Articles of Incorporation Sample

Articles of Incorporation

THIRD
AMENDED AND RESTATED
ARTICLES OF INCORPORATION
OF
HAIGHTS CREEK IRRIGATION COMPANY

THE UNDERSIGNED CORPORATION, in conformance with Utah Revised Nonprofit Corporation Act, Title 16, Chapter 6a, Utah Code Annotated, 1953, as amended (the “Act), and specifically pursuant to Part 10 of the Act, hereby adopts the following Articles of Amendment and Restatement to its Articles of Incorporation (the “Articles”).
WHEREAS, at the annual meeting of shareholders held on February 22, 2014, the shareholder adopted those certain Amended and Restated Articles of Incorporation of Haights Creek Irrigation Company (the “2014 Amended Articles”); and
WHEREAS, the Board of Directors (the “Board”) of the Haights Creek Irrigation Company, deem it necessary to amend and restate the 2014 Amended Articles for the purpose of providing for the issuance of shares in two classes, and otherwise amending, clarifying and up-dating the 2014 Amended Articles in conformance with the Act and other new statutory enactments pertaining to nonprofit mutual water companies.
NOW, THEREFORE, the 2014 Amended Articles are hereby amended and restated, in their entirety, by these THIRD AMENDED AND RESTATED ARTICLES OF INCORPORATION OF HAIGHTS CREEK IRRIGATION COMPANY, effective upon adoption, as follows:

I.
ARTICLES OF INCORPORATION

ARTICLE I
CORPORATE NAME

The name of this corporation is HAIGHTS CREEK IRRIGATION COMPANY (the “Company”). The Company is a nonprofit mutual benefit corporation organized and existing under the Act.

ARTICLE II
DURATION

The duration of this corporation shall be perpetual, unless sooner dissolved in conformance with the requirements of the Act.

ARTICLE III
PURPOSES AND POWERS

A. The Company is organized as a non-profit mutual corporation for the purposes of providing a water supply for beneficial use by its stockholders and otherwise promoting the general interest and welfare of the stockholders. In furtherance of and in no way in limitation of the powers now or hereafter conferred upon the Company by the laws of the State of Utah, the nature of business of the Company and the objects, purposes, and powers to be transacted, promoted, exercised or carried on by the Company are as follows:

1. Own rights to the use of waters for irrigation, domestic, culinary, livestock, generation of electrical energy, industrial, and any other beneficial purposes, and to divert, store, convey, and distribute said waters for beneficial use by its stockholders;

2. Acquire, hold and own, water, water rights, water stock, and sources of water supply by purchase, lease, contract, appropriation, change, exchange, or otherwise, and to bargain, sell, lease or otherwise transfer and convey the same as deemed appropriate in the carrying out of the business of the Company and in the best interest of the stockholders;

3. Acquire, hold, bargain, sell, lease transfer and convey real and personal property, of whatsoever kind or nature, necessary or convenient to carry out the purposes and powers of the Company;

4. Locate, buy, hold, own, lease, and otherwise acquire reservoirs, regulation ponds, dam sites, pumping stations and related equipment and facilities;

5. Build, construct, install, own, operate and maintain reservoirs, regulation ponds, dams, ditches, canals, pipes, culverts, conduits, weirs, head gates, wells, pumps and control systems, and all related equipment and facilities, and to do all other acts and things necessary to manage, preserve, and increase the Company’s water supply for the purpose of irrigating land, generating power, and for all other beneficial uses and purposes;

6. Make, enter into, and perform contracts of any kind, nature and description, including contracts for joint and co-operative action with governmental entities and other parties to accomplish the purposes, powers and objectives of the Company as deemed to be in the interest of the stockholders;

7. Issue certificates of shares of stock evidencing interests in the water, water rights, water supply and other property and property rights of the Company; including, without limitation, the right to receive a proportionate share of water supply distributed by the Company to its stockholders;

8. Sell or otherwise dispose of all gravel or debris taken from the Company’s regulating ponds, ditches, and canals, or deposited upon its property or right of ways;

9. Assess the outstanding shares of stock in the Company for all Company purposes as permitted by State law and in accordance with the Company’s bylaws and rules and regulations;

10. To borrow money to such extent as shall be permitted by the bylaws and rules and regulations of the Company and upon such terms as may be permitted by the Company’s board of directors, and to issue notes, bonds and / or make and perform contracts with the United States, the State of Utah acting through any of its departments, divisions, boards and agencies, as well as other institutions, companies, local government, local and special districts, and other entities, pursuant to which the Company shall be authorized to sell, lease, exchange, mortgage, pledge, or otherwise dispose of all or substantially all of the assets of the Company, as and for security for such indebtedness, or otherwise, for the acquisition of real and personal property, including, without limitation, water, water rights and water stock, and the acquisition, use, joint development of and/or improvements to all water diversion, distribution and storage facilities, and in carrying on its business, or for the purpose of attaining or furthering any of its objectives herein stated and as authorized under Utah law, and the Company’s board of directors shall have the power and authority to assess all outstanding shares of stock of the Company as required to generate the revenues necessary for repayment of any such notes, bonds or contracts;

11. Exercise such powers of eminent domain as shall be authorized by State law;

12. To apportion any loss of Company water rights due to abandonment or forfeiture for non-use to any and all stockholders whose failure to make beneficial use of the water caused the loss or forfeiture of said water rights of the Company; and
13. Do any and all acts and things necessary, suitable, or proper to be done, and have and exercise all rights, powers and authority granted to a nonprofit Company under the Act and otherwise by law, and those necessarily implied therefrom, for the accomplishment of any of the purposes, powers and objectives of the Company as herein enumerated, or which may at any time appear conducive to, or expedient for, the protection or benefit of the Company and its stockholders.

B. The purposes and powers enumerated herein shall not be construed as limiting or restricting, in any manner, the purposes and powers of the Company as authorized under the Act, and this Company shall always have such incidental and implied powers as may be connected with or related to any specific purpose or power enumerated herein.

C. The Company is organized as a private, non-profit irrigation corporation engaged in distributing water only to its shareholders and, therefore, is not a public utility as defined in and therefore is not regulated by the Public Service Commission of Utah pursuant to the provisions of Title 52, Utah Code Annotated.
D. None of the objects of the Company shall be for the pecuniary profit of its members, directors or officers, and no part of the income of the Company shall inure to the benefit of or otherwise be distributed to any shareholder or individual. No loan shall be made by the Company to any of its directors or officers.
E. No substantial part of the activities of the Company shall be the carrying on of propaganda, or otherwise attempting to influence legislation, and the Company shall not participate in, or intervene in (including the publishing or distribution of statements) any political campaign on behalf of any candidate for public office except as authorized under the Internal Revenue Code, as amended and supplemented (the “Code”). Notwithstanding any other provision of these Articles, the Company shall not carry on any other activities not permitted to be carried on (a) by a corporation exempt from federal income tax under the Code, as amended or supplemented, or (b) by a corporation, contributions to which are deductible under Section 170(c)(2) of the Code.
F. The Company shall not carry on any other activities not permitted to be carried on by a corporation exempt from Federal income tax under the Code.

ARTICLE IV
MEMBERSHIP; COMPANY STOCK

A. Membership. The shareholders of the Company shall be its members, and may be referred to as shareholders, stockholders or members. Membership shall be acquired only by the acquisition of stock in the Company.

B. Issuance of Stock. The Company shall issue shares of the capital stock of the Company as evidencing membership therein. The aggregate number of shares which the Company shall be authorized to issue is 10,000 shares, to be issued in two classes as set forth herein, each share having no par value.
C. Classes of Stock. In order to provide for the assessment of shares in a manner that will allow for the allocation of costs on a more equitable basis among the shareholders of the Company, the stock of the Company shall be issued in two (2) classes denominated as Class A Shares and Class B shares, as follows:
(1) Class A shares shall be issued to all shareholders, except as provided in Subsection (2) of this Section below.
(2) Class B shares shall be issued to shareholders in connection with newly developed residential and/or commercial lots or parcels, as to which the issued Class B shares shall be appurtenant, whenever any one or both of the following circumstances shall apply:
(a) water service to said lots or parcels shall require water to be pumped by the Company from its sources of water supply into the Company water distribution system through which said lots or parcels are to be served, and/or
(b) the water rights and/or water supply contracts dedicated to or otherwise obtained by the Company, which are necessary to enable it to provide water service to said lots or parcels, have annual carrying costs, and specifically in the case of water supply contracts have annual contract prices, which are higher than the annual carrying costs and/or contract prices under the Company’s existing water rights and water supply contracts as of the effective date of these Articles.
D. Book-entry Issuance of Shares. All Class A and Class B shares of Company stock shall be issued as book-entry shares without certificates. Within a reasonable time after the issuance or transfer of shares without certificates, the Company shall send the shareholder a written statement containing the following: (i) the name of Company and a statement that it is organized under the laws of the State of Utah, (ii) the name of the person to whom the stock is issued as owner of the shares, (iii) the class and number of shares issued, (iv) a statement that the designations, preferences, limitations, and relative rights applicable to the respective class of share issued, and restrictions on transfers of shares of stock are set forth in these Articles and the Bylaws and Rules and Regulations of the Company.
E. Use of Water. Each Class A and Class B share of Company stock shall represent an equal interest in and right to the use of the water and water supply available to the Company pursuant to the Company’s water rights and water supply contracts, in the quantities and pursuant to the terms, conditions and restrictions set forth in these Articles and the Bylaw and Rules and Regulations of the Company, and as determined by the board of directors subject to these Articles, the Bylaws and Rules and Regulations of the Company, and all applicable state, federal and local laws governing the ownership, use and distribution of water.
F. Appurtenancy of Shares. Upon issuance, each Class A and Class B share of stock shall, pursuant to and in conformance with the appurtenancy provisions set forth in the Bylaws and Rules and Regulations of the Company, become an appurtenance to the land upon which water under the stock is to be used as described in the books and records of the Company, and may not be separately conveyed or otherwise transferred except as provided in the Bylaws and Rules and Regulations of the Company.
G. Assessments. Each share of Class A and Class B stock shall be fully assessable subject to and in conformance with the terms and provisions of the Bylaws and Rules and Regulations of the Company.

ARTICLE V
STOCKHOLDER MEETINGS; VOTING RIGHTS

A. Annual and Special Meetings of Stockholders; Quorum and Voting. An annual meeting of the stockholders of the Company shall be held and special meetings of shareholders may be called as scheduled in conformance with the Bylaws and Rules and Regulations. Unless otherwise expressly provided in the Bylaws and Rules and Regulations or in the Act, at any annual or special meeting of stockholders, the stockholders entitled to vote who are present at the meeting in person or represented by proxy shall constitute a quorum for action on any matter, and any matter voted upon shall be approved if the votes cast favoring the action exceed the votes cast opposing the action.

B. Voting Rights; Single Voting Group. Each Class A and Class B share shall have equal voting rights with each other Class A and Class B share, and each Class A share and Class B share shall be entitled to one (1) vote, or a fractional vote equivalent to the fractional share being voted. All members holding Class A shares and Class B shares of the Company shall constitute a single voting group. The books and records of the Company shall determine who is the record owner of the share and therefore entitled to vote such share.

C. Proxy Voting. Members may vote in person or by proxy. A member may appoint a proxy by signing a proxy form either in person or by their attorney in fact.

ARTICLE VI
BOARD OF DIRECTORS

A. Number of Directors; Qualifications.

(1) Number of Directors. The powers and business affairs of the Company shall be governed, exercised and managed by the Board, which shall consist of no less than three (3) and no more than five (5) directors to be elected for a term of three (3) years by a vote of the stockholders at an annual meeting. Directors shall be elected and terms adjusted, as needed, so as to provide for staggered terms among the directors. The exact number of directors to serve may be fixed by the stockholders at the annual meeting.

(2) Qualifications. Each director must be a natural person of 18 years of age or older, and shall either be a shareholder in the Company, or be a stockholder, officer or assigned representative, of any other corporation which corporation is a stockholder in the Company owning a minimum of one (1) Class A or Class B share. If any director shall sell or transfer his or her stock in the Company, or cease to be a stockholder in any other corporation which corporation is a stockholder of the Company as provided herein, then said director shall, at once, cease to be a director, and the remaining members of the Board may fill any vacancy occurring in its membership to serve between the date of vacancy and the next annual stockholder’s meeting at which directors are elected.

B. Powers. The Board shall have the power to adopt, change and amend such By-Laws and Rules and Regulations not inconsistent with law or with these Articles, and shall have and may exercise all powers and do all such lawful acts and things as are now or hereafter authorized pursuant to the Act and the Bylaws and Rules and Regulations.

C. Voting. Each director shall have equal voting rights with each other and each director shall be entitled to one (1) vote on all matters brought before the Board.

ARTICLE VII
OFFICERS

A. Officers and Term of Office. The officers of the Company shall consist of a president, vice-president, secretary, treasurer and manager. The offices of president and secretary shall not be held by the same person. The persons who hold the offices of president and vice-president shall be elected from among the membership of the Board. The persons who hold the offices of secretary, treasurer and manager may, but need not be, elected from among the membership of the Board, but may be appointed by the Board from outside its membership as deemed prudent.

B. Powers. The authority, powers and responsibilities of the officers of the Company are set forth in the Bylaws and Rules and Regulations.

ARTICLE VIII
LIMITATION ON LIABILITY OF MEMBERS;
INDEMNIFICATION OF DIRECTORS AND OFFICERS

A. Stockholders not Liable for Corporate Obligations. The private property of the stockholders of the Company and its directors and officers shall not be liable for the obligations of the Company.

B. Indemnification of Directors and Officers. To the fullest extent allowed by law, and as authorized in the Bylaws and Rules and Regulations of the Company, the Company shall indemnify any director, officer, or former director or officer of this Company against any expense reasonably incurred in connection to any action, suit, or proceeding in which he/she is made a party by reason of being, or having been, a director or officer of this Company provided that he/she acted in good faith and that he/she reasonably believed their conduct was in the Company’s best interest and was not adverse to the Company. The indemnification of such expenses shall include attorney=s fees, judgments, fines, and amounts paid in settlement. The Company may obtain insurance to assist it in performing this obligation.

ARTICLE IX
AMENDMENT OF ARTICLES OF INCORPORATION

These Articles may be amended as provided in the Act; provided, however, that these Articles shall in no event be amended in any manner so as to change this Company from a non-profit corporation to a corporation organized or operated for pecuniary profit.

ARTICLE X
BYLAWS AND RULES AND REGUALTIONS

The Board shall have the power, from time to time, to promulgate, alter, amend and repeal such Bylaws and Rules and Regulations for the administration and management of the internal affairs of the Company and the operation, regulation and control of the Company’s water rights and sources of water supply and the water systems owned and/or managed by the Company, as the Board shall deem necessary, subject to the provisions of these Articles and relevant provisions of the Act.

ARTICLE XI
REGISTERED OFFICE AND PRINCIPLAL PLACE OF BUSINESS; REGISTERED AGENT

A. Registered Office and Principal Place of Business. The street address of the Company’s initial registered office and principal place of business, which may be changed from time-to-time by the Board without amendment to these Articles is:

820 East 200 North
Kaysville, UT 84037

B. Registered Agent. The Company’s initial registered agent at the registered office set forth above, is Rodney Hill, who hereby represents, affirms and acknowledges that:

I hereby accept my appointment as the Company’s registered agent:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
Rodney Hill

ARTICLE XII
DISTRIBUTIONS

No part of the net earnings of the Company shall inure to the benefit of, or be distributed to, its stockholders, directors, officers or other persons, except that the Company shall be authorized and empowered to pay reasonable compensation for services rendered to the Company and to make payments and distributions in furtherance of the purposes set forth herein.

ARTICLE XIII
DISSOLUTION

In the event of dissolution of the Company, the distribution of assets shall be consistent with all applicable requirements and limitations set forth in the Code, and distributions of assets shall be made in conformance with the requirements of Section 16-6a-1302 of the Act. The involuntary dissolution or lapsing of Company will not automatically transfer title to the Company’s property, including title to water rights, water conveyance facilities, or any other assets of a nonprofit corporation organized to divert or distribute water, but title shall remain with the Company pending the winding up of its affairs or reinstatement of the Company. As a part of winding up its affairs, the involuntarily dissolved Company may distribute its assets to another nonprofit corporation organized to receive the assets of and function in the place of the involuntarily dissolved or lapsed corporation in conformance with the provisions of Section 16-6a-1302(2)(c) of the Act.

II.
SHAREHOLDER APPROVAL

The foregoing Third Amended and Restated Articles of Incorporation of Haights Creek Irrigation Company was duly adopted by the shareholders of the Company at the annual shareholders meeting held on the 20th day of February, 2016, in conformance with the requirements of the Act, by the following vote:

SHARES VOTING FOR ADOPTION: \_\_\_\_\_\_\_\_\_\_\_
SHARES VOTING AGAINST ADOPTION: \_\_\_\_\_\_\_\_\_\_\_
SHARES ABSTAINING \_\_\_\_\_\_\_\_\_\_\_

DATED this \_\_\_\_ day of February, 2016.

HAIGHTS CREEK IRRIGATION COMPANY

By:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
Norman O. Whitaker, President
ATTEST:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
Leland (Lee) G. Stenquist, Secretary

STATE OF UTAH )
: ss.
County of Davis )

Norman O. Whitaker and Leland (Lee) G. Stenquist, being first duly sworn upon oath depose and say that they are, respectively, the President and Secretary of Haights Creek Irrigation Company, that each have signed the foregoing Third Amended and Restated Articles of Incorporation of Haights Creek Irrigation Company, and that said Company duly authorized the execution of the same.

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Norman O. Whitaker, President

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
Leland (Lee) G. Stenquist, Secretary

STATE OF UTAH )
ss.
County of Davis )

SUBSCRIBED AND SWORN to before me this \_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_, 2016.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
NOTARY PUBLIC