

2010  
AMENDED AND RESTATED BYLAWS  
OF  
DIAMOND S DITCH  
An Arizona Non-Profit Corporation

These Bylaws are the Amended and Restated Bylaws of the Diamond S Ditch, being duly adopted on the date set forth hereinafter and supersede and modify the Bylaws as recorded in Book 1387, Page 666, *et seq.*, Official Records of Yavapai County, Arizona.

I

OFFICES AND CORPORATE SEAL

1.01 The principal office of the Corporation shall be located in Camp Verde, County of Yavapai, State of Arizona. The Corporation may have such other offices, either within or without the State, as the Board of Directors may determine from time to time.

1.02 A corporate seal shall not be requisite to the validity of any instrument executed by or on behalf of the Corporation, but nevertheless if in any instance a corporate seal be used, the same shall be, at the pleasure of the officer affixing the same, either: (a) a circle having on the circumference thereof date of incorporation and the state of incorporation, and in the center "Incorporated 1978"; or (b) a circle containing the words "Corporate Seal" on the circumference thereof. A corporate seal adopted by the Corporation shall be impressed in the margin adjoining this paragraph.

II

MEMBERS

2.01 Membership in the Corporation as a mutual organization consists of those joining the organization by reason of their interest in obtaining Verde River water via the Diamond S Ditch, and having a vote in its management by reason of their ownership in land served by the Diamond S Ditch. If a parcel of land is held in more than one name, then the landowners must select one person as the voting member for that parcel and provide written notice to the Corporation. Membership is not transferable without a simultaneous transfer of a fee interest in the land being served. Membership remains with the owner of the land served by the Diamond S Ditch, but voting rights may be transferred to a lessee, agent or proxy pursuant to the terms hereof.

2.02 All lands being supplied with water must have a voting member in good standing. Each member in good standing has one vote, either in election of officers or for those matters reserved for decision by the membership as a whole, for each acre, or partial acre, of the parcel entitled to receive water from the Diamond S Ditch.

2.03 A member in good standing is a member current with all dues and assessments, being current prior to the annual meeting, or any special meeting or the date due of any question referred to the members by ballot, or who rights have not been suspended by the Board as provided hereinafter.

2.04 The Board may (either by general resolution or by separate resolutions applicable to one or more, but fewer than all, members) suspend the voting rights of any member who is delinquent in paying any assessment or who has violated, either personally or indirectly by the actions of agents, any provisions of the Articles of Incorporation, the Bylaws or any Rules and Regulations adopted by the Board of Directors of the Corporation.

2.05 The terms "members" or "shareholders" may be used interchangeable for the purpose of this document. Any reference to gender shall be interchangeable.

2.06 Proxies. Any shareholder or member entitled to vote may vote by proxy at any meeting of the shareholders (and at any adjournment thereof) which is specified in such proxy, provided that his/her proxy is executed in writing by the shareholder entitled to vote. A proxy or power of attorney shall be valid for only twelve (12) months from the date of its execution, unless a shorter time is stated in writing by the owner. The burden of proving the validity of any proxy or power of attorney contested or not contested at any such meeting of the shareholders or members will rest with the person seeking to exercise the same. A telegram, facsimile or electronically transmitted directive appearing to have been transmitted by a shareholder may be accepted as a sufficiently written and executed proxy, provided it contains the signature of the member owner in good standing and empowered to vote. All proxies, to be valid for the purpose of voting for or on behalf of any shareholder, shall be filed with the corporate secretary at least two (2) working days prior to the noticed meeting. Failure to file a proxy or power of attorney with the corporate secretary within the time allotted shall be counted for the purposes of determining a quorum for the meeting, but not for the purpose of voting for or against agenda items or matters to be considered by the members.

2.07 All members acknowledge and agree that the Diamond S Ditch requires the ability to inspect, repair and maintain the Ditch, ditch banks, improvements and laterals comprising the Diamond S Ditch. A member shall not place improvements or structures that impede the ability to access the lands adjacent to the Ditch and ditch works.

### III

#### MEETINGS OF MEMBERS

3.01 An annual meeting of the members shall be held in Camp Verde, Arizona in May of each year for the purpose of electing directors and for the transaction of such other business as may come before the meeting, and the date shall be determined by the Board of Directors. If the day fixed for the annual meeting is a legal holiday in the State of Arizona, such meeting shall be held on the next succeeding business day. If the election of directors is not held on the day designated herein for any annual meeting, or at any adjournment thereof, the Board of Directors shall cause the election to be held at a special meeting of the members as soon thereafter as is convenient.

3.02 Special meetings of the members may be called by the President, three members of the Board of Directors, or not less than twenty-five percent (25%) of the members having voting rights in good standing as of the date of the call of the meeting.

3.03 Written or printed notice stating the place, day and hour of any meeting of members shall be delivered either personally or by mail to each member entitled to vote at such meeting, not less than ten (10) nor more than sixty (60) days before the date of such meeting. Such meeting call may be at the direction of the President, by two (2) members of the Board of Directors, or by the required number of members in good standing at the time of the call for the meeting twenty-five percent (25%). In case of a special meeting or when required by statute or by these Bylaws, the purpose or purposes for which the meeting is called shall be stated in the notice. If mailed, the notice of a meeting shall be deemed to be delivered three (3) days after mailing by deposit in the United States mail, addressed to the member at his address as it appears on the records of the Corporation, with postage thereon prepaid.

3.04 In order that the Corporation may determine the members entitled to notice of or to vote at any meeting, or to express consent to corporate action in writing without a meeting, the Board of Directors may fix in advance a record date which shall be not more than sixty (60) nor less than ten (10) days before the date of such meeting, except as otherwise set forth herein. If no record date is fixed, the record date shall be, for determining members entitled to express consent or opposition to any corporate action in writing without meeting, the time and date on which a Board resolution relating thereto was adopted and, for determining members entitled to notice of or to vote at a meeting, 5:00 p.m., thirty (30) days prior to the day before the date on which notice is given, or, if notice is waived by all members, at the commencement of the meeting.

3.05 A record of those members entitled to vote at each meeting shall be retained by the Secretary or persons calling the meeting to order. A member in good standing entitled to vote may assign, by proxy or power of attorney, to another person to vote on any issue before the membership. However, a member, proxy holder or agent under a power of attorney may not act for more than one (1) member at any meeting of the membership.

3.06 After proper notice of an annual meeting has been given in accordance with the Bylaws, a quorum shall be sufficient if a least ten percent (10%) of the total shares entitled to vote are present in person or by proxy. A simple majority of the voting members present will be entitled to conduct all business of the Corporation, and actions by the simple majority of the members present shall constitute an act of the membership.

### 3.07 VOTING:

Except as may otherwise be required by the Corporation's Articles or Section 3.08 below, each member in good standing of the Corporation represented at any meeting of the members or shareholders in person or by one (1) proxy given, will be entitled to one vote per share owned. Each acre or increment thereof owned and receiving water from the Diamond S Ditch shall represent one share. Unless otherwise required by the Corporation's Articles or by applicable law, any question submitted to the shareholders will be resolved by a majority of the votes cast thereon provided that such votes constitute a majority of the quorum of that particular meeting, whether or not such quorum is then present. The voting will be by ballot on any question as to which a ballot vote is demanded, prior to the time the voting begins, by any person entitled to vote on such question; otherwise, a voice vote will suffice. No ballot or change of vote will be accepted after the polls have been declared closed following the ending of the announced time for voting.

3.08 Shares of the Diamond S Ditch held by another corporation, limited liability company, partnership or trust may be voted by such entity's authorized officer, agent or proxy, and such officer, agent or other person so designated may vote such shares in this Corporation in person or by proxy appointed by the entity.

3.09 Shares held by an administrator, executor, guardian or conservator may be voted by such representative, either in person or by proxy, without a transfer of such shares into his name.

3.10 Shares standing in the name of a trustee, other than a trustee in bankruptcy, may be voted by such representative, either in person or by proxy, but no such trustee shall be entitled to vote shares held by reason of the ownership of the land entitled to receive water from the Diamond S Ditch, without a transfer of such shares into his name, as the acting Trustee.

3.11 Shares standing in the name of a receiver, trustee in bankruptcy, or assignee for the benefit of creditors may be voted by such representative, either in person or by proxy. Shares held by or under the control of such a receiver or trustee may be voted by such receiver or trustee, either in person or by proxy, without the transfer thereof into his/her name if authority to do so be contained in an appropriate order of the court by which such receiver or trustee was appointed.

3.12 A member whose shares are pledged shall be entitled to vote such share until the shares have been transferred into the name of the pledgee, and thereafter the pledgee shall be entitled to vote the shares so transferred.

3.13 If shares stand in the names of two (2) or more persons, whether fiduciaries, members of a partnership, joint tenants, tenants in common, tenants by the entirety or tenants by community property or otherwise, or if two (2) or more persons have the same fiduciary relationship respecting the same shares, unless the corporation is given written notice to the contrary and is furnished with a copy of the instrument or order appointing them or creating the relationship wherein it is so provided, their acts with respect to voting shall have the following effect: (1) If only one votes, his act binds; (2) If more than one votes, the act of the majority so voting binds all; and (3) If more than one votes, but the vote is evenly split on any particular matter, the vote will be valid for determination of a quorum, but shall not be counted otherwise.

3.14 Shares standing in the name of a married person but not also standing in the name of his/her spouse with such a designation of mutual relationship on the certificate, may be voted and all rights incident thereto may be exercised in the same manner as provided in Section 3.13.

3.15 Shares representing lands being leased remain with the owner of record, unless the lessee is specifically appointed in writing as provided herein as the voting representative for that parcel.

### 3.16 Organization and Conduct of Meetings.

Each meeting of the shareholders will be called to order and thereafter chaired by the Chairman of the Board of Directors if there is one or, if not, or if the Chairman of the Board is absent or so requests, then by the President, or if both the Chairman of the Board and President are unavailable, then by such other officer of the Corporation or such shareholder as may be appointed by the Board of Directors. The Corporation's Secretary will act as secretary of each meeting of the shareholders; in his absence, The Chairman of the meeting may appoint any person (whether a shareholder or not) to act as secretary at the meeting. After calling a meeting to order, the Chairman thereof may require the registration of all shareholders intending to vote in person, and announce the proxies or agents previously filed. After the announcement of

proxies or powers of attorney at the meeting, no further proxies or changes, substitutions or revocations of proxies shall be valid. The Chairman of a meeting will, among other things, have absolute authority to determine the order of business to be conducted at such meeting and to establish reasonable rules for expediting the business of the meeting (including any informal, or question and answer portions thereof).

3.17 The Board of Directors may submit any contract or act for approval or ratification of the members, either at a duly constituted meeting of the members (the notice of which either includes mention of the proposed submittal or is waived pursuant to the provisions hereof) or by unanimous written consent to corporate action without a meeting. If any contract or act so submitted is approved or ratified by a majority of the votes cast thereon at such meeting or by such unanimous written consent, the same will be valid and binding upon the Corporation as the act of its shareholders.

3.18 All informalities or irregularities in any call or notice of a meeting of the shareholders or in the areas of voting members, proxies, quorums, voting and similar matters, will be deemed waived if no objection is made at the meeting.

3.19 Action by Shareholders Without a Meeting.

Any action required or permitted to be taken at a meeting of the shareholders of the Corporation may be taken without a meeting if a consent in writing, setting forth the action so taken, is signed by all of the shareholders entitled to vote with respect to the subject matter thereof. Such consent shall have the same effect as a unanimous vote of the membership of the Corporation.

3.20 A regular annual meeting of the Board of Directors is to be held immediately after and at the same place as each annual meeting of the shareholders. Regular meetings, other than the annual ones, may be held at such intervals at such places and at such times as the Board of Directors may provide, or as otherwise stated in the Bylaws.

IV

BOARD OF DIRECTORS

4.01 The business and affairs of the Corporation shall be managed by its Board of Directors in all matters except those expressly reserved for the vote of the membership as set forth by law, the Articles or herein. Directors must be voting members in good standing or an agent under a power of attorney of a member in good standing or proxy holder from a member in good standing.

4.02 The number of directors shall be not less than three (3) nor more than seven (7). Directors shall be elected at the annual meeting of members, and each director shall hold office until the next annual meeting of members and the election and qualification of his successor. The terms of each member of the Board shall be staggered so that each member will serve a three (3) year term, but one third (1/3) of the directors shall receive a three (3) year term in 2010; one third (1/3) shall receive a two (2) year term; and the remaining directors shall receive a (1) year term. At each annual meeting thereafter, directors whose terms expire shall receive a three (3) year term. A Director may be elected to serve more than one (1) term.

4.03 A regular meeting of the Board of Directors shall be held without any other notice than this Bylaw immediately after, and at the same place as, the annual meeting of members. The Board of Directors may establish, by resolution, the time and place for holding additional regular meetings without other notice than such resolution.

4.04 Special meetings of the Board of Directors may be called by or at the request of the President or any two Directors, and shall be held at the principal office of the Corporation or at such other place as the Directors may determine.

4.05 Except in the case of an emergency, notice of any special meeting of the Board of Directors shall state the purpose of the meeting and be given at least three (3) days prior to the meeting in writing, delivered personally or sent by mail or hand delivered to each Director at his address as shown by the records of the Corporation. If mailed, such notice shall be deemed to be delivered three (3) days after deposit in the United States mail at the address on file with the Corporation, with postage thereon prepaid.

4.06 Any action required to be taken at a meeting of the Directors may be taken by means of a conference telephone or without such a meeting if all Directors consent thereto and later ratify in writing any business conducted.

4.07 A majority of the Board of Directors then serving shall constitute a quorum for the transaction of business at any meeting of the Board; but if less than a quorum of Directors are present at any meeting, a majority of the Directors present may adjourn or continue the meeting from time to time without further notice.

4.08 The act of a majority of the Directors present at a meeting at which a quorum is present shall be the act of the Board of Directors, unless the act of a greater number is required by law or these Bylaws.

4.09 Directors may be removed, with or without cause, by a majority vote of members in good standing at a meeting called expressly for that purpose, after proper notice and pursuant to the provisions herein.

4.10 Any Director may waive call or notice of any meeting (and any adjournment thereof) at any time before, during which or after it is held. Attendance of a Director at any meeting will automatically evidence his waiver of call and notice of such meeting (and any adjournment thereof) unless he is attending the meeting for the express purpose of objecting to the transaction of business thereat because it has not been properly called or noticed. No call or notice of a meeting of Directors will be necessary if each Director waives the same in writing or by attendance as aforesaid. Any meeting, once properly called and noticed (or as to which call and notice have been waived as aforesaid) and at which a quorum is formed, may be adjourned to another time and place by a majority of those in attendance, without further notice.

4.11 A Director may resign at any time by giving written notice of his or her resignation to the Board, the President and the Secretary. Any such resignation shall take effect at the time specified therein, or, if the time when it shall become effective is not specified therein, it shall take effect immediately upon its receipt by the Board, the President or the Secretary; and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

4.12 Any vacancy occurring in the Board of Directors, including removal or resignation of a director, any directorship to be filled by reason of an increase in the number of directors, may be filled by the Board of Directors. A Director appointed to fill a vacancy shall serve for the unexpired term of his or her predecessor in office or until the next annual meeting, whichever occurs first. The appointed Director, upon election, shall serve a full three (3) year term.

4.13 Directors shall not receive any stated salaries or compensation for their services as members of the Board. Nothing herein contained shall be construed to preclude any Director from serving the Corporation in any other capacity and receiving compensation therefore, or for being reimbursed by the Corporation for any expenses or costs incurred by the Director on behalf of the Corporation or reasonable expenses as approved by the Board for attendance at any meeting.

4.14 A majority vote of the Board will be required to undertake actions affecting the operation of the Ditch, including but not limited:

- (a) to authorize expenditures over \$500.00;
- (b) to authorize replacement, removal or installations of head gates, granting of easements or rights of way, culverts, pipelines, bridges, or other major components of the Ditch, or which may impact the Ditch or the operation of the Ditch;



- (c) to authorize repair and maintenance work on the Ditch, dam, laterals, or other appurtenances of the Ditch, when such is required to be performed by the Corporation;
- (d) to adjust the assessment of those members served by laterals, the proportionate share of the expenses for such repair and maintenance prorated on a per acre irrigated basis;
- (e) to suspend the voting rights of any member;
- (f) to establish dues, assessments or fines;
- (g) to promulgate Rules and Regulations for the Ditch;
- (h) to appoint new Board members to fill a vacancy;
- (i) to remove an appointed board member (requires two-third majority);
- (j) to appoint a Ditch Boss;
- (k) to establish a budget and financial statements of the Corporation; and
- (l) to engage contractors, engineers, accountants, surveyors, attorneys or hydrologists to provide services or materials for the benefit of the Diamond S Ditch.

## V

### COMMITTEES OF DIRECTORS

5.01 The Board may, by resolution adopted by a majority of the Board, designate one or more Committees to consist of two or more of the Directors of the Corporation, and such members as the Board directs, which (to the extent provided in the resolution, are subject to any limitations under applicable law) to exercise the powers of the Board in the management of the business and affairs of the Corporation.

5.02 The Committees shall keep regular meetings of their proceedings and report the same to the Board.

5.03 The Board of Directors may appoint a Ditch Boss, who will be charged with the day to day operation of the Diamond S Ditch, and shall be entitled to receive such compensation as the Board of Directors deems appropriate. The Ditch Boss need not be a member or owner of

land receiving water from the Diamond S Ditch. A Director may serve as Ditch Boss and be compensated for so acting, however he cannot vote on his own compensation.

#### IV

#### OFFICERS

6.01 The officers of the Corporation shall be a President, one or more Vice Presidents (the number thereof to be determined by the Board of Directors), Secretary, a Treasurer, and such other officers as may be elected in accordance with the provisions of this Article. The board of Directors may elect or appoint such other officers, including one or more assistant secretaries and one or more assistant treasurers, as it shall deem desirable, such officers to have the authority and perform the duties prescribed, from time to time, by the Board of Directors. Any two or more offices may be held by the same person, except the offices of President and Secretary, and all officers shall be current directors.

6.02 The officers of the Corporation shall be elected annually by the Board of Directors at its annual meeting. If the election of officers is not held at such meeting, such election shall be held as soon thereafter as is convenient. New offices may be created and filled at any meeting of the Board of Directors. Each officer shall hold office until a successor has been duly elected and qualifies.

6.03 Any officer, Ditch Boss or other agent or employee elected or appointed by the Board of Directors, may be removed by the Board of Directors whenever in its judgment the best interests of the Corporation would be served thereby, but such removal shall be without prejudice as to any expense or compensation due.

6.04 A vacancy in any office because of death, resignation, removal, disqualification, or otherwise may be filled by the Board of Directors.

6.05 The officers or agents of the Corporation shall have such powers and shall perform such duties as may from time to time be specified in resolutions or other directives of the Board of Directors. In the absence of such specifications, each officer shall have the powers and authority and shall perform and discharge the duties of officers of the same title serving in nonprofit corporations having the same or similar general purposes and objectives as this Corporation.

## ARTICLE VII

### INDEMNIFICATION OF DIRECTORS AND OFFICERS

7.01 If a corporation determines that a person acted intentionally or failed to act in such a manner not in good faith, willfully, with gross negligence or with fraudulent or criminal intent in regard to the action, inaction or refused to act, then indemnification shall not be mandatory. All other cases where the Corporation makes the determination that the actions or failures to act were made in good faith and were not imposed against the best interests of the Corporation, indemnification shall be mandatory. The Corporation shall indemnify any and all of its directors, officers, former directors, and former officers and any appointed Ditch Boss, to the full extent permitted under applicable law, against all amounts incurred by them and each of them, including but not limited to expenses, legal fees, costs, judgments, fine and amounts paid in settlement which may be actually and reasonable incurred, rendered or levied in any threatened, pending or completed action, suit or proceeding brought against any of them for or on account of any action or omission alleged to have been committed while acting within the scope of his or her duties as a director, officer or agent of the Corporation. Whenever any such director or officer shall report to the President of the Corporation or the Board of Directors that he or she has incurred or may incur a claim or obligation, the Corporation shall, within a reasonable time thereafter, determine in a manner consistent with applicable law whether, in regard to the matter involved, such person acted or failed to act in good faith and in a manner reasonable believed to be in or not opposed to the best interests of the Corporation and, with respect to any criminal action or proceeding had no reasonable cause to believe his conduct was unlawful. If the Corporation so determines that such person acted or failed to act in such a manner with regard to the matter involved, indemnification shall be mandatory and shall be automatically extended as specified herein; provided, however, that the Corporation shall have the right to refuse indemnification in any instance in which the person to who indemnification would otherwise have been applicable shall not offer the Corporation the opportunity, at its own expense and through counsel of its own choosing, to defend him or her in the action, suit or proceeding. Nothing contained herein is intended to limit any right of indemnification or other protection provided by Arizona Revised Statutes Section 10-3852 et seq., or other applicable law.

## VIII

### CONTRACTS, CHECKS, DEPOSITS, AND FUNDS

8.01 The Board of Directors may authorize any officer or officers, agent or representatives of the Corporation, in addition to the officers so authorized by those Bylaws, to enter into any contract or execute and deliver any instrument in the name of and on behalf of the Corporation, and such authority may be general or may be confined to specific instances.

8.02 All Checks, drafts, or orders for the payment of money, notes, or other evidences of indebtedness issued in the name of the Corporation shall be signed by such officers of the Corporation, and in such manner as shall from time to time be determined by resolution of the Board of Directors. In the absence of such determination by the Board of Directors, such instrument shall be signed by at least two (2) officers or Board members of the Corporation.

8.03 All funds of the Corporation shall be deposited from time to time to the credit of the Corporation in such banks, trust companies, or other depositories as the Board of Directors may select.

8.04 The Board of Directors may accept on behalf of the Corporation any contribution, gift, bequest or devise for any purpose of the Corporation.

## IX

### CERTIFICATES OF MEMBERSHIP

9.01 The Board of Directors shall provide for the issuance of certificates evidencing membership in the Corporation, which certificates shall be in such form as may be determined by the Board. Such certificates or shares shall be signed by the President or a Vice President and by the Secretary or an assistant secretary and shall be sealed with the seal of the Corporation. All certificates evidencing membership shall be consecutively numbered. The name and address of each member and the date of issuance of the certificate shall be entered on the records of the Corporation. If any certificate is lost, mutilated or destroyed, a new certificate may be issued therefore on such terms and conditions as the Board of Directors may determine.

9.02 When a landowner receiving water from the Diamond S Ditch seeks membership and has paid any fees, assessments and dues that may then be due relating to the lands owned by the member or shareholder receiving water from the Diamond S Ditch, a certificate of membership or stock certificate shall be issued and delivered by the Secretary. Provided, however, a certificate of membership shall not be issued or a membership transferred unless all dues, assessments or unpaid amounts due have been paid current for the lands entitled to receive water from the Diamond S Ditch.

9.03 Certificates of membership are only transferable with the ownership of the land served by water from the Diamond S Ditch.

9.04 Attempts to transfer or sever the right to receive water from the Diamond S Ditch from the ownership of the land must be presented by written notification to the Board of Directors for consideration prior to any transfer. The Board is authorized to object to or contest any severance or transfer which the Board deems to be harmful to the Diamond S Ditch or its members.

## X

### BOOKS AND RECORDS

10.01 The Corporation shall keep correct and complete books and records of account and shall also keep minutes of the proceedings of its members, Board of Directors, committees having and exercising any of the authority of the Board of Directors, and shall keep at the principal office a record stating the names and addresses of the members or shareholders entitled to vote. As provided by the Arizona Revised Statutes, all books and records of the Corporation may be inspected by any member in good standing, or his agent or attorney, for any proper purpose at any reasonable time. Costs of reproduction of any corporate records shall be paid before copies are delivered to any member or agent of a member.

10.2 The minutes of any meeting of the Board of Directors shall include the names of the Directors who voted for, against or abstained in any matter voted upon.

10.3 Except as otherwise provided by law or these Bylaws, the records of the Corporation shall not be reviewed, copied or disseminated.

## XI

### DUES/ASSESSMENTS

11.01 The Board of Directors shall determine from time to time the amount of annual dues or assessments payable to the Corporation by the members, and shall give appropriate notice to the members. Dues and assessments shall be based upon the fiscal needs of the Corporation to meet operating expenses, losses, repairs, insurance expenses, reserves for future repairs and capital improvements, as determined by the Board of Directors.

11.02 Dues shall be payable in advance on the first day of May each year. Dues of a new member shall be prorated from the first day of the month in which such new member is entitled to membership.

11.03 When any member has failed to pay dues or assessments after sixty (60) days after presentation, the Corporation may suspend water service to such member's land or, at the direction of the Board, continue delivery of water and assess a two percent (2%) per month late payment penalty. Water service will be suspended if any dues or assessments remain unpaid at the end of each calendar year.

11.04 Dues and assessments shall be established annually at the minimum amount per member, plus a set amount per acre irrigated by the member, with any portion less than one acre considered a full acre for the purpose of dues or assessments. No allowance shall be made for unwatered areas such as buildings, roadways, or fences. Unexpected repairs may be immediately assessed above annual dues. If the Diamond S Ditch, any lateral or any structure is damaged as the result of any negligent act of any member or a member's family, heirs, agents, guests or invitees, or any person or entity receiving water from the Diamond S Ditch fails to abide by any established rule or regulation of the Board, then the Diamond S Ditch shall be entitled to seek all legal remedies available, including but not limited to suspending all water service to the land owned by a negligent member, assessing the cost of repairs and all damages and seeking judicial enforcement, if necessary. If repairs or stoppage in water service are caused by the willful negligence of a member, his agents, employees, guests or invitees, as determined by the Board, then the responsible member or members may be assessed a greater share of all costs and expenses incurred to re-establish water flows and restore and repair any damage to the Diamond S Ditch or appurtenances thereto.

## XII

### WAIVER OF NOTICE

12.01 Whenever any notice is required to be given under the provisions of law or under the provisions of the Articles of Incorporation or the Bylaws of the Corporation, a waiver thereof in writing signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be deemed equivalent to the giving of such notice.

## XIII

### DITCH LATERALS AND WATER RIGHTS

13.01 The main Diamond S Ditch consists of the dam, all main ditches through the Rio Verde Ranch to the Verde River, and the established laterals from the main ditches to the individual members' lands. It is the responsibility of individual members to maintain ditches beyond the main ditch, and all private laterals. Leaks in ditches, head gates or other improvements in or along the Diamond S Ditch on members' property shall be repaired immediately or water delivery may be suspended. The Board may set hours of use for members and allocate water during periods of heavy use or shortage, and temporarily terminate water service for maintenance.

13.02 Members shall not deposit or spray chemicals, toxic substances or other materials or substances in the Ditch unless prior approval has been given by the Board.

13.03 The Corporation does not guarantee or warrant the right to receive and use surface or ground water of any members on any lands owned by members or shareholders. Records of the Corporation show continuous use of water from the Verde River based on historical claims dated as early as 1877. It shall be responsibility and obligation of each individual member or shareholder to take any actions deemed appropriate to file for and maintain any right to use ground or surface water delivered by the Diamond S Ditch.

13.04 A member may not irrigate from the Diamond S Ditch any portion of his property than as established in the records of the Diamond S Ditch and as historically irrigated, without prior approval of the Board. The Board may withhold its approval if it finds that the member's area has never been irrigated by the Corporation, or that it would constitute an undue burden or injure other existing members' ability to obtain sufficient water or flow. No member may sell, assign, sever or transfer any water right served by the Diamond S Ditch without first notifying the Board of Directors and obtaining the Board's approval.

13.05 In any year in which the Board determines that the volume of water available to the Diamond S Ditch is insufficient to supply all the members, the water available shall be allocated among the members in accordance with the proportional number of shares held.

13.06 The Board may establish periods to clean and maintain the Ditch for maintenance or repairs. The annual dry ditch period will typically include approximately sixty (60) days from December 1st to February 1st. The Board will advise the members of scheduled dry ditch periods.

13.07 Members served by a lateral are responsible for repairs, maintenance or improvements to such lateral and will be billed on a pro rata acreage basis for each member's lands being served by the lateral for such repairs or maintenance performed by the Diamond S Ditch, if any.

13.08 The Board may suspend the right to receive water from the Diamond S Ditch to any member who wastes water or fails to abide by any authorized schedule for delivery of water which injures or interferes with other members' ability to receive their proportional share of water, violates any material provision of the Bylaws or any established Rules and Regulations promulgated by the Board.

XIV

AMENDMENTS OF BYLAWS

14.01 These Bylaws may be altered, amended, or repealed and new Bylaws may be adopted by a majority of the members present at any regular meeting or at any special meeting, if a least fifteen (15) days written notice is given of intention to alter, amend, or repeal or to adopt new Bylaws at such meeting.

I, JANE EVERTS, Secretary of Diamond S Ditch, an Arizona non-profit Corporation, do hereby certify that the foregoing Amended and Restated Bylaws were duly approved as the Bylaws of said Corporation by the Board of Directors at a meeting thereof, duly and regularly called and held on the 10<sup>th</sup> of MARCH, 2010 and by the members of the Corporation by mail-in ballot, returned to the Corporation's address, post marked on or before 16<sup>th</sup> of APRIL, 2010 and that the same do now constitute the Bylaws of Diamond S Ditch, an Arizona non-profit corporation.

Jane Everts  
Secretary

Attest:

Charles R. Hilbers  
President