

ANIMAS CONSOLIDATED DITCH COMPANY

P.O. Box 3777
Durango, CO 81302

Tel: (970) 426-5537
animasconsolidatedditch@gmail.com

RULES AND REGULATIONS

Article I: General Provisions

1.1 General

These Rules and Regulations, together with the Bylaws of the Animas Consolidated Ditch Company (“the Ditch Company”) govern the operations of the Ditch Company and shall be binding on all shareholders, their successors and assigns. These Rules and Regulations may be modified by the Board of Directors at any time as it deems necessary. The Board governs the operations of the Ditch Company including administration of these rules and regulations. The Board reserves the right to grant variances to these Rules and Regulations when in its judgment, the variance would be appropriate and in the best interests of the Ditch Company and its shareholders.

1.2 Conflict

Any conflict between the Rules and Regulations and The Articles of Incorporation or any of the Ditch Company Bylaws shall be resolved in favor of the Articles and Bylaws.

Article II: Water Rights

2.1 Water Rights

The water represented by shares in the Animas Consolidated Ditch Company is adjudicated to the Ditch Company as direct flow water rights which are diverted from the Animas River and Hermosa Creek. The Ditch Company issues shares which represent a right to use an increment of water of the Ditch Company’s adjudicated water rights. Sixteen shares of stock represent 1.0 c.f.s (cubic feet per second) of water when the water rights are in full supply. The Ditch Company sells “A” shares and “B” shares.

Water rights are decreed by the Colorado Water Court to the Ditch Company for use on specific lands and cannot be moved away from those lands except as may be changed by Court decree. Water in the Animas Consolidated Ditch (“the ACD”) must be put to beneficial use on decreed lands. Shareholders do not have the right to petition the court to change ditch company decrees.

Shares may be sold or transferred for use on decreed lands. However, Shareholders may not change their delivery point to a location out of the ditch or off decreed lands without written approval from the ditch company.

2.2 Curtailment

Water adjudicated to the Ditch Company is subject to curtailment in times of shortage. The Division of Water Resources for the State of Colorado administers water rights in priority. If an owner of a water right that is senior in time to the rights adjudicated to the Ditch Company is not receiving his water, he will place a call to the water commissioner. The Division Engineer, in consultation with the water commissioner, may consider, among other things, inflow, evaporation, precipitation, return flows, water demand, and river channel loss or gain, beneficial use and waste in determining whether to act on the call and curtail junior water rights and un-decreed water uses.

Additionally, water delivery may be curtailed as a result of contractual obligations, ditch maintenance, or other factors.

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“B” shares have a lower priority and could be curtailed prior to curtailment of “A” shares. Curtailment occurs *pro rata* within each class of shares.

2.3 Leases and Temporary Transfers

Leases or temporary transfers of any water to other shareholders for use on lands historically irrigated by the ACD may be made anytime during the operating season, subject to state law, and ditch capacity.

Article III: Share Certificates

3.1 Share Certificates

Shareholder rights to use the Ditch Company’s adjudicated water right are represented by share certificates issued in the name of the owners. When a shareholder cannot produce an original share certificate, the ownership of the share certificate will be determined by the records of the Ditch Company, unless ownership of the share is proven otherwise to the satisfaction of the Ditch Company or by Court Order.

3.2 Transfer of Ownership

The Ditch Company will only transfer share certificates in accordance with provision 3.1.

All required

- The original water certificate with the assignment executed by the owner of record. In the event that a water certificate is lost or destroyed, the Lost Certificate policy set forth below must be complied with. If executed by another person authorized by law to execute for the shareholder, evidence of the legal authority (power of attorney, court order, etc.) needs to be submitted with the transfer request.
- A release of any encumbrance on the record ownership of the share certificate.
- Payment of all assessments and other costs due.
- Payment of Transfer Fees for each new certificate issued.
- Contact information for the new owners and instructions specifying the number of shares to transfer.

3.3 Shares used as Collateral

In the event that a shareholder pledges shares as collateral for a loan, the shareholder shall return the original share certificate to the Ditch Company for cancellation and re-issuance with the lienholder listed as a mortgagee, together with the applicable transfer fee, and the address to which the new certificate shall be returned. The new share certificate will be issued and returned via certified mail to the address indicated on the request. Upon release of the lien, it is the shareholder responsibility to provide evidence of said release to the Ditch Company, together with the original share certificate and applicable transfer fee. The Ditch Company is not responsible for loss of share certificates by lienholders or shareholders, and all applicable lost certificate fees will apply. It is the shareholder’s sole responsibility to apply for cancellation and re-issuance of the shares in accordance with this paragraph. The Ditch Company is under no obligation to honor a mortgage interest if it is not reflected on the share certificate

3.4 Lost Certificate Policy

The Ditch Company will not issue a duplicate certificate unless the certificate at issue has been lost, mislaid, or destroyed and the shareholder or lienholder complies with the following procedure, which is

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intended to comply with the statutory procedure set forth in C.R.S. § 7-42-114 through 7-42-117 as amended.

- A. In order for a shareholder, his or her legal representative or assignee, or any lienholder named in the books of the corporation as a lienholder on the lost certificate, to obtain replacement stock certificate, said person must:
- a. Pay all assessments and maintenance fees due on the shares represented by the missing stock certificate.
 - b. File with the Secretary of the Ditch Company a written demand under oath that (1) identifies the stock certificate, (2) states that the certificate has been lost, mislaid, or destroyed, (2) warrants that the certificate is the property of the person submitting the notice and that the certificate and the shares represented thereby have not been transferred, conveyed, or pledged to anyone, (3) and demands the issuance of a replacement certificate in accordance with C.R.S. 7-42-115 to 117 (“the Demand”). A form for the Demand is attached hereto as Exhibit A.
 - c. Tender to the Secretary a deposit (amount determined by the Ditch Company) for publication costs and fees for the replacement certificate.
 - d. Tender an indemnification in the form attached as Exhibit B.
- B. If the person making the demand is the successor in interest to the person who provided the initial demand, he shall also provide documentation that demonstrates that the shares were conveyed to him. Any lienholder named in the books of the Ditch Company as a lienholder on the lost certificate, must also prove its legal right to such certificate.
- C. Upon receiving the written demand required in Paragraph A above, the Ditch Company shall make a notation in the stock book that identifies the certificate as one that has been lost, mislaid, or destroyed and sets forth the date the Ditch Company received notice of the same.
- D. Upon receipt of a demand, indemnification form and fees as described in Section A above, the Ditch Company shall publish in the Durango Herald or other paper of general circulation in La Plata County, at least once a week for five successive weeks, the fifth publication being on the twenty-eighth day after the first publication, a notice that such a demand has been filed with the Ditch Company in accordance with C.R.S. 7-42-114 to 117, stating the demand in full and stating that the Ditch Company will issue, on or after a date therein stated, following the last publication of the notice by at least thirty days, a replacement certificate to the registered owner, the registered owner’s legal representative or assignee, or any lienholder named in the books of the Ditch Company as a lienholder on the lost certificate unless a contrary claim is filed with the Ditch Company prior to the date stated in the notice.
- E. If no claim of interest or ownership other than that made by the person filing a demand pursuant to this section, or such person’s legal representative or assignee is on file in the records of the secretary of the Ditch Company prior to the date stated in the notice, the Ditch Company shall promptly invoice and bill the shareholder for all of the costs and fees incurred to comply with the above-described procedure, including, but not limited to, publication costs and reasonable attorney fees. After the shareholder requesting the replacement stock certificate reimburses the Ditch Company for the costs and fees set forth in said bill, the Ditch Company shall issue, on or after said date, a replacement certificate to the person or person’s legal representative or assignee, or lienholder. All rights under the

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original certificate shall immediately cease and no person shall at any time thereafter assert any claim or demand against the Ditch Company or any other person on account of the original certificate.

Article IV: Assessments

4.1 Annual Assessments

The assessment per share is approved by the Board of Directors annually and presented to the shareholders at each annual meeting. Special assessments may be made as needed. Assessments are due thirty days from the date of assessment.

4.2 Ditch Company Sale of Shares

No water shall be delivered to a shareholder with unpaid assessments, except by special arrangement with the Ditch Company. Overdue assessments shall be assessed interest at 1.5% per month (18% per annum), or as otherwise determined by the Directors.

If a shareholder owes money to the ditch company that is past due, unless the shareholder enters into a written agreement with the Ditch Company for payment of said money, the ditch company may levy upon the stock certificate and sell the stock certificate in accordance with the procedure set forth in the Bylaws of the Ditch Company.

No shares shall be retained by any shareholder for more than two years without such shareholder owning lands, on which water can be put to beneficial use without waste in accordance with the Ditch Company's decreed water rights. Additionally, no shareholder shall retain shares which have not been used without waste for more than two years, even if such shareholder owns sufficient land within the decreed lands. Such shares which have not been placed to use without waste either on existing land, or through an approved transfer to other lands, shall become forfeit and shall be sold in accordance with the procedures set forth in the bylaws of the Ditch Company. Proceeds of such sale shall be remitted to the Shareholder less costs and attorney's fees associated with the sale.

To be eligible, bidders must own property within the decreed lands of the Ditch Company and shall be subject to all operating documents and procedures of the Ditch Company.

Article V: Delivery of Water

Board approval is required for the establishment of any new headgate. In using its discretion to approve or deny a new headgate, the board will consider, among other things, the cost of operation and maintenance to the ditch company as a result of the new headgate, as well as any other impacts to the ditch and other shareholders.

The Ditch Company may decline to allow diversion of water if the shareholder has not installed a measuring device where required, or if, in the ditch walker's discretion, the shareholder's lateral has not been maintained such that it is not ready to receive water.

Delivery of water may be reduced by a transportation loss. Transportation loss shall be applied equally to all shareholders regardless of the point of delivery to any one shareholder.

If a shareholder desires to pump or pipe water directly from the ACD, the pumps must be approved by the ditch walker. All pumps, pipes or other devices placed in the ACD must be removable.

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5.1 Ditch Company Responsibility

The delivery responsibility of the Ditch Company ends at the diversion from the ACD. The Ditch Company does not maintain measuring devices, pipes, pumps or other distribution devices. Water users are responsible for all distribution devices being in proper working order and reading correctly.

5.2 Shareholder Responsibility

Individual water users must clean and maintain their laterals annually before delivery of water.

Placement of the spoils of ditch cleaning along the ditch easements should be expected.

Shareholders may not place check devices or obstructions in the ditch, without ditch company permission. This includes but is not limited to a prohibition on placing branches, leaves, fruit, trash or other debris in the ditch.

Trash dams should be reported immediately to the ditch company.

Trash and other debris intentionally deposited into the ditch or any construction placed in the ditch that can obstruct the regular flow of water is a serious offense.

Under Colorado law, any interference with the flow of irrigation water or destruction of structures used in controlling the irrigation water is punishable both civilly and criminally.

Any person causing trash or debris to enter the ACD will be assessed the costs of removal including an hourly rate for ditch walker time.

In the event a shareholder violates these provisions, the shareholder will be solely responsible for all damage to neighboring property and other shareholders and for costs of removing the obstructions. In addition, the shareholder may be subject to penalties by the ditch company including non-delivery of water until the responsibility for damage is fulfilled, as well as prosecution under civil and/or criminal law.

5.3 Weirs, Measuring Devices, and Headgates and Pumps

The Ditch Company measures water at its points of diversion from the Hermosa Creek and Animas River. The Ditch Company may require measuring devices by shareholders to measure diversions into laterals or to measure diversion for direct use on land where appropriate. Shareholders must own at least four shares and obtain Ditch Company approval to install an individual headgate.

Headgates on laterals are owned by the shareholders, and shall be installed, repaired or replaced by the Ditch Company at shareholder expense. If the Ditch Company determines that a measuring device or headgate is in disrepair, it shall notify the shareholder of same. The Ditch Company will then undertake the repair and send a billing statement to the shareholders taking delivery at that headgate. In the event of a shared headgate, billing will be made *pro rata* based on number of shares. If any bill is not paid when due, no water will be delivered to the delinquent shareholder, and the lien provisions provided for in these Rules will apply.

Headgates may be controlled by the Ditch Company.

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Prior to the installation of pumps in the ACD, the shareholder must contact the ditch walker to arrange for a site visit to determine the appropriate, size, placement and specifications for the pump. A written record of the specifications approved shall be placed in the records of the Ditch Company.

It is against Company policy and a crime for any person to interfere with the delivery of water by the Ditch Company. Any person who tampers with a headgate or interferes with delivery of water by the Ditch Company will be subject to all legal remedies available to the Ditch Company.

5.4 Delivery Season

The first delivery date will be as early as possible, but often not before May 1st of each year, as determined by the Ditch Company after due consideration is given to weather conditions and maintenance requirements for the ditches.

Except for winter domestic and stock water, which is only available in limited areas, if at all, irrigation water may not be delivered after October 31st or such time prior to that date, as determined by weather conditions, maintenance requirements and/or other factors which dictate ceasing deliveries earlier.

Article VI: Access and Easements

6.1 Ditch Easements and Rights of Way

Ditch easements and rights-of-way include the canals and ditches as well as banks and reasonable land for access, maintenance, and use including the placement of spoils. Easements may be unwritten (Parol license or prescriptive), defined by historical use under Colorado Law or written, or defined by recorded deeds and grants. The Ditch Company is not bound by the width or location of the ACD set forth on plats or other surveys for which the Ditch Company did not approve but is permitted by law to do whatever is reasonably necessary to permit the full use and enjoyment of the easement, including the exercise of rights of ingress and egress for maintenance, operation and repair.

6.2 Encroachments

Ditch Safety is a very high priority for the Ditch Company. All care must be taken to prevent serious accidents. Use of ACD easements for recreation is strictly prohibited.

ACD easements shall not be used for any purpose, including but not limited to access to subdivision lots, public access, or aesthetic features.

No person shall encroach on the ACD easements, including the installation of structures, including bridges, culverts, fences or fence posts, or utility or gas lines without written approval of the Ditch Company in accordance with 6.3 below.

Any structure placed on the ACD easements without prior written permission may be summarily removed by the Ditch Company at the expense of the person responsible.

No trees or landscaping shall be placed within ACD easements without written company approval.

No digging or excavation of any kind is allowed in the easements.

The ditch company acknowledges that there exist encroachments on the ditch that have been in place for many years. The ditch company reserves the right to remove any encroachments, including culverts and landscaping at any time if, in its discretion, the ditch company deems removal necessary for maintenance, safety or other reason.

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6.3 Encroachment Permits

If any person desires to encroach on the ditch or ditch easement by installing improvements over, under, or through the ACD easement, or desires to breach the ditch bank in any way, he or she must apply for an encroachment permit from the Ditch Company. The Ditch Company reserves the right to grant or deny any permit application. Upon approval of the application, the applicant must execute an encroachment agreement, pay the applicable fee, and perform all construction in accordance with the agreement under the supervision and final approval of the ditch company employees and engineers.

Encroachment permit applications and specification guidelines are attached as Appendix C and are available on the website.

Any encroachments made without the prior consent of the Ditch Company will be fined in an amount set by the Board, in addition to the regular administrative fee and any expenses incurred by the Ditch Company to examine the project, including but not limited to engineering fees, attorney fees, or extra time spent by the ditch walker. Nothing herein is intended to prevent the Ditch Company from denying the encroachment and requiring removal of all structures.

Ditch walkers will meet with applicant for an initial inspection, and a final inspection. All additional meetings, including construction monitoring, may be billed on an hourly basis.

Fences in the easements, if permitted, must have an easily operable gate of adequate width to allow equipment access for maintenance of the ditch. Access gates are the responsibility of the landowner.

6.4 Maintenance

The maintenance and repair of any culverts or other improvements which encroach on the ACD easement are the responsibility of the owner of the land on which the culvert or other improvement is located.

Maintenance of the ACD easements is the responsibility of the Ditch Company.

Article VII: Subdivisions and Urbanization

7.1 County Review Process

The Ditch Company may submit comments for all proposed subdivisions subject to the County review process as well those that are not which impact water delivery within the decreed lands served by the Ditch Company.

If a developer intends to impact the ditch in any way, either through a crossing, by re-alignment or piping of the ditch, the developer must follow the provisions of Article 6.3 above for encroachments.

The developer or owner is responsible for reimbursing the Ditch Company for its costs associated with reviewing plans and specifications, including but not limited to fees for attorneys, engineers, ditch walker and staff, legal agreements or documentation, and other associated costs, whether or not the project is completed.

Any relocation or improvements in the ditch must be designed so there is no loss of flow conveyance in the ditch or injury to downstream shareholders. All improvements must be approved by the Ditch Company. The Ditch Company may, at its discretion, require bonding or letter of credit for the cost construction of any ditch improvements.

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The review process may require safety fencing along the ACD easement. If fences are required, access gates of adequate width and fences must be constructed according to Company specifications, under the supervision of the ditch walkers.

7.2 Protection of Easements

The Ditch Company aggressively protects its ditch and easements particularly in the case of urbanization of agricultural land, to insure water delivery to downstream users.

In subdividing, irrigation ditches and canals shall be protected through the provision of adequate rights-of-way or easements to provide access for equipment to clean and maintain the ditch.

Easements shall not be used for any purpose, including but not limited to access to subdivision lots, public access, or aesthetic features.

Article VIII: Special Situations

Moving Water

Certain circumstances may warrant that water may need to be transferred from one headgate to another, or from one lateral to another.

No water can be moved without written permission from the Ditch Company, which permission may be approved or denied at the Ditch Company discretion after considering any injury that may result from the move into or out of a particular ditch.

When the movement of water to a different headgate or ditch affects other water users on a lateral, all users so affected must acknowledge to the Ditch Company, or the applicant must submit a authorize the move, and submit written court order authorizing the move.

Working with Ditch Walkers

Colorado State Statutes give ditch walkers the authority and responsibility to run irrigation water, and to maintain the ditches of the Ditch Company.

Consideration and respect is required in working with the ditch walkers, particularly in heavy water use periods.

No physical or verbal abuse of the ditch walkers, directors, or secretary will be tolerated. The ditch company reserves the right to assess fines if a shareholder violates this provision.

Dispute Resolution

In the event that issues cannot be resolved by the ditch walkers, shareholders may request the issue be heard and decided upon by the Board of Directors.

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Designated Contact Person

The Ditch Company may require subdivisions, trailer parks, or any other high density residential communities to authorize one designated contact person and notify Ditch Company of such. All communication with the Ditch Company should be through the designated contact person.

ARTICLE IX: Violations of the Rules and Regulations

9.1 Liability

Any person violating any of the provisions of these Rules and Regulations shall be liable to the Ditch Company for any expense, loss or damage occasioned by reason of the violation.

9.2 Remedies

The Ditch Company shall be entitled to any legal or equitable relief available for violations of these Rules and Regulations, including damages, and injunctive relief to cease any continuing violations.

9.3 Costs and Attorney Fees

The shareholder shall be responsible for any costs and attorney fees incurred by the Ditch Company in enforcing the terms and conditions of these Rules and Regulations.

9.4 Discontinuance of Delivery

The Ditch Company may, in its discretion, discontinue the delivery of water service to any shareholder violating these rules and regulations, or who, for any reason, owes the Ditch Company money, including but not limited to unpaid assessments, contracts, penalties, fines, interest or otherwise.

9.5 Interest on Monies Owed

All damages, fees or other money owed will accrue 1.5% per month (18% per annum) and be subject to lien in accordance with section 4.2.

ARTICLE X: General

No assent, express or implied, to any violation of any one or more of the terms of these rules and regulations hereof shall be deemed or taken to be a waiver of any succeeding or other violation. The covenants set forth herein shall be deemed to be independent from one another.

The Ditch Company retains the authority to amend these Rules and Regulations as the Ditch Company deems necessary to accomplish the purposes of these Rules and Regulations. The Ditch Company is not required to provide prior notice of amendments. Amendments to these Rules and Regulations may be accomplished by explicit modification or by the adoption of policies or decisions by the Ditch Company at its meetings, in which event such amendments shall be evidenced by reference to the adoption of policies or decisions in the minutes of the Ditch Company meetings.

The Ditch Company reserves the right to grant variances to these Rules and Regulations when in its judgment the variance would be good for the Ditch Company, in the interest of fairness to the Shareholders, or good business practice by the Ditch Company.

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Article XI: Adoption of Rules and Regulations

These rules and regulations were adopted by the directors of the Animas Consolidated Ditch Company on **March 8th, 2021 AD** and shall supersede any rules or regulations of the Ditch Company adopted prior to July 24, 2015.

These rules and regulations may be altered, amended, or repealed at any regular meeting of the Board by a majority vote of the Directors. Notice of any proposed alteration, amendment, or repeal shall be given in writing by posting at the office of the Ditch Company at the preceding regular meeting.

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Exhibit A

Demand for Issuing Duplicate Stock Certificate

The undersigned affiant, being first duly sworn under oath, states as follows:

1. My name is _____ and I live at _____
_____. I am a shareholder in the Animas Consolidated Company (the Ditch Company), I am over the age of 18, and I am competent to make this affidavit.
2. Stock Certificate No. _____, issued by the Ditch Company on _____(date) is my property. I have not transferred, sold, assigned, or pledged Certificate No. _____, or the shares represented thereby, to anyone.
3. The stock certificate referenced above has been lost, mislaid, or destroyed.
4. I, or my predecessor in title, have paid all assessments on the shares represented by the stock certificate identified above.
5. I demand that the Ditch Company issue a duplicate stock certificate in accordance with C.R.S. § 7-42-114 and 115. Said duplicate certificate shall be issued in the name of _____, _____(title).

Executed this _____ day of _____, 20_____.

Signature of Shareholder: _____

STATE OF _____)

) Ss.

COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 20_____,

by _____.

Witness my hand and official seal.

My commission expires: _____

Notary Public

