

**April 2001 Amended Bylaws**

**La Mesa Water Cooperative  
Bylaws**



# April 2001 Amended Bylaws

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**April 2001 Amended Bylaws**

**AMENDED AND RESTATED  
BY-LAWS OF  
THE LA MESA WATER COOPERATIVE**

Preamble. This is a cooperative association organized and operated under the applicable laws of the State of New Mexico.

**Article I: The Offices**

**Section 1: Principal Office**

The principal office of the cooperative in the State of New Mexico shall be located as the Board of Directors may determine.

**Section 2: Registered Office and Registered Agent**

The cooperative shall have and maintain continuously in the State of New Mexico a registered office and a registered agent as required by law. The registered office may be, but need not be, identical with the principal office of the corporation, and the address of the registered office may be changed from time to time by the Board of Directors.

**Article II: Definitions**

**Section 1: Articles of Incorporation**

The term "Articles of Incorporation" shall mean the Articles of Incorporation of the Cooperative.

**Section 2: Cooperative**

The term "Cooperative" shall mean La Mesa Water Cooperative a New Mexico cooperative, its successors and assigns.

**Section 3: La Mesa Declaration**

The term "La Mesa Declaration" shall mean the Comprehensive Declaration of Covenants, Conditions, and Restrictions for the La Mesa Subdivision as amended from time to time and recorded in the Records of Sandoval County.

**Section 4: Sundance Mesa Declaration**

The term "Sundance Mesa Declaration" shall mean the Comprehensive Declaration of Covenants, Conditions, and Restrictions for the Sundance Mesa Subdivision as amended from time to time and recorded in the Records of Sandoval County.

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### **Section 5: Developer**

The term “Developer” shall mean KGA Development Corporation and its successors.

### **Section 6: Lot**

The term “Lot” shall have the same meaning as Lot defined in the La Mesa Declaration with respect to the La Mesa Subdivision and the same meaning as Lot as defined in the Sundance Mesa Declaration with respect to the Sundance Mesa Subdivision.

### **Section 7: Residential Unit (Sundance Mesa Only)**

The term “Residential Unit” for Sundance Mesa shall mean the occupation or use of a dwelling unit as a residence by a single person, a family or a family-sized unit in conformity with the Sundance Mesa Declaration and the requirements imposed by applicable zoning laws or any other state, county or municipal laws, rules, regulations, codes or ordinances. A Residential Unit is further defined for the purposes of the Cooperative Articles of Incorporation and Bylaws as a single unit of a Multi-family Dwelling.

### **Section 8: Member**

The term “Member” shall mean those persons or entities who are members of the Cooperative as provided in the Articles of Incorporation and as further defined in the Bylaws. Each lot or residential unit is entitled to one and only one vote, regardless of the number of owners of the lot or residential unit.

### **Section 9: Service Connection**

The term “Service Connection” shall mean and refer to the connection of a cooperative water meter to a member’s residence.

### **Section 10: Water Agreement**

The term “Water Agreement” shall mean that certain Agreement dated June 2, 1994 and amended by an Addendum dated September 23, 1994 between the Cooperative and KGA Development Corporation recorded in the records of Sandoval County, New Mexico at Volume Misc. 312, folios 489 and 494 respectively.

### **Section 11: Board**

The term “Board” shall mean La Mesa Water Cooperative Board of Directors.

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### **Article III: Membership**

#### **Section 1: Qualifications**

In addition to meeting those qualifications set forth in the Articles of Incorporation, the qualifications for membership shall be as follows:

- a) Non-delinquency of any and all assessments levied by the corporation pursuant to these Bylaws against a member's Lot or Residential Unit.
- b) Owners of those Lots that do not have Cooperative water connection available at the Lot are not eligible for membership
- c) If more than one person holds an interest in any Lot or Residential Unit, all such persons collectively shall be a Member of the Cooperative

#### **Section 2: Membership Certificate**

Membership status shall be evidenced by a membership certificate executed by the Member and the Cooperative. A sample certificate is attached hereto as Exhibit B.

#### **Section 3: Voting**

All Members, whose Cooperative account is not delinquent, shall be entitled to vote at any meeting of the Members of the Cooperative or with respect to any matter submitted to a vote of the Members of the Cooperative with one (1) vote for each Lot or Residential Unit owned. The vote for jointly-owned Lots or Residential Unit shall be exercised as the Lot or Residential Unit owners among themselves determine, but in no event shall more than one (1) vote be cast with respect to any Lot or Residential Unit.

The Developer may cast one vote for each owned Lot or Residential Unit so long as each has a water connection available.

#### **Section 4: Members in Good Standing**

Members in Good Standing are those whose Cooperative Account is not delinquent (as defined in Article XI, Section 1) and who are not in continuing violation of any Rule or Regulation of the Cooperative. Those Members not in Good Standing may not be a candidate for office, be elected to office or serve on any committee of the Cooperative.

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### **Article IV: Meeting of Members**

#### **Section 1: Annual Meeting**

The annual meeting of the members of this Cooperative shall be held at a location selected by the Board of Directors within ten miles of the La Mesa Subdivision and the Sundance Mesa Subdivision. At the annual meeting, the Board of Directors shall present an audit of expenses, itemizing receipts and disbursements for the preceding calendar year, the allocation thereof to each Member the estimated budget for the coming calendar year, and any other business which may properly be brought before the Cooperative.

#### **Section 2: Special Meeting**

Special meetings of the Members of the Cooperative may be called at any time by the President upon a resolution signed by a majority of the Board of Directors, or upon written petition to the President signed by ten percent (10%) of the members. The Special Meeting shall be held within 30 days of such resolution or petition to the President. The purpose of every special meeting shall be stated in the notice thereof, and no business shall be transacted except as is specified in the notice.

#### **Section 3: Notice**

Notice of meetings of members of the Cooperative, both regular and special, shall include purpose, place, date and time of the meeting and shall be given to each member of record in writing, and delivered either personally or by mail to the address shown upon the books of the Cooperative, at least ten (10) days prior to the meeting.

#### **Section 4: Procedure at Meetings**

All meetings shall be conducted in an orderly fashion. The Board shall create and publish rules for the conduct of meetings that incorporate elements of "Robert's Rules of Order", as appropriate, and that provides for Member participation. The order of business at the regular meetings, and as far as possible at other meetings, shall be:

1. Calling to order and proof of quorum;
2. Proof of notice of meeting;
3. Reading and action taken upon the minutes of the last meeting;
4. Report of Directors;
5. Reports of Officers and committees;
6. Election of Directors;
7. Unfinished business;
8. New business;
9. Adjournment.



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### **Section 5: Referendum at a Meeting**

Twenty Five (25%) of the total membership of the Cooperative shall constitute a Quorum at any meeting of the Cooperative to transact business requiring a referendum. This quorum requirement shall not apply to the election of Directors.

The meeting notice may include a pre-meeting ballot for any business to be transacted at the meeting by which a Member may vote if unable to attend the meeting. Valid pre-meeting ballots returned within fifteen (15) days of mailing will be counted in establishing a quorum for the item of business they pertain to, and will also be counted in the voting, along with votes cast by Members present at the meeting, except that any Member's pre-meeting ballot will automatically become null and void if that Member attends the meeting and votes.

Floor motions that are approved by a vote of two-thirds (2/3) of those Members present at the annual or any special meeting shall be brought to all Members by a referendum for approval or disapproval.

## **Article V: Directors**

### **Section 1: Directors Meeting**

Regular meetings of the Board of Directors shall be held at such place and time as may be fixed by resolution of the Board. Special meetings of the Board of Directors shall be held when called by the President of the Cooperative, or by any two Directors, after not less than three (3) days notice to each Director. Directors meetings shall be open to any Member of the Cooperative. If a Member(s) or guest becomes disruptive or unruly, then upon a majority vote of the Directors, the Member(s) or guest will be asked to leave the meeting. The Board of Directors may adopt fair and equitable rules for the conduct of Director's meeting. If, and only if, the Directors discuss strategy, plans, claims, defense, or opinions involving a claim or dispute involving a threatened, pending, or filled legal action, then by majority vote a closed meeting maybe held.

### **Section 2: Quorum**

A majority of Directors shall constitute a quorum for the transaction of business. Each act or decision done or made by the Directors shall require the assent of four (4) Directors.

### **Section 3: Removal and Replacement of Director**

Any Director of the Cooperative may resign in writing at any time or may be removed from directorship, with or without cause, by a vote of not less than two-thirds (2/3) of the members voting, in conformance with "Article IV, Section 5 Referendum at a Meeting", at any annual meeting and entitled to vote, or at any special meeting called for that purpose. In the event of death, resignation or removal of a Director, the successor shall be selected by the remaining members of the Board and shall serve until the next annual meeting of the Water Cooperative when an election will be held to fill the vacancy, in accordance with Article XV Section 8, for the unexpired term.

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### **Section 4: Compensation of Director**

No Director shall receive compensation for any service rendered to the Cooperative. However, any Director may be reimbursed for actual expenses incurred in performing their duties.

### **Section 5: Emergency Action of Directors without a Meeting**

In the absence of a regular or special meeting as defined in Section 1 the Directors shall have the right to take any action which they could take at such a meeting by obtaining the written approval of a majority of the Directors provided that an emergency exists requiring action before the next available meeting opportunity. Any action so approved shall have the same effect as though taken at a meeting of the Directors. Members will be promptly notified of any actions taken.

## **Article VI: Powers and Duties of the Board of Directors**

### **Section 1: Powers**

The powers of the Board of Directors are limited to those provided by the Articles of Incorporation, Bylaws and the laws of the State of New Mexico. The Board of Directors shall have the power to:

- a) Adopt and publish rules and regulations managing the Cooperative. Rules and Regulations shall not be enforced until approved by a vote of the Board of Directors and is recorded in signed meeting minutes and filed in the records of the Cooperative. The rules and regulations shall be distributed to all Members of the Cooperative within a publication containing the accumulation of all Rules and Regulations. Such publication shall also be filed in the records of the Cooperative.
- b) Adopt and publish rules and regulation governing the use of Cooperative facilities,
- c) Suspend a Member's rights of membership in the Cooperative during any period in which such Member shall be delinquent in the payment of any assessment levied by the Cooperative.
- d) Exercise for the Cooperative all powers, duties and authority vested in or delegated to this Cooperative and not reserved to the membership by other provisions of these Bylaws, the Articles of Incorporation, or the laws of the State of New Mexico;
- e) Declare the office of a member of the Board of Directors to be vacant in the event such member shall be absent from four (4) consecutive regular meetings of the Board of Directors and fill that vacancy;
- f) Employ a manager, an independent contractor, or such other employees as they deem necessary, and to prescribe their duties.
- g) Fix compensation for managers, independent contractors and the like.

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- h) To incur debt and approve contracts.
- i) Levy assessments and the enforcement and collection thereof in accordance with the provisions of these Bylaws and the laws of the state of New Mexico.
- j) Establish water charges and fees.

### Section 2: Duties

It shall be the duty of the Board of Directors to:

- a) Cause to be kept a complete record of all its acts and corporate affairs and to present a statement thereof to the Members at the annual meeting of the Members, or any special meeting of the Members, or any special meeting when such statement is requested by one-fourth(1/4) of the total votes of the membership;
- b) Supervise all officers, agents, and employees of this Cooperative, to ensure that their duties are properly performed;
- c) Act within the powers prescribed in the Articles of Incorporation and these Bylaws, to:
  - 1) Fix the amount of the Water Usage Assessment against each Lot;
  - 2) Fix the amount of the Standby Fee Assessment, the Installation Fee Assessment, Transfer Assessment, any Special Assessment, and any other assessment set by the Bylaws;
  - 3) Send written notice of all assessments to the owner subject thereto at least thirty (30) days in advance of its due date; and
  - 4) Foreclose the lien of the Cooperative against any Lot or Residential Unit for which assessments are not paid no sooner than ninety (90) days after the due date or to bring an action at law against the owner personally obligated to pay the same when, at the discretion of the Board of Directors, such action would be in the best interests of the Cooperative. Should the Board decide to exceed the ninety days for any Lot the Board shall devise and implement a rule or regulation to be applied equally to all Members defining the rationale for the exception.
- d) Issue, or to cause an appropriate officer to issue, upon reasonable demand by any person, a certificate setting forth whether or not any assessment has been paid. A reasonable charge may be made by the Board for the issuance of these certificates. If a certificate states an assessment has been paid, such certificates shall be conclusive evidence of such payment;
- e) Procure and maintain adequate liability and hazard insurance on property owned or maintained by the Cooperative;

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- f) Cause all officers or employees having fiscal responsibilities to be bonded, if in the discretion of the Board of Directors such bond is deemed appropriate.
- g) Cause the water system and water system extensions to be maintained;
- h) Prepare the annual budget;
- i) Pay the cost from the funds of the Cooperative of all authorized services rendered to the Cooperative and not billed to Owners of individual Lots or otherwise provided for in these Bylaws;
- j) Enforce by legal means the provisions of these Bylaws, and the Rules and Regulations of the Cooperative, and act on behalf of the Members with respect to all matters arising out of any eminent domain proceeding.

### **Article VII: Officers**

#### **Section 1: Enumeration of Officers**

The officers of the Cooperative shall be a president, vice president, a secretary, and a treasurer and such other officers as the Board of Directors may from time to time by resolution create. Each officer shall be a Member of the Cooperative or the authorized agent of a Member corporation or partnership.

#### **Section 2: Election of Officers and Term.**

The officers of this cooperative shall be elected annually by the Board of Directors and each shall hold office for one (1) year unless the officer shall resign, or shall be removed, or otherwise disqualified to serve. The election of officers shall take place at the first meeting of the Board of Directors following each annual meeting of the Members.

#### **Section 3: Special officers**

The Board may elect such other officers from the Members as the Board may decide, each of whom shall hold office for such period, have such authority, and perform such duties as the Board may, from time to time, determine.

#### **Section 4: Resignation and Removal**

Any officer may be removed from office, with or without cause, by the Board. Any officer may resign in writing at any time giving written notice to the Board. Such resignation shall take effect on the date of receipt of such notice or at any later time specified therein, and unless specified therein, the acceptance of such resignation shall not be necessary to make it effective.

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### **Section 5: Vacancies**

A vacancy in any office may be filled by appointment by the Board. The officer appointed to such vacancy shall serve for the remainder of the term of the officer replaced.

### **Section 6: Duties**

The duties of the officers are as follows:

- a) **President:** The president shall preside at all meetings of the Members and the Board of Directors and shall see that orders and resolutions of the Board are carried out; shall sign all written instruments including Membership Certificates on behalf of the Cooperative, be an ex-officio member of all standing committees and shall have such powers and shall have such duties as may be properly delegated by the Board.
- b) **Vice-President:** The vice-president shall act in the place and stead of the president in the event of the presidents' absence, inability or refusal to act, and shall exercise and discharge such other duties as may be delegated by the Board.
- c) **Secretary:** The secretary shall have general charge and supervision of the books and records of the Cooperative and record the votes and keep the minutes of all meetings and proceedings of the Board and of the Members; shall keep the corporate seal of the Cooperative and affix it to all papers requiring said seal; serve notice of meetings of the Board and of the Members; keep appropriate current records including a Membership Book, showing the Members of the Cooperative together with their mailing address, and shall perform such other duties as delegated by the Board.
- d) **Treasurer:** The Treasurer shall collect, receive and deposit in appropriate bank accounts all moneys of the Cooperative, including but not limited to the Operating, Maintenance and Repair Reserve Fund, and shall disburse such funds as directed by resolution of the Board of Directors; shall sign all checks and promissory notes of the Cooperative; keep proper books of account; shall keep a proper Membership Certificate record showing the name, address and Lot or Residential Unit number of each Member of the Cooperative, date of issuance, date of surrender or transfer, termination, cancellation or forfeiture of certificates, whether all assessments made have been duly paid, complete, attest and deliver Membership Certificates as required and affix any necessary Cooperative seal thereto; cause an annual audit of the Cooperative books to be made at the completion of each fiscal year; and shall prepare an annual budget and a statement of income and expenditure to be presented to the membership at its regular annual meeting.

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### **Article VIII: Water System**

#### **Section 1: Statement of Purpose**

As provided in the Articles of Incorporation, the primary purpose of the Cooperative shall be to acquire, construct, install, maintain and operate a water system to supply and distribute water to the Members.

#### **Section 2: Expansion of Water System**

The Developer shall have the right to expand the capacity of the water system or the service area of the Cooperative to the extent provided in the Water agreement. Amendment of these Bylaws shall not be required to expand the water system under Article VIII and the Water Agreement.

#### **Section 3: Participation in the Water System**

Water shall be sold to Cooperative members holding valid Membership Certificates. Water may also be sold, on an *emergency* basis, to neighboring water system(s), provided that, the Board of Directors approves this sale and an "Emergency Mutual Aide" agreement is in force with the neighboring water system(s). The Board of Directors may enact special water rates for emergency purposes to match the rates of the neighboring systems(s). Special water rates shall not be priced less than the minimum rate at which water is provided to members. If any Member needs and desires more than one Service Connection, such additional connections shall be made only upon application to and with the approval by vote of the Board and upon payment of such additional fee as the Cooperative shall determine.

### **Article IX: Water System Cost**

#### **Section 1: Initial Costs**

Initial Costs of construction of the water system and the expansion of the water system to the Sundance Mesa Subdivision were borne by the Developer.

#### **Section 2: Operating Costs**

Operating costs shall be an expense of the Cooperative and payable from the **Operating Maintenance and Repair Reserve Fund** (see Article X, Section 2). Operating costs are those usual, normal and customary expenses incurred for routine maintenance and operation of a water system, including utility costs, insurance, supplies, water testing, purification, accounting, administrative, legal and other miscellaneous day-to-day expenses.

#### **Section 3: Maintenance, Repair and Improvements Costs**

Repair and maintenance costs shall be an expense of the Cooperative and shall include replacement and repair of equipment or property and improvements to the water system, including the acquisition of water rights and wells. Such costs shall be payable from the **Operating, Maintenance and Repair**

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**Reserve Fund.** To the extent that the Fund is insufficient to pay for necessary operations, repair and maintenance, the Board of Directors may levy a Special Assessment as provided for in these Bylaws.

For any additional wells, only those costs agreed upon subsequently by the parties (the Developer and the La Mesa Water Cooperative) will be shared.

### **Section 4: Other Costs**

Assessments for other costs are set forth in Article X, Section 5(Special Assessments), Section 6(Meter Installation and Service Connection Fee Assessment) and Section 8(Assessments of Costs Caused by an Individual Member).

### **Section 5: Costs Caused by Individual Member**

If any cost or expense of the Cooperative is proximately caused by the negligence or misconduct of any individual Member, including any agents of the Member, then the Cooperative may assess that expense against that Member exclusively.

## **Article X: Assessments**

### **Section 1: Generally**

#### **1. Payment of Assessments:**

Each Member is obligated to pay promptly to the Cooperative all assessments made by the Cooperative. All assessments are secured by a continuing lien against the responsible member's Lot as provided for in the La Mesa Declaration and the Sundance Mesa Declaration. No Lot Owner or Member may waive or otherwise escape liability for the assessments provided for herein. The Board of Directors shall be entitled to record a notice of the lien of the Cooperative for any assessment which is delinquent and any cost incurred in filing the lien may be added to the assessment.

#### **2. Basis for Assessment**

Assessments shall be based upon and used only to pay water system costs as provided for in Article IX.

#### **3. Miscellaneous**

- a) The Operating, Maintenance and Repair Reserve Fund (Section 2) is funded by the Standby Fee (Section 3), Water Usage (Section 4) and Special (Section 5) Assessments provided for herein. These assessments shall be based upon the "La Mesa Water Cooperative Costs as of November 1996" (Exhibit A) as a guideline. The Assessments shall be sufficient to maintain the Operating, Maintenance and Repair Reserve Fund.

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- b) The Board shall periodically, but no less often than yearly, impanel a Water Rates Committee, comprised of volunteer Cooperative Members, yearly or whenever there is a perception by the Board that the Standby Fee or the Water Usage Assessments may need adjustment.

### **Section 2: Operating, Maintenance and Repair Reserve Fund**

The Operating, Maintenance and Repair Reserve Fund is funded by the various assessments described above and will be used to pay those costs identified in Article IX Sections 2 and 3 and restated below. The assessments shall be uniform throughout the membership and sufficient for the purpose of establishing and maintaining reserves to be used by the Cooperative for the purposes set forth in these Bylaws.

The Reserves shall be computed according to the following guidelines:

- a) One year operating costs, plus
- b) An amount to be determined by, and approved by the Board of Directors based on both past experience and future estimates sufficient to pay the costs identified in Article IX Sections 2 and 3. The Board shall, at the annual meeting, publish the monetary goals for the reserve fund and substantiate the need for those goals based upon estimates of current and future costs.

### **Section 3: Standby Fee Assessment**

Upon issuance of a membership certificate, there shall be a Standby Assessment Fee, the amount of which shall be established by the Board, paid by each Member until the Member's residence is connected to the water system. The Standby Fee Assessment shall be dedicated to funding the Operating, Maintenance and Repair Reserve Fund. Each member shall pay the Standby Assessment Fee until the service connection is installed. The Developer shall not be subject to the Standby Assessment Fee.

### **Section 4: Water Usage Assessment**

The Board of Directors shall establish the Water Usage Assessment rate schedule to be used to determine the amount to be paid by each member for water services. The Water Usage Assessment rate schedule shall consider the cost of the water and water services provided to each member and shall be dedicated to funding the Operating, Maintenance and Repair Reserve Fund. The Board shall, at each Annual Meeting of the Members, certify the rates for the following 1 year period.

### **Section 5: Special Assessments**

1. **Unforeseen Expenses:** To the extent necessary to defray its costs due to unforeseen circumstances, and maintain the Operating, Maintenance and Repair Reserve Fund the Board of Directors may levy a Special Assessment against the members of the Cooperative. The Special Assessment shall be equally levied against all Members.
2. **Improvements:** Any costs born by the Cooperative, such as the purchase of water rights, that benefit all lots in the La Mesa and Sundance Mesa as described in the Water Agreement, may be apportioned across all Lots and collected from all Members when service is provided.



## **April 2001 Amended Bylaws**

### **Section 6: Meter Installation and Service Connection Fee Assessment**

The initial Owner of a Lot or a Residential Unit shall pay a one-time Service Connection Fee Assessment of \$680.00 to the Developer who shall then provide, within a reasonable time, the service connection. An additional one-time Meter Installation Fee of \$85.00 shall be made by each new member to the Cooperative to defray the cost of the meter, the installation of the meter, and the administrative and accounting costs. In addition to the Meter Installation Fee, new Sundance members shall pay a one-time Water Rights Fee of \$132.00. This is to offset the costs of the additional water rights that the Cooperative had to purchase in order to have sufficient water rights to accommodate the addition of the Sundance subdivision to the La Mesa Water Cooperative.

### **Section 7: Transfer Fee Assessment**

Upon the transfer of a membership, the transferee shall be required to pay a \$50.00 Transfer Assessment Fee to the Cooperative to defray the cost of the associated bookkeeping and administrative expenses of the Cooperative. This fee shall be reviewed periodically by the Board and adjusted as required to reflect the actual cost to the Cooperative.

### **Section 8: Assessment for Costs Caused by an Individual Member**

Upon the determination that costs were proximately caused by a Member, the Member shall be required to pay the costs incurred by the Cooperative including administrative costs. The bill for the assessment shall include the rationale for the Boards determination that proximate cause existed. The Bill shall also include a breakdown of charges comprising the assessment.

The Board shall act in the best interests of the Member being assessed and the Cooperative by determining and executing the least costly option. Any funds collected shall be used to reimburse the Operating, Maintenance and Repair Reserve Fund.

## **Article XI: Nonpayment of Assessment by Member**

### **Section 1: Generally**

If an assessment is not paid within (30) days after the due date, the assessment shall be delinquent and a \$15.00 late fine will be charged for each month that the payment is delinquent. The Cooperative may bring an action at law against the owner personally obligated to pay the same or foreclose the lien against the property, and interests, costs, and reasonable attorneys' fees of any such action shall be added to the amount of such assessment. The Board shall notify any Member to be declared delinquent by certified mail and, if possible, by telephone. The Cooperative shall not have the right,

## **April 2001 Amended Bylaws**

however, to sever the membership from the Lot or Residential Unit and sell the membership separately.

### **Section 2: Termination of Services**

Notwithstanding the rights of the Cooperative as provided above, the Cooperative, through its' Board of Directors, shall have the additional right to terminate the supply of water to the delinquent Member after thirty (30) days written notice by mail of the delinquency. Upon payment in full of all sums owed by a delinquent Member, water supply shall be promptly restored.

## **Article XII: Records of the Cooperative**

### **Section 1: Inspection of Records**

The books, records and papers of the Cooperative shall at all times, during regular business hours and upon reasonable notice, be subject to inspection by any Member. The Articles of Incorporation, the Bylaws of the Cooperative, minutes, resolutions, water analysis results, policies, summary information, receipts, vendor invoices, complaints, legal notices, written claims, etc. shall be available for inspection by any Member at the principal office of the Cooperative, where copies may be purchased at reproduction cost. Except as provided in subsection 4 of Article XII.

### **Section 2: Membership Certificate**

The Board of Directors shall determine the form of membership Certificate. The Certificate shall be signed by the President, and this signature attested to by the Treasurer, who shall impress thereon the Corporate Seal of the Cooperative.

### **Section 3: Membership Book**

As a part of the records of the Cooperative, there shall be kept a membership book, which shall contain a list of the Certificates of Membership which have been issued, noting the numbers of the Certificates, the dates thereof, the number of service connections, and the names and addresses of the persons to whom issued.

### **Section 4: Privacy of Records**

The Cooperative shall not disclose confidential, private or privileged information. Such information is defined as: (a) the names, addresses, lot and block designation, email addresses, and phone numbers of it's members, (b) member specific water usage records or billing records, (c) information, documents, correspondence, or meeting notes that pertain to the Board's discussions, strategies, opinions, defenses, including legal counsel's written and verbal statements to the Board, pertaining to any and all threatened, pending, or filed litigation, claims and disputes, or any other information protected from dissemination under lawyer-client privilege. Complaints, legal notices, or written claims received by and against the Cooperative shall *not* be confidential, private or privileged and shall be available to all

## **April 2001 Amended Bylaws**

members, as described in subsection 1 of Article XII. The Board may provide members names, addresses, lot and block designations to the La Mesa Homeowners Association, the Sundance Homeowners Association, and governmental authorities for the purpose of validating and updating records. The Board shall adopt a policy on who may have access to private, confidential or privileged information and under what circumstances such access may be allowed.

### **Article XIII: Transfer of Membership**

Sale or transfer of the possessory interest in any Lot, or Residential Unit or portion thereof benefited by a membership in this Association shall act to terminate the membership of the Seller and to make the new owner of the possessory interest a Member who shall thereupon be bound by this Agreement, and the rights and obligations provided in this Agreement shall run with the land. Except as set forth in the preceding sentence, no Member may be expelled from the Cooperative and no membership may otherwise be terminated.

Transfer of a Membership interest in the Cooperative will not affect or change any existing or accrued obligations of a transferring Member, and the transferee will not be liable for such obligations unless otherwise provided in the agreement transferring the interest in the Cooperative; provided, however, that the Cooperative will not be required to give the new member service until all fees, charges and assessments incurred for serving the Lot or Residential Unit transferred are brought current.

### **Article XIV: Amendments to the Bylaws**

An amendment to the Bylaws may be initiated by a majority vote of the Board or by a petition of a minimum of 20 Members or ten percent (10%) of the Members whichever is the greater.

Approval of the proposed amendments by referendum shall require an affirmative vote of 60% of those members voting in accordance with the requirements of Article IV, Section 5 at the annual meeting, or at any special meeting called for that purpose. The notice of the proposed repeal or amendment shall be incorporated in the notice of such meeting. Prior to the vote, an informational meeting of all the members may be called by the petitioners or the Board. Pro arguments, written by the petitioners or the Board, and Con arguments written by interested parties including the Board, may be submitted to the Board for publication and distribution prior to or concurrent with the referendum.

### **Article XV: Miscellaneous**

#### **Section 1: Fiscal Year**

The fiscal year of the Cooperative shall begin on the first day of January and end on the 31<sup>st</sup> day of December of every year, except that the first year shall begin on the date of Incorporation.

#### **Section 2: Indemnification of Board of Directors and Cooperative**

Each member of the Board of Directors or officer of the Cooperative shall be indemnified by the Association against all expenses and liabilities including attorney's fees, reasonably incurred by or

## **April 2001 Amended Bylaws**

imposed upon them in connection with any proceeding to which they may be a party, or in which they may become involved by reason of their being or having been an officer or member of the Board of Directors, or any settlement thereof, whether or not they are a member of the Board of Directors or officer at any time such expenses are incurred, except in cases wherein the officer or Board member is adjudged guilty of willful misfeasance or malfeasance in the performance of his duties; provided that in the event of a settlement, the indemnification shall apply when the Board of Directors approves such settlement and reimbursement as being in the best interests of the Cooperative.

### **Section 3: Conflicts**

In the case of any conflict between the Articles of Incorporation and these Bylaws, the Articles of Incorporation shall control.

### **Section 4: Interested Parties**

No transaction of the Cooperative will be affected because a Member, Director, Officer, or employee of the Cooperative is interested in the transaction, provided full disclosure is made in advance to the Directors and officers of the Cooperative. Such interested parties will be counted for quorum purposes, and may vote, when the Cooperative considers the transaction. Such interested persons will not be liable to the Cooperative for the party's profits, or the Cooperative's losses from the transaction.

### **Section 5: Withdrawal from and Reinstatement to the Cooperative**

Any Member may voluntarily withdraw from the force and effect of this agreement: (1) by paying all outstanding charges, assessments and penalties; and (2) by providing to the Board a written statement, signed by the withdrawing member, evidencing the member's withdrawal. Six (6) years after receipt of the written withdrawal notice the former member will forfeit all right, title and interest in the Cooperative. The former member does have the right to a pro-rata distribution of excess revenues in the event of a dissolution, merger or sale of the Cooperative, as described in Article VII of the Cooperative's Articles or Article XV, Section 13 of the Cooperative's Bylaws. Service may be reinstated, by any Member or Successor in the interest of any Member who previously withdrew from the Cooperative upon the payment of an amount equal to the current Standby fee times the number of whole months between withdrawal and reinstatement, any Special Assessments levied during the period of withdrawal and a \$500.00 reinstatement fee.

### **Section 6: Referendum on Board Actions**

Actions taken by the Board must be referred to the Members for approval or disapproval if demanded by petition of at least 20 Members or ten percent (10%) of all the Members, whichever is the greater or by vote of at least a majority of the Directors. However, the rights of third parties which have been vested between the time of such action and such referendum shall not be impaired thereby. The referendum and its quorum requirements shall comply with the requirements specified in Article IV, Section 5.

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### **Section 7: Ownership and Maintenance of Water Meters**

Ownership of the water meter at each service connection shall be by the Cooperative. The Cooperative shall be responsible for its repair and maintenance. The Cooperative shall repair any damage to the easement that may, if not repaired, result in damage to Cooperative Property if the easement damage was due to natural causes or caused by the Cooperative or by any agent of the Cooperative. Water lines from the water meter to any Lot and/or its structures or any Residential Unit will be owned by and will be the responsibility of the Lot or Residential Unit Owner.

### **Section 8: Elections**

At least three months prior to the Annual Meeting, the Water Co-op Board of Directors shall announce the upcoming election, ask for Board of Director candidates, and specify deadlines for receipt of candidates' names and candidate biographies. Any Member not meeting this candidacy-announcement deadline shall not have his/her name on the ballot. A Member may instead be nominated from the floor at the Annual Meeting. The Ballot shall provide a space for a write-in Candidate. If there are fewer candidates than open positions, the board may reopen or extend the time period to accept candidates to be included on the ballot, but only if at least one month is provided between the notification that the process had been reopened and the time of the new announcement deadline.

Candidates must be "members in good standing" (refer to Article III) of the Cooperative according to the Bylaws in order to run for /be elected to/hold office/be appointed to office. Membership qualification means full payment of any and all assessments levied against the Member's lot. Any candidate who is not a Member in good standing must become one five (5) days prior to mailing of ballots or he/she will not be on the ballot. Any Water Cooperative member who is not a qualified member prior to the mailing of ballots will be considered ineligible to vote.

Candidates' biographies and other relevant materials shall be mailed to the Cooperative membership with ballots 45 days prior to the election. Qualified Members shall receive a validated ballot, while unqualified Members shall receive a non-validated ballot and notification of their ineligible voting status. Members have until 24 hours before the election at the Annual Meeting in which to change their ineligibility status. When deemed to be "qualified," those Members shall have their ballots stamped and may vote.

At the Annual Meeting, the Board of Directors shall ask for any floor nominations, allow all candidates the opportunity to address the Meeting, then collect any remaining ballots. When ballots have been tallied, candidates with the most votes win. The candidate(s) with the highest number of votes shall fill any existing two year term(s). Any unexpired one-year term(s) shall be filled by the candidate(s) with the highest number of votes, after the two-year terms are filled. In the event of a tie for the last vacancy, the tied candidates will draw straws or flip a coin.

### **Section 9: Resolution of Disputes Arising Between Individual Members and the Board**

This Article shall not be used as a means of setting aside Board rulings that are applied to all members equally but shall be used to address disputes that are particular to one or several individuals.

## **April 2001 Amended Bylaws**

Disputes arising between individual Cooperative Members and the Board or Board Members that relate to Cooperative business may, at the option of either party, be addressed in the following fashion. A committee of 4 Cooperative Members may be formed to seek a solution to the dispute. The Cooperative Members(s) will choose two (2) Members and the Board of Directors will choose two (2) Members. The committee will seek to resolve the differences between the two parties and, if they can, recommend a solution to the two parties. Any recommendations reached will be provided to the parties in the dispute who may use the recommendation as they choose. All committee members shall be Cooperative Members. In its deliberations the committee shall be guided by the Articles of Incorporation, Bylaws and documented practices of the Cooperative.

The Member(s) or Board member(s) shall make their request for "Resolution by Committee" to the Board in writing within 30 days of the initial point of dispute.

This Article shall not apply to the Developer or the Cooperative in any dispute regarding the Water Agreement.

### **Section 10: Actions at Law Taken by the Board**

The Board shall not initiate any expenditure(s) with a reasonable possibility of expending more than \$5,000 without a referendum by the Cooperative Membership for approval or disapproval unless there is an emergency situation that threatens the ability of the Cooperative to pump, store or distribute water or the power and duty to act is explicitly provided by these Bylaws. This provision shall only apply to expenditures that are not part of a budget previously approved by the Cooperative Membership. The referendum and its quorum requirements shall comply with the requirements specified in Article IV, Section 5.

### **Section 11: Private Water Wells**

The Owners(s) of privately owned water wells that are attached to the Cooperatives water distributions system shall comply with the following requirements.

1. A Backflow valve shall be installed to isolate the Cooperative system from the private well water system. The valve and its installation shall be in compliance with the New Mexico Drinking Water Regulations Section 208,I, p. II-6, and any other in force now or subsequently that regulates the connection of a private water supply to a public water system.
2. The Owner(s) shall provide proof to the Cooperative that a Backflow preventer has been installed and that any required State Inspections have been conducted.

### **Section 12. Subdividing a Lot**

If a lot owner wishes to subdivide his/her lot, and if the subdivider or new owner of the subdivided lot wishes to have a water connection to the lot and become a member of the Cooperative, then the Cooperative will furnish a water connection to the new lot upon presentation to the Cooperative board of the following information:

## **April 2001 Amended Bylaws**

- ◆ All assessments and fees are paid as stipulated in Article X, Sections 6 & 7.
- ◆ The La Mesa or Sundance Architectural Control Committee and/or homeowner association has given permission for the subdivision.
- ◆ Sandoval County has approved a re-platting showing the newly created lot.
- ◆ Upon payment of a New Lot Owner fee of \$5000. This amount maybe adjusted by the Board depending on the cost of water rights.

The new lot owner is responsible to pay the cost of extending a water connection from the water distribution system to the newly created property.

### **Section 13: Cooperative merger, sale or distribution of excess revenues**

In the event of a merger or sale of the Cooperative, any excess revenues generated from the transaction shall be distributed to the current and previous Cooperative members based on paid fees over the six years prior to the merger or sale event. Excess revenues shall be determined by Internal Revenue Service rules under section 501(C)12 of the IRS code. Excess revenues generated by the Cooperative from operations shall be refunded to the current Cooperative members at the end of the fiscal year.

LA MESA WATER COOPERATIVE  
COSTS  
AS OF  
1996

One time fee by initial lot purchaser to reimburse developer \$680.00

Initial owner charge to set up account \$100.00

Transfer charge for subsequent buyers \$50.00

Monthly charges

	<u>USER</u>	<u>STANDBY</u>
1. Repair for emergency system breakdowns	\$4	\$2
2. Replacement cost requirements for existing capital equipment based upon unique lifetimes eg. tank at 50 years.	\$5	\$5
3. Administrative costs (office, supplies, insurance, water testing). Standbys billed quarterly.	\$10	\$3.50
4. Monthly meter reading	\$4	\$0
5. Well 3 capital improvement cost recapture	<u>\$1.50</u>	<u>\$1.50</u>
TOTALS	\$24.50	\$12.00

Water use rates

1. The charge for the first 104,000 gallons is 75 cents per thousand.
2. The charge for the gallons greater than 104K and up to 144K is \$3.00/1000 gals.
3. The charge for greater than 144K is \$10.00/1000 gals.

NOTE: RATES ARE SUBJECT TO REVIEW AND CHANGE AT THE BOARD'S DISCRETION. TO ENSURE YOU HAVE ALL CURRENT RATES, PLEASE CONTACT A MEMBER OF THE BOARD OF DIRECTORS OF THE LA MESA WATER COOPERATIVE



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Exhibit B - Membership Certificate

\*\*\*\*\*NON TRANSFERABLE\*\*\*\*\*  
MEMBERSHIP CERTIFICATE  
LA MESA WATER COOPERATIVE

Certificate # \_\_\_\_\_

Issued to (Name): \_\_\_\_\_

Address: \_\_\_\_\_

Lot No: \_\_\_\_\_, Subdivision: \_\_\_\_\_

THIS MEMBERSHIP CERTIFICATE, ISSUED TO THE ABOVE NAMED PROPERTY OWNER, ESTABLISHES THE MEMBERSHIP OF PROPERTY OWNER IN THE LA MESA WATER COOPERATIVE ("COOPERATIVE") AND ENTITLES THE PROPERTY OWNER TO ALL OF THE BENEFITS OF MEMBERSHIP IN THE COOPERATIVE, ALL IN ACCORDANCE WITH THE ARTICLES OF INCORPORATION AND BYLAWS OF THE COOPERATIVE. THE COOPERATIVE HEREBY CERTIFES THAT ALL CONDITIONS PRECEDENT TO MEMBERSHIP IN THE COOPERATIVE HAVE BEEN MET BY THE PROPERTY OWNER.

THE UNDERSIGNED PROPERTY OWNER HEREBY ACCEPTS MEMBERSHIP IN THE COOPERATIVE, ACKNOWLEDGES RECEIPT OF THE ARTICLES OF INCORPORATION AND BYLAWS OF THE COOPERATIVE, AND AGREES TO FULFILL THE OBLIGATIONS OF A MEMBER OF THE COOPERATIVE INCLUDING BUT NOT LIMITED TO THE OBLIGATION TO PAY WATER CHARGES, LEVIES AND ASSESSMENTS DULY ESTABLISHED BY THE COOPERATIVE IN ACCORDANCE WITH ITS BYLAWS.

LA MESA WATER COOPERATIVE

By: \_\_\_\_\_  
President

\_\_\_\_\_/\_\_\_\_\_  
Property Owner (Member) (Date)

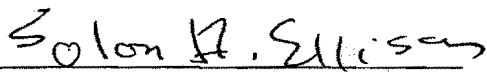
\_\_\_\_\_/\_\_\_\_\_  
Property Owner (Member) (Date)

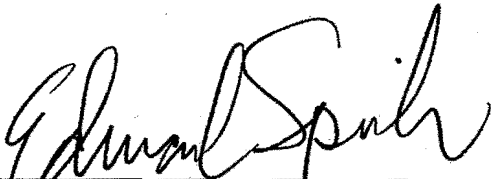
\*\*\*\*\*NON TRANSFERABLE\*\*\*\*\*

**April 2001 Amended Bylaws**

**Certification of Bylaws**

I, Solon A. Ellison, Secretary, and I, Edward Spivak, President, of the La Mesa Water Cooperative, a cooperative Association existing under the laws of the State of New Mexico, hereby certify that the above is a true and correct copy of the Bylaws, as of this 31<sup>st</sup> day of April 2001.

  
Solon A. Ellison  
Solon A. Ellison, Secretary

  
Edward Spivak  
Edward Spivak, President