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RECEIVED
FEB 24 1981
WATER RIGHTS

ARTICLES OF INCORPORATION
OF THE
BIRCH CREEK IRRIGATION COMPANY

*Re: upper San Peteh
system*

KNOW ALL MEN BY THESE PRESENTS:

That we, the undersigned, all residents of Fairview or Mt. Pleasant, Sanpete County, State of Utah, have this First day of April, 1974, voluntarily associated ourselves together for the purpose of forming a corporation under the laws of the State of Utah.

ARTICLE I

The name of this corporation shall be the "Birch Creek Irrigation Company".

ARTICLE II

This corporation shall be a consolidation of two corporations heretofore in existence, namely the Fairview Birch Creek Irrigation Company and the Mt. Pleasant Birch Creek Irrigation Company. This corporation shall be and become the successor to said previously existing corporations and shall take over, hold and operate for the benefit of its stockholders, all of the properties and assets of said previously existing corporations in accordance with the agreement for consolidation executed by said previously existing corporations and the laws of the State of Utah.

ARTICLE III

Upon incorporation, this corporation shall immediately assume, take over and pay when due, all claims, demands and obligations which shall at the time of said consolidation be owed or payable by either or both of said previously existing corporations.

ARTICLE IV

The names and places of residence of the incorporators and the number of shares and classes of stock actually subscribed by each are as follows:

<u>NAME</u>	<u>RESIDENCE</u>	<u>CLASS A</u>	<u>CLASS B</u>
Marvin Mayers	Mt. Pleasant, Utah 84647	147.5	98
L & M	Mt. Pleasant, Utah 84647	72.5	12.5
George E. Collard, Jr.	Fairview, Utah 84629	117.75	21
Anderson Brothers Sheep Company	Fairview, Utah 84629	73	15
G. Worth Bench	Fairview, Utah 84629	65.58	29
Elmer Shelley	Mt. Pleasant, Utah 84647	45.75	16

ARTICLE V

The time for which this corporation is to exist is for a period of One Hundred Years.

ARTICLE VI

The principal place of business of this corporation shall be Fairview, Sanpete County, State of Utah.

ARTICLE VII

This corporation is organized for the purpose of owning, holding, managing, regulating and controlling all the waters of what is known as Birch Creek, a natural stream of water situated near Fairview, in Sanpete County, State of Utah, and of water issuing from a well situated in Birch Creek drainage area, said water running into Birch Creek, with all ditches, canals, headgates, dams, pipes and all other appurtenances used for the diversion, managing, regulating and controlling said water, also such other water and water rights as may be acquired by this company.

For carrying out the purposes set forth, this corporation shall have the power to acquire by purchase, donation, exchange or condemnation,

lands or interests therein or water rights or property of any kind useful in carrying out the purposes set forth and to transfer and convey to the State of Utah or the United States, with or without monetary consideration therefore, any property so acquired, and the power to borrow money, incur indebtedness, issue bonds, contract with the State of Utah or the United States or other parties, municipalities, or corporations or individuals, for the purchase, acquisition, sale or lease of water, water rights, lands, easements, dams, reservoirs, canals, irrigation works, drainage works, pumping plants or parts thereof or interest therein, water works and other property incidental to the operation of this corporation; also to contract with the State of Utah or the United States, or their lawful agencies or other parties, municipalities, corporations or individuals, for the construction of or to construct all such works and to secure the benefits of Acts of Congress and the Utah State Legislature, and to do all other acts and things necessary to carry on the pursuit and business agreed upon; also to mortgage, pledge or otherwise encumber its property, real or personal, to secure the payment of its debts or obligations and to acquire, own, sell or otherwise dispose or exchange its own stock or stock of other corporations.

The said Class A and Class B water rights shall be distributed as by Decree directed.

Water will be furnished only to the stockholders of this corporation.

ARTICLE VIII

The capital stock of this corporation shall be \$30,060.00 divided into 1165 shares of Class "A" stock of the par value of \$20.00 per share and 676 shares of Class "B" stock of the par value of \$10.00 per share. Upon the incorporation of this corporation there shall be issued the shares of stock subscribed for in this corporation and which are deemed to have been paid up in full upon the constituent corporations having conveyed their

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respective property and assets to this corporation and the shareholders respectively thereof having surrendered their shares and certificates in said respective constituent corporations. No additional stock shall be issued beyond the stock which shall be issued in exchange for the property and assets of said constituent corporations and the corresponding shares and certificates thereof.

ARTICLE IX

The officers of this corporation shall be as follows: a President, a Vice President, a Secretary-Treasurer, and two Directors, all of whom shall form a Board of Directors, five in number. No person shall be eligible to hold office unless he be the owner of at least five shares of the Capital Stock of the Company on the books of the corporation. The term of office of the officers of the corporation shall be for two years and until their successors are elected and qualified. The Birch Creek Irrigation Company shall give a good and sufficient bond in the sum of \$2500.00 for the faithful performance of the duties of the Secretary-Treasurer of the Birch Creek Irrigation Company. Such bond is to be approved by the Board of Directors.

ARTICLE X

An annual meeting of the stockholders shall be held on the first Thursday in the month of February of each year at Fairview, Sanpete County, Utah.

ARTICLE XI

The officers of the Company shall be elected biannually at the annual stockholders' meeting by the stockholders. Each stockholder shall be entitled to one vote for each share of Class "A" stock that stockholder owns. Stock may be voted by proxy on receipt of statement of Power of Attorney.

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The five persons receiving the highest number of votes cast at any election shall be elected to the Board, and the Board of Directors shall designate offices of President, Vice President, Secretary-Treasurer, and two Directors. If there shall be a failure to hold any election at the time herein specified, a meeting may be called by the Directors for the election at a subsequent date, of which meeting the stockholders shall be given at least ten days previous notice in writing, stating the object of the meeting, which notice shall be mailed to each stockholder or delivered to him personally.

ARTICLE XII

Special stockholders' meeting shall be called by the President, by any three Directors or members of the Board of Directors, or by any ten stockholders, by written notice mailed to each stockholder of record to his last known address as shown by the books of the corporation and by posting a copy of such notice in three public and conspicuous places in Fairview and Mt. Pleasant, Sanpete County, Utah, both such mailing and posting to be at least ten days prior to the date of said meeting.

ARTICLE XIII

Any officer may be removed and his office declared vacant by a majority vote of at least two-thirds of the stock of the corporation heretofore subscribed, for misconduct, or other just cause, at any meeting called for that purpose, of which meeting and the purpose thereof, the offending officer and the stockholders shall be given at least ten days previous notice in writing, mailed to each or delivered to him personally. The resignation of any officer may be given in writing, addressed to the Board of Directors, and may be acted upon by the Board of Directors at any meeting.

Any vacancy in the Board of Directors shall be filled by the remaining Directors by appointment and such appointment shall hold until

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the next regular election and until his successor is elected and qualified.

ARTICLE XIV

Three members of the Board of Directors shall constitute a quorum at any meeting of the Board of Directors and such quorum is authorized and empowered to transact the business and exercise the corporate powers of this corporation.

ARTICLE XV

The business, pursuits and powers of the corporation shall be exercised through the Board of Directors in accordance with law, these Articles of Incorporation and the By-Laws.

The Board of Directors shall have the power to appoint such watermasters, agents and other officers of this corporation as to them may seem necessary and proper, and the stockholders shall adopt such by-laws, rules and regulations for the government and control of the corporation as they shall deem essential and proper.

All matters voted upon in annual and special stockholders meetings, duly called and held, shall be decided by the majority of the stock represented. All matters voted upon at lawful meetings of the Board of Directors shall be decided by the majority vote of the Board of Directors.

ARTICLE XVI

The Board of Directors of the said corporation, for the purpose of paying expenses, conducting the business and paying the debts of said corporation, may levy and collect assessments in the manner and form and to the extent hereinafter provided, but no one assessment shall exceed 25 per cent of the amount of the Capital Stock herein provided for nor shall assessments be levied more often than once in ninety days.

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No assessment, as aforesaid, shall be levied except by order of a majority of the said Board of Directors and such levy shall be entered upon the records of the corporation, but no assessment shall be levied while any portion of any previous assessment remains unpaid or uncollected, except in cases where all the powers of the corporation have been exercised in accordance with the terms hereof for the purpose of collecting such previous assessment, or is restrained by injunction or other process, in which both cases, a further assessment may be levied and collected according to these articles.

Every order levying an assessment must specify the amount thereof, when, to whom and where payable, and fix a date, subsequent to the full term of publication of the assessment notice, on which the unpaid assessment shall be delinquent, which shall not be less than 20 or more than 60 days from the date the assessment is declared due and payable.

Immediately upon making an assessment, the Secretary of said corporation shall cause to be published or mailed, as hereinbefore provided for annual and special meetings, a notice thereof, in conformity with these articles. Said publication of said notice to be made at least once a week for five consecutive weeks in a newspaper of general circulation in Sanpete County, but in lieu of said publication, said Secretary, or on his default any other Director, may serve said notice by delivering a copy thereof to each stockholder of said corporation or by mailing the same to the address of each stockholder through the United States mail, and making affidavit of such service.

If any portion of the assessment mentioned in said notice remains unpaid on the day specified therein for declaring the stock delinquent, the Secretary shall, unless otherwise ordered by the Board of Directors, cause to be published, served or mailed, in the manner aforesaid, a notice, which

shall state in substance the levy of the assessment, the stock which is delinquent, the amount due on such delinquent stock, together with the time and place of sale of such delinquent stock, specifying the number of shares upon which assessments are unpaid, with the number of the certificate covering said shares and amount due thereon, together with the fact that no certificate or certificates have been issued for such shares, which said notice of sale shall be signed by the Secretary of said corporation and published, served or mailed, as aforesaid, all of which shall be proven by the affidavit of the said Secretary, which affidavit shall be prima facie proof thereof, and which said notice shall be so published, served or mailed at least 20 days previous to the date of the sale.

By the publication, service or mailing of the notice of sale as aforesaid, said corporation shall acquire and have jurisdiction to sell and convey a perfect title to all the stock described in said notice of sale upon which any portion of the assessment or costs of advertising remains unpaid at the hour appointed for said sale, but must sell no more of said stock than is necessary to pay the assessments due and costs of the sale. Said sale shall be made by the Secretary of said corporation, or such other officer as may be appointed by the Board of Directors, to the highest bidder for cash. The person offering at said sale to pay the assessments and costs for the smallest number of shares or fraction of a share, shall be deemed the highest bidder and the stock so purchased shall be transferred to him on the books of the corporation on payment of the assessment and costs. In default of bidders, said corporation, by its Secretary or any officer thereof, may purchase said stock at the amount of assessment and costs due thereon and any stock so purchased by the said corporation shall be subject to the disposal of the Board of Directors.

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The time for any sale of delinquent stock as aforesaid, may be extended from time to time, not exceeding 60 days, by order of the Board of Directors, in which case notice of each extension shall be appended to and published with the original notice of sale.

No assessment shall be invalidated by reason of any irregularity in either the notice of assessment or sale nor in the sale, but in case of any substantial irregularity, such assessment shall stand valid, but publication, service or mailing of notice must begin anew.

The publication, service or mailing of notice required by these articles must be proved by the affidavit of the printer, foreman or principal clerk of the newspaper in which the same was published, if published, and the affidavit of the Secretary or other person mailing or serving such notices, if mailed or served, together with the affidavit of the Secretary or other person making such sale, which shall be prima facie evidence of the time and place of sale, of the quantity and particular description of the stock sold, to whom and for what price sold and of the fact of the purchase money having been paid; said affidavits must be filed in the general office of said corporation.

ARTICLE XVII

The private property of the stockholders shall not be liable for the debts and obligations of the corporation, or any of them.

ARTICLE XVIII

All certificates of stock shall be signed by the President and the Secretary and shall be of such design as may be determined upon by the Board of Directors. No certificate shall be issued until the same shall have been fully paid for and the corporation shall retain a lien upon stock for any delinquency due to the corporation thereon and no transfer upon

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the books of this corporation shall be made of any stock upon which the corporation has a lien.