

**AMENDED & RESTATED  
BYLAWS of  
BURGESS CANAL & IRRIGATING CO.  
a non profit corporation**

**Article I**

**Statement of Purpose**

**Section 1.** Burgess Canal & Irrigating Company (hereinafter “Corporation”) is formed and operates under the provisions of the Idaho Non-Profit Corporation Act (Chapter 30 of Title 30 of the Idaho Code) for the purpose of owning, operating and maintaining water and water rights, reservoir and reservoir rights, canals and canal systems on a non-profit basis; it being the intention to serve its stockholders with water for irrigation purposes at as low a cost as possible consistent with good management and good business practices.

**Section 2.** Except as otherwise provided in these By-Laws, Articles of Incorporation of this Corporation, and the laws of the State of Idaho, all authority and power with respect to the Corporation shall be vested with the stockholders.

**Section 3.** These amended By-laws are intended to replace those certain By-laws as adopted by the Corporation on or before the 9<sup>th</sup> day of March, 1984, as amended from time to time thereafter until the adoption of these amended and restated by-laws.

**Section 4.** All Books, papers and records of the Corporation in the hands of any officer of the corporation shall be subject to inspection by any officer, director or stockholder of the Corporation during the Corporation’s regular hours of business or during any regular or special meeting of the Board of Directors (hereinafter sometimes referred to as “Board” or “Directors”) or stockholders.

**Section 5.** The principal office of the Corporation shall be in the office of the Secretary of the Corporation, which shall be located within the service area of the Corporation. The office is presently located in 223 N 3600 E Rigby, County of Jefferson, State of Idaho.

## **Article II**

### **Service Area, Irrigation System & Water Rights**

**Section 1.** The service area of the Corporation shall include all lands of the stockholders which were legally irrigated during the 1983 irrigation season with water diverted by the Corporation for use by the stockholders upon their lands, or as modified and authorized by the Corporation and decreed as the “authorized place of use” in the Snake River Basin Adjudication. Such lands are described generally as set forth in Exhibit “A” attached hereto.

**Section 2.** The Corporation now owns one (1) canal which diverts its waters from the Dry Bed of the South Fork of the Snake River in the Southeast Quarter of the Southwest Quarter (SE1/4SW1/4) of Section Twenty (20), Township Four (4) North, Range Forty (40), E.B.M., known as the Burgess Canal and more particularly described as follows:

That canal owned by the Corporation running from the point of diversion from the Great Feeder Canal in a Westerly direction through Sections Twenty (20) and Nineteen (19), Township Four (4) North, Range Forty (40) E.B.M.; Sections Twenty-four (24), Twenty-three (23), Twenty-two (22), Twenty-one (21), Township Four (4) North, Range Thirty-eight (38), E.B.M.; thence in a Southwesterly direction through Sections Twenty-eight (28), Twenty-nine (29), Thirty-two (32) and Thirty-one (31), Township Four (4) North, Range Thirty-eight (38), E.B.M.; Section One (1), Township Three (3) North, Range Thirty-seven (37) E.B.M., to that point where it empties into the Snake River, a total distance of approximately Sixteen (16) miles.

**Section 3.** The Corporation, having heretofore assumed the obligation of construction and maintenance of the checks, weirs, headgates, and overflows surrendered to it, hereby reasserts the obligation for the operation, maintenance, and control of such structures during the life of the Corporation, such structures being necessary for the distribution of water to the stockholders of the Corporation, whether served individually or jointly by the irrigation system.

**Section 4.** Any structure, whether weir, headgate, dam, overflow or pump, which the Directors in their discretion have allowed to be constructed or placed in the canal by an individual or group of stockholders, or which the Directors may allow or permit in the future, shall be in accordance with plans and specifications approved by designated offices of the Corporation, and shall be under the exclusive control of the Directors and the Corporation

watermaster in the diversion of water from the canal. The maintenance and service of such structures or pumps shall, under the direction of the Directors, be the responsibility of those shareholders who placed such structures or pumps in the canal.

**Section 5.** No use shall be made of the canal system other than the conveyance of water by and for the Corporation and its stockholders, nor shall any structure be erected and maintained on or across any portion of the system, and nor shall any stockholder or other entity permit the draining of seepage and waste water into the system without the written permission and approval of the Directors. Any such use or any structure shall only be on the condition that the permitted use or structure will not interfere with the proper operation and maintenance nor impede the flow of any part of the irrigation system by the Corporation.

**Section 6.** No changes in the canal system by means of rerouting any portion thereof, or by cutting out or adding to the above described canal system shall be made except with the approval by majority vote of the stockholders present at any regular meeting or such special stockholders meeting called for such purpose.

**Section 7.** The present fully adjudicated water rights of the Corporation are as follows:

<b>Burgess Canal Co., Inc.</b>		
<b>Water Right Number</b>	<b>Priority Date</b>	<b>C.F.S.</b>
01-29	06/10/1886	10
01-31	06/10/1888	380
01-32	06/10/1890	240
01-33	06/01/1895	160
01-35P	06/01/1885	1.167
01-117P	06/01/1888	0.608
01-249	01/22/1916	200

01-353	06/02/1919	100
01-10093	06/10/1887	10.798
01-10418	06/13/1970	27.427
<b>STORAGE RIGHTS</b>		
American Falls Reservoir	9,343 acre feet	
Palisades Reservoir	31,400 acre feet	
Jackson Lake	10,603 acre feet	

### **Article III.**

#### **Stock and Stockholders**

**Section 1.** The Corporation has previously issued stock or shares of the Corporation represented by certificates of the Corporation showing the name of the person to whom such stock was issued, the number of shares, the date of issuance and other information. There are presently four thousand thirteen and fifty-eight hundred (4,013.58) shares of stock authorized for issuance by the Corporation. Of such total, four thousand thirteen and fifty-eight hundreds (4,013.58) shares of stock have been issued and four thousand thirteen and fifty eight hundreds (4,013.58) of which are outstanding in the names of the individual stockholders of the Corporation with zero (0) shares being held by the Corporation as treasury stock.

**Section 2.** Each share of stock represents: (A) Measured at the Corporation's authorized point(s) of diversion from the public water supply, the proportionate share of water to which the Corporation is, at any given time, entitled by virtue of the rights held by the Corporation, as said share of stock bears to the total issued and outstanding shares of stock of the Corporation, less the same proportion of the total transmission losses incurred by the Corporation in the conveyance of water through the irrigation system; (B) The right to have such water conveyed, through the Corporation's irrigation system and delivered from the individually designated

point(s) of diversion into said irrigation system, to the diversion into the receiving facilities of the stockholder; (C) The Corporation shall have no further duty other than to deliver and divert, to the receiving facilities of each stockholder, his/her proportionate share of the water to which the Corporation is entitled, less his/her proportionate share of all transmission losses; provided however, the Corporation may, in the discretion and by the approval of the Directors, carry and transport additional water, the right to the use of which is owned or rented by a stockholder or other person or entity, for a carrying charge to be determined by Directors, so long as such service does not interfere with the efficient and orderly management of the Corporation's irrigation system. (D) The receiving facilities of each stockholder shall be: (a) The ditch or canal which receives the water after it passes through the diversion facility owned and operated by the Corporation's canal; or, (b) If the diversion facility has been allowed to be installed in accordance with Article II, Section 4, it shall be the diversion facility itself.

**Section 3.** Each stockholder of the Corporation who presently holds Corporation stock that has been paid in full shall be entitled to retain the certificate or certificates evidencing the amount of stock in the Corporation; and each stockholder who hereafter acquires a right to stock in the Corporation, when that stock has been paid for in full, shall be entitled to a certificate or certificates, in each case showing the amount of stock of the Corporation shown by the books to be in the name of the stockholder. Stock certificates shall be issued in numerical order from the "Stock Certificate Book", including stock that has heretofore been issued by the Corporation, and bear the serial number and date of issuance, be signed by the President and Secretary, have affixed thereto the seal of the Corporation, and subject to statutory requirements, be in the form prescribed by the Directors. A full record of each stock certificate heretofore issued and hereafter to be issued shall be entered on the corresponding stub of the Stock Certificate Book. Stock certificate outstanding as of March, 1984, will not be called in by the Corporation for reissue, but the respective liabilities, rights and privileges of the holders of these certificates in relation to the Corporation will be governed by the Articles of Incorporation and these By-Laws.

**Section 4.** Subject only to the exception described below, all stock now or hereafter held by stockholders of the Corporation shall be appurtenant to the lands that are within the service area of the Corporation's canal system as it existed during the 1983 irrigation season and defined in Article II. Section 1 of these By-Laws.

No transfer of the stock of the Corporation shall be made for the use of the water represented by said stock on lands lying outside the boundaries of the service area (authorized place of use) of the Corporation, as herein defined, except as follows: There shall be a determination by the Directors as to whether the lands to which the new certificate is to be appurtenant and on which the water is to be used can be brought within the service area (authorized place of use) of the Corporation's canal and irrigation system and can be served from the system herein described. If the determination is in the affirmative, the Directors shall allow the transfer. If the determination is in the negative, the transfer shall not be made unless and until the said transfer is approved by the majority vote of the stockholders present at a regular meeting or special meeting called for such purpose in which a quorum of the stockholders is present. No such change shall be permitted except pursuant to the provisions of Idaho Code §42-108 and §42-222.

**Section 5.** No change in point of diversion of a stockholder shall be made or permitted until corporate approval is obtained in accordance with provisions of Idaho Code §42-108 and §42-222, and any other applicable statutory sections, and by approval of the Directors.

**Section 6.** Transfer of stock shall be made only by the Secretary or other person designated by the Directors, to transfer stock on the transfer books of the Corporation, which shall be kept at the office of the Corporation. Before a new certificate is issued, the old certificate, properly endorsed by the stockholder whose name the certificate bears, shall be surrendered for cancellation. A new certificate shall not be issued before the original cost and all past and present assessments against the shares of the stock, represented by the old certificate, shall have been fully paid. Before the new certificate is issued, the person requesting the transfer of stock shall pay a fee to the Secretary in such amount as shall be fixed from time to time by the Directors.

**Section 7.** Every stockholder of record shall have the right, at every stockholders meeting, to one (1) vote for every share of stock standing in a stockholders name on the books of the Corporation; provided, however, that this Corporation being a non-profit corporation and depending upon assessments for its operation and maintenance, no stockholder shall have the right to vote at any stockholders meeting unless the assessments levied are paid in full prior to the holding of said stockholders meeting.

**Section 8.** In addition to the provisions of Article X, with respect to the sale of stock for delinquent assessments, no land shall be served with water for irrigation until such time as the assessment levied against the stock of the owner of said land or of the certificate entitling such land to be served and watered shall have been redeemed and paid in full.

**Section 9.** Registered stockholders on the books of the Corporation shall be the only ones treated by the Corporation as the stockholders-in-fact of stock standing in their respective names, and the Corporation shall not be bound to recognize an equitable or other claim to, or interest in, any stock certificate on the part of any other person, expressly provided by law.

**Section 10.** In the event of loss or destruction of any certificate of stock, another may be issued in its place upon satisfactory proof of such loss or destruction furnished to the Secretary. Satisfactory proof of loss or destruction shall be made by Affidavit or bond of indemnity may be required to the Corporation in such amount as the Directors may decide. Any such new certificate shall be plainly marked "Duplicate" on the face thereof. In the event of the death or incompetency of any stockholder, no transfer of stock outstanding on the records of the Corporation in his/her name shall be made unless satisfactory proof thereof be furnished to the Secretary in the form of an affidavit by the person seeking to have the certificate reissued in his/her name, showing the reasons therefore, and satisfactory information to prove he/she is the proper person to whom the certificate should be reissued, and such person give an affidavit or a satisfactory bond of indemnity as in the case of a lost or destroyed certificate.

**Section 11.** (A) In the event land within the Corporation's service area (authorized place of use) to which the water and conveyance rights are appurtenant by virtue of stock held by the owner of such land, is subdivided in such a manner that a plat is recorded, stock shall only be issued as follows: (a) The water is transferred from said subdivided land to other land within the system as provided elsewhere in these By-Laws, (b) Or, if not transferred from the land, the Corporation shall require the subdivider and/or the owners of such subdivided tract or parcels to form a formal entity having the legal capacity to hold stock, and a new certificate requested to be issued as a result of the change in ownership of such real property shall be issued by the Corporation only to such entity. Thereafter, the Corporation will only recognize such entity as spokesperson for the subdivided property, and will deliver water only at its request. (c) No water

shall be delivered to such entity unless and until the subdivider has complied with the provisions of Idaho Code 31-3805 or such other applicable statute.

(B) Any group of stockholders who have adjacent lands may form a formal entity for the purpose of pooling their stock, and will be treated as a single entity in the same manner as in (A).

(C) If the land within the Corporation's service area to which water and conveyance rights are appurtenant by virtue of stock held by the owner of such land, is divided in such a manner or under such conditions that recording of a plat is not required, then and in the event a stock certificate(s) will be issued to the purchaser(s) in the amount of water transferred by the seller to the purchaser, not to be less than a full share.

**Section 12.** No stock shall be divided into a smaller denomination than one (1) share. However, this will not affect the stock of such smaller denominations which are recorded on the books of the Corporation at the time this By-Law provision was originally adopted on March 11, 1994. Such stock may be merged and added to other stock in order to become of greater value in number but may not be split to a lesser value or unit. Furthermore, any stockholder who owns less than one (1) share of stock may be assessed as a deminimis shareholder and the Directors shall have the right to determine a minimum assessment to be charged to said deminimis shareholder based upon the increased costs and personnel time associated with dealing with the said shareholder in relationship to costs and personnel time spent on other non-deminimis shareholders.

Notwithstanding the foregoing, the Board of Directors shall allow a vehicle or mechanism by which a shareholder may own less than one (1) share of stock. Said vehicle or mechanism shall be adopted by Policy as amended from time to time by the Board.

## **Article IV**

### **Meetings**

**Section 1.** The annual meeting of the stockholders of Corporation shall be held, as commenced during the year of 1984, on the first Friday after the first Monday of March of each year of the existence of the Corporation. This meeting shall be held in Jefferson County, Idaho, at a time and place designated by the Board of Directors. At this meeting, an election shall be held to elect Directors to the offices for which the terms of office of the current Directors have



expired. The term of office of the Directors so elected shall be as prescribed in these By-Laws or until their successors shall have been elected and qualified. Officers of the Corporation shall present their annual reports, and such other business relating to the Corporation may be transacted as shall come properly before the meeting.

**Section 2.** Special meetings of the stockholders other than those provided for or regulated by statute, shall be held in Jefferson County, Idaho, at a time and place designated by the Board of Directors. A special meeting may be called anytime by the President or Secretary as directed by a majority of the Directors or by the stockholders holding in the aggregate, one-fifth (1/5) of the voting power of all stockholders by written petition to the Board.

**Section 3.** Except when otherwise provide by law, for the purpose of electing Directors or voting any matter submitted to a vote of the stockholders, those stockholders who are present in person or represented by proxy at any regular annual or special meeting shall constitute a quorum.

**Section 4.** Written, printed or electronic Notice of every regular or special meeting of stockholders, stating the time and place of the meeting shall be prepared and mailed by the Secretary, postage prepaid, to the last known post office address of each stockholder at least ten (10) days before the date of such meeting. In the case of special meetings, the Notice shall state the objects of the meeting, and such further notice of such meetings shall be given stockholders by publication as is required by law. No business other than that specified in the Notice shall be considered at any such meeting.

**Section 5.** Notice of the time, place and purpose of any meeting of the stockholders need not be given to any stockholder who attends such meeting, in person or by proxy; and if any stockholder shall waive notice of any stockholders meeting by a writing filed in the records of the meeting, notice thereof need not be given to him/her. No notice of any recessed meeting, regular or special, need to be given when the regular or special meeting was properly called and the recess is occasioned by lack of quorum or by reason of inability to complete the business that was proposed before the original meeting.

**Section 6.** (A) As stated in Article III, Section 7, at each regular or special stockholder meeting, each stockholder shall be entitled to one (1) vote, either in person or by proxy, for each share of voting stock standing registered in his or her name at the time of the closing of the

transfer books for that meeting. The transfer books of the Corporation shall be closed twenty (20) days prior to any such meeting.

(B) In voting for the election of Directors, the voting rights of each stockholder shall be cumulative, as provided by the provisions of §30-133, Idaho Code, to wit: to vote the number of shares owned by him/her for as many persons as there are directors to be elected for whose election he/she has a right to vote, or to cumulate his/her votes by giving one (1) candidate as many votes as the number of such directors multiplied by the number of his/her shares shall equal, or by distributing such votes on the same principle among any number of such candidates.

**Section 7.** Each stockholder entitled to vote may be represented at any regular or special meetings of the stockholders by proxy, which shall be evidenced by a writing designating the person who may exercise the proxy. The person exercising the proxy need not be a stockholder, but the proxy shall be in sufficient form to meet the requirements of law, shall be in writing, dated and signed by the stockholder and the signature shall be witnessed in writing. No proxy shall be recognized unless executed within three (3) months prior to the date of the meeting in which it is presented. The proxy shall be filed with the Secretary before it may be voted at any stockholders meeting.

**Section 8.** A complete list of the stockholders entitled to vote at any Corporate election, whether regular or special, arranged in alphabetical order and the number of voting shares held by each shall be prepared by the Secretary and filed in the Corporation's principal office at least five (5) days before the meeting at which such election is to occur. For this purpose, the principal office shall be deemed to be the home or office of the Secretary. Such list is open to examination to any stockholder during the usual hours of business and during the whole time of election for which it is filed at the place of election.

## **Article V.**

### **Board of Directors**

**Section 1.** The management of all the affairs, property and interests of the Corporation shall be vested in a Board of Directors. The Board shall have all authority and power conferred on the Board by law, by the Articles of Incorporation and these By-Laws, and the Board is given the power to do all lawful acts and things in furtherance of the purposes of the Corporation.

**Section 2.** (A) The Board of Directors of the Corporation shall consist of five (5) Directors. Directors shall be elected for a term of three (3) years at the regular annual meeting of stockholders. They shall hold office, when qualified, for the duration of their term and until their successors are elected and qualified. The terms of the Directors shall be staggered in such a manner that no more than two (2) Directors are elected in any one year.

(B) No person shall be eligible to be elected or to serve as a Director of the Corporation unless he/she is a stockholder of the Corporation, owns land within the Corporation's service area and resides within the county in which the Corporation's service area, or a portion thereof, is located. Failure to possess any of the foregoing qualifications at any time during his/her term of office shall operate as an immediate resignation and forfeiture of his/her office.

(C) Election of Directors shall be held at the regular annual meeting of the stockholders for each of the positions of Director for which the terms of office of the present Director expires. All of the stockholders of the Corporation shall be entitled to vote for each director to be elected in accordance with the provisions of these By-Laws.

**Section 3.** All vacancies in the Board of Directors, including death and resignation, shall be filled by appointment by the remaining Board at a regular or special meeting of the Board. The Director thus selected to fill any vacancies shall hold office for the unexpired term for which he/she is appointed end until his/her successor is elected and qualified. Any Director may be removed from office by a vote of two-thirds (2/3) of the outstanding shares of the Corporation.

**Section 4.** The Board of Directors elected at the annual meeting shall hold its first organizational meeting within ten (10) days of the election of the members to elect a President, Vice-President and Secretary-Treasurer and transact any other business, which meeting shall constitute the only regular meeting of the Board of Directors for the year. Special meetings of the Board may be called at any time by the President, or, in his absence or disability, by the Vice-President or by any two (2) Directors, such call stating the time and place of such meeting and the purposes for which it is to be held.

**Section 5.** Notice of special meetings of the Board of Directors shall be given by the Secretary by giving notice thereof to each Board member's last known post office address, postage prepaid, at least three (3) days before the time fixed for such meeting, such notice giving the time, place and objects thereof; but subject to obtaining written waivers of such notice by all

the Directors, meeting may be called on the giving of five (5) hours oral advance notice. Except as stated in Section 6 hereof, no business shall be transacted at any such special meeting other than that indicated in the notice.

**Section 6.** Notice of any meeting need not be given to a Director if he/she shall waive notice in writing by a waiver which is filed with the records of the Secretary, either before or after the meeting. Any business may be transacted at any meeting at which every Director is present even though the business is not indicated in the call of the meeting. Any meeting of the Board shall be a legal meeting without notice thereof being given to the individual directors, if all the Directors shall be present at that meeting.

**Section 7.** A majority of the entire Board of Directors shall be necessary to constitute a quorum for the transaction of business and the majority member in attendance at any Board meeting shall, in the presence of the quorum, be decisive of the action of the Board, except as otherwise provided in the By-Laws, Articles of Incorporation or as required by law. If, however, by reason of resignation or otherwise, the remaining Directors at any given time comprise less than a quorum, they may meet to fill vacancies as herein provided.

**Section 8.** The Directors shall receive no salary for their services as Directors other than reimbursement for sums actually expended by them in attending such meetings or events as reasonably authorized by the Board of Directors and a per diem should an amount be established by the Board of Directors for each time a Director attends such authorized meetings or events.

## **Article VI.**

### **Powers of Directors**

The Directors shall have the power;

**Section 1.** To conduct, manage and control the business affairs and property of the Corporation and to make such rules and regulations, not inconsistent with these by-laws or the law of the State of Idaho, as they may deem best.

**Section 2.** To borrow money if and when agreed to by the Board of Directors; to grant, bargain, sell, convey, assign, transfer, lease, let, manage or otherwise dispose of, from time to time, at any time, all and singularly its bonds, promissory notes, obligations, accounts and/or other evidence of indebtedness, and any and all property of every kind and description belonging

to the Corporation or in which the Corporation has interest in such amounts, upon such terms and conditions, and as may, from time to time, be deemed necessary or advisable in the judgment of the Board of Directors.

**Section 3.** To appoint and name, at pleasure, all officers, agents and employees of the Corporation, prescribe their duties, fees and compensation and require of them, if advisable, bond for the faithful performance of their duties.

**Section 4.** To call special meetings of the stockholders when they deem it necessary or advisable as set forth above.

**Section 5.** To make and enter into contracts and/or agreements with other canal or water corporations, companies, irrigation districts, associations or individuals with respect to the distribution, carrying, ownership, management, control or rental of any water or irrigation system, canal or municipal plant.

**Section 6.** To enter into and make contracts and agreements with the United States government; or any branch or department thereof, any reservoir, storage company or irrigation district, corporation or association and to take stock in and subscribe for water in any reservoir or storage operation that may seem right and proper and to the interest and benefit of the stockholders in the judgment of the Board of Directors.

**Section 7.** To do any and all things necessary and proper to fully carry into effect the business and proceedings set forth in the articles of incorporation for which this Corporation has been organized and to fully exercise and all powers and privileges entitled to be exercised by virtue of either its Articles of Incorporation, the laws of the State of Idaho, or the United States.

## **Article VII.**

### **Officers**

**Section 1.** (A) The officers of the Corporation shall be a President, a Vice-President, a Secretary and a Treasurer, each of whom shall be elected by the Directors at the regular annual meeting of the Board of Directors. These officers shall hold office for one year, and until their successors have been elected and qualified. The President and Vice-President shall be elected from among the Directors, but no person shall be eligible to hold the office of Secretary or Treasurer while holding the office of a Director of the Corporation. The Secretary and the

Treasurer either may or may not be stockholders of the Corporation. The Board, in its discretion, may provide that the office of Secretary be united with that of Treasurer, to be held by one person.

(B) The Board of Directors may elect such other officers and appoint such agents as it may deem necessary or expedient in the handling of the Corporate affairs. These officers or agents shall hold office during the pleasure of the Board and on such conditions (including providing of indemnity bonds, if any), and shall have such authority, and perform duties as shall be prescribed from time to time by the Board.

**Section 2. President.** The President shall preside at all the meetings of the Directors and of the stockholders. He/She shall, under the general supervision of the Board of Directors, have supervision of all the affairs of the Corporation. He/She shall sign all certificates of stock issued by the Corporation. He/She shall, except as otherwise directed by the Board of Directors, sign or countersign, as may be necessary, all bills, notes, checks, contracts and other instruments as may pertain to the ordinary course of the Corporation's business. He/She shall sign, when authorized by the Board of Directors, all contracts, deeds, bonds, mortgages and other instruments of a similar nature. He/She shall perform such other duties as may properly be required of him/her by these By-Laws, Articles of Incorporation or the Board of Directors. The President may vote at all meetings, including any stockholders meetings.

**Section 3. Vice-President.** The Vice-President shall possess all of the powers and perform all of the duties of the President in the event of the death, absence or disability or refusal to act on the part of the President, such authority to extend until a new President has been elected and qualified, and have such powers and discharge such other duties as may be assigned to him/her from time to time by the Board of Directors.

**Sections 4. Secretary.** The Secretary shall: (A) Keep full minutes of all meetings of the stockholders and Directors; (B) Give notice of all meetings of the stockholders and Directors in accordance with the provisions of these By-Laws; (C) Be the custodian of the stock certificate book; (D) Sign, with the President, all certificates of stock issued or reissued by the Corporation; (E) Sign all contracts, papers and documents as necessary when it shall be necessary for the Corporation seal to be affixed; (F) Be custodian of the Corporation's seal, attesting all contracts and other documents requiring the Corporation's seal, and affixing the seal thereto; (G) Be

custodian of the Corporation's Articles of Incorporation and By-Laws; and, (H) Perform such other duties as any be prescribed by the Board of Directors.

**Section 5. Treasurer.** The Treasurer shall: (a) Have custody of and be responsible for all monies and securities of the Corporation; (b) Keep a full and accurate record of accounts in books belonging to the Corporation, showing the transactions of the Corporation, its accounts, liabilities and financial conditions; (c) Deposit in the name of the Corporation all monies and other forms of negotiable receipts that may come into his/her hands for the Corporation's account, in such depository or depositories as are designated by the Directors; (d) Be accountable for all other valuable corporate papers, except as provided in Section 4 hereof; and, (e) Disburse the funds of the Corporation in payment of just demands against the Corporation or in accordance with general or special directions of the Board of Directors, making proper vouchers for such disbursements. (B) He/She shall submit a full report of the financial condition of the Corporation to the annual meeting of the stockholders, and generally shall perform all duties incident to the position of Treasurer, subject to the control of the Board of Directors. (C) He/She shall give such bond as the Board of Directors may require for the faithful performance of the duties of his/her office and for the restoration to the Corporation in case of his/her death, resignation or removal from office, of all books, papers, vouchers, money, or other property of whatever kind in his/her possession belonging to the Corporation.

**Section 6.** In the event of the absence or inability to act of any officer of the Corporation, or of any person herein authorized to act in his/her place, the Board of Directors from time to time may delegate the powers and duties of such office to such other officer or to any director, or to any other stockholder whom they may select. Vacancies in any office arising from any cause may be filled by the Board of Director at any regular meeting or any special meeting called for that purpose.

**Section 7.** Subject to Article V, Section 8, the compensation of all officers and the compensation and tenure of office of all administrative officers shall be fixed by the Board of Directors.

**Section 8.** Any officer elected by the Board of Directors may be removed at any time, with or without cause, by the Board of Directors.

## **Article VIII.**

### **Water Master or Ditch Rider**

**Section 1.** The Board of Directors at any regular or any special meeting shall provide for the employment of a watermaster (or ditch rider) who shall work under the supervision and direction of the Board of Directors and the President. He/she shall receive such compensation as the Board of Directors shall determine. No person shall be eligible to serve as watermaster while holding the office of a Director of the Corporation, and the watermaster either may or may not be a stockholder of the Corporation.

**Section 2.** It shall be the duty of the watermaster, and such assistants as may from time to time be employed by the Board of Directors, to operate and maintain the irrigation system of the Corporation under the control and direction of the Board of Directors to affect the purposes of the Corporation; specifically, the watermaster and any assistants shall:

(A) Operate and maintain the irrigation system of the Corporation to permit the diversion, by the Corporation through its diversion works, and conveyance through its canal, of water which the Corporation is entitled to divert from the public water supply pursuant to its water rights. The watermaster shall do all things proper and necessary as directed by the Board of Directors to keep the diversion works and conveyance system of the Corporation clean and in good repair, to the end that water may be diverted and delivered to the stockholders.

(B) Deliver the water diverted from the public supply by the Corporation to which each stockholder is entitled at such stockholder's receiving facilities from the Corporation's system as defined in Article II, of these By-Laws. It shall be the duty of each stockholder or group of stockholders entitled to receive water through any designated point of delivery to his/her or their facilities for receiving water, after the same has passed through the headgate or other delivery structure of the Corporation, in such condition that such facilities will receive, without waste, the water to which such stockholder or group of stockholders is entitled. The Corporation assumes no responsibility for damage to stockholders or third parties from the use or misuse of water after such water has been delivered through the delivery structure of the Corporation at any point of delivery from the Corporation's irrigation system. If the watermaster determines that the facilities for receiving water from the headgate or other structure at any point of delivery from the Corporation's system cannot, for any reason receive the water to which any stockholder or group



of stockholders is entitled, he/she shall so notify such stockholder or stockholders, and shall have no responsibility for delivering more water than can, in the sole discretion of the watermaster, be received, unless and until adequate measures are taken by such stockholder or group of stockholders to receive the full water entitlement.

(C) Have exclusive control of the adjustment and locking of all headgates or other delivery structures through which stockholders receive water, as well as exclusive control of all measuring devices at such headgates of other structures shall control pumps and any non-dead gate diversions through pump plans authorized by the Board of Directors and inspected and qualified by the watermaster. The water master shall measure as accurately as practicable, all water delivered through each point of delivery and may keep daily records of such deliveries, which records shall be available for examination and inspection by stockholders as provided in Article I, Section IV of these By-laws. To the extent practicable and consistent with the optimum use of the entire system of the Corporation and in accordance with his entitlement by virtue of stock ownership, each stockholder shall be entitled to receive water at such times as he/she may desire and in any amount to which he/she is entitled.

(D) To report all damages done to the canal system from any cause whatsoever and to seek prosecution for any and all persons who willfully destroy, misuse or waste the canals, headgates or irrigation water.

(E). To do any and all things directed by the Board of Directors and/or that which is necessary for the proper operation of the irrigation system of the Corporation.

**Section 3.** The watermaster, acting under the direction of the Board of Directors, may require the stockholders desiring to increase or decrease the flow of water at the point of diversion from the Corporation's system, within the stockholder's entitlements, to give the watermaster not less than twenty-four (24) hours notice before the flow of water is to be changed at that point.

## **Article IX.**

### **Easements and Rights of Way**

**Section 1.** All easements and rights of way shall be governed by the provisions of Idaho Code Title 42 Chapters 11 and 12 and such other provisions as provided within these bylaws or Board of Directors policies.

## **Section 2. Variances.**

The Board of Directors has absolute discretion to grant or deny variances providing the decision or action doesn't violate Idaho, county, or city laws.

## **Article X.**

### **Assessments**

**Section 1.** Monies necessary for the payment of Corporate indebtedness, for carrying on the business of the Corporation, for maintaining and operating the Corporation's irrigation system, or for any other purpose the Directors determine to be in the best interests of the Corporation, shall be raised by assessments levied from time to time in the manner provided by the laws of the State of Idaho and these By-Laws. Such assessments shall be based on the number of outstanding shares of stock held or owned by the shareholders of the Corporation. In addition, an administrative charge may be levied on each shareholder as provided in Idaho Code 42-2201.

**Section 2.** The Directors, in accordance with the laws of Idaho, shall give notice to the stockholders of any assessments so levied, requiring each stockholder to pay to the designated officer of the Corporation the amount of the assessment on or before the date stated in that notice. On the failure or refusal of any stockholder to pay the amount so assessed, and after giving notice that assessments are delinquent as provided by the laws of Idaho, the Board of Directors shall take immediate action to enforce the collection of such delinquent assessments as provided by the laws of the State of Idaho. The determination as to which course or courses of action to pursue in enforcing the collection of delinquent assessments shall be made by the Board of Directors, including but not limited to the sale of shares of stock held by the delinquent stockholder.

**Section 3.** Assessments levied in conformance with this Article shall be due and payable to the Corporation regardless of whether or not the water used by the stockholder passes through the canal system of the Corporation. If assessments are levied on the stockholders based on the number of shares of stock held or owned, said assessments shall be due and payable to the Corporation regardless of whether or not the water is used by such stockholder. The corporation may hold from time to time water shares in accordance with these by-laws. Properly noticed.

**Section 4.** In addition to such assessments, the Corporation may make reasonable charges to offset related expenses in connection with the diversion, conveyance, drainage or delivery of water to any shareholder or other person/payee or entity with whom the Corporation may contract.

**Section 5.** No water will be delivered during the coming irrigation season until such assessment is paid or reasonable security, satisfactory to the Board of Directors, is given therefore.

## **Article XI**

### **Indemnification and Liability Insurance**

#### **Section 1. Indemnification.**

(A) Except as otherwise limited by the laws of the State of Idaho, the Corporation shall indemnify any person who was or is a party or is threatened with being made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, including all appeals other than an action, suit or proceeding by or in the right of the Corporation by reason of the fact that he/she is or was a Director, officer or employee of the Corporation, or is or was serving at the request of the Corporation as a Director, officer or employee of another Corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees) judgments, decrees, fines, penalties and amounts paid in settlement actually and reasonably incurred by him/her in connection with such action, suit or proceeding if he/she acted in good faith and in a manner he/she reasonably believed to be in or not opposed to the best interest of the Corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his/her conduct was unlawful.

The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not of itself create a presumption that the person did not act in good faith or in a manner which he/she reasonably believed to be in or not opposed to the best interest of the Corporation or, with respect to any criminal action, suit or proceeding, that he/she had no reasonable cause to believe that his/her conduct was unlawful.

(B) The Corporation shall indemnify any person who was or is a party or is threatened with being made a party to any threatened, pending or completed action, suit or proceeding,

including all appeals, by or in the right of the Corporation to procure a judgment in its favor by reason of the fact that he/she is or was a Director, officer or employee of the Corporation, or is or was serving at the request of the Corporation as a director, officer or employee of another Corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees) actually and reasonably incurred by him/her in connection with the defense or settlement of such action, suit or proceeding up to the amount that would reasonably have been expended in his/her defense determined in the manner provided for in subsection (D) if such action, suit or proceeding had been prosecuted to a conclusion. However, indemnification under this subsection shall be made only if the person to be indemnified acted in good faith and in a manner he/she reasonably believed to be in or not opposed to the best interests of the Corporation and no such indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been finally adjudged to be liable for negligence or misconduct in the performance of his/her duty to the Corporation unless, and only to the extent that, the court or body in or before which such action, suit or proceeding was finally determined, or any court of competent jurisdiction, shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the cases, such person is fairly and reasonably entitled to indemnify for such expenses or other amounts paid as such court shall deem proper.

(C) Without limiting the right of any Director, officer or employee of the Corporation to indemnification under any other subsection hereof, if such person has been substantially and finally successful on the merits or otherwise in defense of any action, suit or proceeding referred to in subsections (A) and (B), he/she shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by him/her in connection therewith.

(D) Except in a situation governed by subsection (C), any indemnification under subsections (A) and (B) unless ordered by a court shall be made by the Corporation only as authorized in the specific case upon a determination that indemnification of the Director, officer or employee is proper in the circumstances because he/she has met with applicable standard of conduct set forth in subsections (A) and (B). Such determination shall be made (1) by the Board of Directors by a majority vote of a quorum consisting of Directors who are not or were not parties to or threatened with such action, suit or proceeding, or any other action, suit or

proceeding arising from the same or similar operative facts, or (2) if such a quorum is not obtainable, or even if obtainable, if a majority of such quorum of disinterested Directors so directs, by independent legal counsel compensated by the Corporation in a written opinion, or (3) if there be no disinterested Directors, whether or not a quorum, so directs, by vote in person or by proxy of the holders of a majority of the members entitled to vote in the election of Directors.

(E) Expenses of each person indemnified hereunder incurred defending a civil, criminal, administrative or investigative action, suit or proceeding (including all appeals) or threat thereof, may be paid by the Corporation in advance of the final disposition of such action, suit or proceeding as authorized by the Board of Directors, whether a disinterested quorum exists or not, upon receipt of an undertaking by or on behalf of the Director, officer or employee to repay such expenses unless it shall ultimately be determined that he/she is entitled to be indemnified by the Corporation.

(F) The indemnification provided by this Article shall not be deemed exclusive of or in any way to limit any other rights to which any person indemnified may be or may become entitled as a matter of law, by the articles, regulations, agreements, insurance, vote of members or otherwise, with respect to action in his/her official capacity and with respect to action in another capacity while holding such office and shall continue as to a person who has ceased to be a Director, officer or employee and shall inure to the benefit of the heirs, executors and administrators of such a person.

(G) Subsections (A) through (F) of this Article shall apply to such agents of the Corporation as are designated at any time by the Board of Directors.

(H) If any part of this Article shall be found, in any action, suit or proceeding, to be invalid or ineffective, the validity and the effect of the remaining parts shall not be affected.

## **Section 2. Insurance.**

The Corporation may purchase and maintain insurance on behalf of an individual who is a Director or officer of the Corporation, or who, while a Director or officer of the Corporation, serves at the Corporation's request as a director, officer, partner, trustee, employee, or agent of another domestic or foreign Corporation, partnership, joint venture, trust, employee benefit plan, or other entity, against liability asserted against or incurred by him/her in that capacity or arising from his/her status as a director or officer, whether or not the Corporation would have power to

indemnify or advance expenses to him against the same liability under this part.

## **Article XII.**

### **Amendments**

These By-Laws may be altered or amended at any annual meeting of the stockholders or any other meeting of the stockholders called for that purpose by the Directors by an affirmative vote of the stockholders which vote meets the minimum requirements of Sec. 42-2401 of the *Idaho Code*, as it may be amended.

## **Article XIII.**

### **Dissolution**

The Corporation may be dissolved in accordance with the laws of the State of Idaho. Upon dissolution of the Corporation, any assets remaining after the payments of its debts shall be distributed to such organization as shall qualify at the time as exempt organizations described in IRS Code Section 501(c) as the Board of Directors shall determine. These organizations may include corporations, associations, institutions, trust, community chests or foundations organized and operated exclusively for one or more of the purposes of the Corporation. Notwithstanding any provision herein to the contrary, nothing herein shall be construed to affect the disposition of the property and assets held by the Corporation upon trust or other condition, or subject to any executory or special limitation, and such property, upon dissolution of the Corporation, shall be transferred in accordance with the trust, condition or limitation imposed with respect to it.

## **Article XIV**

### **Corporate Seal**

The Corporation shall have an official seal in the following form, which seal shall be impressed on certificates of stock and other agreements entered into by the Corporation, which by law requires the Corporation seal to be so impressed:

## **Article XV**

### **Audits**

It shall be the duty of the Board of Directors to require an annual audit, in such form and

manner as the Board of Directors shall determine and economical efficient, of the records of the Corporation by competent accountants prior to the annual meeting of the stockholders each year. The results of said audit are to be available for inspection by the Directors or any stockholder as provided in Article I, Section 4 of these By-Laws.

CERTIFICATION

The above and foregoing is a true and correct copy of the Amended and Restated By-Laws adopted at an annual meeting of the shareholders of Burgess Canal and Irrigating Company, held at Jefferson County, Idaho, on WEDNESDAY, the 1<sup>st</sup> day of FEB, 2023, at 07:10 P.m.

Burgess Canal & Irrigating Co.



(Corporate Seal)

Sh. Boam President

Christy Paul Secretary