



AMENDED AND RESTATED BYLAWS OF STILLWATER VALLEY WATERSHED COUNCIL

The board of directors of Stillwater Valley Watershed Council wish to amend and restate the BYLAWS OF STILLWATER VALLEY WATERSHED COUNCIL, as follows:

BYLAWS OF STILLWATER VALLEY WATERSHED COUNCIL

ARTICLE I

Purposes and Rules

Section 1.1. Purposes. The purposes (the “Purposes”) for which Stillwater Valley Watershed Council (the “Corporation”) is organized are stated in its Articles of Incorporation, as amended from time to time.

Section 1.2. Governing Law.

- (a) All references to the “I.R.C.” include the Internal Revenue Code of 1986, or the corresponding provisions of any subsequent federal tax laws.
- (b) All references to the “Act” include the Montana Nonprofit Corporation Act, or the corresponding provisions of any subsequent amendment to or versions of the Act.

Section 1.3. Rules. The following rules shall conclusively bind the Corporation and all persons acting for or on behalf of the Corporation:

- (a) The Corporation is organized exclusively for the Purposes. No part of its net earnings shall inure to the benefit of any private member or individual.
- (b) No substantial part of the activities of the Corporation shall be the carrying on of propaganda or otherwise attempting to influence legislation, and the Corporation shall not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of, or in opposition to, any candidate for public office.
- (c) If, whenever, and so long as the Corporation is a “private foundation” (as defined in I.R.C. Section 509(a)) the Corporation must act, or refrain from acting, so that the Corporation, and any “foundation managers” or other “disqualified persons” (as such terms are defined in the I.R.C.), shall not be liable for any of the taxes imposed by Sections 4941, 4942, 4943, 4944 and 4945 of the Code. Specifically, the Corporation shall distribute its income for each taxable year at such time and in such manner as not to become subject to the tax on undistributed income imposed by I.R.C. Section 4942, and it shall be prohibited from the following:
 - (i) engaging in any act of self dealing (as defined in I.R.C. Section 4941);
 - (ii) retaining any excess business holdings (as defined in I.R.C. Section 4943);
 - (iii) making any investments in such manner as shall subject it to tax under I.R.C. Section 4944;
 - (iv) making any taxable expenditures (as defined in I.R.C. Section 4945); and
 - (v) the performance of any acts which would cause it to lose its tax-exempt status under I.R.C. Section 501(a).

- (d) In the event of the dissolution of the Corporation, the assets of the Corporation shall be dedicated or transferred only in accordance with the Purposes, as stated herein and pursuant to the terms of the Articles of Incorporation.
- (e) The Corporation shall be prohibited from engaging in any excess benefit transaction within the meaning of I.R.C. Section 4958. At any time the Corporation is paying compensation for any services, such compensation shall be reasonable and shall be in an amount as would ordinarily be paid for like services by like enterprises under like circumstances. When compensation is being paid to any disqualified person within the meaning of I.R.C. Section 4958, the Corporation shall:
 - (i) require the board of directors (the “Board”) to approve such transaction or for another authorized body to provide such approval if the Board does not have a quorum of disinterested individuals;
 - (ii) before voting, the Board or other authorized body shall obtain and rely on data as to the compensation paid by three comparable organizations in the same or similar communities for similar services;
 - (iii) concurrently with the vote, the Board or other authorized body shall document the following:
 - A. the terms of the transaction and date of approval;
 - B. the individuals on the Board or other authorized body who were present during debate and voted;
 - C. the comparability data relied upon and how it was obtained;
 - D. any actions by interested individuals on the Board or other authorized body; and
 - E. the basis of the determination of reasonableness before the later of the next meeting or 60 days after the final action of the Board or other authorized body; and
 - (iv) consider any additional procedures required by Treasury Regulations Section 53.4958-6.
- (f) Nothing contained in these bylaws shall authorize or empower the Corporation to perform or engage in any acts or practices which would cause the Corporation to lose its status as a tax-exempt organization within the meaning of I.R.C. Section 501(c)(3).

ARTICLE II

Offices

The Corporation shall have and continuously maintain in this state a registered office and registered agent whose office is identical with such registered office and may have such other offices within Montana as the Board may from time to time determine.

ARTICLE III

Membership

Section 3.1. **Members**. The Corporation shall have members all of whom have the same rights and obligations with respect to voting, dissolution, redemption and transfer of membership rights. The current persons admitted as members of the Corporation are described on the attached Exhibit A.

Section 3.2. **Dues**. The Board shall determine the annual membership dues that shall be paid by each member.

Section 3.3. Resignation. A member may resign at any time; provided, however, such resignation does not relieve the member from any obligations the member may have to the Corporation as a result of obligations incurred or commitments made prior to resignation.

Section 3.4. Annual Meeting. The annual meeting of the members shall be held the *16 day of June each year, at the hour of 11:00 o'clock am*, for the purposes of (a) electing the Board, (b) receiving a report on the activities and financial condition of the Corporation from the Chair and treasurer, and (c) acting upon such other matters requiring approval of the members pursuant to the Act.

Section 3.5. Special Meetings. Special meetings of the members shall be held on the call of the Board, the Chair or at least ten percent (10%) of the members. Before at least ten percent (10%) of the members call a meeting, such members must sign, date and deliver to any corporate officer one or more written demands for a special meeting that describes the purpose or purposes for which it is to be held.

Section 3.6. Notice. Notice of any annual or special meeting of the members shall be mailed by first class mail to each member, addressed to the member at his, her or its last known address or usual place of business, or personally delivered to the member, at least ten (10) days, but not more than sixty (60) days, before the day on which the meeting is to be held. The notice shall include the time and place of the meeting, and a statement of the purposes thereof. The business transacted at a special meeting shall be limited to the purposes stated within the notice of the special meeting. A member may waive notice before or after the date and time stated in the notice; the waiver must be in writing, be signed by the member entitled to the notice and be delivered to the Corporation for inclusion in the minutes or filing with the corporate records. Attendance by a member at a meeting is a waiver of notice of that meeting, unless the member objects at the beginning of the meeting to the transaction of business because the meeting is not lawfully called or convened, or objects before a vote on an item of business because the item may not lawfully be considered at that meeting and does not participate in the consideration of the item at that meeting.

Section 3.7. Quorum and Voting. Except as otherwise provided by statute, all members present at a meeting of the members shall constitute a quorum for the transaction of business at any meeting, and the act of a majority of the members present at any duly held meeting at which a quorum is present shall be the act of the members, unless otherwise required by the Act. In the absence of a quorum, a majority of the members present may adjourn a meeting from time to time until a quorum is present. Except as required by law, notice of any adjourned meeting need not be given, other than by announcement at the meeting at which adjournment is taken.

Section 3.8. No Proxy Voting. Proxy voting shall not be permitted.

Section 3.9. Action Without Meeting. Any action required or permitted to be approved by the members may be approved without a meeting of members if the action is approved by members holding at least eighty percent (80%) of the voting power. The action must be evidenced by one or more written consents that describe the action taken, be signed by those members representing at least eighty percent (80%) of the voting power and be delivered to the Corporation for inclusion in the minutes or filing with corporate records. Written notice of member approval pursuant to this Section must be given to all members who have not signed the written consent.

Section 3.10. Action by Written Ballot. An action that may be taken at an annual or special meeting of members may be taken without a meeting if the Corporation mails or delivers a written ballot to every member entitled to vote on the matter. A written ballot must set forth each proposed action and provide for an opportunity to vote for or against each proposed action. Approval by written ballot is valid only when the number of votes cast by ballot equals or exceeds the quorum required to be present at a meeting authorizing the action, and the number of approvals equals or exceeds the number of votes that would be required to approve the matter at a meeting at which the total number of votes cast was the same as the number of votes cast by ballot. All solicitations for votes by written ballot must (a) indicate the number of responses needed to meet the quorum requirements; (b) state the percentage of approvals necessary to approve each matter other than election of directors; and (c) specify the time by which a ballot must be received by the corporation in order to be counted. A written ballot may not be revoked.

Section 3.11. Transfer or Termination of Membership. No member may transfer his, her or its membership interest in the Corporation or any rights incident to such ownership. In addition to the resignation of a member as described in Section 3.3, a member may be terminated or suspended as follows:

- (a) The Board shall consider such termination or suspension at an annual or special meeting;
- (b) At least fifteen (15) days before such meeting, the Board shall notify the member, by first class or certified mail, of the (i) reasons for the member's potential termination or suspension, and (ii) member's right to be heard at such meeting; and
- (c) At least five (5) days after such meeting, the Board may terminate or suspend the member for nonpayment of dues by the affirmative vote of (i) a majority of the directors present at the meeting at which a quorum is present (at the time of the vote) in the case of nonpayment of dues or assessments, or (ii) seventy-five percent (75%) of the directors present at the meeting at which a quorum is present (at the time of the vote) in all other cases.

ARTICLE IV

Board of Directors

Section 4.1. General Powers. Unless otherwise reserved to the members, all corporate powers shall be exercised by or under the authority of the Board. The activities and affairs of the Corporation shall be managed under the direction of the Board.

Section 4.2. Number, Tenure, and Qualifications of Directors. The number of directors of the Corporation shall be no less than Three (3) and no more than Thirteen (13), as determined from time to time by the members. All directors, except the initial directors of the Corporation, must be elected by the members. Each director of the Corporation shall have a term of three (3) years, unless otherwise designated. Notwithstanding the preceding sentence, upon adoption of these bylaws, the Board or the members shall designate staggered expiration dates for terms of the Board so that, to the extent possible, the terms of one-third of the directors expire each year. Each director may be elected for successive terms. Each director shall hold office until the expiration of his or her term or until removed in accordance with Section 4.11. If a director's term expires, the director shall continue to serve until the Board has elected and qualified a successor or until there is a decrease in the number of directors.

Section 4.3. Annual Meeting. The Board shall hold an annual meeting on a date and time that is immediately after the annual meeting of the Members, unless otherwise agreed by the Board. In the event that such date shall fall on a legal holiday, the annual meeting shall be held on the next succeeding business day or otherwise agreed upon date set by the Board.

Section 4.4. Special Meetings. The Chair, or any director then in office, may call special meetings of the Board.

Section 4.5. Board Meetings by Conference Telephone. The Board or any designated committee of the Corporation may participate in a Board or committee meeting by means of a conference telephone or similar communications equipment, provided all persons participating in the meeting can hear each other at the same time. A director participating in a conference telephone meeting is deemed present in person at the meeting. The chairperson of the meeting may establish reasonable rules as to conducting the meeting by conference telephone or similar communication equipment.

Section 4.6. Notice of, and Waiver of Notice for, Special Board Meetings.

- (a) Notice. (i) Except as provided in (ii) below, special meetings of the Board must be preceded by at least two (2) days notice to each director (including notice to all ex-officio members of the Board (as discussed in Section 4.13)) of the date, time and place but not the purpose, of the special meeting; (ii) Any meeting called to remove a director must state such purpose in its notice. All notices required by these Bylaws shall be governed by the requirements contained in Section 35-2-115 of the Act.

- (b) **Waiver of Notice.** Any director may waive at any time notice of any meeting. Except as provided in the next sentence, the waiver must be in writing, signed by the director entitled to the notice, and be filed with the minutes or the corporate records. A director's attendance at or participation in a meeting waives any required notice of the meeting, unless the director, upon arriving at the meeting or prior to the vote on a matter not properly noticed, objects to lack of notice and does not vote for or assent to that action. Neither the secretary, nor director, needs to specify in the waiver of notice the business to be transacted at, or the purpose of, any special Board meeting.

Section 4.7. **Conduct of Board Meetings.** The Chair, or in the Chair's absence, the vice-Chair, or in their absence, any person chosen by the directors present shall call the meeting of the Board to order and shall act as the chairperson of the meeting. The chairperson, or the chairperson's designee, shall establish rules of the meeting that will freely facilitate debate and decision making. The chairperson will indicate who may speak and when a vote will be taken. The secretary of the Corporation shall act as the secretary of all meetings of the Board, but in the secretary's absence, the chairperson may appoint any other person to act as the secretary of the meeting.

Section 4.8. **Director Quorum.** All of the members of the Executive Committee or a majority of the number of directors in office immediately before a meeting begins shall constitute a quorum for the transaction of business at any Board meeting.

Section 4.9. **Directors and Manner of Acting.**

- (a) **Required Number to Constitute Act.** Unless otherwise specified by the bylaws or Articles of Incorporation of the Corporation, or otherwise required by the Act, the affirmative vote of a majority of the directors present at a meeting at which a quorum is present (when the vote is taken) shall be the act of the Board. If no quorum is present at a meeting of the Board, the directors may not take action on any Board matter other than to adjourn the meeting to a later date.
- (b) **Director Approval.** The Corporation shall deem a director to have approved of an action taken if the director is present at a meeting of the Board unless:
 - (i) the director objects at the beginning of the meeting (or promptly upon arrival) to holding it or transacting business at the meeting; or
 - (ii) the director's dissent or abstention from the action taken is entered in the minutes of the meeting; or
 - (iii) the director delivers written notice of dissent or abstention to the presiding officer of the meeting before its adjournment or to the Corporation immediately after adjournment of the meeting.

The right of dissent or abstention is not available to a director who votes in favor of the action taken.

Section 4.10. **Director Action Without a Meeting.** The directors may act on any matter generally required or permitted at a Board meeting, without actually meeting, if:

- (a) the action is taken by all of the directors then serving on the Board,
- (b) each member of the executive committee signs a written consent describing the action taken, and
- (c) the written consent is filed with the records of the Corporation.

Action taken by written consent is effective when the last member of the executive committee signs the written consent, unless the written consent specifies a different effective date. A signed written consent has the effect of a meeting vote and may be described as a vote in any document.

Section 4.11. Removal of Directors. A director may be removed, with or without cause, by: (i) a number of members sufficient to elect the director; or (ii) written notice from the Board after such director fails to attend three consecutive meeting of the Board.

Section 4.12. Board Vacancies. If a vacancy occurs on the Board, including a vacancy resulting from an increase in the number of directors, the directors may fill the vacancy by the affirmative vote of a majority of all the directors remaining in office. If a director resigns effective at a specific later date, the Board may fill the vacancy, before the vacancy occurs, but the new director may not take office until the vacancy actually occurs.

Section 4.13. Compensation, Loans to, or Guarantees for Directors and Declaration of Conflict of Interest.

- (a) Director Compensation. The Board may, after granting prior Board approval, pay any director's expenses, if any, of attendance at an event the Board determines such director's attendance is in the best interest of the Corporation. The directors shall not be paid a salary or fee for attending the meeting. A director may, however, serve the Corporation as an employee and receive reasonable compensation as provided in Section 1.3(e).
- (b) Loans to or Guaranties for Directors. The Corporation may not lend money to or guarantee the obligation of a director of the Corporation.
- (c) Conflict of Interest. Directors, officers and key employees will complete a conflict of interest questionnaire annually in order to facilitate compliance with governance best practices.

ARTICLE V

Committees and Board Officers

Section 5.1. Executive Committee. The directors may appoint an Executive Committee of no more than five (5) board members and shall consist of the Chair, Vice-Chair, Secretary, and Treasurer, and one at-large member.

- (a) Chair. The Chair, when such an office is authorized by the Board, shall, if present, preside at all meetings of the Board, delegate duties and assignments to directors, clarify issues, review meeting agendas, coordinate and supervise the Coordinator, and, in general, perform all duties incident to the office of Chair and such other duties as from time to time may be assigned to him by the Board.
- (b) Vice-Chair. The vice-chair shall perform, in good faith, the chair's duties if the chair is absent, dies, is unable or refuses to act. Further, the vice-chair shall perform any other duties that the chair or Board may assign to the vice-chair.
- (c) The Secretary. The secretary shall assist the chair by preparing minutes of the meetings, recording votes as they occur and authenticating records of the Corporation. The secretary shall send those minutes and agenda to the directors prior to the monthly meeting, shall file the minutes with appropriate correction in the official minute book of the Corporation, assist the Board when necessary to complete the day-to-day administrative functions of the Corporation, and keep a file of all contracts of the Corporation.
- (d) The Treasurer. The treasurer shall administer the financial accounting of Corporation funds.

Section 5.2. Director Committees.

- (a) Creation of Committees. The Executive Committee may create one or more committees and appoint directors then serving on the Board to serve on them. Each committee must have three (3) or more directors, who serve at the pleasure of the Board.

- (b) Selection of Committee Members. To create a committee and appoint committee members to it, Executive Committee approval is required.
- (c) Required Procedures. Article III, which govern meetings, notice and waiver of notice, quorum and voting requirements, conduct of the Board, and action without meetings apply equally to committees and their committee members. In addition, committees shall keep regular minutes of their proceedings and report the same to the Board. Committees are subject to all the procedural rules governing the operation of the Board itself.
- (d) Authority. Each committee may exercise the specific Board authority which the Board confers upon the committee in the resolution creating the committee or any subsequent resolution; provided, however, a committee may not:
 - (1) authorize distributions;
 - (2) approve dissolution, merger, or the sale, pledge, or transfer of all or substantially all of the Corporation's assets;
 - (3) elect, appoint, or remove directors or fill vacancies on the Board or on any of its committees; or
 - (4) adopt, amend, or repeal the articles or bylaws.

ARTICLE VI

Non-Board Officers

Section 6.1. Number of Officers. The Corporation may name a coordinator, and any other non-board officers and assistant non-board officers, in the discretion of the Executive Committee. The Executive Committee shall appoint each of these officers. If the Executive Committee specifically authorizes an officer to appoint one or more officers or assistant officers, the officer may do so. The same individual may simultaneously hold more than one office in the Corporation.

Section 6.2. Removal of Officers. The Executive Committee may remove any officer or agent any time, with or without cause. The removal shall be without prejudice to the contract rights, if any, of the person removed. The Executive Committee's appointment of an officer or agent shall not of itself create contract rights.

Section 6.3. Coordinator. The coordinator shall be the principal executive officer of the corporation. The coordinator shall be subject to the control of the Board, and shall in general supervise and control, in good faith, all of the activities and affairs of the Corporation. The coordinator may sign, with the secretary or any other proper officer of the Corporation that the Board has authorized, the Corporation deeds, mortgages, bonds, contracts or other instruments which the Board designates as requiring additional signatory approval beyond that provided for in Section 8.1.

Section 6.4. Salaries, Loans to, or Guarantees for Officers. The Executive Committee may fix and or adjust salaries of the officers from time to time; provided, however, such salaries shall be reasonable under Section 1.3(e). The Corporation may not lend money to or guarantee the obligation of an officer of the Corporation.

ARTICLE VII

Notification of Attorney General

The secretary of the Corporation shall notify the Attorney General of the State of Montana in accordance with the Act prior to dissolution, merger, and the sale of assets other than in the regular course of activities (as these events are defined in the Act). The secretary shall deliver notice in the manner required by the Act for each event and cooperate with the Attorney General in providing necessary information and obtaining the requisite approval from the Attorney General, as appropriate. Failure to give the Attorney General the requisite notice and approval could result in reversal of action and/or fines, penalties and/or liability.

ARTICLE VIII

Indemnification of Directors and Officers

The Corporation shall provide its directors and officers (including former directors and officers) the maximum indemnification rights allowed under Sections 35-2-446 through 35-2-454 of the Act.

ARTICLE IX

Contracts, Loans, Checks and Deposits

Section 9.1. Contracts. The Executive Committee may authorize any officer or officers, or agent or agents of the Corporation, to enter into any contract or execute and deliver any instrument in the name of and on behalf of the Corporation, and such authority may be general or confined to specific instructions.

Section 9.2. Loans. No loans shall be contracted on behalf of the Corporation and no evidence of indebtedness shall be issued unless authorized by a resolution of the Executive Committee. Such authority may be general or confined to specific instances.

Section 9.3. Checks and Drafts. All checks, drafts, other orders for the payment of money, notes or other evidence of Corporation shall be signed by such officer or officers, or agent or agents of the Corporation and in such manner as shall from time to time be determined by resolution of the Executive Committee.

Section 9.4. Deposits. All funds of the Corporation not otherwise employed shall be deposited from time to time to the credit of the Corporation in such banks, trust companies or other depositories as the Board may select.

ARTICLE X

Books and Records

The Corporation shall keep correct and complete books and records of account and shall also keep minutes of the proceedings of its Board. All books and records of the Corporation may be inspected by any director, or his agent or attorney, for any proper purpose under the Act at any reasonable time.

ARTICLE XI

Amendments to Bylaws

The bylaws of the Corporation may be altered, amended or repealed and new bylaws may be adopted by the Board or as otherwise provided in the Act.

CERTIFICATE OF ADOPTION OF BYLAWS

The undersigned secretary of the Corporation does hereby certify that the above and foregoing bylaws of the Corporation were adopted this date and the same do now constitute the bylaws of the Corporation.

DATED this ____ day of _____, 2022.

_____, *Secretary*