

**AMENDED AND RESTATED
ARTICLES OF INCORPORATION
OF
DRAPER IRRIGATION COMPANY**

Pursuant to and in accordance with Sections 16-6a-1001 and 16-6a-1006 of the Utah Revised Nonprofit Corporation Act, the following are the amended and restated articles of incorporation of Draper Irrigation Company, a Utah nonprofit corporation (referred to herein as the "Corporation").

**ARTICLE I
NAME**

The name of the Corporation is Draper Irrigation Company.

**ARTICLE II
PERIOD OF DURATION**

The existence of the Corporation shall be perpetual or until dissolved and liquidated in accordance with the laws of the state of Utah.

**ARTICLE III
PURPOSE**

The Corporation is organized to engage in any lawful act or activity for which a corporation may be organized under the Utah Revised Nonprofit Corporation Act, including:

(a) to regulate, control, and distribute to the persons entitled thereto, subject to the provisions hereinafter set forth, for irrigation, culinary, and domestic purposes and all other purposes, all water and water sources that this Corporation now owns or in which it has any interest, or which it may hereafter acquire or become interested in; to keep in repair the streams, springs, and sources of supply, including ditches and canals now owned by this Corporation and such others as may be acquired or received into the system of this Corporation; to construct, purchase, or otherwise acquire and to own, hold, and control reservoirs, pipelines, dams, bridges, conduits, canals, ditches, springs, water, and all sources of water supply; to construct, purchase, or otherwise acquire and to own and control reservoirs, pipelines, dams, conduits, canals, ditches, springs, water, and all sources of water supply; to acquire stock in other corporations organized for the purpose of acquiring, owning, controlling, and distributing water and for the use thereof by purchase, subscription, or otherwise; to construct pipelines, power plants, treatment plants, and facilities and to control and own the same; to establish pumping plants and to drive and sink wells, either for surface or artesian water; to construct tunnels, drifts, and make excavations for the purpose of developing water; to acquire lands, easements, and rights-of-way to be used in connection with the objects of this Corporation and for the construction of reservoirs, pumping and power plants, treatment plants, irrigation systems or parts thereof, including ditches, canals, and sources of water supply, by purchase or otherwise; to borrow money for corporate purposes; to execute and deliver notes, bonds, or other evidence of indebtedness in payment for corporate debts, and to secure the same by mortgages, trust deeds, or other encumbrances upon all or any of the property of this Corporation, and generally to do all acts and things necessary, or which shall be deemed advisable by this Corporation, in order to enable it to carry out the objects and purposes of this Corporation;

(b) to sell, convey, exchange, transfer, and otherwise dispose of all or any part of its property and assets, including but not limited to water, streams, springs, reservoirs, pipelines, bridges, conduits, ditches, lateral ditches, and canals; and

(c) to do all things and any things necessary to participate either as an incorporator or subscriber, or holder or owner of the capital stock of any corporation or association organized or to be organized, for the purpose of purchasing, constructing, or acquiring water, water rights, dams, reservoirs, canals, power plants, treatment plants, irrigation works, pumping or power plants and systems, and other works from the United States or its offices or departments, either directly or through or with such association or corporation, for the construction or erection by it and the acquisition from it of any such dams, reservoirs, canals, power plants, treatment plants, irrigation works, pumping plants, water works, water rights, or interests or rights therein. It shall have authority to enter into contracts with the United States or with any department or officer thereof, or with any person, firm, or corporation; to make and deliver its promissory notes, guarantees, or other obligations in such form and upon such terms and conditions as to its board of directors may be and appear necessary and proper; and to secure, guarantee, or become surety for the payment or performance thereof, or of any contract, promissory note, or other obligation that may be or has been entered into with the United States or with any other person, firm, or corporation in which this Corporation has acquired by subscription, water, water rights, power, franchises, or other water rights, power, or otherwise, shares of stock, any property and privileges, or in or with which it may cooperate, by pledge of its securities, stock or bonds, or by deed of trust, mortgage, or other lien upon any or all of its property, real and personal, or rights or interests therein.

ARTICLE IV AUTHORIZED SHARES

The owners of the stock of this Corporation shall be members of the Corporation. Membership in the Corporation shall be evidenced by the issuance of shares of stock, as hereinafter provided. The limit of the capital stock of this Corporation shall be \$720,000, divided into 20,000 shares of stock to be known as Class A, or common, stock of the par value of \$6.00 per share and 12,000 shares of stock to be known as Class B Culinary stock of the par value of \$50.00 per share. The preferences, limitations, and relative rights of the shares of each class shall be as follows:

(a) All property and property rights of this Corporation and all of the proceeds derived therefrom not otherwise awarded to the Class B Culinary stock shall inure to and be owned by the owners of the Class A stock. Wherever in these articles of incorporation this Corporation's stock shall be awarded or charged with rights, duties, and obligations, such rights, duties, and obligations shall be applied to the owners of said Class A stock unless explicitly provided to the contrary.

(b) The owner of each share of Class B Culinary stock shall be entitled to one culinary connection on the pressure pipeline system of this Corporation that supplies culinary water to its stockholders ("culinary system") and to receive culinary water therefrom, subject, however, to the rules, regulations, and rates of this Corporation with respect to culinary water furnished by this Corporation to its stockholders and *provided* that the Corporation's culinary system serves the area in which such connection is desired. No connection shall be permitted on this Corporation's culinary system unless the person for whom said connection is made is the owner of record of a share of Class B Culinary stock for each such connection. The Corporation shall have the right to redeem the shares of Class B Culinary stock issued with respect to the Corporation's culinary system in return for a like number of shares of Class B stock in a new, wholly-owned subsidiary to provide culinary water service, in the event the Corporation forms such a subsidiary, by notifying its Class B Culinary stockholders of its election to redeem the shares of Class B Culinary stock and evidencing the redemption on its records.

(c) The owners of Class A stock shall not be entitled to receive culinary water from the Corporation's culinary system or to have a connection thereon by virtue of the ownership of Class A stock.

(d) The number of Class B Culinary shares of stock heretofore issued to the owners of Class A stock who have connections on said pipeline system were fully paid for by the release by said Class A stockholders of their rights to receive culinary water on their Class A stock. All further Class B Culinary stock authorized in excess of the number of shares heretofore issued to holders of Class A stock having a connection on the culinary system may be held in the treasury of the Corporation and may be sold or

disposed of and issued by the board of directors of this Corporation on such terms, under such conditions, and at such price, not less than par value, as the board of directors may determine.

(e) The Class B Culinary stock shall be assessable by the board of directors for the purpose of paying for extensions, additions, or improvements to the culinary system, or for the purpose of acquiring additional water to be distributed in the culinary system or to replace water diverted from the mountain sources of the Corporation, which diverted water would otherwise be used for irrigation by the Class A stockholders. Such assessments shall only be levied by the board of directors on the Class B Culinary stock in instances when the board determines that the ordinary revenues from the culinary systems are insufficient. Revenues from such assessment of Class B Culinary stock shall not be used or applied toward the expense of maintenance and operation of the irrigation system of the Corporation.

(f) In the event that increases in the amount of water used by the culinary system reduce the amount of the Corporation's water that would otherwise be used for irrigation by the owners of Class A stock, and the Corporation acquires water to replace the amount of irrigation water so reduced, the cost of acquiring said replacement water shall be paid from the revenues received from the culinary system and the Class B Culinary stockholders.

(g) In the area served by the culinary system where irrigation water is not available to the owners of Class A stock, the Corporation is authorized to repurchase and retire the Class A stock of the owners in such area. The Corporation may be authorized to repurchase and retire either Class A or Class B stock as provided in the bylaws.

(h) In the event of the sale or other liquidation of the culinary system, the holders of Class B Culinary stock shall receive from the proceeds of such sale or liquidation the par value of their stock, plus any payment to the Corporation for acquisition of such stock in excess of par values, plus assessments levied and made thereon (but not quarterly or other regular charges for service and connection fees), and said Class B Culinary stock shall be retired and the balance, if any, of the proceeds of such sale or liquidation shall be retained by the Corporation for the benefit of its Class A stockholders.

(i) Each owner of Class A stock shall be entitled to cast one vote for each share of Class A stock owned on any matter presented to the stockholders for a vote. Each owner of Class B Culinary stock shall be entitled to cast one vote for each share of Class B Culinary stock owned only with respect to the election of members of the board of directors at each annual stockholders meeting, where the Class B Culinary stock shall vote with the Class A stock as a single class.

ARTICLE V MERGER, CONSOLIDATION, DISSOLUTION, CONVERSION TO A CORPORATION, OR SALE OF ASSETS

The Corporation may be a party to a merger or consolidation; dissolve; convert to a business corporation; sell, lease, exchange, or otherwise dispose of all or substantially all of its property, other than in the usual course of business; or sell, lease, exchange, or otherwise dispose of any material portion of its water rights, other than in the usual course of business, only upon the approval of the board of directors as provided in the bylaws and stockholders holding two-thirds of the issued and outstanding Class A stock. Notwithstanding anything to the contrary contained in these articles, no amendment, repeal, or provision inconsistent with the provisions of this Article V or related provision in the bylaws of the Corporation shall be adopted unless it is approved by a two-thirds majority of the board of directors as provided in the bylaws and stockholders holding two-thirds of the issued and outstanding Class A stock.

ARTICLE VI BOARD OF DIRECTORS

All corporate powers shall be exercised by or under the authority of, and the business and affairs of the Corporation shall be managed under the direction of, the board of directors.

The board of directors shall be composed of the number of directors provided in the bylaws, all of whom shall be elected by the holders of Class A stock and the holders of Class B Culinary stock voting as a single class. The directors shall be divided into three classes, with respect to the time that they severally hold office, as nearly equal in number as possible, with the initial term of office of the first class of directors to expire at the 2002 annual meeting of stockholders of the Corporation, the initial term of office of the second class of directors to expire at the 2003 annual meeting of stockholders of the Corporation, and the initial term of office of the third class of directors to expire at the 2004 annual meeting of stockholders of the Corporation. Commencing with the 2001 annual meeting of stockholders of the Corporation, directors elected to succeed those directors whose terms have thereupon expired shall be elected for a term of office to expire at the third succeeding annual meeting of stockholders of the Corporation after their election. If the number of directors is changed, any increase or decrease shall be apportioned among the classes so as to maintain or attain, if possible, the equality of the number of directors in each class, but in no case will a decrease in the number of directors shorten the term of any incumbent director. If such equality is not possible, the increase or decrease shall be apportioned among the classes in such a way that the difference in the number of directors in any two classes shall not exceed one. Each director shall be required to be a natural person who is a Class A stockholder of record or the duly constituted and appointed representative of a corporation, partnership, limited liability company or other legal entity not a natural person that is a Class A stockholder of record.

No amendment, repeal, or adoption of a provision inconsistent with the provisions of this Article VI shall be adopted unless it is approved by the vote of two-thirds of the votes entitled to be cast.

ARTICLE VII BYLAWS

The board of directors of the Corporation shall have the authority to adopt bylaws for and on behalf of the Corporation and to amend such bylaws from time to time as its directors shall deem necessary or advisable, except as otherwise may be provided by law. The bylaws shall specify the officers of the Corporation and describe the duties of each. The stockholders may amend the bylaws from time to time, as they shall deem advisable or necessary, except as may be provided by law, but no amendment, repeal, or adoption of a provision inconsistent with the bylaws may be made by the stockholders unless it is approved by the vote of two-thirds of the votes entitled to be cast.

ARTICLE VIII LIMITATION ON LIABILITY

To the fullest extent permitted by the Utah Revised Nonprofit Corporation Act or any other applicable law as now in effect or as it may hereafter be amended, a director of the Corporation shall have no personal liability to the Corporation or its stockholders for monetary damages for any action taken or any failure to take any action as a director.

ARTICLE IX INDEMNIFICATION OF OFFICERS, DIRECTORS, AND OTHERS

To the fullest extent permitted by the Utah Revised Nonprofit Corporation Act or any other applicable law as now in effect or as it may hereafter be amended, the Corporation shall indemnify directors, and executive officers as set forth in the bylaws. The Corporation may indemnify employees, fiduciaries, and agents to the extent provided for in the bylaws or authorized by the board of directors.

**ARTICLE X
STOCKHOLDER ACTION**

Any action that may be taken at any annual or special meeting of stockholders may be taken only upon the vote of the stockholders at an annual or special meeting duly called and may not be taken without a meeting and without prior notice by written consent of the stockholders. Notwithstanding anything to the contrary contained in these articles, no amendment, repeal, or provision inconsistent with the provisions of this Article X or related provision in the bylaws of the Corporation shall be adopted unless it is approved by the vote of two-thirds of the votes entitled to be cast.

**ARTICLE XI
BUSINESS AT ANNUAL MEETING**

At an annual meeting of stockholders, only such business shall be conducted and only such proposals shall be acted upon, as shall have been brought before the annual meeting (a) by or at the direction of a majority of the directors, or (b) by stockholders of the Corporation who comply with the notice procedures set forth in the bylaws of the Corporation. Notwithstanding anything to the contrary contained in these articles, no amendment, repeal, or provision inconsistent with the provisions of this Article XI or related provision in the bylaws of the Corporation shall be adopted unless it is approved by the vote of two-thirds of the votes entitled to be cast.

**ARTICLE XII
POWER OF BOARD TO OPPOSE CERTAIN TRANSACTIONS**

(a) Factors to Consider. The board of directors may, if it deems it advisable, oppose any proposal for the Corporation to be a party to a merger or consolidation; dissolve; convert to a business corporation; sell, lease, exchange, or otherwise dispose of all or substantially all of its property, other than in the usual course of business; or sell, lease, exchange, or otherwise dispose of any material portion of its water rights, other than in the usual course of business. When considering whether to oppose such a proposal, the board of directors may, but is not legally obligated to, consider any relevant factors. By way of illustration, but not limitation, the board of directors may, but shall not be legally obligated to, consider any and all of the following:

- (1) the effect of the action on the Corporation's traditional mission and role in the community;
- (2) the effect of the action on the ability of the persons within its service area to obtain irrigation and culinary water safely, efficiently, and economically;
- (3) the effect of the action on individual landholder stockholders of the type whose efforts originally formed the Corporation;
- (4) the expressed wishes of the majority of members of the Corporation as contrasted with the possible votes of shares in the Corporation;
- (5) the social, legal, and economic impact that the action would have on the customers, employees, suppliers, and creditors of the Corporation and any subsidiary and on the community of Draper as a whole; and
- (6) any other relevant factors, including the long-term, as well as the short-term, interests of the Corporation and its stockholders, whether or not such other factors are monetary or nonmonetary in nature, or are stockholder or nonstockholder considerations.

(b) Permitted Action. If the board of directors determines that such a proposal should be rejected, it may take any lawful action to accomplish its purpose, including any or all of the following: (i) advising stockholders not to accept the offer; (ii) litigation against the offeror; (iii) filing complaints

with all governmental and regulatory authorities; and (iv) obtaining a more favorable offer from another individual or entity.

(c) Definition of "Substantially All" and "Material Portion." Whether or not any proposed sale, lease, exchange, mortgage, pledge, transfer, or other disposition of part of the assets of the Corporation involves "substantially all" of the property of the Corporation or a "material portion" of its water rights shall be conclusively determined by a vote of the board of directors; *provided, however*, that assets involved in any single transaction or series of related transactions having an aggregate fair market value, as determined by the board of directors, of more than 75% of the total consolidated assets of the Corporation and its subsidiaries as at the end of the Corporation's last full fiscal year prior to such determination shall always be deemed to constitute "substantially all" and any portion of its water rights in excess of 15% shall always be deemed to constitute a "material portion."

(d) Effect on Directors' Power and Liability. Nothing contained herein shall be deemed to limit or restrict the powers of the board of directors, or to enlarge the duties of the board of directors, as provided in Utah law, or to create director liability for taking any action authorized hereunder.

(e) Amendment or Repeal. Notwithstanding anything to the contrary contained in these articles, no amendment, repeal, or provision inconsistent with the provisions of this Article XII or related provision in the bylaws of the Corporation shall be adopted, unless it is approved by the vote of two-thirds of the votes entitled to be cast.

ARTICLE XIII
WAIVER OF ABILITY TO TRANSFER INDIRECT
INTEREST IN CORPORATE ASSETS; INDEMNIFICATION

No stockholder of the Corporation shall have any right, cause of action, remedy, or other claim, whether at law or in equity, to any interest in the water rights or other tangible or intangible assets of any kind or nature of the Corporation or to obtain transfer by any means, directly or indirectly, of any water right or other tangible or intangible asset to such stockholder for its own use, benefit, or enjoyment separate from the Corporation. Any stockholder asserting any right, cause of action, remedy, or other claim to any interest in the water rights or other tangible or intangible assets for their use, benefit, or enjoyment separate from the Corporation shall indemnify the Corporation and hold it harmless from and against any loss, cost, or damage incurred by the Corporation in connection therewith, whether or not litigation results.

ARTICLE XIV
REGISTERED OFFICE AND REGISTERED AGENT

The address of the Corporation's registered office and the name of the registered agent at that address in the state of Utah are:

Noel H. Enniss
12421 South 800 East
Box 275
Draper, Utah 84020

Either the registered office or the registered agent may be changed in the manner provided for by law.

The undersigned affirm and acknowledge, under penalties of perjury, that the foregoing instrument is their act and deed and that the facts stated herein are true.

DATED this ____ day of May, 2001.

DRAPER IRRIGATION COMPANY

By/s/ Tom Flowers _____
President

By /s/ Richard Skeen _____
Secretary

The undersigned hereby accepts and acknowledges appointment as registered agent of Draper Irrigation Company.

/s/ _____
Noel H. Enniss