

# Florida Consolidated Ditch Company

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## RULES AND REGULATIONS

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## **Article 1: General provisions**

### **1.1 General**

These Rules and Regulations govern the operations of the ditch company and shall be binding on all shareholders, their successors and assigns. These Rules and Regulations may be modified by the Board of Directors at any time as it deems necessary. The Board reserves the right to grant variances to these Rules and Regulations when in its judgment, the variance would be appropriate and in the best interests of the company and its shareholders.

### **1.2 Conflict**

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Any conflict between the Rules and Regulations and The Articles of Incorporation or Ditch Company Bylaws shall be resolved in favor of the Articles and Bylaws.

## **Article II: Understanding the Water Rights Delivered through the Ditch**

### **2.1 Direct Flow**

The water represented by your shares in the Florida Consolidated Ditch Company is adjudicated as direct flow water rights which are diverted from the Florida River. The Florida Consolidated Ditch Company holds direct flow water rights on the Florida River as follows:

#### **A Shares**

- Priority F-17 12.08 c.f.s.
- Priority F-21 1.333 c.f.s
- Priority F-22.5 8.58 c.f.s.
- Priority F-24 23 c.f.s

#### **B Shares**

- Priority F-23 24 c.f.s
- Priority F-29 16 c.f.s

#### **C Shares**

- Priority F-68 40 c.f.s

#### **D Shares**

- Priority F-84 30 c.f.s

### **2.2 Florida Water Conservancy District (FWCD) Storage Rights**

The Ditch Company also delivers water released from Lemon Dam known as Project Water.

#### **"Project Water"**

The Florida Water Conservancy District (FWCD) is responsible for the operation of the Florida Project Works including Lemon Dam and administers project water, delivered through the Florida ditch system. Project water is water adjudicated to the FWCD that is stored in Lemon Reservoir and delivered to classified irrigable lands to which project water has been allocated. The right to use Project water is transferred by deed, approved water reallocation petition, or approved water transfer petition. Assessments for project water are billed with your property taxes.

### **2.3 Decreed to Land**

Irrigation water rights are decreed by the Colorado Water Courts to the Ditch Company for use on specific lands. Irrigation water in the Florida Consolidated Ditches must be put to beneficial use for the decreed land. Shareholders do not have the right to petition the court to change Ditch Company decrees.

### **2.4 Measuring Devices/Headgates**

All water is to be measured by Ditch Company employees through a measuring device. All measuring devices installed are subject to control by the Ditch Riders.

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Headgates may only be set or adjusted by the Ditch Company employees. It is against Ditch Company policy and a crime for any person to interfere with the delivery of water by the Ditch Company. Any person who tampers with a headgate or interferes with the delivery of water by the Ditch Company will be subject to all legal remedies available to the Ditch Company.

No pumps, pipes, or any device other than authorized headgates are allowed. Measuring device installation and maintenance is the responsibility of the water users. Variances for pumps may be issued by the Board of Directors at their discretion. They will only be approved if it is the only feasible way water users can receive water. If approved pumps must have a copy of the approved variance on file in the FCDC office, along with an FCDC approved measurement device & bi-weekly readings must be reported by the water user to the office.

## 2.5 Curtailment

Water adjudicated to the Ditch Company is subject to curtailment in times of shortage. The Division of Water Resources for the State of Colorado administers water rights in priority. If an owner of a water right that is senior in time to the rights adjudicated to the Ditch Company is not receiving their water, they will place a call to the water commissioner. The Division Engineer, in consultation with the water commissioner, may consider, among other things, inflow, evaporation, precipitation, return flows, water demand, and river channel loss or gain, beneficial use, and waste in determining whether to act on the call and curtail junior water rights and un-decreed water uses.

Additionally, water delivery may be curtailed because of contractual obligations, ditch maintenance, or other factors.

In times of shortage, available direct flow water is distributed pro-rated to shareholders based on the number of shares owned during the time direct flow water is available.

## 2.6 Leases and Temporary Transfers

Leases or temporary transfers of any water to other Florida Consolidated Ditch Company Shareholders for use on lands historically irrigated by the same may be made anytime during the operating season, subject to state law, ditch capacity, and Ditch Company approval.

Any proposed lease or temporary transfer of all or part of a shareholder's shares of water should be submitted in writing to the Ditch Company for approval by the Board of Directors.

Proposed FWCD Project Water leases must be submitted to the Lemon Dam Superintendent for approval.

## **Article III: Water Shares**

The Ditch Company has adjudicated water rights in the amounts set forth in Article 2.1. The Ditch Company has issued shares that represent a right to use an increment of the Ditch Company's adjudicated water rights. Shares may be sold or transferred to landowners within the ditch company service area for use on decreed lands. However, Shareholders may not change their delivery point without Ditch Company approval.

To be eligible for share ownership in the Ditch Company, the shareholder must own sufficient land within decreed lands of the Ditch Company that can be irrigated with water represented by those shares without waste. Notwithstanding the foregoing, landowners may form small ditch associations or homeowner's

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associations to hold title to the shares on behalf of landowners owning irrigated land within the county approved subdivision. These associations shall be subject to all the operating documents of the Ditch Company.

No shares shall be retained by any shareholder for more than two (2) years without such shareholder owning sufficient land within decreed lands of the Ditch Company, which can be irrigated with water represented by those shares without waste. Any such shares shall be deemed forfeit. Additionally, no shareholder shall retain shares that have not been used without waste for more than three (3) years, even if a such shareholder owns sufficient land within the decreed lands. Such shares which have not been placed to use without waste either on existing land or through an approved transfer to other lands shall become forfeit. After one (1) year of non-use, the Board of Directors may notify the shareholder, by certified mail to the last known address in the Ditch Company's records of the Ditch Company's intent to forfeit the shares of stock in one (1) year's time. The shareholder shall then have one year to put the water to beneficial use and provide documentation of said use to the Ditch Company. If the shareholder does not so use the water within that time period, the shares shall be deemed forfeited.

Upon forfeiture, the forfeited shares shall automatically revert to ownership by the Company, to be held as unissued shares pending reallocation or sale to other users within the Ditch Company service area, and such forfeited shareholder shall no longer have any interest in the shares. A such shareholder shall assign the unused shares back to the Company, at no cost to the Company. If the shareholder does not assign the shares back to the Company, the Company shall reflect the forfeiture on its books and shall notify the shareholder in writing, that such shares have been transferred to the Company pursuant to this Article.

The Ditch Company will hold the shares for the following purposes:

- (1) In the discretion of the Board of Directors and for good cause, the Ditch Company may permit redemption of forfeited shares, an extension of time to remedy delinquencies or non-ownership, or other relief as deemed appropriate. In that event, a written agreement between the affected Shareholder and the Ditch Company shall be prepared and signed by both parties. The terms of any agreement shall require the payment of all sums owed to the Ditch Company, including assessments, charges, costs, fees, interest, and penalties as well as a redemption fee to be determined by the Ditch Company. Forfeited or delinquent shareholders may not be permitted to purchase shares in the Ditch Company at any time in the future until all past-due accounts are brought current.
- (2) In the discretion of the Board of Directors, in the event that forfeited shares are the result of foreclosure of or other change of ownership, the Ditch Company may, but is not required, to offer the forfeited shares to the new landowner.

At any time, if the shares are not redeemed in accordance with subpart (1) above, or sold pursuant to subpart (2) above, the Ditch Company may place the shares for sale. The time and place of the sale shall be advertised in a newspaper of local circulation in La Plata County, Colorado at least three times. The advertisement shall include the number of shares to be sold, and the date, time, and location of said sale. At the time and place fixed in the notice, the Ditch Manager, or the person designated by him, shall proceed to sell the shares at public sale, to the highest and best bidder for cash, so long as the bidder is qualified to own share of the Ditch Company pursuant to these Bylaws. The company may bid at such sale.

To be eligible, bidders must own property within the decreed lands of the Ditch Company and shall be subject to all operating documents and procedures of the Ditch Company.

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## 3.1 Share Certificates

Ditch Company rights for adjudicated water are represented by share certificates issued in the name of the owner of the land within the ditch company service area. When a shareholder cannot produce a share certificate, the ownership records of the Ditch Company control unless ownership of a share is proven otherwise to the satisfaction of the Ditch Company or by Court Order. Any changes in ownership or titling must be completed within one (1) year of the date of the change. Failure to comply may result in loss of use of water or forfeiture of the stock certificates.

Allotments of project water usually appear on property deeds. The allotment records of all project water, based on all originally approved water petitions and subsequently approved reallocation and transfer petitions are kept by FWCD.

## 3.2 Transfer of Ownership

The Ditch Company will only transfer share certificates in accordance with this provision. All required documentation should be delivered to the Ditch Company's address of record:

- The **original water certificate**, signed by the owner of record.
  - If executed by another person authorized by law to execute for the shareholder, evidence of the current legal authority (power of attorney, court order, letters of administration, etc.) will need to be submitted with the transfer request.
  - In the event that a water certificate is lost or destroyed, the Lost Certificate policy set forth below must be complied with.
- Copies of the land transfer documents (deed, deed of trust, etc.), where applicable.
- A release of any encumbrance on the record ownership of the share certificate.
- Payment of Transfer Fees for each new certificate issued in addition to all assessments and other costs due. Any deviation from this, the Seller must submit a written plan to the Board of Directors for approval.
- Contact information for the new owners and instructions specifying the number of shares to transfer.

In the event that a transfer is not completed correctly, or the Ditch Company discovers a defect in the stock certificate, the Ditch Company reserves the right, in its discretion, to make an exception to these rules in order to complete a transfer or correct the stock certificate if the documentation provides sufficient indicia of transfer and/or ownership. In that event, the Assignee will be required to execute an agreement for indemnification of the Ditch Company.

### **Lost Certificate Policy**

The Ditch Company will not issue a duplicate certificate unless the certificate at issue has been lost, mislaid, or destroyed and the shareholder or lienholder complies with the following procedure, which is intended to comply with the statutory procedure set forth in C.R.S. § 7-42-114 through 7-42-117 as amended.

- A. In order for a shareholder, his or her legal representative or assignee, or any lienholder named in the books of the corporation as a lienholder on the lost certificate, to obtain duplicate stock certificate, said person must:

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- a. Pay all assessments on the shares represented by the missing stock certificate.
  - b. File with the Manager of the Ditch Company a written demand under oath that
    - (1) identifies the stock certificate,
    - (2) states that the certificate has been lost, mislaid, or destroyed,
    - (3) warrants that the certificate is the property of the person submitting the notice and that the certificate and the shares represented thereby have not been transferred, conveyed, or pledged to anyone, and
    - (4) demands the issuance of a duplicate certificate in accordance with C.R.S. 7-42-115 to 117. A form for this Demand is attached hereto as Exhibit A.
  - c. Tender to the Manager a deposit (amount determined by the Ditch Company) for publication costs and fees for the duplicate certificate.
  - d. Tender an indemnification in the form attached as Exhibit B.
  - e. If the person making the demand is the successor in interest to the person who provided the initial demand, he shall also provide documentation that demonstrates that the shares were conveyed to him. Any lienholder named in the books of the Ditch Company as a lienholder on the lost certificate must also prove its legal right to such certificate.
- B. Upon receiving the written demand required in Paragraph A, above, the Ditch Company shall make a notation in the stock book that identifies the certificate as one that has been lost, mislaid, or destroyed and sets forth the date the Ditch Company received notice of the same.
- C. Upon receipt of a demand, indemnification form, and fees as described in Section A above, the Ditch Company shall publish in the Durango Herald or other paper of general circulation in La Plata County, at least once a week for five successive weeks, the fifth publication being on the twenty-eighth day after the first publication, a notice that such a demand has been filed with the Ditch Company in accordance with C.R.S. 7-42-114 to 117, stating the demand in full and stating that the Ditch Company will issue, on or after a date therein stated, following the last publication of the notice by at least thirty days, a duplicate certificate to the registered owner, the registered owner's legal representative or assignee, or any lienholder named in the books of the Ditch Company as a lienholder on the lost certificate unless a contrary claim is filed with the Ditch Company prior to the date stated in the notice.
- D. If no claim of interest or ownership other than that made by the person filing a demand pursuant to this section, or such person's legal representative or assignee is on file in the records of the Ditch Company prior to the date stated in the notice, the Ditch Company shall promptly invoice and bill the shareholder for all of the costs and fees incurred to comply with the above-described procedure, including, but not limited to, publication costs and reasonable attorney fees. After the shareholder requesting the duplicate stock certificate reimburses the Ditch Company for the costs and fees set forth in said the bill, the Ditch Company shall issue, on or after said date, a duplicate certificate to the person or persons legal representative or assignee, or lienholder. All rights under the original certificate shall immediately cease and no person shall at any time thereafter assert any claim or demand against the Ditch Company or any other person on account of the original certificate.

## Article IV: Assessments

### 4.1 Annual Assessments

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The assessment per share for the Florida Consolidated Ditch Company is approved by the Board of Directors annually and presented to the shareholders at each annual meeting. Special assessments may be made as needed.

Payments will not be accepted from non-certificate owners unless written authorization is provided to the Ditch Manager and is signed by the owner of the stock certificate. If the duration of the agreement is not specified in the authorizing document, acceptance of payment from the third party will be deemed for the current assessment year only.

The due date for assessments shall be February 15th of each year unless specified otherwise on the assessments mailed to the shareholders.

## **4.2 Past Due Accounts and Sale of Shares**

No water shall be delivered to a shareholder with unpaid assessments, except by special arrangement with the Ditch Company. Overdue assessments shall be assessed interest at 1% per month, or as otherwise determined by the Directors. **The Ditch Company may notify mortgagees listed on the stock certificate of overdue assessments.**

If a shareholder owes money to the Ditch Company that is sixty (60) days past due, the Ditch Company may place a lien on the Shares owned by the shareholder. Such lien shall be in favor of the Ditch Company and shall be for the benefit of all other shareholders. The Ditch Company may file a written lien statement, setting forth the name of the shareholder, the legal description of the property, the name of the Ditch Company, and the delinquent assessment or charge amounts then owed. Any such statement shall be duly signed and acknowledged by the President or Vice-President of the Ditch Company or the Ditch Company attorney and shall be served upon the member of the property by certified mail to the address of the property or at such other address as the Ditch Company may have in its records for the member. The Ditch Company may record the statement in the office of the Clerk and Recorder of La Plata County, Colorado. No earlier than thirty (30) days following the mailing of such notice to the shareholder, unless the shareholder enters into a written agreement with the Ditch Company for payment of said money, the Ditch Company may, at its option, declare the shares forfeited.

Upon forfeiture, the forfeited shares shall automatically revert to ownership by the Company, to be held as unissued shares pending reallocation or sale to other users within the Ditch Company service area, and such forfeited shareholder shall no longer have any interest in the shares. Such shareholders shall assign the unused shares back to the Company, at no cost to the Company. If the shareholder does not assign the shares back to the Company, the Company shall reflect the forfeiture on its books and shall notify the shareholder in writing, that such shares have been transferred to the Company pursuant to this Article.

The Ditch Company will hold the shares for the following purposes:

- (1) In the discretion of the Board of Directors and for good cause, the Ditch Company may permit redemption of forfeited shares or other relief as deemed appropriate. In that event, a written agreement between the affected Shareholder and the Ditch Company shall be prepared and signed by both parties. The terms of any agreement shall require the payment of all sums owed to the Ditch Company, including assessments, charges, costs, fees, interest, and penalties as well as a redemption fee to be determined by the Ditch Company. Forfeited or delinquent shareholders may not be permitted to purchase shares in the Ditch Company at any time in the future until all past-due accounts are brought current.



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- (2) In the discretion of the Board of Directors, in the event that forfeited shares are the result of foreclosure of or other change of ownership, the Ditch Company may, but is not required, to offer the forfeited shares to the new landowner.

At any time, if the shares are not redeemed in accordance with subpart (1) above, or sold pursuant to subpart (2) above, the Ditch Company may place the shares for sale. The time and place of the sale shall be advertised in a newspaper of local circulation in La Plata County, Colorado at least three times. The advertisement shall include the number of shares to be sold, and the date, time, and location of said sale. At the time and place fixed in the notice, the Ditch Manager, or the person designated by him, shall proceed to sell the shares at public sale, to the highest and best bidder for cash, so long as the bidder is qualified to own share of the Ditch Company pursuant to these Bylaws. The company may bid at such sale. The proceeds of any such sale, over and above the amount due on said shares together with costs of said sale, publication costs, administrative fees and costs, collection efforts, attorneys' fees, and any other reasonable costs shall be paid to the delinquent Shareholder, if said Shareholder has provided a forwarding address to the Ditch Company. Nothing herein shall require the Ditch Company to undertake Shareholder location efforts. Proceeds from the sale held by the ditch company for three months or more after the sale shall revert to the Ditch Company ownership.

To be eligible, bidders must own property within the decreed lands of the Ditch Company and shall be subject to all operating documents and procedures of the Ditch Company, including but not limited to the ability to put the water to beneficial use without waste. Eligibility must be approved by the Ditch Company.

## Article V: Delivery and Ordering

Irrigation water on the Florida Mesa is delivered through a series of earthen ditches designed in the late 1800s as well as pipelines in some areas.

Ordering irrigation water is **not** turning on a tap. It takes time for the water to fill the ditches, and a steady flow cannot be guaranteed.

Water can be ordered by calling your Ditch Office, or in accordance with water management or delivery agreement, if applicable.

No water will be delivered without a Ditch Company-approved measuring device.

Water will be delivered only through headgates or division boxes in existence on April 27, 1971, as provided by resolution, except as may be changed with the approval of the Ditch Company.

Delivery of water will be reduced by transportation loss. Transportation loss shall be applied equally to all shareholders regardless of the point of delivery to any one shareholder.

No pumps, pipes, or any device other than authorized headgates are allowed. Variances for pumps may be issued by the Board of Directors at their discretion. They will only be approved if it is the only feasible way water users can receive water. If approved pumps must have a copy of the approved variance on file in the FCDC office, along with an FCDC approved measurement device & bi-weekly readings must be reported by the water user to the office.

No more than one (1) c.f.s. of water per eighty (80) acres of irrigated land will be delivered.

Delivery of less than 0.125 (118<sup>th</sup>) c.f.s. needs a Board of Directors approved management plan.

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Pumping of water directly from the Florida Consolidated Ditch Company ditch is not allowed. Any water pumped beyond the headgate must first be measured through a measuring device at the point of delivery.

## **5.1 Ditch Company Responsibility**

The delivery responsibility of the Ditch Company ends at the historic headgate. The Ditch Company does not maintain the measuring device. Water users are responsible for measuring devices being in proper working order and reading correctly. The Ditch Rider will flag measuring devices in need of repair, and no water will be delivered until corrections to ditch company specifications have been made.

The Ditch Company will repair, maintain, and replace all currently used headgates, subject to landowner liability for damage set forth in 6.5 below.

## **5.2 Shareholder Responsibility**

Individual water users **must** clean and maintain their ditches and measuring devices annually before the delivery of water. Water will not be delivered to ditches that have not been cleaned adequately.

When water use is completed, shareholders must notify the Ditch Rider so the ditch delivery can be adjusted accordingly.

Shareholders may not place check devices or obstructions in the ditch company ditches, without Ditch Company permission. In the event that a shareholder violates this provision, the shareholder will be solely responsible for all damage to a neighboring property and other shareholders. In addition, the shareholder may be subject to penalties by the Ditch Company including non-delivery of water until the responsibility for damage is fulfilled, as well as prosecution under civil and/or criminal law.

## **5.3 Timing Orders**

All water orders are to be placed no less than forty-eight (48) hours prior to the expected delivery date by phone, text to the Office at 970-749-9800, or email to [floridaditch@gmail.com](mailto:floridaditch@gmail.com). An answering machine is available for messages.

Orders will not be taken before April 15 of each irrigation year, and will only be received between 7:00 a.m. and 7:00 p.m. Monday through Saturday. **Messages, texts, or emails left after 7:00 p.m. and before 7:00 a.m. or on Sundays will not be accepted or responded to at all.**

Callers are asked to leave the time, date, amount ordered, and date of their call to determine when the order will be filled. Messages left without a time, date and amount cannot be guaranteed for accurate processing.

No delivery of water will be made on Sunday.

During times of high call volume, deliveries cannot be guaranteed within 48 hours.

Except in an emergency, the rules set forth above will also apply to all calls related to delivery problems. Please allow at least 48 hours for a response.

## **5.4 Ordering Water for Subdivisions and Pipelines**

Subdivisions and pipelines may only receive water at designated delivery points in existence before the creation of the subdivision, except where the same may be changed with the approval of the Ditch Company.

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On or before the delivery of water each year, Shareholders of subdivisions shared laterals or pipelines and landlords shall notify the Ditch Manager in writing the name of the person and/or tenant responsible for ordering water. In the absence of a new agreement, the former designee will be relied upon. Ditch Riders will only recognize water calls from the designated water caller, as notified to the Ditch Company.

Subdivisions and pipelines may choose to create internal water delivery agreements to assure delivery to all water users; however, this is **not** the responsibility of the Ditch Company, nor will the Ditch Company enforce such agreements.

## **5.5 Delivery Season**

The first delivery date each year will be determined by the Ditch Company after due consideration is given to weather conditions and maintenance requirements for the ditches.

Except for livestock pond releases made by the Florida Water Conservancy District, which may not occur every year, water shall not be delivered after October 15th, or such time prior to October 15th, as determined by weather conditions, maintenance requirements and/or other factors which dictate ceasing deliveries earlier. The ability to deliver water is contingent on the gates at Lemon dam being open.

## **Article VI: Access and Easements**

### **6.1 Ditch Easements and Rights of Way**

Ditch easements and rights-of-way include the ditches and pipelines as well as banks and reasonable land for access and maintenance. Easements can be prescriptive, defined by historical use under Colorado Law, or descriptive, defined by plats or recorded deeds and grants.

Notwithstanding dedication on any plat or other recorded easement, Colorado law provides that the width of the ditch easement includes sufficient width to use the ditch and the land on either side of the ditch that is reasonably necessary to properly operate, maintain and repair the ditch, including the placement of spoils. Normal operations and maintenance of the ditch may require less width than a major repair. No permanent structures may be located within the ditch easement without the written consent of the ditch company. The landowner may be required to remove any structures that encroach on the ditch easement at its expense.

Placement of the spoils of ditch cleaning along the ditch easements should be expected. The Ditch Company is not obligated to remove spoils from the easement, nor to conduct reclamation activities after maintenance or repair.

### **6.2 Crossings and Encroachments**

Ditch Safety is the highest priority of the Florida Consolidated Ditch Company. All care must be taken to prevent serious accidents.

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Ditch easements shall not be used without permission for any purpose, including but not limited to access to subdivision lots, public access, or aesthetic features. Use of ditches or ditch banks for recreation is strictly prohibited.

No person shall encroach on (cross) the Ditch Company easements without obtaining written consent from the Ditch Company. No structures, including bridges, culverts, fences or fence posts, or utility or gas lines may be constructed within the Ditch Company ditch easements without the written approval of the Ditch Company.

If any person desires to cross the ditch easement by installing improvements over, under, or through the Ditch Company ditches or desires to breach the ditch bank in any way, he or she must apply for a permit from the Ditch Company. The Ditch Company reserves the right to grant or deny any permit application. Upon approval of the application, the applicant must execute a crossing agreement, pay the applicable crossing fee, and perform all construction in accordance with the crossing agreement under the supervision and final approval of the Ditch Company employees and engineers.

Crossing permit applications and specification guidelines may be obtained by emailing the Ditch Company, or by written request to the Ditch Company at 691 CR 233, Ste B1A Durango, CO 81303. A fee is required for each permit entered into by the Florida Consolidated Ditch Company.

Any construction within a ditch easement is subject to the specifications of the Ditch Company and the Bureau of Reclamation, where applicable. The Ditch Manager and/or Ditch Riders will meet with the applicant for an initial inspection, and a final inspection and may monitor construction as needed. All additional meetings will be billed on an hourly basis.

Encroachments made without the prior consent of the Ditch Company will be subject to a fine in an amount set by the Board, in addition to the regular administrative fee and any expenses incurred by the Ditch Company to examine the project, including but not limited to engineering fees, attorney fees, or extra time spent by the Ditch Rider or Ditch Manager. In addition, no water will be delivered until the shareholder has resolved the matter with the Ditch Company. Nothing herein is intended to prevent the Ditch Company from denying the encroachment and requiring the removal of all structures.

Any structure (whether man-made or natural) growing or placed on the Ditch Company easements without prior written permission may be summarily removed by the Ditch Company at the expense of the person responsible.

No trees or landscaping shall be placed within Ditch Company easements without written Ditch Company approval. No digging or excavation of any kind is allowed in the easements.

Failure by the Ditch Company to remove the structure, landscaping, or other encroachment for any period of time does not rise to the level of permission or acquiescence by the Ditch Company, and the structures and encroachments, whether man-made or natural, may be removed at any time when the Ditch Company deems it necessary for the protection, safety, maintenance, or repair of the Ditch.

## **6.3 Maintenance**

The maintenance, repair, replacement, or removal of any culverts or other improvements which cross the Ditch Company ditches are the responsibility of the owner of the land on which the culvert or other improvement is located, and all maintenance, repairs or replacement shall be completed to ditch company specifications and approval. All culverts are subject to the encroachment provisions set forth in 6.2. The Ditch Company may remove culverts or improvements at the landowner's expense.

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All other maintenance of the Ditch Company easements is the responsibility of the Ditch Company.

## **6.4 Headgates**

Headgates are owned by the Ditch Company and shall be repaired or replaced by the Ditch Company. No additional headgates can be placed on the Ditch Company ditches unless approved by the Ditch Company in accordance with the policy set forth below. Headgates, culverts, or ditch banks damaged by the landowner or the landowner's livestock will be repaired at the landowner's expense.

If a Shareholder desires a new headgate, the Shareholder shall make a written request to the Ditch Company. The Ditch Manager will work with the Shareholder to determine a location for the proposed headgate as well as to locate a headgate that can be abandoned. The Board of Directors shall approve or deny new headgates. Shareholders shall work with the Ditch Manager to locate an abandoned headgate. The shareholder shall be required to enter into a written agreement which shall provide at a minimum: the location of the new headgate, the headgate to be abandoned, an approved design for the new headgate or process for design and approval, and the costs to be paid by the shareholder. The shareholder shall be responsible for all costs associated with the new headgate including design and construction of the headgate, Ditch Company costs including engineering costs and attorney's fees, costs for abandonment of the old headgate, administrative fees, and repair and maintenance costs for a period of one year after construction. Upon mutual execution of the agreement and payment of all costs, the Ditch Company shall contract for the construction of the new headgate and removal of the abandoned headgate. If the Shareholder's water is delivered to a shared headgate, the Shareholder will need to demonstrate approval by the other shareholders or a court order to move out of the shared headgate.

If any person opens, closes, damages, or otherwise interferes with a Ditch Company headgate, in addition to pursuing any other remedy provided for by law, the Ditch Company may assess a fine against said person, together with the refusal to deliver water.

## **6.5 Trash**

Trash and other debris intentionally deposited into the ditch, or any construction placed in the ditch that can obstruct the regular flow of water is a serious offense.

Trash dams should be reported immediately to the Ditch Company.

Under Colorado law, any interference with the flow of irrigation water or destruction of structures used in controlling the irrigation water is punishable both civilly and criminally.

## **Article VII: Subdivisions and Urbanization**

### **7.1 County Review Process**

The Florida Ditch Company will submit comments for all proposed subdivisions, boundary adjustments, and special use permits that are subject to the County review process as well those that are not which

# Florida Consolidated Ditch Company

impact water delivery, maintenance, or other issues within the decreed lands served by the Ditch Company.

If a developer intends to impact the ditch in any way, either through a crossing, by re-alignment or by piping of the ditch, the developer must follow the provisions of Article 6.3 above for encroachments.

The developer or owner is responsible for reimbursing the Ditch Company for its costs associated with reviewing plans and specifications, including but not limited to fees for attorneys, engineers, legal agreements or documentation, and other associated costs, whether or not the project is completed.

Any relocation or improvements in the ditch must be designed so there is no loss of flow conveyance in the ditch or injury to downstream shareholders. All improvements must be approved by the Ditch Company. The Ditch Company may, at its discretion, require bonding or a letter of credit for the cost construction of any ditch improvements.

The review process may require safety fencing along the ditch easements. If fences are required, access gates of adequate width and fences must be constructed according to Ditch Company specifications, under the supervision of the Ditch Manager.

## **7.2 Delivery Arrangements**

In the event lands that were irrigated through a headgate are subdivided, future irrigation water will only be delivered to the subdivided land at the historic delivery point before subdivision.

Ditch Company's responsibility for water delivery to a subdivision ends at that historic delivery point.

Any arrangement to deliver irrigation water within a subdivision is the responsibility of the lot owner(s) and is a private arrangement between the landowner and future landowners. Subdivision covenants should be written to include internal water delivery arrangements, with attachments to property deeds.

Subdivision lot owners shall be responsible for creating an authority for requesting delivery of water through the historic headgate. Only one person can call for water for a subdivision, shared lateral or pipeline. (See Article 5.4)

## **7.3 Water Quality**

The Florida Consolidated Ditch Company does not allow direct storm runoff or storm drainage into the ditches, except as naturally occurring.

Any occurrence which adversely impacts the historic quality of the water entering the ditch will not be permitted.

## **Article VIII: Pipelines and Irrigation Systems**

The Ditch Company must approve all new systems. The cost incurred by the Ditch Company to review and approve shall be at the expense of the shareholder.

### **8.1 Design**

# Florida Consolidated Ditch Company

In order to verify that adequate water is available to run irrigation systems, inspection and approval by the Ditch Company is required before water can be run in the system.

Systems that involve more than one user must authorize one designated water caller and notify Ditch Company of such. (See **Article VII: Subdivisions and Urbanization**)

Systems that involve more than one user require all users to authorize new projects or changes to existing systems in writing to the Ditch Company.

Ditch Company easements along pipelines are required for future maintenance.

## Article IX: Special Situations

### Weed Control

As part of its regular maintenance operations, the Ditch Company may eradicate weeds or other noxious plants in any manner deemed efficient and cost-effective, including removal, burning, or pesticide. Any shareholder who does not want weeds sprayed on his property may petition the Ditch Company for an agreement in which the shareholder agrees to manually remove and/or mitigate the weeds. The Agreement shall provide for the timing, location, and manner of weed removal. Shareholders will be responsible for any costs incurred by the Ditch Company for manual weed removal. Failure to pay said costs may result in the use of herbicides on the property.

### 9.2 Moving Water

Certain circumstances may warrant that water may need to be transferred from one headgate to another. No water can be moved without written permission from the Ditch Company, which permission may be approved or denied at the Ditch Company's discretion after considering any injury that may result from the move into or out of a particular ditch.

When the movement of water to a different headgate or ditch affects other water users on a lateral, all users so affected must authorize the move, and submit written acknowledgment to the Ditch Company, or the applicant must submit a court order authorizing the move.

### 9.3 Livestock Water

As may be determined by the Board of Directors of FWCD, water to fill livestock ponds may be released from Lemon Reservoir after the close of the irrigation season each year. Because livestock water is released after the close of the irrigation season, this water is not project water allocated to specific lands. Instead, the supply of project water for livestock is a benefit created by the existence of Lemon Dam and the policies set by the District and the Ditch Companies. It is a courtesy service provided to livestock owners who earn income from their livestock to help provide water to livestock through the non-irrigation season. The amount of livestock water to be released, if any, will be determined by FWCD in its discretion.

..... To be eligible to divert livestock water from the Ditch (1) the applicant for livestock water must either own livestock or lease to someone who owns livestock; (2) The property must have a storage facility to hold the stock water, (3) the livestock must have access to the storage facility, and (4) the applicant for livestock water must sign an Affidavit verifying that he files a Schedule F or other tax return form showing

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income from Livestock or leases to someone who files said forms. Upon request, the applicant for livestock water must provide the Ditch Company with a copy of the schedule F or other tax return form from his/her past year's tax return which shows income from Livestock. The Ditch Company reserves the right to deny the delivery of livestock water to anyone who does not meet the eligibility criteria set forth above.

During times of livestock water runs, you will still be required to place a call to the Ditch Office in order to receive water.

The timing of livestock water runs will be published on the Ditch Company webpage.

## **9.4 Working with Ditch Riders**

Colorado State Statutes give Ditch Riders the authority and responsibility to run irrigation water and to maintain the ditches and reservoirs of the Ditch Company.

**Consideration and respect are required** in working with the Ditch Riders, particularly in heavy water use periods.

No physical or verbal abuse of the Ditch Company Employees will be tolerated. This could result in the delivery of water being terminated until the issue is resolved.

## **9.5 Dispute Resolution**

In the event that issues cannot be resolved by the ditch riders, shareholders may request the issue be heard and decided upon by the Board of Directors.

## **ARTICLE X. Violations of the Rules and Regulations**

### **10.1 Liability**

Any person violating any of the provisions of these Rules and Regulations shall be liable to the Ditch Company for any expense, loss or damage occasioned by reason of the violation, shall not receive water until the violation is corrected, and at the discretion of the board, may be fined.

### **10.2 Remedies**

The Ditch Company shall be entitled to any legal or equitable relief available for violations of these Rules and Regulations, including damages, and injunctive relief to cease any continuing violations.

### **10.3 Costs and Attorney Fees**

The shareholder shall be responsible for any costs and attorney fees incurred by the Ditch Company in enforcing the terms and conditions of these Rules and Regulations.

### **10.4 Discontinuance of Delivery**

The Ditch Company may, in its discretion, discontinue the delivery of water service to any shareholder violating these Rules and Regulations, or who, for any reason, owes the Ditch Company money, including but not limited to unpaid assessments, contracts, penalties, fines, failure of complying with ownership requirements, interest, attorney's fees, or otherwise.

### **10.5 Interest on monies owed**



All damages, fees, or other money owed will accrue 1.5% per month and be subject to lien in accordance with section 4.2.

## **ARTICLE XI: General**

No assent, express or implied, to any violation of any one or more of the terms of these rules and regulations hereof shall be deemed or taken to be a waiver of any succeeding or other violation. The covenants set forth herein shall be deemed to be independent of one another.

The Ditch Company retains the authority to amend these Rules and Regulations as the Ditch Company deems necessary to accomplish the purposes of these Rules and Regulations. The Ditch Company may not provide individual notice of amendments but will post the amended Rules on its website. Amendments to these Rules and Regulations may be accomplished by explicit modification or by the adoption of policies or decisions by the Ditch Company at its meetings, in which event such amendments shall be evidenced by reference to the adoption of policies or decisions in the minutes of the Ditch Company meetings.

The Ditch Company reserves the right to grant variances to these Rules and Regulations when in its judgment the variance would be good for the Ditch Company, in the interest of fairness to the Shareholders, or good business practice by the Ditch Company.

## **Article XII: Adoption of Rules and Regulations**

These Rules and Regulations were amended by the Directors of the Florida Consolidated Ditch Company on August 9, 2023 and shall supersede anything in any rules or regulations of the Company adopted prior to that date, which conflicts with any of them. These rules and regulations may be altered, amended, or repealed at any regular meeting of the Board by a 5/7th vote of the Directors. Notice of any proposed alteration, amendment, or repeal shall be given in writing by posting at the office of the Company at the preceding regular meeting.

# Florida Consolidated Ditch Company

## Exhibit A

### Florida Consolidated Ditch Company Demand for Issuing Duplicate Stock Certificate

The undersigned affiant, being first duly sworn under oath, states as follows:

1. My name is \_\_\_\_\_ and I live at \_\_\_\_\_  
 \_\_\_\_\_  
 I am a shareholder in the Florida Consolidated Ditch Company (the Ditch Company), I am over the age of 18, and I am competent to make this affidavit.
2. Stock Certificate No. \_\_\_\_\_, issued by the Ditch Company on \_\_\_\_\_(date) is my property. I have not transferred, sold, assigned, or pledged Certificate No. \_\_\_\_\_, or the shares represented thereby, to anyone.
3. The stock certificate referenced above has been lost, mislaid, or destroyed.
4. I, or my predecessor in title, have paid all assessments on the shares represented by the stock certificate identified above.
5. I demand that the Ditch Company issue a duplicate stock certificate in accordance with C.R.S. § 7-42-114 and 115. Said duplicate certificate shall be issued in the name of \_\_\_\_\_(title).

Executed this \_\_\_ day of \_\_\_\_\_, 20\_\_

Signature of Shareholder: \_\_\_\_\_

STATE OF \_\_\_\_\_)  
 \_\_\_\_\_) ss.  
 COUNTY OF \_\_\_\_\_)

The foregoing instrument was acknowledged before me this \_\_\_ day of \_\_\_\_\_, 20\_\_  
 by \_\_\_\_\_

Witness my hand and official seal.

My commission expires: \_\_\_\_\_

\_\_\_\_\_  
 Notary Public

# Florida Consolidated Ditch Company

## Exhibit B

### Florida Consolidated Ditch Company Company Indemnification Form for Issuing Duplicate Stock Certificates

1. I \_\_\_\_\_, a shareholder in the Florida Consolidated Ditch Company, represent and warrant that Stock Certificate No. \_\_\_\_\_, issued by the Company on \_\_\_\_\_ (date), in the name of \_\_\_\_\_ has been lost,

misaid, or destroyed, and that I have not conveyed, assigned, transferred, or pledged said certificate, or the shares represented thereby, to anyone.

2. I, for myself, my heirs, devisees, successors, and assigns:

- A. Waive and release any and all claims, causes of action, and/or damages in law or in equity, that I, or anyone taking through me, may have against the Ditch Company, its Board of Directors, officers, and/or shareholders, arising from or in any way related to the issuance of a duplicate stock certificate for Certificate No. \_\_\_\_\_
- B. Agree to indemnify and hold harmless the Ditch Company, its Board of Directors, officers, and shareholders from any and all claims, causes of action, or damages, including reasonable attorneys fees, arising from or in any way related to the issuance of a duplicate stock certificate for Certificate No. \_\_\_\_\_

Executed this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

Signature of Shareholder: \_\_\_\_\_

STATE OF \_\_\_\_\_ )  
  ) Ss.  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_  
by \_\_\_\_\_

Witness my hand and official seal.

My commission expires: \_\_\_\_\_

\_\_\_\_\_  
Notary Public

# Florida Consolidated Ditch Company

## Informational facts

- Florida Consolidated Ditch Company issues Certificates where 40 (forty) shares represent 1 (one) c.f.s.
- One acre-foot of water equals 325,851 gallons.
- One c.f.s. of water is equivalent to 1.9835 acre-ft. per day, 449 gallons per minute, or 646,320 gallons per day.

## Fee Structure

Transfer fee per certificate	\$500.00
Lost Certification Fee	\$500.00
Lost Certification Publication	\$500.00
Estate Planning or Inheritance	No Charge
Returned Check Fee	\$35.00
Research Fees	\$100.00 per hour for Operations Manager \$60.00 per hour for Office Manager
Theft of water This includes unauthorized pumps & pipes in FCDC operated ditches (Please see 2.5 & Article V) Effective May 1, 2023	\$1,000.00 and loss of water until fine is paid (1 <sup>st</sup> offence)  \$2,000.00 and loss of water for 90 days (while ditches are running) and until fine is paid (2 <sup>nd</sup> offence).  \$10,000.00 and loss of ability to receive water from FCDC (3 <sup>rd</sup> and all future offences).
	If fines are not paid FCDC will use all legal means available to stop the theft and collect the monies owed.