



FREMONT CONSERVATION DISTRICT

DITCH COMPANY BYLAWS

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March 20, 2026



Bylaws: The Basics

- What are they?
 - Internal rules of the company. Bind company action. Cannot be inconsistent with statute, control otherwise.
- What are they not?
 - Articles of Incorporation (public/outward facing/on file with Sec. of State – stream, POD, reservoir, etc.)
 - Rules and Regulations (nitty gritty of Ditch Co. operations, how to obtain water, etc.)
- Basic Provisions:
 - Meetings
 - Assessments
 - Stock
 - Directors / Officers
 - Division of Water
- “Advanced” Provisions:
 - Right of First Refusal
 - Catlin Provision
 - Modifications to Ditch / Easement
 - Right to run “foreign water”



Meetings

- Annual Meeting
 - When and where?
- Special Meeting
 - Who can call?
 - Agenda and notice – what has to be on it?
- Quorum
 - Usually majority of SHs
- Voting Rights
 - Usually pro-rata SH ownership



Section 2. Special Meetings

Special meetings of the stockholders of the company may be called at any time by resolution of the Board of Directors, or by the President and Secretary, and the President or Secretary shall call a special meeting upon receipt of a written request of the holders of one-half of the issued and outstanding stock of the company. The notice of a special meeting shall state the business thereof in addition to the time and place and no business shall be transacted at any special meeting except such as shall be mentioned in such notice.



Assessments

- Unique feature of Mutual Ditch Company
- Must conform to C.R.S. 7-42-104
- Must be approved by stockholders
- Special assessments



Stock

- What is it? – stock represents a pro-rata ownership of specific water right and infrastructure
- Common issues:
 - Delinquencies: Best practices (C.R.S. 7-42-104(4))
 - 18% interest per year compounded annually
 - If delinquent after certain amount of time, empower Company to make forfeiture or sale
 - Provide 30 days actual or written notice notice of public sale to stockholder and publish in local newspaper
 - Sealed bids to Ditch Company, sell to highest bidder
 - Proceeds pay off unpaid assessments, anything over that paid to delinquent stockholder
 - Lost Certificates: Best practices (C.R.S. 7-42-113-115)
 - File sworn statement of loss and demand new
 - Publication requirement



“The benefit derived from the ownership of such stock is the right to the exclusive use of the water it represents, the water being divided pro-rata according to the number of shares of stock held by each shareholder.” – *Jacobucci v. District Court*, 541 P.2d 667 (Colo. 1975)



Request for Documents

- Issue: Ditch Companies occasionally get requests to review documents
 - Stockholder lists
 - Agreements
 - Payments
- Best Practice: include a bylaw provision outlining request and inspection process

“We hold that shareholders of a mutual ditch company have a common law right to inspect the ditch company’s shareholder list.”

Left Hand Ditch Co. v. Hill, 933 P.2d 1 (Colo. 1997)





Directors/Officers and their Duties

- **Directors** (adopt policies/supervise) /
Officers (implement policies and day-to-day operations)
 - How many
 - When do they meet
 - Quorum
 - Who appoints
- **Do Directors / Officers need to be stockholders?**
 - President/VP/Superintendent
 - Secretary/Treasurer
- **Districts?**
- **Duties**
 - In addition to specific responsibility usually identified in bylaws, implied duties
 - Duty to keep ditch in good repair (7-42-108)
 - Duty to Act within Authority
 - Duty of Care
 - Duty of Loyalty and avoid improper conflicts of interest

Division of Water

- Generally: Water provided to stockholders must be divided pro-rata
- Best Practices: describe basics in bylaw provision
 - Diversion out of main ditch
 - Maintenance of structures in main ditch
 - Changes to locations

“The corporation is not only obligated to furnish a proper proportion of water to each of its shareholders, but it is liable in damages for the failure to do so.”

Rocky Ford Canal Co. v. Simpson, 5 Colo.App. 30, 36 P. 638 (Colo.1894)





Right of First Refusal

- Generally: stock can be sold freely, like other personal or real property, but the sale can be conditioned by bylaws.
- Many bylaws include a right of first refusal provision
 - Usually where owner of stock desires to sell stock to a non stockholder separate from the land on which stock is used
 - Requires stockholder to offer the stock to the Company or other stockholders on the same basis as offered to the stockholder by the nonstockholder
 - Secretary then mails offered basis to all Company stockholders with timeframe for Company or stockholder to match offered basis
 - If no Company or stockholder match, can sell to non stockholder
- Pros: may keep more water in ditch system, may increase value of stock
- Cons: process can be burdensome, may deter offers from non stockholders





Catlin Provision

- Purpose: to allow the Ditch Company to have some control over changes of its shares to other uses.
 - Water rights represented by stock can be changed from “irrigation” use to many other uses
- A “Catlin Provision” requires a stockholder desiring a change in water court to apply to the Ditch Company first
 - Should include proposed changed uses, terms and conditions to prevent injury to the Company and its stockholders
 - Company can then approve, approve with conditions, or deny
 - Requires reimbursement for legal / engineering expenses
- Pros: protects Company and stockholders, can keep water in the ditch
- Cons: makes it more costly to change types of use





Modifications to Ditch / Easement

Purpose: control development / modifications to ditch

Generally: C.R.S. 7-42-103 (Right of Way), CO Constitution

- nearly all old ditches have prescriptive easements on land they cross
- law is that anyone seeking to modify a ditch / ditch easement, on their property or not, must get consent of the ditch company or ditch owner or a declaratory judgment from court (*Roaring Fork Club L.P. v. St. Jude's Company*, 36 P.3d 1229 (Colo. 2001)).

Best Practices for Bylaws:

- Require that landowners or people seeking to cross the ditch first get permission of Ditch Company
- Require an agreement where changes are authorized – record it in County records
- Require licensee to pay for legal / engineering
- Require inspection





Foreign Water

- Generally: Ditches carry the decreed water rights they were established for but often stockholders want to divert “nonshare” or “foreign water” in the “excess capacity” of the ditch, this can include “stormwater”
- Issues: do stockholders have a right to the “excess capacity”?
 - Depends on the custom of the ditch
 - Does pro-rata ownership of water rights/infrastructure extend to the “excess capacity”?
- Best Practices: Address in bylaws, require agreement
 - Often in provision regarding division of water, diversion boxes, etc.
 - Who can grant agreement for excess capacity? Directors? Or stockholder vote?
 - Address inflation index, per acre foot charge, minimum charge, water quality, etc.
 - Compensation should not be based on cost to company but value to the other party.



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