

FILED EFFECTIVE**2017 MAY 10 AM 11:17****SECRETARY OF STATE
STATE OF IDAHO****RESTATED
ARTICLES OF INCORPORATION**

of

NORTH FREMONT CANAL SYSTEMS, INC.
-----**KNOW ALL MEN BY THESE PRESENTS:**

Pursuant to the applicable provisions of the Idaho statutes, the undersigned corporation, pursuant to a resolution unanimously adopted by its full board of directors (seven out of seven) at a meeting held on February 24, 2017, the following Restated Articles of Incorporation are hereby adopted:

That we, the undersigned citizens of the United States of America, of the age of twenty-one years or more, by these presents voluntarily associate ourselves together in behalf of ourselves and all of the present stock holders of originally decreed water rights listed with the Idaho Department of Water Resources which have as their place of use the lands of the shareholders located within Fremont County, Idaho, by forming a non-profit corporation, pursuant to the provisions of Chapter 30 of Title 30 of the Idaho Code, and receiving all of the assets and assuming all of the liabilities and responsibilities of said corporation originally incorporated on August 31, 1987, do hereby certify:

ARTICLE I**NAME**

The name of this corporation is **North Fremont Canal Systems, Inc.**, and is formed as a non-profit corporation (hereinafter "Corporation").

ARTICLE II**PURPOSES AND POWERS**

A. The purposes for which the corporation is formed are to own, acquire, lease, hold, manage, control, operate and maintain an irrigation system, and water and water rights, all for the benefit of the corporation and its stockholders, upon certain lands lying in the Ashton, Idaho vicinity, in the County of Fremont, State of Idaho, for irrigation, domestic use, watering livestock, and all other beneficial uses of water, and to conduct any business, and to do all and every thing necessary, suitable, and proper for the accomplishment of any of the purposes or the attainment of any benefits for the Corporation and its stockholders, not inconsistent with the laws under which the Corporation is organized.

IDAHO SECRETARY OF STATE

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B. This Corporation existed heretofore under the same name.

ARTICLE III

REGISTERED OFFICE AND REGISTERED AGENT

The address of the initial registered office of **North Fremont Canal Systems, Inc.** is at P.O. Box 241, Ashton, ID 83420, and the name of its initial registered agent is Dennis Warnke, whose address is 3594 E. 1200 N., Ashton, ID 83420.

ARTICLE IV

DURATION

The term for which the Corporation is to exist shall be perpetual from and after the date of its incorporation, unless sooner dissolved or disincorporated pursuant to law.

ARTICLE V

INITIAL BOARD OF DIRECTORS AND OFFICERS

A. The number of directors of this Corporation shall be seven (7). The names and residences of the persons who are to serve as directors and officers of the Corporation until the first annual meeting of stockholders or until their successors are elected and shall qualify are:

<u>Name</u>	<u>Address</u>
Sean Maupin	P.O. Box 331 Ashton, ID 83420
Jason Howell	4275 E. 1400 N. Ashton, ID 83420
Clen Atchley	4054 E. 1300 N. Ashton, ID 83420
Brian Loosli	3127 E. 1100 N. Ashton, ID 83420
Doug Hess	3351 E. 1200 N. Ashton, ID 83420
Rex Wade	P.O. Box 396

Dennis Warnke

Ashton, ID 83420
P.O. Box 256
Ashton, ID 83420

B. The directors shall be elected in the manner described below by their respective Class of stock **prior** to the annual meeting of the stockholders in Fremont County, Idaho, to be held at the place, and on the date and at the time specified in the By-Laws of the Corporation.

ARTICLE VI

CAPITAL STOCK

A. This Corporation shall not have members but shall have stockholders.

B. The amount of capital stock of this Corporation shall be 70,000 shares with no par value, divided into three classes as follows: 40,000 of "M" Class shares, 20,000 of "F" Class shares and 10,000 of "Y" Class shares.

C. All stock shall be common stock and when fully paid shall not be subject to call. Each share of stock shall be entitled to one vote within its own Class and all stock shall have equal rights within its own Class.

D. The capital stock of the Corporation may not be transferred except in connection with a transaction involving title to the real property to which that proportion of the water and conveyance rights of the Corporation represented by such stock is appurtenant, or as otherwise provided by these Articles and the By-Laws of the Corporation, and only to the extent and in the manner provided in the said Articles, By-Laws and the Statement of Merger and as the same may from time to time be amended.

E. The ownership of said stock shall be further limited and shall be held and transferred as provided for in the Dy Laws and Class Dy-Laws as described below. No share shall have pre-emptive rights within its own Class, and each stockholder may vote by written proxy pursuant to any limitations contained in the By-laws and Class By-Laws. All stock shall be subject to assessment for use in paying all of the expenses of the Corporation, including the expenses of maintenance and operation of the irrigation system.

F. The names of the persons or entities, their mailing addresses, and the number of shares this Corporation recognizes and acknowledges as being owned in this Corporation shall be set forth in the stock register of this Corporation and Class By-Laws as provided to this Corporation.

G. Each class shall be entitled to elect a specific number of Directors to the Corporation and each class represents a priority in the use of the water rights owned by the Corporation, as follows:

<u>Class</u>	<u>No. of Shares</u>	<u>No. of Authorized Directors</u>	<u>Earliest Water Priority Date</u>
M	40,000	4	Nov. 5, 1895
F	20,000	2	June 1, 1892
Y	10,000	1	Nov. 5, 1895
Total	70,000	7	

ARTICLE VII

SUPPLEMENTAL POWERS AND PURPOSES

A. In carrying out the purposes of this Corporation to furnish for its stockholders water for irrigation, domestic use, watering livestock, and all other beneficial uses of water, the Corporation will issue stock to its stockholders in unequal numbers of shares, issuing to each stockholder the number of shares deemed sufficient to equal their percentage of ownership of the water rights owned in their corporation (sometimes referred to as Merging Corporation) prior to its merger in this Corporation (sometimes referred to as Surviving Corporation) and in the manner set forth in the Bylaws and the Statement of Merger filed herewith. The funds necessary for the accomplishment of said purposes can be raised by assessments on those shares.

B. This Corporation shall at all times be operated on a non-profit basis for the benefit of its stockholders. No interest or dividends shall be paid or payable to the stockholders by the Corporation.

C. In the payment of assessments, which shall be uniform on each share of stock (except for the surcharge assessment described in subparagraph "D" immediately below), the business of the Corporation shall be so conducted that only sufficient funds shall be levied and collected from the stockholders as are necessary for the payment of its reasonable and necessary expenses in carrying out the purposes of the Corporation. Should an excess of funds be collected, by said assessments or by the rental or sale of surplus water in times of plenty, which shall exceed a reasonable sum to be retained in a reserve fund for the acquisition of water by lease, purchase or otherwise, in times of shortage, and after taking into account the Corporation's reasonable needs for normal business purposes, retiring indebtedness, expansion, or maintaining reserves for other necessary purposes, the same shall, at the discretion of the board of directors of the Corporation, be returned to the stockholders on a per share basis, or the Corporation shall reduce the amount of the next assessment on said stock, or both. The books and records of the Corporation shall be set up and kept in such a manner that at the end of each fiscal year, a record of the amount of surplus funds collected by the Corporation shall be made.

All such amounts received by the Corporation from its operations in excess of costs and expenses shall, insofar as permitted by law, be used to offset any losses incurred during the current or any prior fiscal year.

D. Notwithstanding the foregoing, due to the varying and unique costs and expenses of each of the three classes of stock, the shareholders of each class of stock shall, in

addition to that general assessment made by this Surviving Corporation, be surcharged an assessment which shall equal the costs and expenses associated with each Class's obligations which are associated with its reach or branch of the Corporation's irrigation system and obligations which each Class's irrigation company owed at the time of the merger. Therefore, in order to accomplish said unique costs and expenses, and notwithstanding the foregoing, without the express consent of the majority vote of each Class of stock (M, F & Y) to be issued pursuant to these Articles and the Statement of Merger, no amendments to these Articles or Bylaws of this Surviving Corporation shall modify these initial rights granted to each Class, including the right of the shareholders of each Class of stockholders from meeting independently of this Corporation's other Class of shareholders and organizing themselves as they chose, including adopting their own by-laws (herein referred to as "Class By-laws"), electing their respective board members to serve on the board of directors of the Corporation as authorized herein, and surcharging their particular Class of stock assessments for monies required to pay the debts and obligations required of their particular Class and segment of the Corporation's irrigation system.

Additionally, the rights reserved by each class shall include, but are not limited to, the following:

Class M:

- (1) All real property presently owned by Marysville Canal Company.
- (2) All interest in what is known as the Fall River Hydro Contract.
- (3) The 3/4 of a miners inch calculation for water consumption (ditch loss).

Class F:

- (1) Preservation to Class F members of the earliest water rights (06/01/1892).
- (2) The 5/8 of a miners inch calculation for water consumption (ditch loss).

Class Y:

- (1) One for One calculation for water consumption (no ditch loss).

The foregoing is providing said Class rights and actions do NOT violate any laws of the Idaho Business Corporation Act and further providing the adoption of "Class By-laws" do NOT contradict those terms and conditions of these Articles or By-Laws duly adopted by the Corporation.

All assets and liabilities of the three merging corporations shall be retained on the books as equity and debt held by each respective Class and any rights and obligations, including payments attributable to said equity or debt shall be borne only by the shareholders of each respective Class.

E. In the event of dissolution or liquidation of the Corporation, after all outstanding taxes and indebtedness of the Corporation shall have been paid, together with all costs of dissolution or liquidation, all gains from the sale of an appreciated asset, as well as all other assets, including funds of the Corporation, shall be returned to the stockholders on a per share basis, with the exception of assets retained by a particular Class, which shall be returned to the stockholders of each respective Class.

ARTICLE VIII

LIMITATIONS OF LIABILITY

All present or past directors, officers, employees or agents of the corporation and the heirs or personal representatives of such person, shall be indemnified and may be advanced expenses by the Corporation if said person was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than action by or in the right of the corporation) by reason of the fact that he is or was a director, officer, employee, or agent of the corporation or is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him in connection with such action, suit or proceeding if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the Corporation, and, with respect to any criminal action proceeding, had no reasonable cause to believe his conduct was unlawful and is so determined in accordance with Idaho Code § 30-30-626, and if so determined such person shall be entitled to all the other benefits as set out in Idaho Code § 30-30-626 and shall have no personal liability to the corporation or its stockholders for monetary damages for breach of fiduciary duty as a director, officer, employee or agent; provided that this provision shall not eliminate or limit the liability of such person (i) for any breach of the duty of loyalty to the Corporation or its stockholders, (ii) for acts or omissions *not in good faith* or which involve intentional misconduct or a knowing violation of law, (iii) under Section 30-30-626, Idaho Code, or (iv) for any transaction from which such person derived an improper personal benefit. This section shall not eliminate or limit the liability of such person for any act or omission occurring prior to the date when this section becomes effective.

ARTICLE IX

BY-LAWS & CLASS BY-LAWS

The By-Laws shall be adopted by the Board of Directors. The power to amend or repeal the By-Laws of the corporation shall thereafter be pursuant to these Articles, the By-Laws and the Statement of Merger.

In addition to the By-laws, the shareholders of each Class of stockholders may adopt their own Class By-laws, unique to and binding only upon the shareholders of the adopting Class of stock.

ARTICLE X

CURRENT SHAREHOLDERS FOLLOWING MERGER

As set forth above, three canal companies have recently merged with the Corporation pursuant to the Statement of Merger filed with the Idaho Secretary of State, which terms shall be binding upon the Corporation. The names of the recently merged companies and their representative number of authorized shares in Corporation following the merger are as

follows:

The Shareholders of **Marysville Irrigation Company, Inc.:** 40,000 shares of Class M stock

The Shareholders of **Farmer's Own Ditch Company, Limited:** 20,000 shares of Class F stock

The Shareholders of **Yellowstone Power and Irrigation Company, Inc.:** 10,000 shares of Class Y stock

ARTICLE XI

INCORPORATORS

The name and address of each restated incorporator/director is:

Sean Maupin

P.O. Box 331
Ashton, ID 83420

Jason Howell

4275 E. 1400 N.
Ashton, ID 83420

Clen Atchley

4054 E. 1300 N.
Ashton, ID 83420

Brian Loosli

3127 E. 1100 N.
Ashton, ID 83420

Doug Hess

3351 E. 1200 N.
Ashton, ID 83420

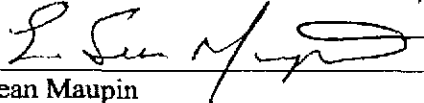
Rex Wade

P.O. Box 396
Ashton, ID 83420

Dennis Warnke

P.O. Box 256
Ashton, ID 83420

DATED This day of February, 2017.


Sean Maupin


Jason Howell


Clen Atchley


Brian Loosli

Doug Hess

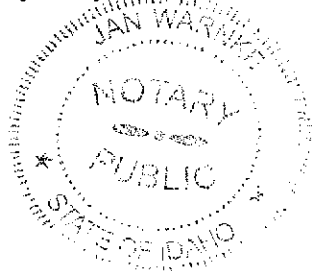
Rex A. Wade
Rex Wade

Dennis Warnke
Dennis Warnke

STATE OF IDAHO,)
)
) ss.
County of Ashton.)

On this 23 day of February, 2017, before me, the undersigned a notary Public in and for said State, personally appeared Sean Maupin, Jason Howell, Clen Atchley, Brian Loosli, Doug Hess, Rex Wade and Dennis Warnke known to me to be the persons whose names are subscribed to the within instrument and acknowledged to me that they executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.



Notary Public for Idaho
Residing at: Ashton
My Commission Expires: 4-26-19