

REVISED AND RESTATED

BY-LAWS OF THE FLATHEAD COUNTY WATER DISTRICT NUMBER 101

ARTICLE I

Organizational Authority

Title 7, Chapter 13, Section 2203 of the Montana Code Annotated ("MCA") authorizes the formation and incorporation of county water districts pursuant to the requirements of the remainder of Parts 22 and 23. The Flathead County Water District Number 101 was formed by formal election, voted by the residents and landowners within the designated boundaries of the District located in Flathead County, Montana, and duly conducted in accordance with 7-13-2208(2) in 1968. A Certificate of Incorporation for the District was thereafter issued by the Montana Secretary of State on July 29, 1968. Acting by resolution unanimously adopted on October 8, 2015, the Board of Flathead County Commissioners ordered the appointment of the initial Board members of the District for staggered terms.

ARTICLE II

Name and Boundaries

The name of the corporation is the Flathead County Water District Number 101. The principal office of the District shall be located at such place as the Board of Directors may from time to time determine. The mailing address of the District is P. O. Box 1141, Columbia Falls, Montana 59912. The properties constituting the District are situated in Township 30 North, Range 20 West, Flathead County, Montana. The boundaries of the District are as shall be designated by the Board of Directors from time to time in accordance with all applicable laws and statutes.

ARTICLE III

Purpose

It is the duty of the District and each Director to maintain and provide a clean and healthful environment for present and future generations, and to do all things necessary and proper to maintain and operate these facilities as required by law and these By-Laws (1972 Montana Constitution, Article IX, 1(1)). In addition, the District and Board of Directors shall exercise the powers enumerated in Title 7, Chapter 13, Parts 22 and 23, MCA.

ARTICLE IV

Seal

The seal of the District shall have inscribed thereon the words: "Flathead County Water District 101", and the year of incorporation of the District, "1968". The secretary shall have custody of the seal.

ARTICLE V

Fiscal Year

The fiscal year of the District shall begin July 1 of each year and shall end on June 30.

ARTICLE VI

Board of Directors

1. Governing Body.

The Board of Directors is the governing body of the district (Section 7-13-2231(2), MCA). All powers of the District, as provided by Title 7, Chapter 13, Parts 22 and 23, MCA, or necessarily implied, shall be vested in the Board of Directors.

2. Composition.

The Board of Directors ("Board") shall consist of five (5) elected members, as prescribed by Section 7-13-2232(1), MCA. The five positions of the Board shall be numbered, one through five, and such numbered Director positions shall serve as reference for future elections and vacancies.

3. Qualifications.

A Director shall be an owner or lessee of real property within the District or a resident therein (Section 7-13-2233, MCA).

4. Election.

The procedure and mode of nomination and election for Directors shall be as provided in Section 7-13-2235 through 7-13-2262, MCA. The elections shall be held under the supervision of the Flathead County Election Department, following Montana State Statutory Codes (Title 7, Chapter 13), MCA.

5. Recall of Directors.

Each director, as an incumbent of an elective office, whether elected by popular vote for a full term, elected by the Board of Directors to fill a vacancy, or appointed by a majority of the board of county commissioners for a full term, is subject to recall by the electors of the District in accordance with Title 2, Chapter 16, Part 6 of Section 7-13-2261, MCA.

6. Term of Office.

Except as provided herein or by law, the term of office for directors shall be four (4) years from and after the date of their election (Section 7-13-2234(2), MCA). Directors shall hold office until the election and qualification, or appointment and qualification of their successors (Section 7-13-2234(1), MCA). The initial term of office for Positions 1, 2 and 3 shall be two (2) years. The second and subsequent term of office for Positions 1, 2 and 3, and all terms of office for Positions 4 and 5, shall be four (4) years (Section 7-13-2234(3)(a), MCA). The first regular election for positions on the Board of Directors shall be in the off year between elections for local government officials (Sections 7-13-2234(5) and 7-13-2236(1), MCA).

7. Vacancies.

Vacancies on the Board of Directors shall be filled by the remaining directors (Section 7-13-2262(2), MCA).

8. Committees and Advisors.

The Board shall determine the necessity for any committees, either temporary or standing, and shall select and appoint the members of these committees by resolution after having received appropriate public input. The Board may appoint individuals to assist the Board in an advisory capacity. Such advisors may counsel the Board on issues of grant resources, general perspectives, and other issues and/or duties as deemed appropriate by the Board. Committees and advisors may not act on behalf of the Board, but may advise the Board on matters of special interest.

9. Meetings.

Commencing in 2021, regular meetings of Directors shall be held quarterly, on the first Tuesday of every third month at 7pm at the Badrock Volunteer Fire Department Station No.1, Montana Highway 206, Columbia Falls, Montana, or if that space is unavailable at an alternate place located no further than 5 miles outside the District, designated by the President.

If a Federal holiday falls on the regular meeting date, the meeting will be moved to the following Tuesday. Special meetings may be called by the President or any two Directors. If there is no pertinent business to be considered at a regular meeting, the President may cancel the meeting by notifying each Director at least forty-eight (48) hours prior to the time set for such meeting. If any Director objects, the meeting shall take place.

Committees of the Board may meet on a regular basis and may hold special meetings. All meetings of the Board and its committees, whether corporal or by telephone or other means of electronic communication, shall be open to the public and subject to the public participation and notification requirements of Title 2, Chapter 3, MCA. A meeting of the Board or a committee of the Board, whether corporal or by telephone or other means of electronic communication, is defined as the convening of a quorum of the Board, or a quorum of committee members, to hear, discuss, or act upon a matter over which the Board, or a committee, has supervision, control, jurisdiction, or advisory power (Section 2-3-202, MCA). A quorum is represented by a majority of the total members of the Board or committee. All meetings and the conduct of business at those meetings shall be guided by Robert's Rules of Order, Newly Revised. No Director shall sit in hearing or vote on any matter in which they are personally or financially interested. (Section 2-2-125, MCA.)

Official action at Board meetings can only occur through resolution or ordinance and with a quorum of Directors present. Minutes of all meetings required by statute to be open, fully reflective of all business transacted at the meeting, shall be kept and shall be available for inspection by the public. A consent agenda may be presented by the President at the beginning of a meeting. Items may be removed from the consent agenda on the request of any member of the Board or by any public participant in the meeting. Items not removed may be adopted by general consent without debate. Removed items may be taken up either immediately after the consent agenda or placed later on the agenda at the discretion of the president.

The order of business shall be (unless changed by acclamation):

- I. Call to Order and Roll Call.
- II. Reading and approval of the minutes.

- III. Public comment.
- IV. Operator's report.
- V. Financial report.
- VI. Correspondence.
- VII. Old business.
- VIII. New business.
- IX. Questions and answers with District staff.
- X. Adjournment.

10. Public Meeting Notices.

Notices of regular, special and public meetings of the Board of Directors shall be posted at least three (3) days prior to the meeting on the district website at <https://fcwd101.wordpress.com/>. Notice of Special Meetings and Public Hearings shall be published as required by law.

11. Ordinances and Resolutions.

The Board shall act only by Ordinance or Resolution (Section 7-13-2274(3), MCA). An ordinance or resolution may not be passed or become effective without the affirmative votes of at least a majority of the total members of the board. The ayes and noes for passage of all ordinances and resolutions must be taken and included in the Minutes of the meeting (Section 7-13-2275(1), MCA). The enacting clause of all ordinances passed by the Board shall be the following words: "Be it ordained by the Board of Directors of the Flathead County Water District Number 101 as follows: . . . " All ordinances and resolutions shall be signed by the President of the Board and attested to by the secretary (Section 7-13-2275(2), MCA).

12. Compensation.

Each member of the Board of Directors shall receive a monthly salary of \$60. The Board may elect to waive Directors' compensation during development of the budget each fiscal year.

ARTICLE VII

Duties and Offices of the Board of Directors

1. Duties of the Board.

The Board of Directors, subject to restrictions of law and these Bylaws, shall exercise all of the powers of the District, and without prejudice to or limitation upon their general powers, it is hereby expressly provided that the Board of Directors shall have, and are hereby given full power and authority in respect to the matters set forth in Sections 7-13-2201, MCA, et seq., and 7-13-2301, MCA, et seq., and hereinafter set forth to be exercised by ordinance and resolution duly adopted by the Board. Signatures of any two (2) Board members are required on checks written on District accounts. The Board shall indemnify each Director from any and all liability for acts and omissions accomplished as a member of this Board within the scope and authority of their duties while serving on this Board.

The Board of Directors shall fix all water rates and shall oversee the collection of water charges. These rates are intended to pay for the operating expenses of the District, interest on any bonded debts, and as far as possible,

provide a fund for the payment of principal on any debts as they become due. (Sections 7-13-2340, MCA through 7-13-2348.)

Specific duties of the Board, without prejudice to or limitation upon the general duties of the Board include, but are not limited to:

- A. Selection, appointment, prescription of duties, establishment of appropriate compensation, and removal, where necessary or expedient, of all officers and agents of the District;
- B. Prescription, adoption and amendment, from time to time, of such equitable uniform rules and regulations as, in its discretion, may be deemed essential or convenient for the conduct of the business and affairs of the District and the guidance and control of its officers and employees, and to prescribe adequate penalties for the breach thereof; and
- C. Establishment, regular review of, and amendment of an annual financial budget for the District. The budget shall be approved by a majority of the Board prior to July 1 of each year;
- D. Completion of an annual independent audit of the books and accounts for the District; and
- E. Review of rates, charges and taxes levied or assessed by the District as often as deemed necessary, but at least bi-annually (Section 7-13-2301(2), MCA), to ensure that income and revenue will be adequate to meet the needs of the present and future budgets.

2. Election of a Board President and Vice President.

The Board of Directors shall elect a President and a Vice President who shall then serve for a term of one (1) year or until successors are elected. The Board shall hold annual elections for these positions.

3. Duties of the Board President.

The President shall sign all resolutions, ordinances, and contracts on behalf of the District and perform such other duties as may be imposed by the Board of Directors (Sections 7-13-2272 & 7-13-2275(3), MCA). The President shall also, when present, preside over meetings of the Board and shall convey all directives from the Board to other District employees as necessary and appropriate. The President shall have general charge over the affairs of the District, subject to the Board of Directors. The President shall also appoint Board members to committees as may be necessary for the affairs of the District.

4. Duties of the Board Vice President.

In the President's absence, inability or refusal to act, the Vice President shall perform the duties of the President, and when so acting, shall have all the powers of, and be subject to all the restrictions of the President; provided, however, that in case of death, resignation or disability of the President, the Board of Directors may declare the office vacant and elect a successor. The Vice President shall also perform such other duties as from time to time may be assigned to him or her by the President and the Board of Directors.

ARTICLE VIII

Offices and Duties of Administrative Personnel

1. Appointment.

Without limitation to the creation of additional offices as deemed necessary and appropriate by the Board for the conduct of the business of the District, the Board shall appoint by a majority vote: a general manager, a secretary, and an auditor/treasurer. No director shall be eligible to the office of general manager, secretary, or auditor/treasurer. The general manager, secretary and auditor/treasurer shall receive such compensation as the Board shall determine, and each shall serve at the pleasure of the Board. (Section 7-13-2277, MCA.) The general manager, secretary, and auditor/treasurer, and all other employees or assistants of the District who may be required to do so by the Board of Directors, shall give bonds to the District conditioned for the faithful performance of their duties as the Board from time to time may provide.

2. Duties.

A. General Manager. The general manager has full charge and control of the maintenance, operation, and construction of all works and systems of the District, with full power and authority to employ and discharge all employees and assistants at pleasure and prescribe their duties and shall, subject to the approval of the Board of Directors, fix their compensation.

The general manager shall perform other duties that may be imposed by the Board. The general manager shall report to the Board in accordance with rules that it may adopt (Section 7-13-2278(1), MCA). If a charge for services is due and payable in a fiscal year and is not paid by the end of the fiscal year, the general manager shall, by July 15 of the succeeding fiscal year, give notice to the owners of the property to which the service was provided. The notice must be in writing and:

- (i) must specify the charges owed, including any interest and penalty;
- (ii) must specify that the amount due must be paid by August 15 or it will be levied as a tax against the property;
- (iii) must state that the district may institute suit in any court of competent jurisdiction to recover the amount due; and
- (iv) may be served on the owner personally or by letter addressed to the post office address of the owner as recorded in the county assessor's office (Section 7-13-2301(4)(a), MCA).

On September 1 of each year, the general manager shall certify and file with the county assessor a list of all property, including legal descriptions, on which arrearages remain unpaid. (Section 7-13-2301(4)(b), MCA).

B. Secretary. The Secretary shall be the official record keeper for the Board, oversee the keeping of the minutes of the proceedings of all meetings of the Board, and shall have custody of all books, papers and seal of the District, except as shall be in the charge of any other officer authorized by the Board to have custody. The Secretary shall countersign all contracts on behalf of the District and perform such other duties as may be imposed by the Board (Section 7-13-2278(2), MCA). Minutes of all Board meetings, Resolutions and Ordinances passed

by the Board will be attested by the secretary. All legal documents and notices of Public Hearings that require certification of Board action will be attested by the Secretary.

C. Auditor/Treasurer. The auditor/treasurer is charged with the duty of creating and maintaining a system of auditing and accounting that must completely and at all times show the financial condition of the District. The auditor/treasurer shall draw warrants to pay demands made against the District when the demands have been first approved by at least three (3) members of the Board and the general manager (Section 7-13-2278(2), MCA). The auditor/treasurer shall perform other duties that may be imposed by the Board.

ARTICLE IX

Finance and Taxation

1. Loans and Indebtedness.

No loans shall be contracted on behalf of the District and no evidence of indebtedness shall be issued in its name unless authorized by a resolution of the Board. Such authority shall be confined to specific instances.

2. Checks, Drafts and Orders.

All checks, drafts or other orders for the payment of money, notes or other evidences of indebtedness issued in the name of the District shall be signed by two (2) Directors.

3. Charges for Services.

The Board of Directors shall fix all water rates and shall, through the general manager, collect the charges for the sale and distribution of water to all users. The Board, in the furnishing of water or other services and facilities, shall fix such rate, fee, toll, rent, or other charge as will pay the operating expenses of the District, provide for repairs and depreciation of works owned or operated by it, pay the interest on any bonded debt, and so far as possible, provide funds for the payment of the principal of such debt as it may become due. Notwithstanding any other provision regarding charges for services governed by Section 7-13-2301, MCA, the Board may adopt a system of rates, fees, and charges by ordinance to require that each recipient of treatment works services pays its proportionate share of the costs of operation, maintenance and replacement and to require industrial users of treatment works to pay their proportionate share of the capital cost of construction of the treatment works which is allocable to the treatment of that industrial user's wastes.

4. Levy of Taxes.

The District may levy taxes to meet bond obligations and other expenses as provided by Section 7-13-2302 through 2310, MCA.

5. Bonded Indebtedness.

Whenever the Board of Directors deems it necessary for the District to incur a bonded indebtedness, it shall by a resolution so declare and state the purpose for which the proposed debt is to be incurred, the land within the district to be benefitted thereby, the amount of debt to be incurred, the maximum term the bonds proposed to be issued shall run before maturity, and the proposition to be submitted to the electors. In addition, the provisions

of Section 7-13-2321 through 2331, MCA, shall govern the procedure for acquisition of bonded indebtedness by the District.

6. Governmental Grants, Loans or Other Financial Assistance.

The District may be treated as a municipality when applying for a grant, a loan, or other financial assistance from the State.

7. Public Hearing Required.

Except as provided in Section 7-13-2275(5), MCA, prior to the passage or enactment of an ordinance or resolution imposing, establishing, changing, or increasing rates, fees, or charges for services or facilities, the board shall order a public hearing. Notice of the public hearing must be published as provided in Section 7-1-2121, MCA. The published notice must contain:

- A. The date, time, and place of the hearing;
- B. A brief statement of the proposed action; and
- C. The address and telephone number of a person who may be contacted for further information regarding the hearing.

The notice must also be mailed to all persons who own property in the District and to all customers of the District at least seven (7) days and not more than thirty (30) days prior to the public hearing. The mailed notice must contain an estimate of the amount that the property owner or customer will be charged under the proposed ordinance or resolution (Section 7-13-2275, MCA).

ARTICLE X

Insurance

The District shall purchase appropriate insurance as determined by the Board to protect its Board members, officers, employees, and property from any potential loss and/or loss expense.

ARTICLE XI

Conflict of Interest Prohibited

Members of the Board, advisors to the Board, officers of the District, staff members and employees shall at all times act in good faith with respect to the duties of their respective offices. They shall not use their positions or knowledge gained therefrom, so that a conflict of interest might arise between the interest of the District and that of the individual. A full disclosure of all facts pertaining to a transaction that is subject to any degree of doubt concerning the possible existence of a conflict of interest shall be made to the President of the Board of Directors before consummating the transaction. If the President is involved in the transaction, then disclosure shall be made to the Vice President of the Board of Directors. Record of the disclosure shall be recorded in the minutes of the next Board meeting, however specific details of the content of the disclosure are not required.

A conflict of interest can be considered to exist in any instance where the actions or activities of an individual on behalf of the District also involve an improper or unfair gain or advantage to any party, or has an adverse effect on the District's interests.

ARTICLE XII

Indemnification

No Board member, officer, or employee of the District shall be individually liable for any act or omission made in the course and scope of his official capacity on behalf of the District as long as the individual:

- A. Conducted him or herself in good faith;
- B. Reasonably believed that his or her conduct in his or her official capacity was in the best interests of the District;
- C. That in all other cases his or her conduct was at least not opposed to the best interests of the District;
- D. That he or she had no reason to believe that his or her conduct was unlawful;
- E. That he or she does not derive an improper personal benefit from his or her conduct; and
- F. That his or her acts or omissions do not constitute willful misconduct, recklessness, or knowing violation of law.

ARTICLE XIII

Amendments

At any regular meeting, these By-Laws may be amended, repealed or added to by the affirmative vote of a three-fifths (3/5) majority of the total members of the Board, so long as the change does not put the District into conflict with the Montana Code Annotated or the administrative rules of the State of Montana. By-Laws may not be amended, repealed or added to at special meetings.

ARTICLE XIV

Annexation

1. All properties serviced by the District must be annexed into the District before water connection(s) are made as provided in Sections 7-13-2341 M.C.A.
2. If the Board of Directors determines that the District has a water facility with a capacity greater than required to meet the needs of the current district, it may by Ordinance, upon petition of contiguous property owners and with the written consent of all property owners to whom the service is to be extended, expand the District to include land, to the extent of excess capacity (Section 7-13-2341 (5) M.C.A.).
3. The property owner(s) of land(s) contiguous with the District shall submit petition(s) of annexation to the Flathead County Water District 101 for review of capacity requirements and availability of excess capacity.

Approval of service requests and subsequent annexation shall be limited to available excess capacity, determined by the Board of Directors at submittal.

4. Upon completion of the review, approval, and statement of available excess capacity remaining at the time, the Board of Directors shall request the Secretary of State, State of Montana, and Flathead County to include all lands petitioned into the revised boundaries of the Flathead County Water District 101 pursuant to Section 7-13-2341 (5) M.C.A.

5. In the event a statement of excess capacity is not possible in order to accommodate an annexation petition, the District may choose to enter into a contract with the interested property owner(s) to develop additional capacity. Said contract will appropriate costs for developing said additional capacity between the District and the property owner(s).

6. In evaluation of the ability to provide new water service, water rights and the current standing with the Montana Department of Natural Resources and Conservation (DNRC), in that regard, will be a consideration of accepting applications for annexation of land parcels into the District.

ARTICLE XV

Validity and Severability

The invalidity of any section, clause, sentence, or provision of these By-Laws shall not affect the validity of any other part of these By-Laws which can be given effect without such invalid part or parts. To this end, the provisions of these By-Laws are to be severable.

KNOW ALL PERSONS BY THESE PRESENTS:

The undersigned President of the Board of Directors of the Flathead County Water District Number 101 DOES HEREBY CERTIFY that the above and foregoing Amended and Restated Bylaws were duly adopted by the Board of Directors of the District on this _____, and that the same now constitute the By- Laws of the Flathead County Water District Number 101.

President

WITNESS MY HAND AND SEAL of the District this _____.

Secretary

Director moved to adopt the By-Laws as amended. Motion seconded by

Director . Motion carried.

AYES:

NAYES:

ADOPTED:

WE, the undersigned, being all of the Directors of the Flathead County Water District Number 101, hereby adopt the foregoing as the By-Laws of the said District.

Harold Herman, President

Russ Barnett, Vice President

Linda Bosworth, Director

Brian Rohletter, Director

(vacant), Director