

**BIRCH CREEK IRRIGATION COMPANY**  
**BY-LAWS**  
**PO Box 455**  
**Fairview, UT 84629**

**I. RESPONSIBILITIES OF DIRECTORS**

The responsibilities of the Board of Directors (“Board”) of the Birch Creek Irrigation Company (“Company”) include levying assessments on Company stock to cover general costs of Company administration, establishing disciplinary sanctions, establishing and imposing fees and charges on shareholders for services expended by the Company on behalf of the shareholder and to enforce and collect such assessments, fees, and charges. It shall be the duty of the Directors to have charge of the Company’s affairs, 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.

**II. RESPONSIBILITIES OF THE PRESIDENT**

The President of the Company shall call the annual meeting of the shareholders and all meetings of the Board and preside at all such meetings when present. The President shall sign documents and papers requiring the signature of the President and perform other duties prescribed by this Company’s Bylaws, Articles of Incorporation, and state code.

**III. RESPONSIBILITIES OF THE VICE PRESIDENT**

The Vice-President shall 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.

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

It shall be the duty of the Secretary-Treasurer to take minutes of the proceedings at all meetings of the shareholders and the Board of this Company; to keep a stock record containing the names of all shareholders together with the number of shares of each class of stock owned by each shareholder; to make transfers upon the books and to issue certificates of stock; to keep a record of the water handled by the Company 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 Company; 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 Company 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 shareholders. All receipts shall be deposited in an area bank approved by the Board. All disbursements shall be authorized by the signatures of at least two members of the Board. The Secretary will provide a list of shareholders and shares owned by each to the Watermaster prior to the start of the irrigation turns. The Secretary shall act as a member of the Board.

## **V. RESPONSIBILITIES OF THE WATERMASTER**

The duties of the Watermaster of this Company shall be to distribute the waters of Birch Creek belonging to this Company to the shareholders in proportion as they hold stock in the Company; to oversee the construction and improvement 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 the expense of labor, materials, etc. All records and logs dealing with the water distribution kept by the Watermaster shall be deemed the Company's property and shall be turned in to the same at the end of every year or as required by the Board.

**a. Share Quantity Distribution:** The Watermaster shall post Class A and Class B shares in gallons per minute at points designated by the Board.

**b. Monitoring:** The Watermaster shall monitor the Company's total water usage and maintain accurate records of such water use.

**c. Shareholder Change to Watermaster:** Any shareholder desiring a change in water distribution from one pond or unit to another must present the change to the Watermaster at least two days before the change.

**d. Watermaster Repair Authority:** The shareholder should notify the Watermaster of any ditch, pipe, or pond repair required. If the required work can be accomplished for less than \$500.00, the Watermaster has the authority to do the work or see that it gets done. If the cost exceeds \$500, the Watermaster will notify the Board member charged with Watermaster supervisory authority before proceeding.

**e. Diversion Authority:** The Watermaster and/or appointed assistant is the only person authorized to divert water on the main channel or trunk line.

**f. Compensation and Service:** The Watermaster will be paid as determined by the Board. The Watermaster shall serve under the direction of the Board.

## **VI. BOARD AND OFFICER COMPENSATION AND EXPENSES**

**a. Compensation:** The compensation of the President, the Vice-President, the Secretary-Treasurer, and other members of the Board shall be decided by shareholders. The Board shall determine the salaries or wages of all others.

**b. Expenses:** Members of the Board 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 incidental 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.

## **VII. CONFLICTS OF INTEREST AND DISCLOSURE TO BOARD OF DIRECTORS.**

### **a. Definitions:**

i. **Interested Director:** An “Interested Director” is defined as a member of the Board with direct financial interest in a transaction or contract being considered by the Board or a working committee of the Company. The application of this Article to a direct financial interest applies whether the financial interest is either the Director’s personal interest as a shareholder or as a representative of a shareholder. Interested Directors shall disclose their interest in any transaction before the Board prior to any Board action. Disclosure includes divulgence of all facts known to the Interested 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.

ii. **Conflicting Interest Transactions:** “Conflicting Interest Transactions” are defined as agreements, contracts, property transactions, and financial relationships between the Company and any of the following: a Board member or party related to the Board member, an entity in which the Board member is an officer or agent, or a where Board member has a financial interest in the outcome of the transaction.

**b. Board Member Duty:** Members of the Board shall be held to the standards of care and duties as determined by the Utah Revised Non-Profit Corporation Act. In addition, each member of the Board must serve the Company as a whole and not themselves or individual shareholders. This duty applies even when the Director’s own personal interest as a shareholder or as representative of a shareholder in the Company may be contrary to the interest of the Company.

**c. Interested Directors and Quorum:** Interested Directors may be counted in determining the presence of a quorum at a meeting of the Board or a committee that authorizes, approves, or ratifies a contract or transaction. 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.

**d. Interested Directors and Voting:** Interested Directors shall not vote on motions and contracts concerning the interest or conflict.

**e. Conflict Voidable:** The Board, upon finding a conflicting interest transaction,

may, by majority vote, determine that the conflicting interest transaction is void or voidable.

**f. Board Vote:** The Board or a committee of the Board may, in good faith, 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.

## **VIII. CHANGE OF ADDRESS**

It shall be the shareholder's responsibility to notify the Secretary-Treasurer of any change of address.

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

Shareholders desiring that their water stock certificates be issued in the name of a company, partnership, estate, DBA, etc., must provide the Secretary-Treasurer with the specific name and address of the Chief Operating Officer, executor, or legal representative.

## **X. SHAREHOLDER VOTING AND BYLAW ADOPTION**

**a. Quorum:** A quorum shall consist of shareholders representing at least 50% of the Company's outstanding shares, either in person or by proxy, who are authorized to vote at such a meeting.

**b. Representative Voting:** Stock held in the name of a company, partnership, estate, 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 issue date.

**c. Bylaw Amendment Voting Requirements:** These By-Laws may be adopted, amended, or repealed at any Annual Meeting or Special Shareholder meeting called for that purpose by a majority vote of the shareholders present at such meeting or by notarized written consent of the shareholders verified and filed with the Board.

**d. Proposed Bylaw Amendments:** Proposed Bylaw amendments shall be submitted in writing to the Board of Directors at least thirty (30) days before any meeting called and noticed to adopt, amend, or repeal the Bylaws. The Board of Directors shall submit the proposed amendments in writing to the Shareholders at least ten (10) days in advance of any Annual Meeting or Special Meeting called and noticed to adopt, amend, or repeal the Bylaws.

**e. Shareholder Meeting Adjournment and Reconvene:** If, at a properly called shareholder meeting, a quorum is not present, those shareholders present may adjourn the meeting. The meeting may be reconvened subject to the following:

i. Adjournment Notice: The Company shall send notice of the adjourned meeting to all shareholders entitled to vote, giving the time and place of holding such a reconvened meeting and a statement of the purpose of the meeting, identify 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.

ii. Shareholder Quorum: At the reconvened meeting, the shareholders 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.

iii. Shareholder Voting: 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 shareholder voting and the number of shares voted by the shareholder, and if such ballot be cast by proxy, it shall also state the name of such proxy.

## **XI. DELINQUENT WATER ASSESSMENTS OR FEES**

Shareholders with delinquent water assessments or service fees shall not receive or be considered for Board approval or authorization for the following until such assessments or fees are resolved with the Company:

- a. Delivery of irrigation water or stock water;
- b. Consideration for administrative actions, including shareholder change applications, stock transfers, new connections, or changed connections to Company water distribution systems.

## **XII. STOCK CERTIFICATES**

Certificates of stock shall be in such form as the Board and Utah State Code shall direct, and either the President and Secretary-Treasurer or in the absence of one of these, an elected board member shall sign such certificates. 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 shareholder or entity to which it is issued. Company policy is 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.

## **XIII. 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 shareholder to whom it was 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. The stub shall also show a form of acknowledgment of receipt for the shareholder to sign when the

certificate is delivered. Registered mail delivery by the Company Secretary-Treasurer to the shareholder is sufficient receipt.

#### **XIV. WATER DISTRIBUTION, USE, PENALTIES, AND FORFEITURE**

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

**b. Use:** Shareholders shall use only the proportionate amount of water allocated based on share number and class and as designated by the Board and Watermaster. Shareholders shall not engage in the waste of water and are responsible for the maintenance and monitoring of their usage.

**c. Penalties:** The Board reserves the right to enforce or waive the following penalties:

i. First Offense: A shareholder found to exceed their water allocation will be issued a written notice from the Board and or Watermaster and is responsible for a penalty payment of \$500.00. In addition to the penalty payment, the Board may charge the shareholder for any parts damaged or required to stop the exceedance.

ii. Second Offense: A shareholder found to exceed their water allocation will be issued a written notice from the Board and or Watermaster and is responsible for a payment of \$1000.00. Upon finding a second offense, the Company reserves the right to restrict the shareholder's water usage for one calendar year.

**d. Forfeiture:** If, upon the issuance of a final decree or interlocutory decree in a quiet title or general adjudication action of a court of competent jurisdiction, it is determined that a portion of the water rights owned or held by the Company has been forfeited for non-use under the laws of the State of Utah, the board, pursuant to Utah Code Ann. § 73-1-4.5, shall have the power and authority to apportion such loss or forfeiture to any and all shareholders whose failure to make beneficial use of the water caused the loss or forfeiture of that portion of the Company's water right. The procedure for allocating such forfeiture and loss of water shall generally follow the process as set forth by statute.

#### **XV. COMPANY DISTRIBUTION SYSTEM**

**a. Existing Company Ditches and Lines:** Company ditches will be designated as ditches shared by two or more shareholders extending to property lines. Sprinkler lines are those designated by Company design.

**b. Board Approval Required for All New Shareholder Infrastructure:** No underground hookups to Company lines or additional shareholder infrastructure connected to Company infrastructure shall be allowed without prior Board approval.

**c. New Shareholder Infrastructure:** Newly installed additional lines shall have a shut-off valve and a meter. BCI is not responsible for financial costs.

**d. Shareholder Responsibility and Liability:** New shareholder infrastructure must be approved by the Board prior to installation. New shareholder infrastructure is the sole responsibility of the shareholder. Shareholders are entirely responsible for installation, cleaning, and maintenance. The Company is in no way responsible for any damage to the Company, shareholder, or neighboring infrastructure or property or damages caused by the action or lack of action of the shareholder in installing and maintaining said infrastructure. Shareholder responsibility and liability for the impacts of installation, maintenance, and repair are entirely the shareholders' responsibility, and such liabilities and responsibilities are transferred to new owners upon conveyance.

## **XVI. CONNECTIONS TO THE PRESSURIZED WATER DISTRIBUTION SYSTEM**

Connections to the Company's distribution system must receive prior approval by the Board. The shareholder shall pay for connections to the Company's pressurized water distribution system. New connection infrastructure shall become the Company's property 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/shareholder shall grant the Company an easement to repair, maintain, service, or monitor said addition. If there is a failure by the real property owner or shareholder to grant such access, the Company may shut off said addition or seek legal remedy or both at the Company's sole discretion.

## **XVII. TYPE OF WATER METER**

The Board shall approve the design and models of water meters and shut-off valves required for new connections to the Company's pressurized irrigation distribution.

## **XVIII. SHAREHOLDERS REQUESTING NEW CONNECTIONS OR CHANGES TO THE EXISTING WATER DISTRIBUTION SYSTEM.**

Shareholders requesting changes in the Company's water distribution system or connecting to the Company system shall be required to follow the following process:

- a.** Submit requests in writing to the Board.
- b.** Upon receipt of the written request, the Board shall promptly schedule the shareholders on the agenda of the Board meeting.
- c.** The Board shall review the request with the shareholder at the Board meeting.
- d.** Upon the Board's initial approval, the shareholder applicant shall provide engineered drawings of the connection or change. The engineered drawings must include any flow restrictions or reduction calculations impacting Company infrastructure.

- e. Shareholder applicant responsibilities and requirements include:
  - i. Submission to the Board of a written statement of the following:
    - 1. that the shareholder applicant is responsible for all costs and expenses required for the change or connection;
    - 2. acceptance of full liability for any damage, repair, crop loss, or damages to surrounding properties resulting from the shareholder's connection or change;
  - ii. Submission to the Board of built drawings for Company records;
  - iii. Shareholder applicant responsibility and liability for the connection and change transfers to the new owners where upon sale of the property. Shareholder must inform purchasers of liability and responsibilities in disclosure agreements between seller and buyer.
- f. Final Board approval is contingent upon:
  - i. the acceptability of the engineered drawings;
  - ii. reliance on Board-approved licensed and insured contractors for installation;
  - iii. visual inspection and approval of the project by either the Watermaster and a member of the Board, or two members of the Board prior to line burial.
  - iv. Fulfillment of the shareholder applicant's responsibilities.
- g. Once the installation passes inspection, the Board shall write a letter of documentation to the shareholder acknowledging the approval of the change and installation.

## **XIX. SHAREHOLDER CHANGE APPLICATIONS**

**a. Shareholder Change Application Filing:** No Shareholder shall be permitted to file or cause to be filed with the Utah Division of Water Rights a permanent change application, fixed-term, temporary change application, and/or otherwise modify any element of the Company's underlying water rights without the express written approval of the Board and full compliance with the requirements of Utah Code Ann. § 73-3-3.5 (the "Shareholder Change Statute"). The Board may adopt policies and procedures to assist with Shareholder Change Application requests, which are to be held as a record of the Company.

**b. Shareholder Change Applications Responsibility:** Shareholders seeking to change the beneficial use of Company water from agricultural irrigation to domestic use or from an underground point of diversion will not be approved by the Company.



**b. Board Considerations:** Change applications that will result in increased costs to the Company and its shareholders, or interfere with the Company's ability to manage and distribute its water for the benefit of all shareholders, or impair the quantity and quality of water available to the Company and its shareholders, or otherwise impact the Company as identified by the Shareholder Change Statute will be denied by the Company.

**c. Service Area:** The Board 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.

**d. Action by the Board:** The Board shall review the proposed change application. 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. 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 Company's first weir, the Board must notify the Shareholders of the proposed change. A Shareholder will have 10 days following such notification to make their written concerns known to the Board.

**e. Decision of the Board:** Based on the facts and circumstances of each proposed Shareholder Change Application, the Company may, by resolution, approve the change request, approve the change request with conditions, or deny the change request, subject to the following:

i. Co-Applicant: The Board, in its sole discretion, may either require that the Corporation be a co-applicant of the Shareholder Change Application or that the applicant may file such application in the applicant's own name.

ii. Letter of Assent: If the Board consents to the Shareholder Change Application, it shall provide a letter of assent stating the Company approves of the Shareholder Change Application, setting all conditions, and that any conditions must be a part of the State Engineer's Memorandum Decision approving the Shareholder Change Application. The Letter of Assent must be filed with the Shareholder Change Application.

iii. Denial: If the requested change is denied, the written notice shall contain a brief explanation for the denial that cites the considerations listed in Utah Code Ann. § 73-3-3.5. A change request shall not be denied, absent other factors if any anticipated or potential cost, damage, or impairment to the Corporation or its Shareholders can be reasonably mitigated by the applicant without cost to the Corporation.

**g. Dispute Resolution:** 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.

## **XX. ANNUAL AUDIT OF BIRCH CREEK WATER SOURCES.**

The Board of Directors shall conduct an initial audit on all springs, weeps, and other sources of water in Birch Creek, including both the North and South forks, from canyon bottom to ridgeline. At a minimum, all water sources shall be clearly identified with a description of the source, the estimated amount of flow, the date measured, any interference or the taking of the waters by others, GPS location, and elevation. Following the initial audit, the Board of Directors shall conduct periodic inspections and audits, with a report given at the next Annual Meeting of the Shareholders of the Company. The Shareholders of the Company shall reserve the right to name any spring or source through a process they may determine.

**XXI. COMPANY FISCAL YEAR**

The Company shall conduct its financial operations in a fiscal year that begins on January 1st and ends on December 31<sup>st</sup> of each year. The Board may conduct a share assessment 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's Annual meeting and the election of new officers.

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

The Board of Directors shall see that an annual independent compilation of the Company's financial records for the preceding calendar year shall be completed with a written report submitted to the Shareholders 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 Company financial transactions shall be received and paid from the approved Company checking account.

**XXIII. 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 or assign shall request that share(s) of water stock be transferred.

**b.** The Stockholder or their agent or assign 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 verify a notarized affidavit of a lost certificate as allowed by code 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 and that no delinquent water stock assessments are pending.

**e.** The Secretary-Treasurer will ensure that the water stock transfer does not conflict with Company Articles of Incorporation or Bylaws. Where such conflict exists, it shall be reported to the Board 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 sign the certificate 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, the Secretary-Treasurer shall mail the certificate(s) to the Stockholder by certified U.S. Mail, and a return receipt shall be requested.

**i.** The Secretary-Treasurer will adjust the membership and Company records to reflect the water stock certificate transfer.

#### **XXIV. UNAUTHORIZED UNDERGROUND CONNECTIONS TO THE COMPANY WATER DISTRIBUTION SYSTEM**

Shareholders or others who connect to the Company’s underground water distribution system without following the written procedures detailed in **Article XVIII** of these Bylaws shall have their point of connection removed 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 making an appropriate 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 a diagram within the ninety-day grace period, the Board will review the request and provide a written response to the Stockholder. If this process is followed, no identification, excavation, or capping fine will be assessed to the Shareholder.

#### **XXV. INSURANCE COVERAGE REQUIRED**

The Company shall maintain adequate general liability insurance coverage for the Company's Directors and Officers and general liability coverage for the Company in case of damage or accident.

**XXVI. NOTIFICATION OF RENT OR LEASE OF WATER STOCK REQUIRED**

Birch Creek Irrigation Company Shareholders 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's 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 Utah Code Ann. § 73-3-3.5 and these Bylaws.

**XXVII. TRANSFER OF WATER STOCK FOR USE ON ADJUDICATED AND NON-ADJUDICATED LAND**

All classes of Company water stock 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 served by the water of Birch Creek.

The Board 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 Bylaw.