

RESTATED BY-LAWS
Of The
UPPER SURFACE CREEK DOMESTIC WATER USERS ASSOCIATION
Incorporating all amendments to date

ARTICLE I
Names, Objects, Purposes and Principal
Place of Business

The corporate name, the objects and purposes and the principal place of business of this Association shall be as stated in and provided by the Certificate of Incorporation of the Association ~~heretofore~~ filed in the Office of the Secretary of State of Colorado and the Office of the County Clerk and Recorder of Delta County, Colorado, as required by the Laws of the State of Colorado.

ARTICLE II
Seal

The seal of this Association shall have inscribed thereon the name of the Association, the year of its organization and the words "Corporate Seal" and "Colorado".

ARTICLE III
Membership.

Section 1.

Persons who own real property, as certified by a copy of a recorded deed, in the designated service area of the Association, as described in the Certificate of Incorporation or as amended from time to time by the Board of Directors may be eligible for membership upon submittal of an application on such forms as provided by the Association and upon compliance with all other terms and conditions of membership payment of a membership fee.

Section 2.

Each membership in this Association shall be entitled to one or more residential service connections to the Association's system. A residential service connection shall be defined to be a metered connection to the water system via a three-quarters of an inch (3/4") pipeline for domestic use by persons residing in the same dwelling. Any person desiring more than one service connection shall be required to apply for and secure additional connections upon payment of all required tap fees and delivery of all required water rights, as established by Association from time to time. ~~secure each such connection as provided in Section 1 of this Article.~~ More than one service connection may be allowed per ~~household membership, but in no event shall any one parcel of land be entitled to more than one membership. shall not be allowed.~~ The Board of Directors may authorize larger diameter connections subject to such terms and conditions as may be vested in the discretion of the Board.

Section 3.

- a. Applications shall be addressed to the Association and be accompanied by a check ~~for payment of~~ the membership fee. All applications for membership or additional service connections shall be reviewed by the Operations Manager, who may approve a membership and connection where all applicable fees are paid, and the Association has adequate capacity and infrastructure to provide service. If there is any concern about the ability of the

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Association to serve a potential customer, the Operations Manager may refer the matter to the Board of Directors for a decision.

- b. The Board shall have the authority to grant or deny such application in accordance with its judgment and determination as to whether the supply of water and the capacity of the system is adequate to serve the applicant in addition to supplying the needs of the existing members of the Association. The Board shall have authority to impose conditions upon which an application may be granted including, but not limited to: i) requiring dedication of adequate rights-of-way as may be needed to provide service; ii) requiring conveyance to the Association of water rights as may be needed to accommodate demand by the applicant; or iii) other conditions as may fit the circumstances of the application..

Section 4.

The rights, privileges and obligations of all members in this Association shall be equal, except as otherwise provided in these By-Laws. All members, ~~including those who do not currently receive water service under their memberships,~~ shall pay an equal minimum service rate ~~of forty-five dollars (\$45.00) per month per connection, for water. All service rates and other charges shall be published in a resolution of the of the Board of Directors and filed with the Secretary-Treasurer of the Association.~~

Section 5.

- a. **Voting Rights.** Each person holding a membership shall be entitled to one (1) vote only. The holding of more than one service connection shall not entitle such holder to more than one vote. Voting by proxy will be permitted, provided, that any member shall be permitted to vote not more than ten (10) proxies in addition to his/~~her~~ own vote, ~~and if~~ a member receives more than ten (10) proxies, he/~~she~~ shall have power to substitute any other member or members present at the meeting to vote such additional proxies. Cumulative voting shall be prohibited.
- b. **Suspension of Voting Rights.** The Board of Directors may suspend the voting rights of any member who: i) fails to pay when due any service charges or other sums owing to the Association; or ii) fails to comply with any rules of the Association. Suspension of voting rights shall be subject to the procedures otherwise specified in Article V, Section 7(f).

ARTICLE IV Membership Meetings

Section 1.

Annual Meetings. Annual meetings of the members shall be held ~~at the Town Hall or such other~~ at any place as the Board may designate in ~~the Town of Cedaredge, the~~ County of Delta, State of Colorado, on the second Tuesday in December of each year. Public notice of the time and place of said meeting shall be given by the Secretary by publication in a newspaper having general circulation in Delta County, Colorado. Such notice to be published at least once, not more than thirty (30) days nor less than ten (10) days prior to the date fixed for said meeting and by giving at least ten (10) days, but not more than thirty (30) days written or printed notice stating the time and place of such meeting by depositing a copy of such notice in the United States mail, addressed to each member at his address, as the same may appear on the records of the Association, or by delivering such notice personally to each member. The mailed notice shall include an agenda with reasonable detail as to matters to be considered. Members shall be permitted to waive such notice and a waiver in writing signed by the person or

persons entitled to such notice, whether before, at, or after the time stated therein, shall be deemed equivalent to such notice.

Section 2.

Special Meetings. Special meetings of the members may be called at any time by the President, or by a majority of the Directors. The President, or in his absence, the Vice-President, shall call a special meeting upon the written petition of ten (10) of the members of the Association. Notice of special meetings shall specify the business to be transacted thereat and shall be given as in Section 1 of this Article, ~~provided.~~

Section 3.

Quorum. One-fifth (20%) of the total membership of this Association present either in person or by proxy shall constitute a quorum for the transaction of business at any annual or special membership meeting. If such a quorum is not present, the meeting ~~may~~ shall be adjourned ~~from time to time by a majority of those present,~~ provided that such meeting may not be adjourned for a period to exceed sixty (60) days ~~for any one adjournment.~~

Section 4.

a. **Order of Business.** All membership meetings of the Association shall be governed by Robert's Rules of Order. The President or, in his/her absence, the Vice-President shall chair the meeting of the membership. The order of business at all membership meetings shall include as far as possible:

1. Roll call
2. Proof of ~~due~~ notice and determination of quorum
3. ~~Reading and disposal~~ Approval of any unapproved minutes
4. Nominations for vacancies on the Board of Directors
5. Report of Board of Directors by President or Vice-President
6. Report of Secretary/Treasurer
7. Operations Manager Report
8. Unfinished business
9. New Business
10. Election
11. Unscheduled business
12. Adjournment.

The meeting chairperson has discretion to alter the order of the agenda or to add or delete items to fit the reasonable needs of the participants or the Association.

ARTICLE V Directors

Section 1.

Functions of the Board of Directors. The business and affairs of this Association shall be managed by a Board of seven (7) Directors. Its functions shall include:

- a. selection of and management of staff;
- b. determination of policies for guidance of staff;

- c. adoption of budgets annually;
- d. keeping of members fully informed of the business of the Association;
- e. ~~reviewing financial records and reporting on the condition of the Association; causing audits to be made at least annually, or as needed, and preparing reports of any findings ;~~
- f. establishing fees, charges, or other conditions for service, the levying and collecting assessments, and enforcing the collection thereof in accordance with the laws of the State of Colorado, except as provided in Article VII of these By-laws;
- g. controlling the property of the Association;
- h. authorizing contracts, loans, agreements, and legal claims for and on behalf of the Association; and
- i. such other and further powers as may be reasonably necessary to govern the affairs of the Association.

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Section 2.

Election and Term of Board Members. The general membership shall elect seven (7) Directors who shall be members residing in the upper-Surface Creek area, the Cedar Mesa area, and the Redlands Mesa area, respectively. At least two (2) Directors, but no more than three (3) Directors shall be elected from each area. Directors shall serve two (2) year terms. Annually four (4) directors shall be elected in the ~~even~~odd numbered years and three (3) directors shall be elected in the ~~odd~~even numbered years. The designation of Director seats as being elected on odd or even numbered years shall be based on the historic records of the Association.

Section 3.

Election of Officers. The Board of Directors shall elect by ballot one of its members as President and one Vice-President and shall also elect a Secretary-Treasurer, who need not be a member of the Board of Directors of the Company, or a member of the Company.

Section 4.

Term of Officers. The officers shall be elected for a period of two years, or until their successors are appointed and qualified.

Section 5.

Compensation of Directors and Officers. The Board of Directors and the officers, with the exception of the Secretary-Treasurer, shall serve without compensation. The Secretary-Treasurer shall be paid a reasonable remuneration for services rendered.

Section 6.

Meetings of the Board of Directors.

- a. The meetings of the Board of Directors shall be held at such regular intervals as the Board shall determine and it shall have its annual meeting immediately succeeding the annual meeting of the members, at which time the members of the Board are elected. A majority of the Board of Directors present in person at any meeting of the Board shall constitute a quorum for the conduct of business.
- b. ~~Provided that the Association has the technical capability, Board members may attend meetings of the Board by electronic means in the event that physical presence is impossible due to illness, family commitments, or work obligations. A Board member participating by~~

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electronic means shall be able to speak, vote, and participate in the meeting to the same extent as other Board members, and all actions taken shall be valid to the same extent as if the Board member participating by electronic means were physically present.

Section 7.

- a. **Powers of the Board.** The Board of Directors shall have the general power to act for the Association in any manner not prohibited by law, these By-Laws, or by the Certificate of Incorporation. If the Association shall at any time borrow or receive by any way of grant or contract any property from the United States, the State of Colorado, or any state or federal agencies, the Board of Directors shall be authorized to undertake such management methods, including accounting and audits, as such agencies may reasonably prescribe. The Association, through the Board of Directors, has the authority to enter into and execute contracts, deeds, and loans as the Board may see fit to execute, together with the power to sue and be sued as otherwise provided by law.
- b. **Control of the System.** The Association, through the Board of Directors, shall have exclusive authority to control access and connections to the water system, all pipelines, equipment, water meters, and associated works. The Board may levy fines or charges as it determines to be appropriate against members or property owners who: i) tamper with or make unauthorized access to the water system; or ii) install unauthorized water connections.
- c. **Indemnity.** The Association, through the Board of Directors, shall indemnify and hold harmless Board members, officers, employees, and/or agents of the Association from any claims, losses, liabilities, or damages, including reasonable legal fees and court costs, asserted by third parties and arising from any act or omission of the Board members, officers, employees, and/or agents undertaken in good faith and/or in the reasonable course and scope of the official duties of that person. The Association has no duty to indemnify where an officer, director, employee, or agent is found by a court in a final judgment to have engaged in gross negligence, willful or reckless misconduct, or criminal acts.
- d. **Capital Planning.** The Board may undertake such studies or policies as it deems reasonable or necessary to plan for future service obligations of the Association or capital facilities needs. Additionally, the Board may establish and fund reserve accounts to cover anticipated capital facilities upgrades.
- e. **Service Boundaries and Service Obligations.** From time to time the Board may establish or revise the geographic boundaries defining where the Association will provide domestic water service. The Association shall have no obligation to deliver water to persons outside of the established service boundaries. Within enacted service boundaries, the Association may deliver water to persons who will be admitted as members, provided it has an adequate water supplies and can do so without harming water deliveries to other existing members. The Board may decline to admit a person as a member when there is insufficient water supply, or where water service cannot reasonably be provided due to excessive cost, lack of legal access, distance, terrain features, or the like.
- f. **Delinquent Accounts/Lien/Remedies/Interest.** Should any member or property owner fail or refuse to pay water service charges, special assessments, connection fees, or other sums owing to the Association, or fail or refuse to comply with any rules of the Association, the

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Board may, following delivery of written notice to the member and/or property owner identifying the nature of the default and the amounts owing (if any) and allowing a period of not less than thirty (30) days in which to pay or comply in full, undertake one or more of the following: i) the disconnection of water service, including capping of service lines; ii) recording a lien for all sums due in the Delta County land records against the real property where water service was provided; iii) commencing a civil ~~collection~~ action to recover the sums owing and any other appropriate relief; and/or iv) suspension of the voting rights of the member; ~~and/or v) foreclosure upon the member interest via public sale in the manner specified below.~~ Cure by the member/property owner within the time provided under the notice shall result in the reinstatement of all service obligations and member rights. The notice shall be sent by United States Mail, postage prepaid, to the address of the member/property owner as shown on the records of the Association. The Association may combine or utilize multiple remedies in its discretion, depending on the nature of the violation.

1. Within the time period specified in the written notice for cure of the delinquency the member may request an opportunity to be heard before the Board of Directors and may offer any response to the delinquency notice in person or in writing. The Board shall not take any final action on the matter until the member is has been given an opportunity to contest the action before the Board.

~~2. If foreclosure upon the member interest is ordered, the Association shall sell the membership interest of the delinquent member at a public sale. Any surplus in the proceeds of the sale of the membership in excess of the sums owing to the Association shall be promptly paid to the delinquent member.~~

~~3.2.~~ Sums owing to the Association shall become delinquent ~~thirtysixty~~ (3060) days from the date they are due. Unpaid member accounts shall be assessed a late charge of twenty-five dollars (\$25.00) and all sums owing shall accrue interest at the rate of ~~twelve~~ eighteen percent (~~12%~~18%) per annum, simple interest, until paid in full.

~~4.3.~~ The Association shall not order a water shut-off or capping of service lines unless an account is at least ninety (90) days past due.

- g. Eminent Domain.** To the extent provided by applicable law including, but not limited to, the Colorado Constitution, Article XVI, Section 7, the Board may commence an action in eminent domain to obtain real or personal property rights as may be necessary for the maintenance, repair, or expansion of the domestic water system. Before commencing an eminent domain case the Board shall: i) first negotiate in good faith for the purchase of the property in question from the owner of record; and ii) adopt a resolution authorizing the commencement of a legal action and specifying that the acquisition of the property is necessary and in the best interests of the Association.
- h. Subdivisions.** As a condition for providing service to new land development, the Board may require that developers provide and dedicate to the Association reasonable rights-of-way, pipeline infrastructure, water rights, and/or such other requirements as may be necessary for the Association to provide service to newly developed properties. The Board may authorize conveyances and agreements as may be necessary to provide service.

- i. **Closed Meetings.** The Board may convene a meeting that is closed to the public for purposes of: i) receiving legal advice from an attorney; ii) developing negotiation strategy in connection with any existing or proposed contract or real property transaction; or iii) for purposes of considering personnel matters or employee evaluation/discipline. The minutes of the Board shall reflect the purpose for which the Board convenes a closed session.

Section 8.

Vacancies. When any vacancies shall occur among the members of the Board of Directors by death, resignation, ~~or~~ because such vacating Director has ceased to be a member of the Association, or otherwise, such vacancy shall be filled by the remaining Directors by the selection of a member of the Association who shall serve as a member of the Board of Directors until the election of Directors at the next ensuing annual meeting of members.

**ARTICLE VI
Officers**

Section 1.

Duties of the President. The President shall preside at all meetings of the Board of Directors and the members. The President shall execute notes, bonds, mortgages, contracts, and all other instruments on behalf of the Association. The President shall be Ex-Officio a member of all standing committees and shall have such powers and perform such other duties as may be properly required by the Board of Directors.

Section 2.

Duties of the Vice-President. The Vice-President shall, in the absence of disability of the President, or in the event of death, resignation or removal from office, perform and discharge the duties and exercise the powers of the President.

Section 3.

Duties of the Secretary-Treasurer. The Secretary-Treasurer shall keep a record of the proceedings of the Association and the seal of said Association and shall attest the signatures of the officials of the Association executing documents on behalf of the Association; shall collect assessments and moneys due the Association and deposit the same in a depository designated by the Board of Directors and shall disburse funds on the proper order of the Board; and shall provide accurate reports of the business transacted annually, and/or as frequently as may be requested by the Board of Directors or the President. The Secretary-Treasurer shall perform such other duties and functions as may be required by the Board of Directors or the President. The Secretary-Treasurer shall be covered in the performance of his/her duties by a surety bond in an amount to be determined by the Board of Directors. The premium for such bond shall be paid by the Association. The duties of the Secretary-Treasurer may be performed by the Office Manager employed by the Association, if so directed by the Board of Directors.

Section 4.

Appointment and Duties of Operations Manager. The Board of Directors may appoint in addition to the officers above named an Operations Manager of the domestic water system, who will be in charge of the work of construction, maintenance, and repair of the system of the Association and of the distribution of water.

ARTICLE VII
Assessments and Charges

Section 1.

- a. **Water Charges.** The Board of Directors shall recommend a service rate for water flowing through the meters which are to be installed on each service line connected with the Association's system. Such charges shall be in accordance with the amount registered by such meters. The service rate shall provide for a minimum monthly charge. The Board of Directors shall be guided in establishing the service rate by the estimated amount necessary to pay the costs of operation, maintenance, repair, rehabilitation, and construction of the system and payments of principal and interest of any indebtedness of the Association which may have been contracted in connection with the Association's operation. The Recommended service rates shall be reviewed and subject to approval by the Association members at any regular or special meeting. Service charges on water sold through meters shall become due and payable monthly at the option of the Board of Directors and shall become delinquent if not paid within thirty (30) days from the date a statement of the same is mailed by the Secretary-Treasurer.
- b. Membership fees (including tap fees) for new members of the Association shall be recommended by the Board of Directors, effective upon ratification by the members at any regular or special membership meeting. Other fees, terms, and/or conditions of service shall be as set by the Board of Directors from time to time.

Section 2.

Membership Assessments. In the event the revenues of the Association are insufficient at any time to pay current costs of operation and maintenance and debt retirement payments and are resulting in a deficit so as to jeopardize debt retirement payments, or in cases of financial emergency requiring the levying of a special assessment, it shall be the duty of the Board to call a special meeting of the members to consider the question of levying such special assessment as may be required to make up the deficit or to meet the emergency, and in the event there are insufficient members present to constitute a quorum, or the members fail to levy an adequate assessment to take care of such deficit or emergency, then it shall be the duty of the Board Directors to proceed to make such levy and collect the same for purposes required.

Section 3.

Revocation of Membership. The Board of Directors is authorized and directed to refuse to provide water service to any member who is delinquent in the payment of any service charge, fee, or assessment levied by the Board, or who fails to comply with Association rules or these By-Laws.

Section 4.

Usage Reduction. In the event of scarcity of water or failure of supply for any reason, the Board of Directors shall have power to restrict and limit the use of water from said system to domestic household purposes only. Notice of the imposition of such restriction may be by telephone, electronic, or by written notice delivered or mailed by the Association and shall be effective until the members are notified otherwise.

ARTICLE VIII
Membership Rights and Accounting

Section 1.

Certificates Not Required. The Association shall maintain a record of membership in the Association for each new member, and for those holding Membership Certificates at the time of adoption of this section. Membership Certificates shall no longer be issued by the Association upon adoption of this section. Membership Certificates held by members at the time of adoption of this section shall be null and void.

Section 2.

Membership Book. As a part of the records of the Association, there shall be kept a Membership ~~Book~~Record, which shall contain a list of the memberships which have been granted, noting the date thereof, the name of the person to whom issued, and assigning a unique number to each membership.

Section 3.

Transfer of Membership. Membership may be transferred and the transfer shall be noted on the books of the Association. No transfer of membership shall be valid until all of the indebtedness owed to the Association is paid or adjusted to the satisfaction of the Board of Directors. No transfer of membership shall be valid when made to the transferee who is not eligible for membership, as provided in Article III of these By-Laws.

Section 4.

~~a.~~ **Membership Rights.** Each Membership shall entitle the holder thereof to one service connection with the water system of the Association. A member may purchase additional connections as provided in Article III of these By-Laws. Each such service connection shall be entitled ~~to~~ a proportionate amount of water available through the system for any season that that service connection bears to the total number of service connections with the system. The voting rights of any persons holding more than one service connection shall not exceed those rights as provided in Article ~~IV~~III, Section 5, of these By-Laws. ~~In all other respects, the rights, interest, obligations and duties represented by each membership shall be equal.~~

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~~b.a.~~ **Usage Priority.** In times of drought or water shortage, the Board of Directors may establish a priority basis for allocating water and charge different rates for different uses. If such priority basis is established, then essential household use shall be given first priority for an adequate number of gallons per month, and essential agricultural use, as the Board may define such, shall be given second priority for use.

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Section 5.

Location of Service Connection. At the time of application for membership or for an additional service connection, the tract of land to be served shall be identified by the applicant. The service connection may not be used upon any other tract of land other than ~~that so as~~ identified in the application. Service connections, including those not yet installed, may be transferred only with the transfer of the tract of land where installed or designated, except for good cause shown by the member, as determined in the sole discretion of the Board of Directors.

ARTICLE IX
Fiscal Year

The fiscal year for said Association shall be from December 1st of each year until November 30th of the following year.

ARTICLE X
Amendments

These By-Laws, or any Section or Article thereof, may be changed, amended or repealed at any regular meeting of members, or any special meeting of the members held for that purpose, provided such notice of such proposed changes have been incorporated in the notice -for such meeting.