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Utah Div. of Corp. & Comm. Code

**AMENDED AND RESTATED  
ARTICLES OF INCORPORATION  
BEAVER/ SHINGLE CREEK IRRIGATION COMPANY**

**THE UNDERSIGNED CORPORATION**, pursuant to the Utah Revised Nonprofit Corporation Act, Title 16, Chapter 6a, Part 10, Utah Code Annotated, 1953, as amended (the "Act"), hereby adopts the following Amended and Restated Articles of Incorporation (the "Articles"), as follows:

**FIRST**

**NAME OF THE CORPORATION**

The name of the Corporation is Beaver/ Shingle Creek Irrigation Company.

**SECOND**

**TEXT OF ARTICLES OF AMENDMENT AND RESTATEMENT**

The Articles of Incorporation of Beaver and Shingle Creek Irrigation Company, dated April 28, 1911, as amended, from time to time, are hereby amended and restated in their entirety, to modify, clarify and up-date the Articles of Incorporation to conform to recent amendments to the Act, and to harmonize the Articles with other new statutory enactments pertaining to nonprofit mutual water companies, as follows:

**ARTICLE I**

**Corporate Name**

The name of the corporation is BEAVER/SHINGLE CREEK IRRIGATION COMPANY (hereinafter the "Company").

**ARTICLE II**

**Duration**

The period of duration of the Company shall be perpetual, unless sooner dissolved as provided under the Act.

**ARTICLE III**

**Purposes**

A. The purposes and powers of the Company and the business for which the Company is formed are:

1. To own, manage, operate, maintain, repair and replace, construct and reconstruct water diversion, distribution and storage facilities, including, without limitation, canals, ditches, wells, dams, reservoirs, flumes, aqueducts, underground pipelines and all necessary and desired appurtenances thereto, in the County of Summit, State of Utah, for the purpose of supplying water for irrigation, stock watering, domestic and all other beneficial uses and purposes;

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Date: 03/10/2015  
Receipt Number: 5930826  
Amount Paid: \$17.00

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2. To own and acquire, by appropriation, purchase, condemnation, lien, lease, contract or otherwise, any and all real and personal property, including, without limitation, water and water rights of the Beaver and Shingle Creeks and their tributaries, water supply contracts with water conservancy districts or subscription agreements with Water Users Associations for use of Reclamation Project Water, and other needful water, water rights, water stock and sources of water supply used in connection with the said water diversion, distribution and storage facilities and the water supply flowing in and through the same and to supervise, regulate, control, divide and distribute said water and water supply only to the several shareholders of the Company; to sell, lease and otherwise dispose of water currently surplus to the needs of the Shareholders of the Company, and in general to do any and all things necessary and proper to be done in carrying out the business of a mutual irrigation company under Utah law;

3. To issue bonds and other forms of indebtedness and to otherwise make and perform contracts of any kind and description, including contracts with the United States, the State of Utah, and other governmental special districts and 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 indebtedness, or otherwise, for the acquisition of real and personal property, including, without limitation, water, water rights and water stock, and the 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;

4. To apportion any loss of all or any portion of the water rights of Company due to abandonment or forfeiture for non-use to any and all shareholders whose failure to make beneficial use of the water caused the loss, forfeiture or partial forfeiture of the water rights of the Company;

5. To do any and all acts and things, and to have and exercise all rights and powers from time-to-time granted to a non-profit corporation by law, including, without limitation, those powers described in the Act.

B. The Company is organized as a non-profit, private irrigation company engaged in distributing water only to its shareholders and, therefore, is not a public utility as defined by law and is not subject to regulation by the Utah Public Service Commission.

C. 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, officers or shareholder.

D. 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 set forth in the Act, and this Company shall always have such incidental powers as may be connected with or related to any specific purpose or power enumerated herein.

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 ("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, as amended or supplemented.

#### ARTICLE IV Membership, Stock, & Voting Rights

A. Membership. The shareholders of the Company shall be its members, and may be referred to as either shareholders or members.

B. Issuance of Stock.

1. Shares of Company stock may be issued in one or more classes. The aggregate number of shares of Class A and B Shares the Company is authorized to issue is 31,000 shares of common stock, and 900 shares of Class C common stock. Each share regardless of its class shall have a par value of \$10.00 per share.

2. Each share of Company stock shall represent and secure to the owner thereof the rights sets forth in this Article IV and Article X, which rights may be exercised in conformance with these Articles of Incorporation and the By-Laws and Rules and Regulations of the Company.

B. The initial classes of shares are as follows:

CLASS A.....Agricultural, Livestock Water, and Irrigation Use.

CLASS B.....Domestic/Municipal Use.

CLASS C.....Water available under the shares of stock owned by Company in  
the Provo River Water Users Association

1. Class A shares represent the shareholder's right to receive irrigation water and water for livestock through the Company's irrigation distribution system for the irrigation land within the Company's historic service area. One share of Class A stock shall entitle the holder thereof to 0.33 acre-feet of water in an average year; the quantity of water delivered per share is to be adjusted annually and during the course of any given irrigation season depending upon the available water supply. Class A shares do not entitle the shareholder to use any of the Company's water available under its shares in the Provo River Water Users Association.

2. Class B Shares represent Class A Shares that have been surrendered to the Company for conversion to domestic/municipal use pursuant to a shareholder-requested change application for water to be diverted from a well or wells and no longer delivered for irrigation use through the Company's irrigation

distribution system. One share of Class B stock shall be issued for each share of Class A stock so surrendered for conversion in accordance with these Articles and the by-Laws of the Company. Class B shares do not entitle the shareholder to use any of the Company's water available under its shares in the Provo River Water Users Association. One share of Class B shares shall entitle the holder thereof to 0.33 acre-feet of water in an average year. As provided in the By-Laws, for each three shares of Class B shares converted to domestic/municipal use, one share of Class A stock shall be retained and the water available under that share must remain in the irrigation distribution system to provide the converting shareholder's share of carrier water to the irrigation system to avoid impairing the remaining Class A shareholders.

3. Class C shares represent the right to use a portion of the Company's water available under shares of stock owned by Company in the Provo River Water Users Association. As of the date of these Amended and Restated Articles of Incorporation, no Class C shares have been issued by the Company. Each share of Class C stock, entitles the shareholder to use 1 acre foot of water on average, depending upon the available supply in storage in the Provo River Project facilities. In order to qualify to hold Class C shares, if issued by the Company, a person must first hold at least one share of either Class A or Class B shares in the Company.

C. Voting Rights. Regardless of Class, each share of Class A and B shares shall have equal voting rights with each other, and each share shall be entitled to only one (1) vote. All votes shall be cast in person or by written proxy. Class C shares are not entitled to vote.

## ARTICLE V

### Assessments

A Stock Assessments. All shares of Company stock shall be fully assessable in conformance with law and with the following and the terms and provisions of the Bylaws and Rules and Regulations:

#### 1. Assessments.

(a) Annual Regular Assessments. The Board shall annually levy a regular assessment on all shares of Company stock so as to carry out the various purposes of the Company as provided in the Bylaws and Rules and Regulations.

(b) Special Assessments. The Board may levy special assessments as provided in the Bylaws and Rules and Regulations.

2. Assessments may be levied on other than a pro-rata basis, and assessments may vary depending upon the Class of Shares. All assessments shall be levied, collected and enforced in conformance law and the provisions of the Bylaws and Rules and Regulations.

B. Fees and Charges. The Board, from time-to-time, may impose such fees and charges, on shareholders other than and in addition to regular and special assessments, as it may deem necessary for the administration of the Company and otherwise in carrying out the various purposes of the Company.



**ARTICLE VI:**  
**Non-Use and Forfeiture**

A. Requirement of Beneficial Use. Each shareholder of the Company shall beneficially use his or her water each and every year or, if use is not possible for a period of years, the shareholder shall request the Company to file an application for the non-use of the shareholder's portion of the water with the State Engineer in accordance with Utah Code Ann. §73-1-4, prior to any five-year consecutive period of non-use.

B. Apportionment of Loss or Forfeiture of Water. If all or any portion of the Company's water right is declared lost due to statutory forfeiture resulting from the lack of beneficial use by a shareholder, the loss of water shall be apportioned to the shareholder or shareholders whose failure to make beneficial use of the Company's water caused the loss of all or some portion of the Company's water right. Any shareholder, whose entire right to the water rights of the Company is decreed forfeited by a court of competent jurisdiction, may no longer be a shareholder of the Company and his or her right to receive water service through the Company's water distribution system shall end. Any shareholder responsible for the loss of some portion of the Company's water right shall be required to surrender his or her share certificate(s) to the Secretary of the Company. If the shareholder has forfeited only a portion of water the shareholder is entitled to receive, the shareholder shall surrender that portion of his or her shares to the Secretary. The Secretary, upon receipt of such shares, shall cancel the same in the official shareholder records of the Company. Such action does not relieve or excuse the shareholder whose shares, or a portion thereof, are canceled from liability for any unpaid fees and assessments or other debts the shareholder may owe the Company.

**ARTICLE VII**  
**Board of Directors**

A. Number of Directors and Term of Office. The powers and business affairs of the Company shall be exercised and managed by a governing Board of Directors (the "Board") consisting of a minimum of five (5) Directors who shall each serve for a term of two (2) years. Notwithstanding the foregoing, the number of directors to serve may be modified at any annual meeting or special meeting of the shareholders except that the Board shall in no event consist of less than five (5) directors. Initially, five Class A shareholders shall be elected members of the Board. When the Class B shareholders acquire more than 20% of the outstanding shares of the Company, the Class B shareholders shall be entitled to elect one member of the Board and the Class A shareholders will elect the other four members. As the Class B shareholder acquire more than 40% of the outstanding shares, the Class B shareholders will be entitled to elect two members of the Board and the Class A shareholders will elect the other three members of the Board. As the Class B shareholders acquire 60% or more of the outstanding shares, the Class B shareholders will elect three members of the Board and the Class A shareholders will elect the remaining two Board members. To insure continuity of the Board, the Board shall establish staggered terms for Board members so that no more than 3 Board members are subject to election in any one calendar year. Class C shareholders shall not be entitled to elect a member of the Board, but will be represented by the Class A and/or Class B Board members.

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B. Qualification of Directors.

1. To qualify to serve on the Board, each Director shall be a natural person 18 years of age or older, and either be: (i) an individual personally owning a minimum of ten (10) shares of either Class A or Class B stock ("Individual Shareholder"), or (ii) a person duly authorized, in writing, to vote the shares of a shareholding entity (an "Entity Representative"), which owns a minimum of (10) shares of either Class A or Class B stock. A shareholding entity for the purpose of this Article V ("Shareholding Entity"), shall include the following:

a. A corporation, limited liability company, partnership or other business entity recognized under Utah law;

b. A municipal corporation, local district, special service district, school district or other governmental entity;

c. An administrator, personal representative or executor of an estate serving under Letters Testamentary issued by a court, or an appointed guardian or conservator of a protected person duly appointed by the court, and their appointed successors;

d. A trustee or successor trustee holding shares on behalf of one or more beneficiaries duly established trust; and

e. A court appointed Bankruptcy Trustee or Receiver or his appointed successor.

2. As a condition to an Entity Representative being qualified to serve on the Board, the person shall present such written evidence as the Company may reasonably require, demonstrating the person's authority and/or fiduciary capacity to vote the shares in behalf of the Shareholding Entity, and such person shall be required to maintain voting authority in behalf of the Shareholding Entity in order to maintain qualification to serve on the board.

3. If an Individual Shareholder or an Entity Representative shall sell or transfer his or its stock in the Company, or if an Entity Representative serving on the Board shall for whatever reason cease to be authorized to vote the shares of a Shareholding Entity, then in either case the Director shall at once cease to be a Director, and the vacancy shall be filled in conformance with the provisions of the By-Laws of the Company, as they may be amended from time to time.

C. Powers. The Board 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 of the Company.

**ARTICLE VIII**

**Officers**

A. Officers and Term of Office. The officers of the Company shall be elected by the Board, and

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shall consist of a president, vice-president, secretary and treasurer. Those persons to serve in the office of president and vice-president shall be elected from among the membership of the Board. Those persons to serve in the office of secretary and treasurer may, but need not be, members of the Board. One person may hold the office of secretary and treasurer. The term of office shall be one year.

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

## **ARTICLE IX**

### **Limitation on Liability of Members, Indemnification**

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

B. Indemnification. 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 X:**

### **Ownership and Shareholder Change Applications**

The legal title to all of the water rights of the Company is held in the name of the Company and all aspects related to the administration, distribution and regulation of the Company's water rights are under the control and management of the Board of Directors. The shareholders of the Company have an equitable and beneficial ownership interest in the Company's water rights, diversion, distribution and other facilities, which interest entitles them to use a pro rata share of the water available under the Company's water rights as determined by the By-Laws and Rules and Regulations of the Company as implemented by its Board of Directors from time to time.

Any shareholder desiring to use the Company's water in a manner inconsistent with the purpose of use, place of use or point of diversion of the Company's water rights, or for use outside of the Company's historic service area must submit a written request for change application approval to the Board of Directors asking the Company to sign a change application to be filed with the office of the Utah State Engineer. Shareholder change application requests are processed in accordance with the Rules and Regulations of the Company.

A. Fee for Review. Any shareholder requesting to make a change in the use of water represented by his or her shares shall pay to the Board a review fee. The amount of the fee shall be set by separate

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resolution of the Board from time to time, but shall not be less than the estimated costs to the Company to review and act upon the request and may include any costs incurred by the Company for legal or engineering services required to address the change; the cost of modifying or changing the existing water measuring or distribution facilities; increased administrative costs to administer the water under the change; and any costs incurred to identify a parcel or parcels that no longer have water rights available to them, including the disconnection of service to any such parcel. The Board shall have the authority to require payment of the review fee by the shareholder before the Board will formally consent to the filing of the change application with the State Engineer.

B. Discretion to Grant or Deny. The Board of Directors shall have full discretion to deny a request for change application approval if, in reviewing the request, they determine that the change will adversely impact any other shareholder of the Company or the Company itself and the adverse impact cannot be satisfactorily mitigated, or that the change is not in the best interest of the Company or its shareholders.

C. Imposition of Conditions. In consenting to the filing of a shareholder change application, the Board may impose reasonable conditions on the approval to protect the interests of the Company and its shareholders. These conditions may be imposed in the form of a written agreement between the Company and the requesting shareholder.

D. No Binding Precedent. The granting of any change application approval request shall not create a binding precedent on the Company or limit the Board's discretion in reviewing future change application approval requests to ensure that any such request is in the best interest of the Company and that the requested change when viewed against the cumulative impacts of all prior shareholder change applications will not cause any adverse impacts to any other shareholder of the Company or to the Company itself that cannot be mitigated through the imposition of conditions on approval.

E. Filing Fees. If the Board approves the filing of the change application, the shareholder shall be required to pay all filing fees with the State Engineer and to pay all costs of pursuing the application through the State Engineer's administrative process and any subsequent appeal. The Company shall not be required to participate in any such proceeding, nor is it to be financially responsible for any such costs and professional fees incurred by the shareholder in making such a change of use. Shareholder shall be responsible for all filing of extension requests and for proof of beneficial use.

## ARTICLE XI

### Amendment of Articles of Incorporation

These Articles of Incorporation may be amended by two-thirds majority vote of those Class A and B shareholders present in person or by written ballot or by proxy as provided in the By-Laws, at a regular or special meeting called for that purpose pursuant to notice, and at which a quorum is present; provided, however, that these Articles of Incorporation 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. Notice of any such meeting shall be given no more than 20 days and no less than 10 days prior to the meeting.



**ARTICLE XII**  
**Distributions**

No part of the net earnings of the Company shall inure to the benefit of , or be distributed to, its shareholders, 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, each shareholder shall receive their proportionate share of the Company's property and assets based upon patronage insofar as is practical, as their legal interests may appear, after paying or providing for payment of all the lawful debts and obligations of the Company. 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, to its members. 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 Company.

**ARTICLE XIV**  
**Registered Office; Registered Agent**

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

Scott Simpson  
P. O. Box 685  
96 S. Main  
Kamas, Utah 84036  
435-640-5878

B. Registered Agent. The Company's current registered agent at the above address shall be Scott Simpson, who hereby represents, affirms and acknowledges that:

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

  
\_\_\_\_\_  
Scott Simpson, Registered Agent

**THIRD**  
**SHAREHOLDER APPROVAL**

The foregoing Amended and Restated Articles of Incorporation were adopted by the shareholders of the Company at a special shareholders meeting held on the 23 day of February, 2015. The number of votes cast for the amendment by the shareholders was sufficient for approval by the shareholders.

DATED this 6 day of March, 2015.

**BEAVER/SHINGLE CREEK IRRIGATION COMPANY**

By: Kent Leavitt  
President

ATTEST:

Scott Simpson  
Secretary

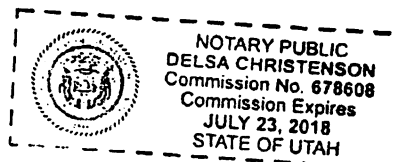
STATE OF UTAH )  
                              : ss  
County of Summit )

Kent Leavitt and Scott Simpson, being first duly sworn upon oath depose and say that they are, respectively, the President and Secretary of Beaver/Shingle Creek Irrigation Company, that each have signed the foregoing Articles of Amendment and Restatement to the Articles of Incorporation of Beaver/Shingle Creek Irrigation Company, and that said Company duly authorized the foregoing Articles of Amendment and Restatement to the Articles of Incorporation.

Kent Leavitt  
President  
Scott Simpson  
Secretary

SUBSCRIBED AND SWORN to before me this 6 day of Mar, 2015.

Delba Christenson  
NOTARY PUBLIC



Utah  
Department of Commerce  
Licensing and Enforcement System

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Payer: BEAVER AND SHINGLE CREEK IRRIGATIO  
Drawer ID: TerminalID  
User : mprice  
Date: 03/10/2015  
Amend/Restate/ 1 17.00 17.00  
Check \$17.00

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Amount Due: \$17.00  
Amount Paid: \$17.00  
Receipt #: 5930826

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