

# **BYLAWS**

**For The**

**El Valle Water Alliance-Merged Associations**

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A Non-Profit Association Formed Under the Sanitary Projects Act ("SPA"), NMSA  
1978 §3-29-1 through 3-29-20 NMSA.

**06/2014**

## Resolution

WHEREAS, the members of the El Valle Water Alliance hereafter referred to as the Association, desire to approve these Bylaws for the provision of drinking water services. This document forms part of the Alliance Official Organizational Documents along with the:

- Articles of Incorporation
- Governing Documents
- Rules and Regulations
- Memorandum of Agreement
- Amendment to Memorandum of Agreement
- Certificate of Membership

If any provisions of the Bylaws, Governing Documents and/or Articles of Incorporation contradict one another, the latest document amended, will prevail. The Alliance must take the necessary steps to amend the documents needing amendment.

NOW, THEREFORE be it resolved that these Bylaws were adopted by the membership of the Alliance on June 16, 2014, and they hereby are amended to read as follows:

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## ARTICLE I

### Name, Objectives, Purposes, Principal Place of Business

The corporate name is El Valle Water Alliance (herein after “Association”), the objectives and purposes of this Association shall be as stated and provided in the Certificate of Association. The principal office of the Association shall be located in San Miguel County, New Mexico. The Association may have such other offices within the County, as the Board of Directors may designate or as the business of the Association may require from time to time. The address of the registered office may be changed from time to time as provided by law.

## ARTICLE II

### Seal

The Seal of the Alliance shall be in the form of a circle and shall have inscribed in it the name of the Alliance in a circular fashion and the words “Non-Profit Association” in the center of the circle. The secretary of the Alliance shall have custody of the seal.

## ARTICLE III

### Fiscal Year

The fiscal year of the Association shall begin on the first of day of July and end on the last day of June of each year.

## ARTICLE IV

### Membership

#### Section 1. Membership Qualification and Type

- A. Property owners within the geographical area served by the Association and reasonably accessible to the Association’s water distribution system may become a Member of the Association by providing proof of property ownership by appropriate instrument including a legal description of such filed in the County Clerk’s office, a copy of which shall be included with the Membership Agreement; Water Users Service Agreement with the Association, which is a written agreement for each water and/or wastewater service connection that includes an agreement to purchase domestic water from an authorized tap and pay for it through monthly charges; payment of membership fee; and payment of other fees and/or obligations, such as water rights, *as stated in the Rules and Regulations set by the Board of Directors.*
- B. The Association shall have residential and non-residential memberships.
- C. **Residential Memberships** entitle the member to water and wastewater service to one residence. The memberships shall be issued to:
  - a. Individual persons;
  - b. Married persons who shall own the single membership jointly as community property associated with ownership of the property within the franchise limits of the Community;
  - c. Co-Tenants, Joint property owners, or other properties where there is more than one



property owner such as Estates.

2. **Commercial/Institutions Memberships** entitle the member to water and wastewater services to one commercial establishment. Multi-unit commercial establishments where each establishment is metered may require a secondary membership for each commercial store front. The memberships shall be issued to:
  - a. businesses, partnerships, corporations, or any other form of business organization, such as water haulers,
  - b. churches, schools, senior centers,
  - c. multiple unit rental property
  - d. Water haulers shall have a maximum of 5,000 gallons a month at same rate as active members, limited to within a 5 mile distance from the area served by El Valle Water Alliance.
- C. To preserve the one vote per membership, in the case of a Residential Membership where there is more than one individual property owner, or Commercial, Institution or Association Membership, each shall designate in writing a single individual to act as their official representative, who shall be entitled to one (1) vote for the Membership. Such designation may include alternative designated Members who may replace the initial designated Member. All actions taken by the designated Member or the replacement shall be binding on all other property owners.
- D. Conversion from one type of membership to another shall be governed by the Rules and Regulations of the Association. All applications for membership and/or transfer of membership shall be approved by the Board of Directors. Connection to the system shall only be approved and completed after the applicant has paid or agreed to pay all associated membership and connection/hook up fees and has complied with other requirements as stated in this Bylaws and Rules and Regulations of the Association.
- E. Membership shall not be denied because of the applicant's race, color, creed, national origin or sex. Provided, however, that membership may be denied if the physical infrastructure or legal capacity of the Association is inadequate to supply the needs of its existing Members and/or if it shall cause a financial hardship to its existing Members and/or is prohibited by funding agencies.
- F. In the event of a shortage of water, the Association shall take appropriate measures to provide water to meet the needs of existing Association Members before consideration of new membership applications.
- G. If a member refuses to obtain an additional membership so that each residence, unit, establishment on the Members property is separately metered as determined by the board or it is discovered that a declaration statement has been falsified, the Association may terminate water or wastewater service and the primary membership with written notice.

**Section 2. Additional Service Connections, Construction criteria, New Membership Application, Service to Non Members, Eminent Domain**

- A. All approved Members shall be eligible to purchase additional memberships upon application to the Association. However, each Member shall be limited to one vote in all matters before the Membership requiring Membership approval. A written Water User

Service Agreement, in a form approved by the Board of Directors, shall be executed by the Member for each additional membership requested and by the Board of Directors. A Water User Service Agreement shall not be approved until the Board has determined that capacity exists to add such connection and payment of, or payment arrangements for, all required fees and connection costs have been made and water rights requirements have been met.

- B. All service connections into the Association shall meet the Association construction criteria. All service connections requiring distribution line extension shall be paid for by the applicant, unless public funding has been approved including such connection within the stated scope of such project.
- C. New application for Membership shall be considered, provided that the Association has adequate infrastructure capacity, meets the needs of its current Members, has considered the revenue requirements of all Members, has considered that new service connections shall not cause undue hardship to the Association, new applicants bring or pay for water rights and all expenses associated with the new connections, and the applicant complies with the Certificate of Association, Bylaws, and Rules and Regulations.
- D. Members are prohibited from permitting non-members to draw water from the Association water lines for use away from the property, to fill containers for non-member domestic use, or to fill animal stock tanks for commercial use. Domestic usage shall have priority over other uses.
- E. The Association acting through its Board of Directors may exercise the right of eminent domain to take and acquire the necessary property or rights of way for the construction, maintenance and operation of water lines and related facilities. The association shall exercise this right in the manner provided by the Eminent Domain Code.

### **Section 3. Rights, Privileges and Obligations of Members**

The rights, privileges and obligations of all Members of this Association shall be equal. Members shall not have any individual legal interest or ownership in the assets of the Association, which may include land, water supplies, wells, diversion structures, well house, pumping equipment, water storage tanks, system meters, and all water system distribution lines up to and including the metered box and contents near the Member's property line. The Member shall be responsible for maintaining all water lines within the Member's property from the point of meter on the association lines to his home and plumbing fixtures on the Member's property. The Member shall promptly repair all water leaks or damaged pipes in accordance with the Rules and Regulations of the Association.

### **Section 4. Voting**

- A. Each Member shall be entitled to one vote on each matter submitted to vote at a meeting of the Members, regardless of how many connections and/or memberships they own. No Member shall be permitted to vote in any election unless the Membership is in good standing and has been approved by the Association Board of Directors for at least thirty (30) days prior to any election.
- B. Voting by mail or proxy **shall be not permitted.**



- C. All elections and voting shall be conducted as stipulated in the Rules and Regulations and/or Election Policy.

**Section 5. Form of Membership Certificate**

The Board of Directors shall determine the form of membership certificate that must include a legal description of the property to which the membership is attached. The certificate shall clearly state the form of membership. The Association may issue a new Membership Certificate in the place of any certificate previously issued if the Member named in the certificate (a) makes proof in affidavit form that it has been lost, destroyed or stolen; and (b) satisfies any other requirements imposed by the Association. A copy of the Membership certificate issued to each Member must be retained in the Association Membership Record. The President shall sign the certificate and the Secretary shall attest and impress the seal of the Association.

**Section 6. Membership Book/Record**

As a part of the records of the Association, there shall be kept an official Membership Book/Record which shall contain a list of the certificates of membership which have been issued, noting the number of the certificate, the date when the board acted on it, the number of service connections, and the name(s), physical address of the Member(s), legal description (unless an Association membership), and mailing address of the Member(s), if different, to whom issued or transferred.

**Section 7. Transfer & Purchase of Membership**

- A. Membership may be transferred with the land to a new property owner; provided that any required transfer fee has been paid to the Association and that the transferee shall be eligible for membership and shall be approved by the Board of Directors. A transfer from or to spouse or significant other requires an administrative fee, which will be assessed only if any cost is incurred by the Association to complete the transfer. Other than described above, if property is inheritance, there will be a \$100 transfer fee. If the property is sold or exchange of ownership is completed for whatever reason, there is a \$500 transfer fee if the meter is in place. If a meter is not in place, a \$1,000 fee and the cost of the meter installation is assessed. A transfer of Membership or alternate designation of Member for a property with more than one owner shall only be approved upon receipt of a written request and/or a demonstration of property conveyance by appropriate instrument filed in the County Clerk's office. Upon approval of such transfer, a new Membership Certificate shall be issued and the prior Membership Certificate shall be terminated and void for all future uses and purposes of the Association. All meters are the property of the Association and are permanently fixed at their respective service locations. Therefore, no meter is transferable from the property that it is intended to serve to any other location or property. In the event that a dwelling or place of service is permanently discontinued or eliminated by the owner of record and Membership relinquished, the Association may, in its sole discretion, elect to either remove the meter or retain the meter at its location to provide service for possible future users. New Members must purchase new membership at current rate.

**Section 8. Membership Status and Good Standing**

Members of the Association have the obligation to keep the membership in good standing so that the association operates in the best manner to provide safe drinking water to all users. Board members or persons wishing to serve on the Board must be in good standing and not have any amount in arrears.

**Section 9. Terminating the Supply of Water/Wastewater Service.**

The Board of Directors shall have the authority to terminate the delivery of water and/or wastewater service to a member that fails to pay either water or wastewater fees and/or other causes as stated in the Rules and Regulations of the Association. The Board shall act after a written notice of delinquency has been sent to the delinquent member by mail and/or by posting on premises of the service meter or location.

**Section 10. Terminating Membership**

- A. In addition to terminating the water services, the Board of Directors shall have the authority to terminate the Membership of any Member in the event of non-payment of any water charges or assessments owing by such Member or for violating the Association's Bylaws or Rules and Regulations. The board must collect any amount due to the association from a terminated membership. In accordance with the Sanitary Projects Act ("SPA" – NMSA 1978 §3-29-1 to 3-29-20), the Association through its board of directors may place a lien on the property.
- B. Any property owner whose Membership has been terminated may be eligible to apply for a new Membership upon payment of all previously owed monies and compliance with membership application set in this Bylaws and all Rules and Regulations of the Association.
- C. The Board shall not terminate any Membership until after a written notice of the delinquency or violation has been sent to the Member by mail and/or by posting on premises of the service location and the Member has been offered a hearing before the Board. The Member shall have the opportunity to correct the violation or pay the account in full and if the Member shall refuse or fail to comply, than the Board of Directors shall terminate the Membership.
- D. Any Member may voluntarily relinquish their Membership upon compliance with the Rules and Regulations prescribed by the Board of Directors for such an action. The Association shall issue a written notification of the termination or voluntary relinquishment of any Membership. Termination of Membership in any manner shall not release the Member or the Member's estate or successors from any debts due to the Association, which must be paid in full.

**ARTICLE V**

**Meetings of Members**

**Section 1. Purpose of Annual Membership Meeting**

The purpose of the annual meeting as identified in Article IX of the governing documents is to elect Directors, if applicable, provide reports to the Members regarding revenue, expenditures and overall financial condition, changes to and the condition of the water



system, review the Consumer Confidence Report, and to transact such other matters as may properly come before the Members. Failure to hold the annual meeting at the designated time shall not work as forfeiture or dissolution of the Association.

## **Section 2. Date and Time of Annual Membership Meeting**

The meeting of the Members of this Association shall be held at the times and places designated by the Board of Directors, but at least annually in or near the community, within two months prior or after the ending of the Fiscal Year.

## **Section 3. Calling for a Special Meetings**

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

## **Section 4. Notice of Meetings**

Notice of all meetings shall follow the Open Meeting Act ("OMA" - NMSA 1978 §10-15-1 to 10-15-4). Unless otherwise specified in the OMA resolution adopted annually by the Board, notice will be given as follows, at least ten (10) days prior to the annual meeting; three (3) days prior to a special meeting; one (1) day if possible prior to an emergency meeting. Such a notice will state the nature, time, place, and purpose of the meeting and be mailed by first-class mail to each member of record, directed to the address as shown upon the books of the Association. The failure of any Member to receive notice of an annual or special meeting of the Members shall not invalidate any action that may be taken by the Members at such meeting.

## **Section 5. Quorum**

**Six (6%) percent** of the total members present in person shall constitute a quorum at any meeting of the Membership for the transaction of business. If a quorum is present, unless otherwise provided by law, the affirmative vote of a majority of the Members at the meeting entitled to vote on the subject matter shall be the act of the Members. After a quorum has been established at a Member's meeting, the subsequent withdrawal of Members, so as to reduce the number of Members entitled to vote at the meeting below the number required for a quorum, shall not affect the validity of any action taken at the meeting or any adjournment thereof.

If less than a quorum is present at any meeting, those present may adjourn the meeting. Provided that the proper notice is given all Members of the Association, another meeting shall be held within Sixty (60) days. At the rescheduled meeting, the Members present shall constitute a quorum for the transaction of business and the notice of the meeting shall so state.

## **Section 6. Meeting Agenda**

- A. The order of business at the meeting of the Membership, and as far as possible, at other meetings, shall be:
1. Calling to order and proof of the quorum

2. Proof of notice of meeting
3. Approval of Agenda
4. Reading and/or approval of any minutes
5. Report and Approval of officers and committees,
  - a. President's report
  - b. Secretary's report
  - c. Treasurer's report including financial statement report.
  - d. Other reports, such as Consumer Confidence Report
6. Election of directors
7. Unfinished business
8. New business
9. Other, such a questions or issues from the floor (*Discussion only to comply with the Open Meeting Act*).
10. Adjournment

### **Section 7. Matters for the Membership**

The following actions shall require the affirmative vote or concurrence of the Members of the Association:

- A. Adopting an amendment or amendments to the Certificate of Association and/or Bylaws;
- B. Authorizing the sale, lease, exchange or other disposition of all or substantially all of the property and assets of the Association, not in the usual and regular course of business;
- C. Approving a plan of merger, consolidation, or exchange that is required to be approved by the Members.
- D. Adopting a resolution submitted by the Board of Directors to dissolve the Association;
- E. Adopting a resolution submitted by the Board of Directors to revoke voluntary dissolution proceedings.

## **ARTICLE VI**

### **Directors of the Association**

The election of directors and all issues pertaining to the directors and officers of the Alliance shall be as stated in the El Valle Water Alliance Governing Documents.

## **ARTICLE VII**

### **Duties of Board Members and Officers**

The duties of the officers of the Alliance shall be as stated in the El Valle Water Alliance Governing Documents.



## **ARTICLE VIII**

### **Water Charges, Assessments, and Distribution of Services**

#### **Section 1. Providing Water Services**

Water service shall not be delivered by the systems of the Association, except to users who are Members of the Association as set out in the Association's Rules and Regulations. Exclusions may be made when water is sold at temporary hydrants to contractors, county road dept., etc. All service connections shall pay a minimum monthly service fee regardless of whether or not they use the service. In compliance with Federal and/or State laws, all service connections shall be metered and a certified operator shall make all connections. A representative of the Association shall have the right at all reasonable hours and after prior notification to enter upon member's premises for the purpose of inspection and enforcement of state and federal laws including inspection related to unauthorized connections, cross connection, leak detection, line integrity.

#### **Section 2. Establishing Rates and Budget**

The Board of Directors shall establish a rate schedule to be charged the Members for services provided by the Association. The established rate schedule shall apply to each Membership Certificate by an approved rate schedule in effect. The Board of Directors shall review the established rate schedule of charges at least annually, to assure that sufficient income shall be generated for the upcoming year to cover anticipated expenses. This determination shall be based on a rate analysis and asset management plan that considers the previous year's actual expenses, anticipated replacement/repair needs, and the estimated budget for the coming year. The board shall make a presentation of the rate structure to the Membership at the annual meeting.

#### **Section 3. Assessments**

If at any time prior to the end of any fiscal year, it appears in the judgment of the Board of Directors that the amount derived, or which shall be derived, from the collection of water charges during any fiscal year shall be insufficient to pay, when due, all costs incident to the operation of the Association's system(s) and the payment of all debts of the Association, the Board shall make and levy an assessment against each service connection in the Association so that the total amount reasonably expected to be collected from water charges fully pay, when due, all cost of operation, maintenance, replacement and repayments on indebtedness, or other expenses of the year's operation.

#### **Section 4. Establishing Reserve Funds**

Although this Association is a non-profit Association for the mutual benefit of its Members, the Board shall establish rates at a level which provides for a percentage of annual operating revenues to be placed in a fund (s) to be used for the purpose of reserve funds for replacement/repair, contingency, emergency, and sustainability of Association assets. If necessary, the Board of Directors shall follow federal and/or state guidelines to determine the total amount of such reserve funds and at which amount it shall be maintained.

#### **Section 5. Water Conservation & Usage**

Members are required to safeguard the integrity and quality of the ground water aquifer or surface water that supplies the Association's water source. The Member is held responsible



to use the supplied domestic water in a prudent manner. Unnecessary usage or wasting of water during irrigation or other outdoor usage shall not be permitted. Members shall be warned in writing of such abuse. Second or subsequent offenses shall result in a fine levied against the Member in such an amount as shall be determined by the Board of Directors. Continuing abuses may result in termination of Membership.

#### **Section 6. Selling Water**

El Valle Water Alliance will not sell water to any entity outside of the merged or active associations. El Valle Water Alliance protects its water rights and wet water from losses to outside entities. Short term construction projects that benefit the communities are allowable with Board Majority approval.

#### **Section 7. Shortages**

In times of water shortage or drought as determined by the Board of Directors, the Board shall determine how water rationing rules shall be applied. The following sequence shall govern the delivery of water:

- A. Water shall first be delivered for in-door domestic uses and volumes delivered to each household shall be set at a maximum quantity to protect the health and safety of the water customers according to the Rules and Regulations of the Association.
- B. If sufficient supplies exist, then water shall next be delivered to commercial customers at quantities sufficient to meet efficient uses, and subject to implementation of any mandatory conservation measures set out in the Rules and Regulations of the Association.
- C. Other uses will be considered after satisfying A. and B. above.

#### **Section 8. Property of the Association**

Any property and/or records that belong to the Association, which is in possession of Board members, employees, or agents of the association, must be returned to the association within fifteen (15) days of resignation, termination, dismissal, or end of term.

#### **Section 9. Water in exchange for Service**

No services, contract, employment, or easements for the association may be compensated by reduced water rates, free water, free or reduced hook ups, etc. Compensation must be in U.S. currency and recorded in the books of the Association.

#### **Section 10 Cancel and Sale of Membership for Non-payment**

The Board of Directors shall have the authority to cancel and sell the membership of any member in the event of non-payment of any water charges or assessments owing by such member within thirty (30) days after demand for payment by mail, properly addressed to such delinquent member. In lieu of such cancel and sale of membership, the Board of Directors may purchase the membership on behalf of the Association at a price determined by the Board to be the fair value of the membership provided that in the event of either a sale of the membership or the purchase thereof by the Association, the proceeds shall be first applied to the payment of any indebtedness due the Association by the delinquent member.

## ARTICLE IX

### Amendments to the Bylaws

These bylaws may be repealed or amended by a majority vote of a quorum of the Members present at any annual meeting of the Association, or at any special meeting of the Association called for that purpose. The Members shall not have the power to change the purposes of the Association so as to decrease its rights and powers under the laws of the state, or to waive any requirement of any provision for the safety and security of the property and funds of the Association or its Members.

So long as any indebtedness is held by or guaranteed by the USDA/Rural Development, the members shall not have the power to amend the bylaws as to effect a fundamental change in the policies of the corporation without the prior approval of the USDA/Rural Utilities Services in writing.

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We the undersigned below Secretary and President of El Valle Water Alliance, an Association existing under the laws of the State of New Mexico, hereby certify that the foregoing is a true and correct copy of the Bylaws, together with all amendments thereto, as of this 16 day of June 2014, which were duly adopted by vote of the Membership on June 16, 2014.

(Seal)

Dwain St. Sena  
Secretary  
Ramon M. Lucero  
President

