

## ARTICLES OF INCORPORATION

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CHERRY GROVE CANAL COMPANY, LIMITED  
-----SECRETARY OF STATE  
STATE OF IDAHO

KNOW ALL MEN BY THESE PRESENTS:

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 said Cherry Grove Canal Company, Ltd., which has operated as a de facto corporation since November 30, 1967, when said corporation's charter was forfeited for failure to file its annual statement, but which said corporation has continued to function in all respects as a legally constituted corporation, and this set of articles of incorporation are being filed with the Secretary of State, State of Idaho, for the purpose of converting said de facto corporation into a de jure corporation, by forming a non-profit corporation, pursuant to the provisions of Chapter 3 of Title 30 of the Idaho Code, and receiving all of the assets and assuming all of the liabilities and responsibilities of said de facto corporation, and we do hereby certify:

## ARTICLE I

NAME

The name of this corporation is CHERRY GROVE CANAL COMPANY, LIMITED, and is formed as a non-profit 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 along and in the vicinity of Darby Creek, which is a tributary of the Teton River, in the County of Teton, 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.

B. This corporation existed heretofore under the name of Cherry Grove Canal Company, Limited; its original Articles of Incorporation having been filed for record with the Secretary of State of the State of Idaho on the 7<sup>th</sup> day of January, 1901. On December 1, 1913, the charter of said company was forfeited by the Secretary of State of the State of Idaho for failure to file its annual statement. On May 25, 1950, said company was reinstated as a corporation by said Secretary of State, with the filing of new Articles of Incorporation. On

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November 30, 1967, said corporation's charter was forfeited for failure to file its annual statement. No annual report has been filed by the corporation with the said Secretary of State since that date. Nevertheless, the company continued as a de facto corporation under and by virtue of the laws of the State of Idaho, continuing to elect directors and officers and operate for all intents and purposes as if its charter had never been forfeited. The purpose, therefore, of executing and filing these Articles of Incorporation with the Secretary of State of the State of Idaho is to re-instate said corporation as a legal corporate entity, recognizing the stockholders of the de facto corporation exactly as they existed on the date of the execution of these Articles of Incorporation on May 25, 1950, and for the purpose of acquiring from the de facto corporation all water rights and other rights and properties and assuming the liabilities, if any exist, as of date hereof, to continue and perpetuate the canal company entity.

### ARTICLE III

#### REGISTERED OFFICE AND REGISTERED AGENT

The address of the initial registered office of Cherry Grove Canal Company is at 477 S. 100 W., Victor, ID 83455, and the name of its initial registered agent at such address is Francis Eugene Lewis.

### 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

There shall be a board of directors composed of not less than three (3) members, as provided in the by-laws; and the following officers: President, Vice-President, Secretary, and Treasurer. Their qualifications, duties, terms of office, manner of election, and other matters pertaining to the corporation shall also be set forth in the By-Laws of the corporation.

### ARTICLE VI

#### CAPITAL STOCK

A. The total authorized capital of this corporation shall be fifteen hundred dollars (\$1,500.00), divided into fifteen hundred shares (1,500), each with the par value of one dollar (\$1.00).

ARTICLES OF INCORPORATION OF CHERRY GROVE CANAL COMPANY, LIMITED

B. Fourteen hundred and forty-eight (1,448) of said shares have been subscribed for and fully paid and issued by Cherry Grove Canal Company, Limited, which corporation's charter has been forfeited, but for which this corporation is organized, and this corporation adopts those outstanding shares of stock as its outstanding capital stock and which stockholders shall, without any further action on their part, become stockholders of this corporation.

C. The following named persons and their addresses and the numbers of shares each owned at the time this corporation was last reorganized, May 25, 1950, are the following:

James G. Oglesby, Driggs, Idaho, 160 shares; Vernal J. Foster, Driggs, Idaho, 80 shares; Clifton E. Yearsley, Driggs, Idaho, 120 shares; Thomas G. Foster, Driggs, Idaho 16 shares; Ariel Nelson, Driggs, Idaho 20 shares; Charles Allen, Driggs, Idaho, 160 shares; Richard Jackson, Driggs, Idaho 160 shares; Mrs. Etta Cover, Driggs, Idaho, 40 shares; Mrs. Willis Buxton, Challis, Idaho 160 shares; Austin Child, Driggs, Idaho, 152 shares; Lynn W. Casper, Driggs, Idaho, 160 shares; Glenn Woolstenhulme, Driggs, Idaho, 160 shares; Earl D. Stringfellow, Driggs, Idaho, 60 shares.

The owners of said shares of stock on the date of this incorporation are the above named persons or their heirs and assigns.

D. 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 and all stock shall have equal rights.

E. 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 for in the By-Laws of the corporation, as the same may from time to time be amended.

F. The ownership of said stock shall be further limited and shall be held and transferred as provided for in the By-Laws. No share shall have pre-emptive rights, and each stockholder may vote by written proxy pursuant to any limitations contained in the 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.

G. 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 minutes of the initial meetings of the stockholders of this corporation.

## 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 for that stockholder's needs in the manner set forth in the bylaws. 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, 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.

D. 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.

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.

## 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 § 30-1-5(d), and if so determined such person shall be entitled to all the other benefits as set out in Idaho Code § 30-1-5 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 30-1-48, 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

The initial 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 the By-Laws.

## ARTICLE X

### INCORPORATORS

The name and address of each incorporator is:

Francis Eugene Lewis  
477 S. 100 W.  
Victor, ID 83455

Ronald Zohner  
1842 1st Street  
Idaho Falls, ID 83401

DATED This 29<sup>th</sup> day of December 2006.

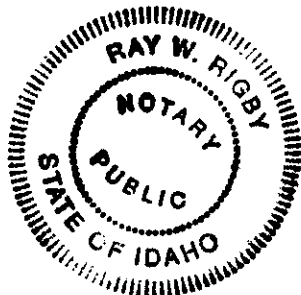
Francis Eugene Lewis  
Francis Eugene Lewis

Ronald Zohner  
Ronald Zohner

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

On this 29<sup>th</sup> day of December, 2006, before me, the undersigned a Notary  
Public in and for said State, personally appeared FRANCIS EUGENE LEWIS and RONALD Zohner,  
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.



Ray W. Rigby  
Notary Public for Idaho  
Residing at Rexburg, Idaho  
My Commission Expires: 03-12-2011