

**Birch Creek Irrigation Company**  
**PO Box 455**  
**Fairview, UT 84629**  
**By-Laws**

*As by the final vote of the shareholders at the annual meeting Feb 6th, 2006.*

**I. DUTIES OF THE PRESIDENT**

It shall be the duty of the President of this corporation to call the annual meeting of the stockholders, and all meetings of the Board of Directors; and to preside at all such meetings when present. Also to sign all documents and papers that require the signature of the President and to perform other duties that may be prescribed by these By-Laws or the Articles of Incorporation of this Company or by law.

**II. DUTIES OF THE VICE-PRESIDENT**

The duties of the Vice-President of this corporation shall be to perform all the duties of the President when the President is absent or unable or disqualified to act. He will also act as a member of the Board of Directors.

**III. DUTIES OF THE DIRECTORS**

It shall be the duty of the Directors of this Company to levy assessments, establish disciplinary sanctions, establish fees for services, to have charge of the affairs of the corporation and to transact the business thereof, and to perform all the duties prescribed for them by these By-Laws or the Articles of Incorporation or by law. All such assessments shall have priority over any mortgage, lien, pledge, bailment, sale contract, escrow contract, lease, conditional or unconditional transfer or any other encumbrance, lien, claim, attachment, execution or other charge or interest. The right of the Company to assess the Stock shall be paramount and superior to all those liens, claims, charges or interests for the reason that the assessments constitute an improvement to the irrigation system.

**IV. DUTIES OF THE SECRETARY-TREASURER**

It shall be the duty of the Secretary-Treasurer to take minutes of the proceedings at all meetings of the stockholders and the directors of this corporation; to keep a stock record containing the names of all stockholders together with the number of shares of each class of stock owned by each share holder; to make transfers upon the books and to issue certificates of stock; to keep a record of the water handled by the corporation but not owned by it; to act as clerk of election at the biennial elections of the Company and within five days after such elections to give to the parties elected notice of their election; to post all proper notices and to attend to the correspondence of the corporation; to send notices of assessments and to receive taxes; to advertise for sale and sell delinquent stock; to have charge of all funds of the corporation and to make all disbursements; to keep account of all receipts and disbursements of the Company, and to prepare a balance sheet of the accounts of the Company at least once a year, such report and balance sheet shall be read at the annual meeting of the stockholders. All receipts shall be deposited in an area bank approved by the Board of Directors. All disbursements shall be authorized by at least two signatures of the Board of Directors. The Secretary will provide a list of stockholders and shares owned by each to the Water master prior to the start of the irrigation turns. The secretary shall act as a member of the Board of Directors.

## V. DUTIES OF THE WATER MASTER

The duties of the Water master of this Company shall be to distribute the waters of Birch Creek belonging to this corporation to the stockholders in proportion as they hold stock in the Company; to oversee the construction and improving of all weirs, head gates, flumes, ditches and other devices for measuring and distributing the said waters, and to present to the Secretary-Treasurer all bills for expense of labor, materials, etc. All records and logs dealing with the distribution of water kept by the Water master shall be deemed the property of the Company and are to be turned in to the same at the end of every year or as required by the Board of Directors.

The Water master shall post Class A and Class B shares in gallons per minute at points designated by the Board of Directors.

Any Stockholder desiring a change in the distribution of water from one pond or unit to another must present the change to the Water master at least two days before the change.

The stockholder should notify the Water master of any ditch, pipe, or pond repair required. If the required work can be accomplished for less than \$500.00, the Water master has the authority to do the work or see that it gets done. If the cost will exceed \$500, the Water master will notify the Board of Directors member who is charged with Water master supervisory authority before proceeding.

The Water master and/or appointed assistant is the only person authorized to divert water on the main channel or trunk line.

The Water master will be paid as determined by the Board of Directors.

The Water master shall serve under the direction of the Board of Directors.

## VI. WATER DISTRIBUTION

Water shall be delivered on a gallon per share rate for sprinkler systems and to designated ditches on designated days.

Any and Stockholders or their agent must take care of the water allocated to them

## VII. COMPENSATION

The compensation of the President, the Vice-President, the Secretary-Treasurer and the two Directors shall be decided by the Stockholders.

The salaries or wages of all others shall be determined by the Board of Directors.

## VIII. COMPANY DISTRIBUTION SYSTEM

Company ditches will be designated as ditches shared by two or more stockholders extending to property lines. Sprinkler lines are those designated by Company design. No underground hookups to the company lines allowed without the Board of Directors approval. Additions shall have a shut off valve and a meter unless the addition is for field riser use only. Flow control nozzles on the pressurized sprinkler system are required for the entire irrigation season.

## IX. AMMENDMENTS

These By-Laws may be amended and added upon by a majority vote of an authorized quorum of the shares represented at any regular stockholders meeting or at any special meeting of the Stockholders that is properly called. A quorum shall consist of Stockholders representing either in person or by proxy at least 50% of the outstanding shares of the Company authorized to vote at such a meeting.

If, at a properly called Stockholder meeting a quorum is not present, those Stockholders present may adjourn the meeting. The meeting may be reconvened subject to the following:

- 1 The Company shall send notice of the adjourned meeting to all Stockholders entitled to vote, giving the time and place of holding such a reconvened meeting and a statement of the purpose of the meeting, that the adjourned meeting failed for lack of a quorum and that under provisions of this section, it is proposed to hold the reconvened meeting with a quorum of those present.
2. At the reconvened meeting, the Stockholders present, represented in person or by proxy, shall constitute a quorum and the votes of a majority interest of the votes present at such meeting shall be sufficient to transact the business.
3. Voting at such meetings shall be by Stock vote with one vote per "A" Share either owned or represented by proxy. The ballot for a stock vote at a meeting shall state the name of the Stockholder voting, the number of shares voted by Stockholder and if such ballot be cast by proxy, it shall also state the name of such proxy.

#### X. DELINQUENT WATER ASSESSMENTS OR FEES

Stockholders with delinquent water assessments or service fees shall not receive irrigation water, stock water or transfer water stock until such assessments or fees are resolved with the Company.

#### XI. STOCK CERTIFICATES

Certificates of stock shall be in such form as the Board of Directors and the Utah State Code shall direct, and such certificates shall be signed by the President and the Secretary-Treasurer. Certificates shall be issued in numerical order from the stock certificate book and shall express on the face thereof the certificate number, date of issue, the number of shares represented, and the name of the stockholder or entity to which it is issued. It is declared to be the policy of the Company not to issue a certificate of stock for less than one share except as necessary to resolve certificates previously issued or as ordered by court decree or statute.

#### XII. STOCK CERTIFICATE STUB

The certificate book shall contain a duplicate stub on which shall be written or printed the serial number of the certificate, the date, the name of the stockholder to whom issued, the certificate from which the stock transfer originated, the amount and class of stock transferred, and any other information shown on the certificate or stub as directed by the Board of Directors. The stub shall also show a form of acknowledgment of receipt for the stockholder to sign when the certificate is delivered. Registered mail delivery by the Company Secretary-Treasurer to the stockholder is sufficient receipt.

#### XIII. CONNECTIONS TO THE PRESSURIZED WATER DISTRIBUTION SYSTEM

If approved, connections to the Birch Creek Irrigation Company distribution system will be paid for by the Stockholder and become the property of the Birch Creek Irrigation Company up to the last pressure reducer, riser and drain or through and including any pipe tee and shut off valve up to and including the water meter. With any such addition the real property owner/stockholder shall grant an easement to the Birch Creek Irrigation Company to repair, maintain, service, or monitor said

addition. If there is a failure by the real property owner or stockholder to grant such access, the Birch Creek Irrigation Company may shut off said addition or seek legal remedy or both at the Company's sole discretion.

#### XIV. TYPE OF WATER METER

Approved connections to the Birch Creek Irrigation Company pressurized irrigation distribution system that involve water meters shall require that the design, type or model of the meter and associated shut off valve, be approved by the Board of Directors.

#### XV. STOCKHOLDERS REQUESTING NEW CONNECTIONS OR CHANGES TO THE EXISTING WATER DISTRIBUTION SYSTEM.

Stockholders requesting changes in the Birch Creek Irrigation Company water distribution system, or connecting to the company system shall be required to follow the following process:

- a. Submit their request in writing to the Board of Directors of the Birch Creek Irrigation Company.
- b. Upon receipt of the written request, the Board of Directors shall schedule the Stockholder on the agenda of the Board meeting in a timely manner.
- c. The Board of Directors shall review the request with the Stockholder at the Board meeting.
- d. If approved, the Board of Directors shall authorize installation by the Stockholder, subject to visual inspection.
- e. When the Stockholder is ready for inspection, the Water master and a member of the Board of Directors, or two members of the Board, shall inspect the installation.
- f. Once the installation passes inspection, the Board of Directors shall write a letter of documentation to the Stockholder acknowledging the approval of the change and installation.

#### XVI. CHANGE OF ADDRESS

It shall be the responsibility of Stockholder to notify the Secretary-Treasurer of the Birch Creek Irrigation Company of any change of address.

#### XVII. NAME AND ADDRESS OF CHIEF OPERATING OFFICER, EXECUTOR OR LEGAL REPRESENTATIVE

Stockholders desiring that their water stock certificates be issued in the name of a company, partnership, estate, doing business as (D.B.A.), abbreviations or the like, must provide the Company Secretary-Treasurer with the specific name and address of the Chief Operating Officer, executor or legal representative.

#### XVIII. LIMITATION OF REPRESENTATIVES ON THE BOARD OF DIRECTORS.

Only one representative of a company, partnership, estate, doing business as a (D.B.A.), etc at a time can be elected and serve on the Board of Directors based on water stock held by that entity.

#### XIX. REPRESENTATIVE VOTING

Stock held in the name of a company, partnership, estate, doing business as (D.B.A.) etc shall be voted only by a designated representative with the written authority of that entity. This

designation shall be made by the completion of a proxy signed by the chief operating officer, executor or legal representative. Such proxy shall not be effective for more than one year from the date of issue.

## XX. CHANGE APPLICATIONS FOR POINTS OF DIVERSION OR WELL PERMITS

The Board shall review the proposed change application and if the proposed point or points of diversion are topographically located at an elevation equal to or below the elevation of the first weir of the Company on Birch Creek, the Board may take action on the proposed application as provided herein. However, if the proposed point or points of diversion are located at an elevation that is higher than the first weir of the Company, the Board must notify the Stockholders of the proposed change. A stockholder will have 10 days following such notification, to make known their written concerns to the Board. The Board, based on the facts and circumstances is empowered to take the following action:

- a. Approve the request
- b. Approve the request with conditions
- c. Deny the request.

Under Utah State Law the Company may not withhold approval of any request if any potential damage, liability, interference or other impairment to the Company of its Stockholders can be reasonably mitigated without cost to the Company.

Upon satisfaction of the conditions precedent herein set forth, the Board, within 120 days from the date of submittal of the application, shall notify the applicant of its approval or denial of the application. The decision of the Board shall be final.

If the Company approved the requested change, with or without conditions, the change application may be filed with the State Engineer and must be signed on behalf of the Company or be accompanied by written authorization from the Company clearly assenting to the change and signed by each Stockholder whose shares are tied to the change application. As provided by law, if the applicant's change application is approved by the State Engineer, the Stockholder shall be obligated at his/her own expense to file requests for extension of time to submit proof of beneficial use under the change application without further responsibility of the Company. If the Stockholder change application is approved by the State Engineer and the Stockholder fails to comply with any of the conditions lawfully imposed by the Company, the Company shall send written notice to the Stockholder demanding compliance and extending a reasonable time to remedy the failure following receipt of notice. If the Stockholder fails to substantially comply within the reasonable time set forth in the notice, the Company shall withdraw its approval and petition the State Engineer for an order canceling the change application.

Under State Law, an applicant requesting a change application shall have a cause of action against the Company if the Company:

- a. Unreasonably withholds approval of the request.
- b. Imposes unreasonable conditions in approval of the request.
- c. Withdraws approval of a change application other than as spelled out above
- d. All such actions by a Stockholder shall be referred to mediation by the court under the Utah Alternative Dispute Resolution Act unless both parties decline mediation.

## XXI. ADOPTING, AMENDING OR REPEALING THE BY-LAWS.

The By-laws of the Company may be adopted, amended or repealed at any Annual Meeting or at a Special Meeting called and noticed for that purpose, by a vote of a majority of the Stockholders present at such a meeting, or by notarized written consent of the Stockholders, verified and filed with the Board of Directors. Proposed By-law amendments shall be submitted in writing to the Board of Directors at least thirty (30) days in advance of any meeting called and noticed for the purpose of adopting, amending or repealing the By-laws, and the Board of Directors shall submit in writing to the Stockholders the proposed amendments at least ten (10) days in advance of any Annual Meeting or Special Meeting called and noticed for the purpose of adopting, amending or repealing the By-laws.

#### XXII. EXPENSES OF THE BOARD OF DIRECTORS

The Board of Directors shall not receive any salaries for their services, but may receive a sum of not more than ten dollars (\$10.00) per month for expenses related to meeting attendance if such meetings are called, held, and the Board Member attended. Directors are entitled to reimbursement for any reasonable expenses incurred incident to Company business, if reviewed and approved by the Board of Directors. Such payments and reimbursements shall be reported in detail at the next Annual meeting.

#### XXIII. CHANGES IN POINTS OF DIVERSION AND TRANSFER OF WATER STOCK LIMITATIONS.

The Board of Directors shall only approve changes in points of diversion and transfer of water stock within the acreage total authorized for service by the Utah State Division of Water Rights.

#### XXIV. CONFLICTS OF INTEREST AND DISCLOSURE TO BOARD OF DIRECTORS.

Each Director on the Board has a duty to serve the company as a whole and not the individual himself/herself or individual Stockholders of the Company. This duty applies even when the Director's own personal interest as a Stockholder or representative of a Stockholder in the Company may be contrary to the interest of the Company. "Conflicting interest" transactions include agreements, contracts, transaction, financial relationships between the Company and :

- a. a director of the company
- b. a party related to a director.
- c. An entity in which a director is an officer or agent.
- d. A director who has a financial interest.

An "interested director" means a director who has a direct financial interest in a transaction or contract being considered by the Board or committee of the Company whether as an individual Stockholder of the Company or as a representative of an individual stockholder.

- a. "Interested directors" may be counted in determining the presence of a quorum at a meeting of the Board of Directors or a committee, which authorizes approves, or ratifies a contract or transaction.
- b. "Interested directors" may be excluded from a Board or committee meeting during the discussion and vote on a matter in which the director has a direct financial interest.

"Required disclosure" shall be made by any director who has a "conflicting interest" or is an "interested director" to the Company as a whole.

- a. Required disclosure shall be made concerning the existence and nature of the conflicting interest.

- b. All facts known to the director respecting the subject matter of the conflict of interest or conflicting transaction that an ordinarily prudent person would reasonably believe to be material shall be disclosed to the Board.
- c. Directors with a conflicting interest and those who are interested Directors shall not vote on motions and contracts concerning the interest or conflict.

Upon finding a conflicting interest transaction, an action properly brought before the Board it may:

- a. Rule that the conflicting interest transaction is void or voidable.
- b. The Board of Directors or committee in good faith, may authorize, approve or ratify the conflicting interest transaction by the affirmative vote of the majority of the disinterested Directors, even though the disinterested Directors are less than a quorum.

**XXV.** ANNUAL AUDIT OF BIRCH CREEK WATER SOURCES.

The Board of Directors shall cause that an initial audit be completed on all springs, weeps, and other sources of water in Birch Creek including both the north and south forks, from canyon bottom to ridgeline. All such sources shall minimally be clearly identified with a description be clearly identified with a description of the source, estimated amount of flow, date measured, if there is interference or the taking of the waters by others, GPS location, elevation. Following the initial audit, the Board of Directors shall cause that periodic inspections and audits be made with a report given at the next Annual Meeting of the Stockholders of the Company. The Stockholders of the Company shall reserve the right to name any spring or source through a process that they may determine.

**XXVI. COMPANY FISCAL YEAR**

The Birch Creek Irrigation Company shall conduct its financial operations on a fiscal year that begins January 1<sup>st</sup> and ends December 31<sup>st</sup> of each year. The Board of Directors may make an assessment at any time during the year consistent with Utah State law. Preference shall be given to the establishment of budgets and assessments that coincide with the Company Annual meeting and the election of new officers.

**XXVII. ANNUAL INDEPENDENT COMPILATION AND FINANCIAL REPORT REQUIRED.**

The Board of Directors shall see that an annual independent compilation of the company financial records for the preceding calendar year shall be completed with a written report submitted to the Stockholders at the Company Annual Meeting. The independent compilation and the company Secretary-Treasurer financial report shall be presented for Stockholder approval at the annual meeting.

All financial transactions of the Company will be received into or paid from the approved Company checking account.

**XXVIII. MINIMUM PROCEDURES FOR TRANSFERRING COMPANY WATER STOCK.**

The transfer of Birch Creek Irrigation shares of water stock shall be according to the following procedures:

- a. The Stockholder or their agent, assign or courts shall request that share(s) of water stock be transferred.

- b. The Stockholder or their agent, assign or courts shall submit the original stock certificate with proper endorsement on the back side thereof and appropriate fees according to the current Company fee schedule to the Company Secretary-Treasurer.
- c. The Secretary-Treasurer will verify the water stock certificate (or verified and notarized affidavit of a lost certificate) submitted and assure that the certificate submitted is valid, not a duplicate, a copy or a lost and replaced certificate.
- d. The Secretary-Treasurer will verify that the Stockholder is in good standing with no delinquent water stock assessments pending.
- e. The Secretary-Treasurer will assure that the transfer of the water stock is not in conflict with the current Articles of Incorporation or By-laws of the company. Where such conflict exists, it shall be reported to the Board of Directors for disposition.
- f. The Secretary-Treasurer shall verify that there are no liens against the water stock. If there is a lien holder, a letter from the lien holder shall be required before completing the transfer.
- g. The Secretary-Treasurer will complete the new water stock certificate(s) and shall sign the certificate along with the Company President or Vice-President.
- h. The Secretary-Treasurer will have the new stock certificate owner(s) sign that they have received the certificate at the appropriate signature line on the "stub" of the certificate book. If the Stockholder is not able to sign an acceptable alternative shall be for the Secretary-Treasurer to mail the certificate(s) to the Stockholder by certified U.S. Mail, return receipt requested.
- i. The Secretary-Treasurer will adjust the membership and other records of the Company to reflect the water stock certificate transfer.

#### XXIX. UNAUTHORIZED UNDERGROUND CONNECTIONS TO THE COMPANY WATER DISTRIBUTION SYSTEM

Stockholders or others who connect to the Birch Creek Irrigation Company underground water distribution system without following the written procedures detailed in Article XV of the By-laws of the Company, shall have their point of connection dug up and capped by the Company. The cost of identifying the connection, the excavation and capping shall result in a minimum fine of \$300.00. The fine and the cost of the capping shall be paid to the Company in advance of any consideration by the Company for the review of any application for the connection.

There shall be a ninety day grace period from the date of approval of this By-law until the costs of identifying, excavation and capping are imposed by the Company. This ninety day grace period is contingent upon the stockholder making full disclosure in writing to the Company and also making an appropriate proper application for the connection(s). The Stockholder application must minimally be a written request to the Board of Directors to make the connection along with a diagram of the installation to meet the requirements of this section.

Upon receiving such a Stockholder written application request with diagram within the ninety day grace period, the Board of Directors will review the request and provide a written response to the Stockholder. If this process is followed, no identification, excavation and capping fine will be assessed to the Stockholder.

#### XXX. INSURANCE COVERAGE REQUIRED



The Birch Creek Irrigation Company shall maintain in force adequate general liability insurance coverage for the Directors and Officers of the company and for general liability coverage for the Company in case of damage or accident.

#### XXXI. NOTIFICATION OF RENT OR LEASE OF WATER STOCK REQUIRED

Birch Creek Irrigation Company Stockholders who rent or lease any class of Birch Creek Irrigation Company water stock shall submit written notice or a completed "Standard Water Stock Lease Notification" form to the Company. Such leases shall be for the balance of the irrigation season. Rented or leased water must be used for beneficial use on adjudicated land and require no additions to the Company underground water distribution system. Lessees may rent or lease said shares in accordance with the procedures outlined above. Where necessary, temporary change applications must be filed in accordance with sec 73-3-3.5 of the Utah Code Annotated and with these by-laws.

#### XXXII. TRANSFER OF WATER STOCK FOR USE ON ADJUDICATED AND NON-ADJUDICATED LAND

All classes of Birch Creek Irrigation Company water shall be transferred if such water will be used on "adjudicated" land. Adjudicated lands are those areas in the Birch Creek drainage described in the ruling of Judge Leroy Cox, commonly known as the "Cox Decree" and further detailed by the Utah State Division of Water Rights. The Cox Decree and Utah State Division of Water Rights will be used to identify the number of acres that will be served by the water of Birch Creek.

Transfer of any class of water stock will be permitted if it is going to be used on "non-adjudicated" land if an equivalent amount of "adjudicated" land is "dried up". This type of transfer shall describe the land to be permanently "dried up" and the land to be "served" by the water in writing and signed by the appropriate Stockholder(s) and land owner(s). The Board of Directors shall require that there is a statement by the applicant describing the "beneficial use" of the water on the "non-adjudicated" land and may require a change application even if the "non-adjudicated" land is below the first weir. Such a transfer of any class of Company water stock to "non-adjudicated" land must be approved by a majority vote of the Board of Directors.

The Board of Directors shall not permit any of the Company water described under the "Cox Decree" to be used on non-adjudicated land except under the provisions of this By-law.