

AMENDED ARTICLES OF MERGER
Of
NORTH SALEM AGRICULTURAL & MILLING
CANAL COMPANY, LIMITED
Into
SALEM UNION CANAL COMPANY, LIMITED

FILED
1999 FEB 22 A 10:55
SECRETARY
STATE OF IDAHO

Pursuant to the provisions of Idaho Code § 30-1-1101 et seq., of the Idaho General Business Corporations Act, the undersigned corporations adopt the following Amended Articles of Merger for the purpose of merging them into one of such corporation:

FIRST: The following Amended Plan of Merger was approved by the shareholders of each of the undersigned corporations in the manner prescribed by the Idaho General Business Corporations Act:

**FIRST
RECITALS**

A. The Salem Union Canal Company, Limited (Salem Union), the surviving corporation, is validly organized, existing and in good standing under the laws of the State of Idaho. North Salem Agricultural & Milling Canal Company, Limited (North Salem), the merging corporation, is validly organized, existing and in good standing under the laws of the State of Idaho. The two (2) corporations filed Articles of Merger with the Secretary of State on April 4, 1996. Thereafter, on or about July 1, 1996, Blair Calaway et al., commenced an action, CV-96-317, in the District Court for Madison County, seeking to set the merger aside. At a Pre-Trial Hearing held on October 15, 1998, the court indicated the Notice of the Shareholder's Meeting to obtain approval of the merger should have included a copy of certain statutory provisions which were not included, thereby, calling into question the validity of the merger. As a result, the directors of both companies unanimously agreed to present for another vote this Amended Plan of Merger. In connection therewith, all directors proceeded on the basis the initial merger was invalid and both the Salem Union and North Salem were in good standing.

B. Salem Union, the Surviving Corporation, has an authorized capital of \$11,000, divided into 440 shares, with a par value of \$25.00 each. There are 440 shares of said stock outstanding as of date hereof. The Salem Union consists generally of diversion works in the Henry's Fork of the Snake River, a system of canals from that point to where it empties into the Teton River; and decreed water rights consisting of 315 cfs prior to July 1, and 240 cfs thereafter. It also has 35,000 shares in the North Fork Reservoir Company which owns the decree to Henry's Lake storage.

C. North Salem has an authorized capital of \$1,000.00 divided into 50 shares, with a par value of \$20.00 each. There are 45 shares of said stock outstanding as of date hereof. It has diversion works in the Teton River, and a canal to carry its water to its shareholders to the point

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where it empties into the consolidated canal. The North Salem has an 1888 decree for 26.5 cfs from the Teton River until July 1.

D. The Boards of Directors of both Corporations considered the Amended Plan of Merger and, both approved it. However, the shareholders of the Salem Union, at the meeting held to approve the Amended Plan of Merger on January 9, 1999, unanimously amended the plan to provide for Class A and Class B stock. The Class A stock was to be issued to the Salem Union shareholders which Class A stock would retain the decreed water rights of the Salem Union and the North Fork Reservoir storage rights. The Class B stock was to be issued to the North Salem shareholders and would retain the decreed water rights of the North Salem. The Amendment was on condition the litigation referred to in paragraph A be dismissed with prejudice, and each side pay their own costs and attorneys fees. The meeting was adjourned while the plaintiffs met with their attorneys, and the directors of the Salem Union met with their attorney. Following the adjournment, the meeting resumed and plaintiffs and their attorneys, and the directors of the Salem Union and its attorney agreed to the condition.

On the 4-11 days of February, 1999, all of the shareholders of the North Salem waived the requirement of a meeting and in writing approved the merger with the amendment, and on February 11, 1999, the Amended Plan of Merger with the two classes of stock was approved unanimously by the shareholders of the North Salem. Consequently, the Boards of Directors and Shareholders of both corporations have determined it is in the best interests of their corporations to merge with and into the surviving corporation, Salem Canal Company, Limited, in accordance with the provisions of applicable laws of the State of Idaho.

SECOND AMENDED PLAN OF MERGER

The plan is to have each of the corporations agree, to merge into a single corporation which shall be Salem Union Canal Company, Limited, the Surviving Corporation, (whose name is not changed and whose Articles of Incorporation shall be amended, as hereafter provided, and whose By-Laws will not be amended in any respects except as provided herein) pursuant to the laws of the State of Idaho, and hereby agree to the terms and conditions of the merger, the mode of carrying it into effect and the issuance of Class A and Class B stock as follows:

On the effective date of the merger, the Merging Corporation shall be merged with and into the Salem Union and the separate existence of the Merging Corporation, North Salem, shall cease; the Constituent Corporations shall become a single corporation named "Salem Union Canal Company, Limited," an Idaho corporation, which shall be the Surviving Corporation.

THIRD
ARTICLES OF INCORPORATION OF SURVIVING CORPORATION

The Articles of Incorporation and Amendments thereto of Salem Union, the Surviving Corporation, shall be amended by amending Article Sixth of said Articles of Incorporation to read as follows:

"Sixth. That the total authorized capital of this corporation shall be \$11,375 (Eleven Thousand Three Hundred Seventy-five) Dollars, divided into 440 shares of Class A stock with a par value of \$25 per share, and 18.75 shares of Class B stock with a par value of \$20 per share. All stock shall be fully accessible, with each share of Class A stock and each share of Class B stock to be assessed equally. Each share of stock shall be entitled to one vote."

Said Articles, as further amended, shall continue to be the Articles of Incorporation of the Surviving Corporation until further amended in accordance with the Corporation Laws of the State of Idaho. A copy of said Articles of Incorporation, together with the prior Amendments thereto, are on file with the secretary of the corporation.

FOURTH
BY-LAWS OF THE SURVIVING CORPORATION

The By-Laws of Salem Union in effect immediately prior to the effective date of the merger shall continue to be the By-Laws of the Surviving Corporation, until altered or repealed in the manner provided by law and such By-Laws.

FIFTH
DIRECTORS AND OFFICERS OF THE SURVIVING CORPORATION

The Directors and Officers of Salem Union immediately prior to the effective date of the merger shall continue to be the Directors of the Surviving Corporation, to hold office for the terms specified in the By-Laws of the Surviving Corporation and until their respective successors are duly elected and qualified.

SIXTH
MANNER AND BASIS OF CLASS A AND CLASS B SHARES

A. Class A shares shall be issued to all shareholders of the Salem Union. One (1) share or part thereof shall be issued for one (1) share of existing Salem Union stock or part thereof so that it will be a share for share exchange.

The Class A stock shall retain the decreed water rights of the Salem Union, along with the North Fork Reservoir storage water of the Salem Union, and be entitled to the use of all of said water.

B. Class B shares shall be issued to all shareholders of the North Salem. .04053 shares shall be issued for each share of North Salem stock rounded to the nearest quarter share. That means, the 45 issued and outstanding shares of the North Salem will be exchanged for 18.75 shares of Class B stock.

The Class B stock shall retain the decreed water rights of the North Salem and be entitled to the use of said water.

C. At the Annual Meeting of the Board of Directors, the Board shall make an assessment for the stock. Each share of Class A stock and each share of Class B stock will be assessed equally.

D. As soon as practical after the effective date of the merger, each shareholder of the Salem Union and North Salem of stock heretofore issued shall be entitled, upon surrender of their existing certificates, for cancellation, to receive new certificates for the number of shares of Class A and/or Class B stock of the Surviving Corporation to which each shareholder is entitled as set forth herein.

SEVENTH EFFECT OF MERGER

A. On the effective date of the merger, the Surviving Corporation shall possess all the rights, privileges, powers and franchises of a public as well as a private nature of each of the Constituent Corporations, and shall become subject to all the restrictions, disabilities and duties of each of the Constituent Corporations and all of the singular rights, privileges, powers and franchises of each of the Constituent Corporations. All water rights as set forth in the Class A and Class B stock herein, canals, diversionary works, cash, bank, checking and savings accounts, and all other property, real, personal and mixed, and debts due to each of the Constituent Corporations on whatever account, as well as all other things in action or belonging to each of the Constituent Corporations shall be vested in the Surviving Corporation; and all property, assets, rights, privileges, powers, franchises and immunities, and all and every other interest shall be thereafter as effectually the property of the Surviving Corporation as they were of the respective Constituent Corporations; and the title to any real estate vested by deed or otherwise, in either of the Constituent Corporations, shall not revert or be in any way impaired by reason of the merger; provided, however, that all of the creditors and liens upon any property of either of the Constituent Corporations shall be preserved unimpaired, and all debts, liabilities, obligations and duties of the respective Constituent Corporations shall thenceforth attach to the Surviving Corporation, and may be enforced against it to the same extent as if said debts, liabilities, obligations and duties had been incurred or contracted by it.

B. If at any time after the merger becomes effective it shall appear to the Surviving Corporation that any further assignments or assurances are necessary or desirable to evidence the vesting in the Surviving Corporation of the title to any of the property or rights of the Merging Corporation, those persons who were proper officers and directors of the Merging Corporation as of the effective date of the merger shall execute, acknowledge and deliver such assignments or other instruments and do such acts as may be necessary or appropriate to evidence the vesting of title to such property or rights in the Surviving Corporation. For such purposes the capacity and authority of the Merging Corporation and its officers shall be deemed to be continuing.

C. The Surviving Corporation shall agree that it may be served with process in the State of Idaho and shall irrevocably appoint the Secretary of State of Idaho as its agent to accept service of process, in any proceeding for the enforcement of any obligation of the Merging Corporation arising in the State of Idaho prior to the effective date of the merger, and in any proceedings for the enforcement of the rights of a dissenting shareholder of the Merging Corporation against the Surviving Corporation.

EIGHTH ACCOUNTING AND STATED CAPITAL

When the merger becomes effective, subject to such changes, adjustments or eliminations as may be made in accordance with generally accepted accounting principles, (a) the assets and liabilities of the Constituent Corporations shall be recorded in the accounting records of the Surviving Corporation at the amounts at which they shall be carried at that time in the accounting records of the Constituent Corporations, (b) the amount of stated capital with which the Surviving Corporation shall begin business immediately after the effective date of the merger is \$11,375.

NINTH REPRESENTATIONS AND WARRANTIES

Salem Union and the Merging Corporation shall each represent and warrant to the other that between the date hereof and the time when the merger becomes effective they will not enter into any employment contracts, grant any stock options or issue any stock or securities, or declare or pay any dividends in stock or cash or make any other distribution on or with respect to their outstanding stock.

TENTH EFFECTIVE DATE

The effective date of the merger provided for by this Agreement shall be the date on which the last act prior to recording required to complete the merger under the respective laws of the State of Idaho is performed. Following the Amendment to create Class A and Class B stock, the shareholders of the North Salem waived notice of meeting and unanimously approved in writing the issuance of the Class A and Class B stock as set forth herein.

SECOND: The Amended Plan of Merger was unanimously approved the Boards of Directors of each of the corporations. At the Special Meeting of Shareholders of the Salem Union to approve the plan, it was amended to provide for Class A and Class B shares as set forth herein. Otherwise, said Plan of Merger is consistent with the Amended Plan of Merger as presented to the shareholders.

Following the amendment for Class A and Class B stock, the Directors of the North Salem met on January 15, 1999, and approved the plan with the Class A and Class B stock. It was then submitted to the shareholders of the North Salem who unanimously approved in writing the plan with the two (2) classes of stock.

THIRD: As to each of the undersigned corporations, the number of shares outstanding, and the designation and number of outstanding shares of each class entitled to vote as a class on such plan are as follows:

<u>Name of Corporation</u>	<u>Entitled to Vote as a Class</u>		
	<u>Number of Shares Outstanding</u>	<u>Designation of Class</u>	<u>Number of Shares</u>
Salem Union Canal Company, Limited	440	All common stock of the same class	
North Salem Agricultural & Milling Canal Company, Limited	45	All common stock of the same class	

FOURTH: As to each of the undersigned corporations, at their respective shareholders meetings, called for the purpose and in the manner aforesaid, the total number of shares voted for and against such Plan of Merger are as follows:

<u>Name of Corporation</u>	<u>Number of Shares</u>	
	<u>Total Voted For</u>	<u>Total Voted Against</u>
Salem Union Canal Company, Limited	395	0
North Salem Agricultural & Milling Canal Company, Limited	45	0

FIFTH: This Plan of Merger was, therefore approved; the official name of the Surviving Corporation is confirmed as Salem Union Canal Company, Limited, whose capital stock was increased to \$11,375 (Eleven Thousand Three Hundred Seventy-five) Dollars, divided into 440

shares of Class A stock with a par value of \$25 per share, and 18.75 shares of Class B stock with a par value of \$20 per share; and the officers of the said Salem Union Canal Company, Limited, were authorized and directed to file these Amended Articles of Merger with the Secretary of State of the State of Idaho and to do all things necessary for the total merger of said Constituent Corporations.

DATED: 2-16-99

**SALEM UNION CANAL COMPANY LIMITED,
an Idaho corporation
(the "Surviving Corporation")**

By: Max L. Ball
MAX L. BALL, President

ATTEST:

Shirley H. Rice
SHIRLEY H. RICE, Secretary

**NORTH SALEM AGRICULTURAL & MILLING
CANAL COMPANY, LIMITED
an Idaho corporation
(the "Merging Corporation")**

By: Jerry Harris
JERRY HARRIS, President

ATTEST:

Quenton J. Bagley
QUENTON J. BAGLEY, Secretary

STATE OF IDAHO)

)ss

County of Madison

On this 16th day of Feb., 1999, before me, the undersigned, a Notary Public in and for said State, personally appeared **MAX L. BALL and SHIRLEY H. RICE**, known to me to be the President and Secretary, respectively, of **SALEM UNION CANAL COMPANY, LIMITED**, an Idaho corporation, said corporation being one of the corporations that executed the above and foregoing instrument, and acknowledged to me that the seal affixed to said instrument is the corporate seal of said corporation and that said instrument was signed and sealed in behalf of said corporation by authority of its Board of Directors, and **MAX L. BALL and SHIRLEY H. RICE** acknowledge said instrument to be the free act and deed of said corporation.

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

(seal)

Raymond F. Bagley
Notary Public for Idaho
Residing at: Reeling, Id.
Commission Expires: Life

STATE OF IDAHO)

)ss

County of)

On this 16th day of Feb., 1999, before me, the undersigned, a Notary Public in and for said State, personally appeared **JERRY HARRIS and QUENTON J. BAGLEY**, known to me to be the President and Secretary, respectively, of **NORTH SALEM AGRICULTURAL & MILLING CANAL COMPANY, LIMITED**, an Idaho corporation, said corporation being one of the corporations that executed the above and foregoing instrument, and acknowledged to me that the seal affixed to said instrument is the corporate seal of said corporation and that said instrument was signed and sealed in behalf of said corporation by authority of its Board of Directors, and **JERRY HARRIS and QUENTON J. BAGLEY** acknowledge said instrument to be the free act and deed of said corporation.

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

(seal)

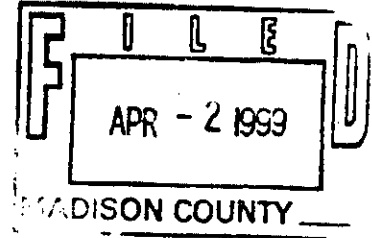
Raymond F. Bagley
Notary Public for Idaho
Residing at: Reeling, Id.
Commission Expires: Life

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GROVER & ARCHIBALD
RIGBY, IDAHO



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IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF MADISON

REUBEN BISCHOFF, HOWARD
CLARK, BLAIR CALAWAY, DEE
HARRIS, HAROLD HARRIS, JAMES
MORTENSON, AUSTIN PRICE and
BOYD PRICE,

Plaintiffs,

vs.

SALEM UNION CANAL COMPANY,
LIMITED, an Idaho Corporation, CLEVE
BAGLEY, individually and as a director
of the Salem Union Canal Company,
Limited, an Idaho Corporation, MAX L.
BALL, individually and as a director of
the Salem Union Canal Company, Limited
an Idaho Corporation, GARON BROWER
individually and as a director of the Salem
Union Canal Company, Limited, an Idaho
Corporation, JERRY DALLING,
individually and as a director of the Salem
Union Canal Company, Limited an Idaho
Corporation, and STEVE LUSK,
individually and as a director of the Salem
Union Canal Company, Limited, an Idaho
Corporation.

Defendants.

Case No.: CV 96-317

ORDER DETERMINING MERGER
INVALID, AND DISMISSING THIS
ACTION WITH PREJUDICE

THIS MATTER having come on before the undersigned judge of the above entitled court this 2nd day of April, 1999, on Stipulation of the parties hereto, the court having reviewed the records and files herein, including the court's prior concern about the validity of the merger of the Salem Union Canal Company, Limited (Salem Union) and the North Salem Agricultural & Milling Canal Company, Limited (North Salem) which was documented by Articles of Incorporation filed with Secretary of State on April 4, 1996, and being otherwise fully advised in the premises,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

1. The previous merger between Salem Union and North Salem, reflected in Articles of Merger filed with the Secretary of State on April 4, 1996, was invalid. As a result, the existence of the North Salem continued, and was not merged into the Salem Union by said Articles.

2. The Complaint and Counterclaim on file herein be and the same are hereby dismissed with prejudice, with each party to pay their own costs and attorneys fees.

DATED: 4/2/99

151 Gregory S. Anderson
JUDGE

CLERK'S CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 6 day of March, 1999, a true and accurate copy of the foregoing was sent by U.S. Mail, postage prepaid to the following:

Blair Grover, Esq.
P.O. Box 36
Rigby, ID 83442

E.W. Pike, Esq.
P.O. Box 2949
Idaho Falls, ID 83403-2949

H. Nightingale
Deputy Clerk of the Court