The Corporation will not exercise its statutory right to sell shares as provided in Utah Code Ann. §16-4-101.

b. Levy of Regular Assessments. The Board shall annually make and levy regular assessments, consisting of a regular Operation Assessment and a regular Maintenance Assessment against the Corporation's issued and outstanding Shares to generate the funds necessary to pay the costs identified in the annual budget and in conformance with the following:

(1) Operation Assessment; Maintenance, Construction Assessments.

(A) Regular Operation Assessment. A regular Operation Assessment shall be levied against all Shares based upon the volume of water delivered to the Shareholder during the water year through the Utah Lake Pumping Facility. The amount of such assessments shall be included in the annual budget and adopted by the Board pursuant to Section 9.1.

(B) Regular Maintenance Assessment. A regular Maintenance Assessment shall be levied against all outstanding Shares in proportion to the number of Shares owned by each Shareholder regardless of the volume of water delivered to that Shareholder during the water year. The amount of such assessments shall be determined and included in the annual budget adopted by the Board pursuant to Section 9.1.

(C) Construction Payment Assessment. The Board may levy a regular and/or special assessment to pay any on-going expenses of construction projects for new capital improvements and for extraordinary repair and replacement of existing facilities. The assessment shall be levied on the basis of the number of Shares owned

by the Shareholder. Annual construction, repair and replacement costs shall be included in the annual budget to the extent they can be reasonably forecasted and billed as part of the regular Maintenance Assessment.

(2) Payment of Assessments. Regular Operation Assessments shall be billed on a monthly basis during the water year, and shall be due and payable on or before 15 days after the billing date set forth in the notice of assessment. Regular Maintenance Assessments shall be billed on a monthly basis, or as needed throughout the water year and be due and payable on or before 15 days after the billing date set forth in the notice of assessment. Assessments for capital improvements and repair and replace of facilities shall be paid as indicated in the assessment notice for this specific assessment.

(3) Failure to Levy Annual Assessments. In the event the Corporation does not timely levy an assessment as provided herein, the regular operation assessment and the regular maintenance assessment for the prior year shall apply in the ensuing calendar year.

c. Special Assessments. The Corporation, by vote of 7 of the 10 of the directors may levy special assessments for the purpose of defraying, in whole or in part, any extraordinary expenses not reasonably capable of being fully paid with funds generated by annual regular assessments, the costs of any unexpectedly required repair or replacement of any part of the Utah Lake Pumping Plant, The Turner Dam or any other diversion or storage facilities, and for the construction, reconstruction, repair, or any improvement of the Utah Lake Pumping Plant for the common benefit of all of the Shareholders. The Board shall issue orders levying a special assessment in the same manner as orders levying annual assessments.

9.4. Modification of Assessments. Assessments may be modified at any time during the year by a vote of 7 of the 10 directors at a meeting called for that purpose, where such action is reasonably necessary.

9.5. Other than Pro-rata Assessment. Ordinarily all assessments shall be levied on a pro rata basis according to the number of shares owned or water delivered as set forth above. However, the Board, in its discretion, may apportion assessments, fees and charges, particularly with respect to special assessments, when the equities appear to justify the imposition of assessments, fees and charges on other than a pro rata basis.

9.6. Assessment Lien. All unpaid assessments shall constitute a lien against the delinquent stock, which shall have priority over any mortgage, lien, pledge, sales contract, escrow contract, lease, conditional or unconditional transfer, or any other encumbrance, lien, claim, attachment, execution, or other charge or interest in or upon or deemed or claimed to be against the stock, and the right of the Corporation to assess the stock for such assessments shall be paramount and superior to all those liens, claims, charges, or interests, all of which are and shall be inferior and subordinate to the assessments levied upon the grounds and for the reason that the assessments constitute an improvement to the Utah Lake Pumping Plant and the Turner Dam for which assessments may be levied.

9.7. Delinquent Assessments.

a. Delinquency: Enforcement. If any Shareholder shall fail to pay any regular or special assessment within 30 days from the billing date, the delinquent Shareholder shall be charged interest on the unpaid assessment from said date at the rate of 1.5% per month until paid, and after 60 days from the billing date, a late fee in the amount of 25% of the amount of the unpaid assessment.

(1) In the event any assessment remains delinquent for more than 60 days, upon

written notice to the delinquent Shareholder the Corporation shall be entitled to exercise all rights of enforcement, in the following order, including: (i) denying the delinquent Shareholder access to its pumping capacity, which access shall only be restored upon payment in full of the unpaid assessment, together with accrued interest, and a resumption of service fee in an amount to be determined by the Board; (ii) commencing a legal action to collect the an equitable and proportionate contribution for operation and maintenance from a co-owner of water facilities pursuant to Utah Code Ann. § 73-1-9; and (iii) any and all other rights and remedies afforded to the Corporation for the collection of delinquent share assessments under the Act, excluding the statutory sale of Shares for non-payment of assessments.

(2) In the event the Corporation shall be required to retain an attorney in connection with the exercise of its rights of enforcement, the delinquent Shareholder shall also be required to reimburse the Corporation for all attorney=s fees and costs incurred by it as a condition to restoration of pumping for the Utah Lake Pumping Plant.

#### **SECTION 10 OPERATION OF UTAH LAKE PUMPING FACILITIES**

10.1. Operations. Any or all of the pumps may be started at any time during the irrigation season, or otherwise, upon the request of three or more of the Shareholders, and when so started, each of the Shareholders shall be responsible for payment of Operation Assessments in proportion to their individual water deliveries.

10.2. Early Commencement of Operations. If fewer than three of the Shareholders want to start one or all of the pumps before the other Shareholders have a desire for the pumps to be in operation, then the individual Shareholders who requested early commencement of operations shall be solely responsible for payment of Operation Assessments in proportion to their delivery of water until such time as three or more Shareholders are taking pumped deliveries. Once three or more Shareholders are taking delivery of pumped water, then all Shareholders shall pay the Operation Assessments in proportion to the quantity of water delivered to them. If those Shareholders requesting early commencement of operations use water in excess of their water rights at that time or cause damage to other water users, they shall be solely responsible for any such damages and hold the Corporation and the other Shareholders harmless.

10.3. Late Season or Year Around Operations. If any one or more of the Shareholders request the pumps to remain in operation beyond the point in time during an annual irrigation season when the majority of the Shareholders are ready to terminate pumped deliveries of water for that irrigation season, that Shareholder or the Shareholders requesting extended operations shall be solely responsible for payment of Operation Assessments in proportion to the amount of water delivered to them during the extended operation period. If those Shareholders requesting extended operations use water in excess of their water rights at that time or cause damage to other water users, they shall be solely responsible for any such damages and hold the Corporation and the other Shareholders harmless.

#### **SECTION 11 INDEMNIFICATION OF OFFICERS AND DIRECTORS**

11.1. Indemnification. The Corporation, as authorized by law and the Articles shall indemnify and defend any and all persons who may serve or who have served at any time as directors or officers, or both.

11.2. Advance of Expenses. The Corporation shall pay for or reimburse the reasonable expenses incurred by a director or officer who is a party to a proceeding in advance of final disposition of the proceeding

if the director or officer furnishes the Corporation a written affirmation of the director's or officer's good faith belief that the director or officer has met the applicable standard of conduct set forth in Subsection 11.3; the director or officer furnishes the Corporation a written undertaking, executed personally or on the director's or officer's behalf, to repay the advance, if it is ultimately determined that the director or officer did not meet the standard of conduct; and a determination is made that the facts then known to those making the determination would not preclude indemnification hereunder. The required undertaking shall be an unlimited general obligation of the director or officer. It does not need to be secured, and may be accepted without reference to financial ability to make repayment.

11.3. Standard of Conduct. No officer shall be liable for negligence or misconduct in the performance of his or her duty to the Corporation if he, she or they acted in good faith; the director or officer reasonably believed that the director's or officer's conduct was in or not opposed to, the Corporation's best interests; and in the case of any criminal proceeding, the director or officer had no reasonable cause to believe the director's conduct was unlawful.

11.4. Notice to Shareholders. If the Corporation indemnifies or advances expenses to a director or officer under this Section in connection with a proceeding by or in the right of the Corporation, the Corporation shall give written notice of the indemnification or advance to the Shareholders in conformance with the requirements of the Act.

11.5. In Addition to Other Rights. The indemnification provided for in this Bylaw shall be in addition to all other rights to which the person indemnified may be entitled under any law, Bylaw, agreement, resolution or otherwise.

## **SECTION 12 CALENDAR YEAR**

12.1 Calendar Year. The Corporation shall operate on a calendar year basis, January 1 through December 31.

## **SECTION 13 AMENDMENT OF BY-LAWS**

13.1. Amendment by Shareholders. These Bylaws may be repealed or amended, or new Bylaws may be adopted, by the affirmative vote of 2/3<sup>rd</sup>s of the issued and outstanding Shares in attendance and entitled to vote at a meeting called for that purpose, and at which a quorum is present, subject however, to any restrictions on such amendments imposed by the Articles, other provisions of these Bylaws or by the Act.

13.2. Amendment by Directors. The Board may amend or repeal the Bylaws as provided in the Articles and these Bylaws.

13.3. Capacity Rights not subject to Reduction. No Bylaw may be amended by either Board or Shareholder action that would reduce the capacity rights of any Shareholder without the express written consent of the Shareholder.

13.4. Restrictions on Amendment. The Articles and these Bylaws shall not be amended in any manner to change this Corporation from a non-profit corporation to a corporation organized or operated for pecuniary profit, nor shall the Articles be amended in any manner that would cause the Corporation to become regulated as a public utility.

13.5. Record of Amendments. Any amendment or new Bylaws adopted by the Shareholders or the

Board shall be copied in the appropriate place in the minute book with the original Bylaws, and the repeal of any Bylaw shall be entered on the original Bylaws together with the date and manner of such repeal. The original or a copy of the Bylaws as amended to date shall be open to inspection by the Shareholders at the Corporation's principal office at all reasonable times during office hours.

**SECTION 14  
NO THIRD PARTY BENEFICIARIES**

14.1. No Third Party Beneficiaries. There shall be no third party beneficiaries of any of the Sections of these Bylaws.

**SECTION 15  
SAVINGS CLAUSE**

15.1. If any section, subsection, sentence, clause or phrase of these Bylaws is for any reason held to be invalid by a court of law, such determination shall not affect the validity of the remaining portions of these Bylaws, which shall remain binding and enforceable against the Shareholders of the Corporation.

**SECTION 16  
EFFECTIVE DATE**

16.1. These Bylaws shall be in full force and effect from and after the date of passage and adoption by the Board or the Shareholders as provided herein.

**WE HEREBY CERTIFY** that the foregoing is the original or a true and correct copy of the Bylaws adopted by UTAH LAKE WATER USERS ASSOCIATION, INC. on the \_\_\_\_\_ day of \_\_\_\_\_, 2011.

**UTAH LAKE WATER USERS ASSOCIATION, INC.**

\_\_\_\_\_  
President

\_\_\_\_\_  
Vice-President

\_\_\_\_\_  
Secretary