

**ANIMAS CONSOLIDATED DITCH COMPANY, INC.**  
PO Box 3777 ~ Durango, CO 81302

**BY-LAWS**

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**ARTICLE I**

**Corporate Name**

The corporate name of the company shall be as stated in Certificate of Incorporation, ANIMAS CONSOLIDATED DITCH COMPANY.

**ARTICLE II**

**Objects**

The Objects of the Company shall be as stated in the Articles of Incorporation.

**ARTICLE III**

**Meetings of Shareholders**

**Section 3.1:** Annual meetings of the shareholders for the election of Directors, and for other purposes, shall be held at a location as determined by the Board of Directors in La Plata County, State of Colorado, on the first Saturday in March each year, or whenever practicable as determined by the Board of Directors. Notice of the time and place of holding such meeting, and also of all special meetings, shall be given by mailing a notice of the meeting to the shareholders no less than twenty (20) days prior to the meeting and advertising in a newspaper with local circulation at least one time.

**Section 3.2:** Special meetings of the shareholders of this Company may be called by the Board of Directors by resolution at any meeting of the Board of Directors upon the written request of the shareholders of the Company, representing one-third of all the shares of the Company then issued and outstanding, or a majority of all the Board of Directors elected, but notice of all special meetings shall be given as provided in Section 3.1 of this Article.

**Section 3.3:** At all meetings of shareholders of the Animas Consolidated Ditch Company, the shareholders present, either in person or by valid proxy, shall be considered a quorum for the purpose of conducting any and all necessary business that may come before the Company. To be a valid proxy, the proxy must be in writing, dated, signed by the shareholder, and must designate a person who will be present at the meeting to cast votes for the shareholder. Proxies from a legal entity shall be subscribed by an authorized agent thereof, and proof of such authority must accompany the proxy or be on record with the Company from Company records or other official documents acceptable to the Board of Directors. Proxy authority is presumed to be valid for a period of one year unless a different duration is stated on the face of the proxy. Any revocation of a proxy must be in writing, signed, dated and delivered to the Secretary of the Company. The revocation is not valid until received by the Secretary, and will affect only votes cast after the time of receipt by the Secretary.

**ARTICLE IV**

**Board of Directors**

**Section 4.1:** The Board of Directors shall be composed of five shareholders, or the designated agent of the shareholder. The Board of Directors shall serve staggered three year terms. At the annual meeting of the shareholders, shareholders shall nominate and elect Directors to replace each Director whose term is expiring.

**Section 4.2:** As soon as practical following the annual meeting of the shareholders, the Board of Directors shall meet and elect the following officers: President; Vice President; Secretary; Treasurer, and any such other officers as may be deemed necessary.

**Section 4.3:** A Director may hold any office in the Company, or may be employed by the Company to perform any special service that may be required. A Director may hold two or more offices.

**Section 4.4:** Said officers shall be elected or appointed for one year, or until the next annual election of the Board of Directors, or until their successors are appointed and qualified; the Board of Directors shall have the right to remove any officer or agent selected by them at any time it may be deemed advisable by the Board of Directors.

**Section 4.5:** The Board of Directors is the Company's governing body and shall act in all instances on behalf of the Company, except as provided in these Bylaws or applicable law. The Board of Directors shall have, subject to the provisions of these Bylaws and applicable law, all powers and duties necessary for the administration of the affairs of the Company, which shall include the powers and duties set forth in C.R.S. §7-42-101 et seq., and the Colorado Revised Nonprofit Corporation Act, C.R.S. Title 7, Articles 121-137.

**Section 4.6:** It shall be the duty of the Board of Directors to levy an annual or any special assessment deemed necessary by the Board of Directors in accordance with Section 7.1 upon all of the shares of the Company then issued and outstanding.

**Section 4.7:** The Board of Directors will have discretion to determine compensation for directors and officers of the Company, both for their services as directors and officers and for services and labor provided to the company.

**Section 4.8:** The Board of Directors shall also have the power to require of any officer, agent, clerk or employee, bonds with sureties in such an amount as they may see proper for the faithful discharge of their duties, and for the protection of the Company, and shall have full control of all the Company's business, approve all bonds, direct the execution of all works, contract for the same, audit and pass upon all bills, direct the amount of labor to be employed, determine when and what work shall be done, what property, machinery, etc. shall be purchased or sold, or the Board of Directors may appoint an agent to perform such of these duties as may be deemed best.

**Section 4.9:** Meetings of the Board of Directors shall be held at a place determined by the President of the Board, in said County, at such time and hour as may be designated by written notice, either by mail or email, given to each board member by the Secretary, President or Vice President at least twenty-four hours prior to the meeting, when there is business to be transacted.

**Section 4.10:** At all meetings of the Board of Directors, a majority thereof shall constitute a quorum for the transaction of business.

**Section 4.11:** Any action required or permitted to be taken at a meeting of the Board of Directors, including any amendments to the By-Laws, may be taken without a meeting if notice of the proposed action is sent to all Directors at least ten days prior to the action, and all Board of Directors agree to vote on the action, and the action is approved by a majority of the Board of Directors, as evidenced by their written consent to the action. If a board member objects to an action being taken without a meeting, the proposed action shall not occur without a meeting, but shall be placed on the agenda for the next regular or special meeting of the Board of Directors. Action taken under this Section is effective when a majority of the Board of Directors have signed the consent or proposed action, unless the consent specifies a different effective date. The Secretary shall file these consents with the minutes of the meetings of the Board of Directors.

**Section 4.12:** All vacancies occurring within the Board of Directors occasioned by death, resignation, disqualification or otherwise, may be filled by a vote of the majority of the remaining members of the Board of Directors. The substitute member shall serve out the unexpired term of the board member being replaced.

## ARTICLE V

### Officers

**Section 5.1:** The President shall be the chief executive officer of the Company; he shall sign all official papers and documents of the Company, preside at all meetings of the Board, and attend to such other duties as the Board of Directors may authorize.

**Section 5.2:** In the absence or inability of the President to discharge the duties of the office, the Vice President shall act in his place, and have and exercise all the powers of the President. The Board of Directors may, in case of the absence or inability of both the President and Vice President, elect a President pro tem, and the Board of Directors may, in case of the absence or inability of the Secretary, elect a Secretary pro tem.

**Section 5.3:** The Secretary shall keep a record of the proceedings of the Board of Directors and of the Company; shall keep the stock book and seal of the Company; shall attest by his signature and seal of the Company all official documents and certificates of stock; shall keep a complete set of books, showing all the accounts, property and transactions of the Company; shall carefully examine all bills and accounts due to or against the Company; shall prepare vouchers for all such bills as he finds correct against the Company, and present them to the Board of Directors for their action; shall certify all bills and vouchers audited by the Board of Directors; shall collect all assessments and moneys due the Company, and pay the same over to the Treasurer, taking his receipt for the same; shall make a report of the business transacted by him annually, or oftener, if so required by the President or the Board of Directors, and exhibit and explain the same to the Board.

**Section 5.4:** The Treasurer shall be the custodian of and receive all money, bonds, notes and other property of the Company; shall pay out money only upon proper voucher certified by the Secretary or President, as shall be determined by the Board of Directors; shall transfer property only upon order of the President and Directors of the Company, and make a report annually, or as often as required by the President or Board of Directors.

**Section 5.5:** The Secretary and Treasurer shall at least once a year or more often, if required by the President or by resolution of the Board of Directors, make a full comparison and adjustment of the accounts of the Company and each prepare and deliver full detailed reports of their respective accounts to the President of the Company, which shall be submitted to the annual meeting of the shareholders.

**Section 5.6:** The Board may delegate implementation of some or of all of the duties of the Secretary and Treasurer to an employee or independent contractor. However, oversight and responsibility for the completion of said duties shall remain with the Officer.

## ARTICLE VI

### Capital Stock

**Section 6.1:** Certificates of Stock shall be issued under the seal of the company and be signed by the President and Secretary of the Company. No transfer of stock shall be allowed, except upon the return and cancellation of the old certificate, and the Secretary shall have the old certificate cancelled before signing a new one, provided, that no certificate of stock shall be transferable while the assignor of such certificate shall be indebted to the Company, unless, a vote of the majority of the Board of Directors authorizes the same.

**Section 6.2:** Ownership of stock in the Company is subject to these By-laws and the rules and regulations of the Company. The stock certificates shall be numbered and registered in the order in which they are issued. They shall be issued in consecutive order, and a current record thereof shall be maintained, including the name of the person owning the shares and the date of issue. Such certificates shall exhibit the shareholder's name, and shall be signed by the President, countersigned by the Secretary, and sealed with the seal of the corporation. To be eligible for share ownership in the Ditch Company, the shareholder must own sufficient land within decreed lands of the Ditch Company on which water can be put to beneficial use without waste in accordance with the company's decreed water right. Notwithstanding the foregoing, landowners may form small ditch associations or homeowner's associations to hold title to the shares on behalf of landowners owning irrigated land. These associations shall be subject to all of the operating documents of the Ditch

Company. If a shareholder does not own land for a period of two years or as otherwise set forth in the Rules and Regulations, the stock shall be forfeited to the Ditch Company in accordance with the provisions of Article VII below unless an agreement for retention is reached with the Ditch Company.

**Section 6.3:** Certificates of Stock hereafter issued shall be substantially in the following form:

"Incorporated Under the Laws of the State of Colorado Certificate No. \_\_\_\_\_

No. of Shares \_\_\_\_\_.

THE ANIMAS CONSOLIDATED DITCH CO.

This is to certify that \_\_\_\_\_ is the owner of \_\_\_\_\_ Class \_\_\_\_ Shares of Capital Stock of the Animas Consolidated Ditch Company ("the Company"). Ownership and transferability of the Shares of the Company and use of the water represented thereby are subject to the Articles of Incorporation, Bylaws, Rules and Regulations, Resolutions, other governing documents of the Company as same may be amended from time to time, and the laws of the State of Colorado. Shareholder is advised to become familiar with the governing documents of the Company. Copies may be obtained from the Secretary of the Company. Issuance of a stock certificate does not constitute approval for use of water or change in point of delivery of water without written approval from the Company.

IN WITNESS WHEREOF, the President and Secretary have hereunto subscribed their names and caused the corporate seal of said corporation to be attached at Durango, Colorado, this \_\_\_\_\_ day of \_\_\_\_\_, A.D. 20\_\_\_\_\_.

\_\_\_\_\_  
Secretary

\_\_\_\_\_  
President

**Section 6.4:** The Company shall operate as a mutual ditch company and no shares of stock shall be sold except as consistent with the operating documents of the Ditch Company, and that, if sufficient shares are sold representing the fully supply of water belonging to the Ditch Company, no further shares shall be sold. Nothing herein is intended to require the Ditch Company to sell all of its issued shares of stock.

## ARTICLE VII

### Assessments and Other Charges

**Section 7.1:** Assessments may be levied upon all the capital stock of this Company which shall be issued or outstanding, at any time, sufficient to obtain monies necessary to keep the property of the Company in good repair, to meet the payment of any claim against the Company not otherwise provided for, to pay the expenses necessary in maintaining and operating the ditches of the Company, to provide for all reasonable capital expenses and other expenses of the company, and to maintain a reasonable reserve fund. Within thirty days after levy, all such assessments shall be payable, and shall be levied pro rata on all shares of stock issued and outstanding at the time the assessment is levied.

**Section 7.2:** As soon as practicable after the said assessment is levied by the Directors as above provided, notice shall be given to each shareholder by the Secretary of Company, stating that the assessment had been levied, and the amount thereof, and requiring the shareholder to pay the same to the Secretary within thirty days from the date of said notice. Such notice shall be given in writing and shall be either delivered to the shareholder in person, or shall be duly deposited in the post office, properly addressed to the shareholder at the address on record with the Ditch Company and the postage thereon shall be prepaid, within five days of its date.

**Section 7.3:** All other charges owed by a shareholder to the Company, including, but not limited to late fees, attorneys fees, encroachment fees or other charges shall be subject to all interest, penalties and forfeiture as assessments.

**Section 7.4:** In case any shareholder shall fail to pay the assessment due upon his stock or any other charges owed to the Company, in accordance with this notice, the amount due to the Company from him on account of said assessment or other charges shall bear interest from the time the same was required to be paid, in accordance with the notice aforesaid, at the

rate set forth in the Rules and Regulations, and this interest shall be paid to the said Company by the said shareholder when the assessment or other charge is paid, or in case a sale of the stock is made, shall be added to the amount of the assessment or other charge. Such interest may be waived by the Board of Directors for good cause shown. Shareholders are prohibited from diverting water while any sums owed the Ditch Company, including assessments, charges, penalties, cost or interest, shall remain unpaid for thirty days after the same has been levied to said Shareholder. If the delinquent shareholder is then receiving water, the same may be discontinued by the Company.

**Section 7.5:** In case the assessment so levied upon any share of stock or other charge is not paid within the time mentioned in said notice, as aforesaid, then the Secretary shall, as soon as practicable, send a second notice to each shareholder who has not paid the said assessment or other charge. This second notice shall state the same facts as set forth in the first notice, and in addition thereto shall state that if the assessment is not paid within thirty days from the date of said notice, the said stock so delinquent shall be declared forfeited to the Ditch Company. This second notice shall be delivered either to the shareholder so delinquent, in person, or shall be duly mailed, properly addressed to the said shareholder, postage prepaid, by certified mail, return receipt requested at his address as shown on the stock ledger, and shall be either delivered to him in person or mailed at least thirty days prior to the time when such forfeiture is to take effect, as prescribed in said notice.

**Section 7.6:** If the Ditch Company is unable to locate the Shareholder by mail or in person, the Ditch Company may advertise the forfeiture three times in a newspaper of local circulation in La Plata County, Colorado. The advertisement shall state the name of the record shareholder, the stock certificate number, and the number of shares to be forfeited. The forfeiture will occur fourteen days after the last publication.

**Section 7.7:** Upon forfeiture, the forfeited shares shall automatically revert to ownership by the Company, to be held as unissued shares pending reallocation or sale to other users within the Ditch Company service area, and such forfeited shareholder shall no longer have any interest in the shares. Such shareholder shall assign the unused shares back to the Company, at no cost to the Company. If the shareholder does not assign the shares back to the Company, the Company shall reflect the forfeiture on its books, and shall notify the shareholder in writing, that such shares have been transferred to the Company pursuant to this Article.

**Section 7.8:** In the discretion of the Board of Directors and for good cause, the Ditch Company may permit redemption of forfeited shares, extension of time to remedy delinquencies, or non-ownership, or other relief as deemed appropriate. In that event, a written agreement between the affected Shareholder and the Ditch Company shall be prepared and signed by both parties. The terms of any agreement shall require the payment of all sums owed to the Ditch Company, including assessments, charges, costs, fees, interest and penalties as well as a redemption fee to be determined by the Ditch Company. Forfeited or delinquent shareholders may not be permitted to purchase new shares in the Ditch Company until all past due accounts are brought current.

**Section 7.9:** In the event that the forfeited shares are Class A shares not redeemed in accordance with section 7.8 above, the Ditch Company will advertise said shares for sale within two years of forfeiture. The sale price will be determined by the Ditch Company, but unless otherwise determined by the Board of Directors, the sale price shall be no less than the amount outstanding and owed on the shares, together with all interest, penalties, costs, and sale fee. The sale of Class A shares shall be advertised in a newspaper of local circulation in La Plata County, Colorado at least three times. The advertisement shall include the number of shares to be sold, and the date, time and location of said sale. At the time and place fixed in the notice, the Secretary, or the person designated by him, shall proceed to sell the shares at public sale, to the highest and best bidder for cash, so long as the bidder is qualified to own share of the Ditch Company pursuant to these Bylaws. The company may bid at such sale. Class B shares will be owned or sold by the Company in the same manner as other Class B shares owned by the Company.

**Section 7.10:** Each shareholder in accepting stock shall be deemed to have acquiesced in and agreed to the provisions herein set forth.

**Section 7.11:** It is further provided that the Company shall have a lien upon all stock issued and outstanding, for any and all assessments or other charges that may have been levied or assessed against the same, and the same shall be a perpetual lien against said shares of stock, until the same and all parts thereof are fully paid and discharged.

**Section 7.12:** It is further provided that the Company may declare forfeited in the same manner as provided in this Article for forfeiture for unpaid assessments, any stock whose owner has failed to apply the water represented thereby, to beneficial use for a period of four years.

## **ARTICLE VIII**

### **Use of Water**

**Section 8.1:** All water shall be delivered to the shareholders at the established point of diversion. Any shareholder in any manner interfering with the same shall forfeit all right to the use of water from said ditch under his stock until such interference is resolved and shall be subject to fines and penalties as determined by the Company. Every shareholder shall receive the water to which he is entitled at the aforesaid point of diversion, and care for the same so that it may not commit waste or damage.

**Section 8.2:** Unless otherwise determined by the Board of Directors, the waters of said ditch shall be divided so that sixteen shares of stock shall entitle the holders thereof to one cubic foot of water per second in time, or if there is not sufficient water in the ditch to make a cubic foot of water per second in time for each sixteen shares, then each shareholder shall have the right to take water from said ditch for the purposes specified, in quantities bearing the same ratio to the waters running in said ditch as the amount of stock held by each shareholder bears to the whole amount of stock issued, and the ditch walker shall regulate the same accordingly.

**Section 8.3:** All headgates in the main canal shall be installed under the supervision of the Company, but shall be paid for by the shareholder for whose benefit the same are constructed and placed, and all consumers of water owning shares in said company shall construct their own laterals and take care of the water from the point of delivery at such headgates in the main canal of the Company, and the Company will not be responsible for any damage that may arise after the water is delivered at such headgates for such laterals belonging to such shareholder. If the owner shall fail to perform this duty at any time and any dispute rises which results in litigation involving the Company, the owner agrees to hold Company harmless from any such claim or demand and to indemnify Company for any loss sustained by the Company as a result of the failure of the owner of lands as herein set out to maintain such culverts. The owner of such lands also agrees to pay all of Company's expenses in defending the legal action, including, but not limited to, reasonable attorney's fees.

**Section 8.4:** If a shareholder desires to transfer or change the place of delivery of water, he shall submit to the Board a written request in writing. If the Board approves a transfer or change of shares, the Board may impose reasonable terms and conditions on the transfer or change to protect other shareholders from injury, including, but not limited to, requiring a certain portion of the shares to remain in the Ditch past the proposed diversion point to make up for lost carriage flow. Any shareholder(s) proposing any transfer or change of share(s) ("the Proposing Shareholder") shall pay all of the Company's costs related to the proposed transfer or change, including but not limited to all attorney fees, engineering fees, staff time, expenses, or other Company costs associated with reviewing the proposal and any information related thereto, negotiating and implementing any agreements, and reviewing and participating in any water court cases related to the proposed transfer or change. The Company may require a deposit prior to commencing any review of a proposed transfer or change, may require additional deposits during the review process, and may apply such deposits to costs incurred. The Proposing Shareholder shall pay such costs whether or not the transfer or change is approved and whether or not it is actually implemented. Such costs shall be considered additional assessments to the Proposing Shareholder pursuant to Article VII, except that shareholder approval and any other provisions inconsistent with this section shall not be required for levying such additional assessments. The Company may collect such costs as set forth in Article VII and shall have all remedies for non-payment as set forth in Article VII.

**Section 8.5:** In many cases, the easement for the Ditch Company's water distribution, drainage and waste systems is unwritten (parol license or prescriptive). Much of the ditch easement has been established by use since the latter part of



the nineteenth century together with other appurtenant easements, and under Colorado law, sufficient space on either side of the centerline of a ditch or canal for operation and maintenance thereof is included in such easement. The Ditch Company's easements are generally not exclusive, but in most cases are prior in time to any other encroaching use, and subject to the Ditch Company's bylaws and procedures as to approval and reimbursement for costs.

**Section 8.6:** Any shareholder desiring to place any structures in, under or over the ditch shall complete an Encroachment permit application and submit same to the Board. The Board may charge impact fees for Ditch encroachments or any other proposed change or impact to the Ditch or Ditch easement, including bridges, pipelines, crossings, or any other proposed structures or changes within the Ditch easement (collectively Encroachment"). The amount of the impact fee shall be set by the Board in its discretion. Without limiting the Board's discretion, the Board should consider the following in evaluating the amount of the impact fee: 1) the Company's costs, including attorney fees, engineering fees, staff time, expenses or other Company costs incurred as a result of the proposed Encroachment; 2) any increase in the Company's potential liability due to the Encroachment; and 3) any increase in potential maintenance due to the Encroachment. If the Company's standard impact fee is not adequate to cover all the Ditch Company's costs related to the proposal, the proposing party shall pay all of the Company's costs related to the proposed Encroachment, including but not limited to all attorney fees, engineering fees, staff time, expenses, or other Company costs associated with the proposed Encroachment, including but not limited to reviewing the proposal and any information related thereto, and negotiating and implementing any agreements. The Company may require a deposit prior to commencing any review of a proposed Encroachment, may require additional deposits during the review process, and may apply such deposits to costs incurred. The proposing party shall pay such costs whether or not the Encroachment is approved and whether or not it is actually implemented. Such costs and/or impact fees shall be paid within 15 days of the date that the Company sends an invoice to the proposing party, and any charges not paid when due shall incur interest at the rate set forth in the Rules and Regulations for delinquent assessments until paid. If the proposing party is a shareholder, the Company's costs and impact fees shall be considered additional assessments to the proposing shareholder pursuant to Article VII, except that shareholder approval and any other provisions inconsistent with this section shall not be required for levying such additional assessments. The Company may collect such costs and impact fees as set forth in Article VII and shall have all remedies for non-payment as set forth in Article VII.

## **ARTICLE IX**

### **Alterations and Amendments of the By-Laws**

These By-Laws may be altered, amended, modified or added to by the votes of a majority of the Board of Directors at any meeting of the Board of Directors. Notice must have been given at a previous meeting and not acted upon for at least one week from the time of such notice, for any alterations, amendments, additions or modifications, and the Secretary shall enter such alterations, changes, additions or amendments of By-Laws in the record.

**APPROVED and ADOPTED by the Board of Directors this 24<sup>th</sup> day of July, 2015 AD**