

BYLAWS
OF
TIMBERON WATER AND SANITATION DISTRICT
TIMBERON, OTERO COUNTY, NEW MEXICO

Organized pursuant to Section 73-21-1, NMSA 1978, as a governmental subdivision of the State of New Mexico and a body corporate with all the powers of a public or quasi municipal corporation. Established by Order of The District Court for Otero County, New Mexico, Cause Number CV-88-290 on March 8, 1990.

73-21-1 (Declaration of purpose.)

It is hereby declared that the organization of water and sanitation districts, having the purposes and powers provided in this act, will serve a public use and will promote the health, safety, prosperity, security and general welfare of the inhabitants of said district.

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ARTICLE 1 Name and Location

1.01 The name of the special district shall be Timberon Water and Sanitation District, herein referred to as TWSD. The statutes provide that the district shall be known under the name ordered by the court; the district may not change its name.

1.02 The principal office (TWSD Office) shall be located at the Timberon Community Center (A.K.A. Community Lodge), 1 Bobwhite Circle, Timberon, New Mexico.

ARTICLE 2 Declaration of Purpose

2.01 The Timberon Water and Sanitation District, has all the purposes provided in the New Mexico state law, in sections NMSA 1978 73-21-1 through 73-21-55 and may be cited as the "Water and Sanitation District Act" and all other purposes permitted under the laws of the State of New Mexico whether or not enumerated within these Bylaws and attachments. (See Addendum 14.04)

2.02 The purposes of the Timberon Water and Sanitation District include, but are not limited to the following:

- A. The Timberon Water and Sanitation District shall manage all of the surface and groundwater resources of the District.
- B. TWSD shall construct, maintain, repair and manage a collection, storage, treatment and delivery system or systems for potable water.
- C. TWSD may construct, maintain, repair and manage a collection, storage, and delivery system or systems for untreated water.
- D. TWSD may establish, construct and maintain park and recreational facilities such as fishing lakes, golf course and recreation area, playgrounds, and swimming pools.
- E. TWSD may establish, construct and maintain park and recreational facilities such as fishing lakes, golf course and recreation area, playgrounds, and swimming pools.
- F. TWSD shall manage and maintain the Timberon Memorial Park cemetery.
- G. TWSD may manage, acquire, establish, construct and maintain certain public and leased facilities, buildings, sheds, office space and public meeting places.
- H. TWSD shall provide water for fire suppression.
- I. TWSD shall be responsible for the maintenance of the public streets and roads of the District with the exception of those that are maintained by Federal, State, County or other governmental entities. Maintenance will be done in accordance with TWSD rules, policies and guidelines.
- J. TWSD shall provide at least one site within the district for the collection and removal of trash.
- K. TWSD may acquire, establish, construct, lease and maintain any other facilities or provide other services as permitted by New Mexico Statute.
- L. TWSD may take any action it deems necessary that is permitted under the laws of the United States and The State of New Mexico in order to maintain and protect the quantity and quality of the surface and ground waters allocated to the District.
- M. TWSD may purchase, acquire, establish, construct or operate other public facilities or economic development projects as provided in NMSA 1978 73-21-3E.

ARTICLE 3 Definitions

For the purposes of these Bylaws, the following definitions will apply.

3.01 "district" means a water and sanitation district that is established pursuant to the Water and Sanitation District Act.

3.02 "board" means the seated (installed) members of the board of directors (BOD) of a district.

3.03 No person shall become a candidate in a regular local election unless the person physically resides within the boundaries of the district or districted area in which the person desires to be elected or to represent, and the person's record of voter registration show that the person is both a qualified elector of the state and was registered to vote in the area to be elected to represent on the date of the proclamation calling a local election is filed in the office of the Secretary of State.

3.04 "Timberon Community" All Timberon Property Owners.

ARTICLE 4 Board of Directors

4.01 The affairs and business of TWSD shall be managed and directed by the Board of Directors (BOD) and shall have powers as provided in 73-21-16 NMSA 1978 (see Addendum 14.04):

4.02 Organization Chart - The BOD shall prepare and maintain a current organizational chart that accurately shows the reporting relationship between the board and all employees of TWSD. [See Addendum 14.01]

4.03 Five Director Board - The BOD shall consist of five members duly elected by taxpaying electors in accordance to 73-21-14, & 73-21-15 NMSA 1978. (See Addendum 14.04)

4.04 Vacancy - In case of vacancy on the BOD, the board shall identify the position number of the vacancy and by majority vote shall appoint a taxpaying elector to fill that vacancy until the next biennial election, at which time a candidate will be elected for the remainder of the term. If the BOD shall fail, neglect, or refuse to fill any vacancy within thirty days (30) after the same occurs, the district court having jurisdiction over TWSD may fill such vacancy.

4.05 Participation by Communications Equipment - In the event of a called emergency meeting, special meeting, closed meeting, or a regular meeting lacking a quorum, board members may participate by means of telephone or other communication equipment, and participation by such means shall constitute presence in person at a meeting. Use of communication equipment by the community may be allowed provided that the use of the equipment does not interfere with conducting the meeting. If the communication equipment interferes with the meeting the Chairman or any Director may discontinue the use of the communication equipment for that meeting by board decision.

4.06 Conflict of Interest - Board members are subject to the same standards of conduct applicable to a full-time State employee. Board members are prohibited from personally and substantially participating, influencing, or voting as a Board member in any particular matter or enterprise in which the Board member or the Board member's family, as defined in NMSA 1978 10-16- 2 Government Conduct Act, spouse, child, or employee has a significant financial interest. "Significant financial interest" shall mean the current percentage of ownership exceeds 5%, or annual income from the entity exceeds \$10,000, or the current equity value exceeds \$10,000. This restriction also applies if the Board member is negotiating or has any arrangement concerning prospective employment with TWSD that has a significant financial interest in any matter before the BOD

4.07 Gratuities - BOD members shall not knowingly receive or solicit from persons having business with TWSD anything of value as a gift, gratuity, loan or favor while serving on the BOD or in connection with such service.

4.08 Disclosure Statement - Before acting upon any matter coming before the Board, involving any organization in which a Director has a financial interest, the Director shall file a financial disclosure statement with the Secretary of State in accordance with NMSA 1978 10-16A. Prior to any action being taken, the Director shall publicly announce, in a public meeting of the Board, the fact that the financial disclosure has been filed and those copies are available to the public. It is the responsibility of the Director to insure filing with the Secretary of State.

4.09 The court, 12th District court, Otero County, having jurisdiction of the district shall have the power to remove directors for cause shown, on petition, notice and hearing

4.10 Legal Duties - require Board Members to: Use reasonable care and good judgment in making their decisions on behalf of the interests of the Timberon Community and TWSD; Comply with governing documents (i.e., Bylaws; policies; etc.).

4.11 "Unilateral Conduct" -Directors shall not engage in unilateral or independent activities under the assumption of "official duties" to create or cause an obligation in any manner to the district without approval by a quorum of the BOD. A director acting alone and without approval, as a public official, shall not engage nor encumber TWSD in any pursuit that would constitute a contract or agreement by which an expressed obligation to do or forbear is imposed. (i.e., professional services or fees such as engineer, C.P.A., attorney, hydrologist, or any other services) All members of the BOD, including the chairman, vice-chairman and treasurer shall conduct the district's business within the standards applied to a governing body acting collectively and, in a majority, to serve the public.

4.12 Reimbursement-BOD members shall be reimbursed for direct expenses related to conducting TWSD business. Reimbursement of travel shall be in accordance to Regulations Governing the Per Diem and Mileage Act, NMAC 2.42.2. All expenses for reimbursement shall be submitted on a travel voucher. (Addendum 14.05)

ARTICLE 5 Meetings

5.01 All meetings of a quorum of members of the BOD, except those meetings as may be closed as defined by the Open Meetings Act, are declared to be public meetings open to the public at all times and subject to the provisions of the Open Meetings Act, NMSA 1978, Chapter 10, Article 15. At least annually, a resolution shall be passed by the BOD to define meeting procedures and notice requirements.

5.02 Citizen Participation: All persons so desiring shall be permitted to attend and listen to the deliberations or proceedings. The methods of receiving comments from the public are hereby listed.

- A. Members of the public may request that items for consideration be placed on the agenda at the regular meetings of the BOD where the agenda for the regular meeting is discussed and set. The deadline for making requests to add agenda items by the public is one week prior to the scheduled meeting. The request shall be emailed to the BOD secretary or dropped off at the office using the Agenda request form. There is a five-minute limit for presentations. If that amount of time is insufficient the remaining information may be presented to the BOD in written form for consideration later.
- B. Members of the public may participate in the discussion of agenda items that have received a motion and second by Board members in the following manner. At least ten minutes prior to the start of a regular, special meeting, or emergency meeting members of the public may place their names on a list stating which agenda item they would like to discuss. After each Board member has had an opportunity to speak the chairman will call on members of the public in the order that their names appear on the list. There will be a five-minute time limit for each speaker. All comments shall be addressed to the chair.
- C. Members of the public may be permitted to make comments at any time during a meeting, if recognized by the Chairman.

5.03 All TWSD BOD meetings shall be strictly conducted in accordance to the "Open Meetings Act", NMSA 1978 10-15 NMSA 1978 73-21-13. (See Addendum 14.06)

5.04 All public notices of the TWSD BOD meetings shall be titled "Regular Meeting" or "Special Meeting" or "Emergency Meeting" or "Closed Meeting".

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5.05 The public notice of any meeting shall include without exception the following:

- A. Type of meeting (Regular, Special, Emergency, Closed).
- B. Who authorized meeting (Chairman's name or names of Directors representing quorum).
- C. Date and time notice was posted.
- D. Date of meeting.
- E. Time of meeting.
- F. Place of meeting.
- G. The agenda will be included in the meeting notice. The last revision must be posted no later than seventy-two hours prior to the time of the meeting.
- H. All notices shall include the following language, "If you are an individual with a disability who is in need of service to attend or participate in the meeting, please contact The Public Information Officer at the TWSD office at 987-2250 at least one week prior to the meeting or as soon as possible".

5.06 Conduct of Meetings

The Board shall meet in accordance with the Open Meetings Act, Chapter 10-15-1 NMSA 1978 (See Addendum 14.06)

A. REGULAR MEETINGS

1. All regular meetings shall be scheduled so that overnight travel is not required.
2. The agenda must be posted at the time of the notice.

B. SPECIAL MEETINGS

1. Special meetings may be held as often as the needs of the district require.
2. Special meetings of the BOD may be called by the Chairman of the Board, or by a majority of the BOD, as specified in the annual resolution.

C. EMERGENCY MEETINGS

1. An emergency meeting will be called only under unforeseen circumstances, which demand immediate action to protect the health, safety or property of citizens or to protect the public body from substantial financial loss.
2. Emergency meetings may be called by the chairman or by a majority of the BOD as specified in the annual resolution, unless immediate action is required to protect the health, safety or property of citizens or to protect the public body from substantial financial loss.

3. The notice for all emergency meetings shall include only the agenda item/s for the meeting. Only the subject/s pertaining to the emergency may be discussed.

D. CLOSED MEETINGS

1. Closed meetings are closed to public attendance and shall be held in accordance with Section 10-15-1 of the Open Meetings Act.

5.07 Manner of Acting - An act of the majority of the directors present at a meeting at which a quorum is present shall constitute an act of the BOD.

5.08 Quorum: A majority of the directors in attendance shall constitute a quorum at any meeting.

ARTICLE 6 Officers of the Board

6.01 At the first regular meeting in January following the biennial election there shall be an election of officers consisting of the Chairman of the BOD who shall be a director, a Vice-Chairman of the BOD who shall be a director, a Treasurer of the BOD who shall be a director and shall not be an employee of the TWSD, and a Secretary of the BOD who may or may not be a director or may or may not be an employee of the TWSD. This election shall be conducted by the Chairman, Vice-Chairman, or Secretary, respectively.

6.02 Term of Officers - The officers shall serve in these positions until the results of the next biennial election are declared or they resign or are removed by a sitting judge, The court having jurisdiction of the district shall have the power to remove directors for cause shown, on petition, notice and hearing. Whichever occurs first NMSA 1978 73-21-14C.

6.03 Fidelity Bonds - The Directors and the Secretary of the Board if not a Director on the BOD, other than the treasurer (reference 6.07), shall file with the clerk of the 12th District Court for Otero County, New Mexico, as soon as possible at the expense of TWSD, a corporate fidelity bond in an amount not less than \$1,000.00 conditioned on faithful performance of the duties of his/her office.

6.04 Removal - Any BOD can only be removed by a sitting Judge at the NM12th District court. NMSA 1978 73-21-12.

6.05 Chairman of the Board of Directors - The Chairman shall preside at all meetings of the BOD. In general, he/she shall perform all duties incidental to the offices of Chairman and other duties as may be prescribed by the BOD from time to time. The Chairman will be the liaison with any of the TWSD legal representative regarding current cases. (See 4.11)

6.06 Vice-Chairman of The Board of Directors - In the absence of the Chairman, or in the event of his/her death, inability, or refusal to act, the Vice-Chairman shall perform the duties of the Chairman. The Vice Chairman will be the liaison with any of the TWSD legal representatives regarding current cases. (See 4.11) in the absence of the Chairman.

6.07 Treasurer of The Board of Directors - The Treasurer shall act as Chairman in the absence of the Chairman and Vice-Chairman. The Treasurer shall:

- A. In general, perform all of the duties incidental to the office of Treasurer. (with the assistance of the GM) The treasurer will oversee the accounting clerk in compiling monthly, quarterly and annual reports.
- B. Be responsible for overseeing that accurate accounts of all money received by and disbursed for and on behalf of TWSD are maintained in permanent records.
- C. A \$5,000 bond will be held for the position of Treasurer

D. The Treasurer will be the liaison with any of the TWSD legal representatives regarding current cases in the absence of the Chairman or Vice Chairman. (See 4.11)

6.08 Secretary of The Board of Directors - The secretary and treasurer may be one person the Secretary of the BOD shall:

- A. Keep, in a well-bound book, the minutes and records of all proceedings, minutes of all open meetings, certificates, contracts, bonds given by employees and all corporate acts which shall be open to public inspection All records will be kept on file in the office.
- B. See that all notices are duly given in accordance with the provisions of these Bylaws or as required by law.
- C. Except for medical records, be custodian of the Board of Directors records only and of the seal of TWSD and see that the seal of TWSD is affixed to all documents, the execution of which on behalf of TWSD under its seal is duly authorized.
- D. Keep a register of the post office address and phone number of each director.
- E. The Secretary of the Board will communicate with the county clerk in the elections as identified in the Local Elections Act.
- F. In general, perform all duties incidental to the Office of Secretary.
- G. The Secretary of the Board shall be protected for all acts related to official TWSD duties in the same manner as if he/she is a member of the board.

ARTICLE 7 Management and Administration

7.01 The powers of BOD stated by New Mexico statutes, or the Bylaws herein shall not be delegated to TWSD employees or others without written documentation stating the limits and authority of such delegation of duties and any delegation shall be approved by the majority of the BOD.

7.02 The approval of policies and procedures, employee handbook, hourly wage scales, salary limits, and benefits shall be the responsibility of the BOD. All of the above-mentioned activities shall be in compliance with applicable state/federal labor laws and Union rules/contracts.

7.03 Any additional headcount shall be approved by the majority of the BOD. The person requesting the additional headcount shall prepare a written request with position description and justification and shall be submitted to the BOD for consideration. This will include full-time, part-time and any other category of additional headcount to TWSD.

7.04 Non-disclosure: Employees, volunteers or members of some committees who may be exposed to sensitive or confidential information (ie HIPPA) may be required to execute a board approved non-disclosure agreement, provided by the General Manager or the BOD for a specific task. Recording devices may be used in an open meeting, but not in a closed or private meeting. If a recording device is used, all parties must be aware of its use.

ARTICLE 8 Purchasing

8.01 All purchases shall be made in compliance with the NMSA 1978 Chapter 13 Public Purchases and Property, Article 1 Procurement. The General Manager will be responsible for all purchases. The GM is authorized for a \$5,000 limit per purchase without BOD approval. Anything over \$5,000, the BOD must approve it. (See Addendum 14.07, Procurement Code)

ARTICLE 9 Fiscal Policy

9.01 The BOD shall determine and direct, within budgetary and LGD guidelines, the amount of cash balances and amount of capital reserve funds to be maintained annually in the funding accounts established for this purpose.

All money received or spent by TWSD shall be budgeted and accounted for in accordance with New Mexico laws. Chapter 6, Article 6 of the Statutes Annotated NMSA 1978 requires the LGD (Local Government Division, Department of Finance and Administration) to make rules and regulations relating to budgets, records, reports, and the disbursement of public monies, including transfers between funds. TWSD is required to keep all books, make all reports, and to conform to all rules and regulations as directed by the LGD. (See Addendums 14.08 & 14.09)

9.02 The interim annual budget, including the budget recap page, must be made available to the public for review prior to BOD approval for filing to the LGD.

9.03 TWSD BOD shall approve and file with the Local Government Division (LGD) and the Department of Finance and Administration an Interim annual budget for the next fiscal year as required by the LGD.

9.04 The BOD shall adopt the budget by resolution and provide LGD with a copy of the resolution. Once the budget is approved by Local Government Division (LGD) it will be posted to the public.

9.05 Estimated deadlines: A book will be maintained by the office staff for deadlines for reports and mandatory deadlines, evaluations certificates.

ARTICLE 10 Conduct of Elections

All Elections will be conducted by the County Clerk per the Local Elections Act.

ARTICLE 11 Committees

11.01 Committees:

11.01 The committees do not have statutory power; they are formed as a research and advisory capacity to the BOD. The committee may not deal with any subject or information that would be construed as an invasion of the privacy of an individual nor will the committee engage in any activity that would cause or imply a conflict of interest to any person. Other Board members are encouraged to attend all committee meetings.

11.02. The BOD may add new committees and dissolve committees as the need dictates. In the event that the establishment of a committee becomes necessary; the BOD will clearly define the objective and then appoint a board member who will recruit volunteers to achieve the committee's objective(s).

11.03. Standing Committees:

Budget: The Budget Committee shall prepare, plan, and review the annual budget for consideration by the BOD. The Budget Committee will also help with any other financial matters of the district. This will include capital planning as well. The committee will consist of the Treasurer of the BOD and GM and members of the community. The other board members are encouraged to attend.

Bylaws: The Bylaws Committee shall be responsible for revising, submitting amendments and publishing changes to the Bylaws as requested and approved by the BOD. The Bylaws Committee does not have statutory power and will consist of one board member and members of the community.

Advisory Committees: The Advisory Committees shall be Water Advisory, Water Rate Committee, Water System, Water Rules and Rights, Five Year Capital Planning, Road Advisory, Recreation Advisory, Golf Enterprise, and others as deemed necessary. The purpose of an advisory committee is to tap an abundance of volunteer resources in the community to obtain new ideas, propose improvements and promote community involvement in research and information gathering to be utilized by the BOD for project enhancement and development. All committees shall consist of one board member and members of the community.

ARTICLE 12 Bylaws Amendments and Precedents

12.01 The BOD shall have the power to alter, amend, and repeal by majority vote these Bylaws at any regular meeting of the BOD or at any special meeting of the BOD. The proposed amendments or revisions shall be entered as an agenda item and changes read at two (2) meetings. At the second meeting the revision, amendment or repeal shall be entered on the agenda and the proposed action shall be decided by vote of the BOD.

12.02 All previous Bylaws and amendments are superseded by these Bylaws. These Bylaws are the only Bylaws of TWSD on this date but are subject to amendment in the future as specified in ARTICLE 12.01 above.

12.03 Where there is a conflict between an existing resolution or rule and the TWSD Bylaws, the TWSD Bylaws shall control. Where there is not state or federal law to establish precedent, the BOD shall rule by majority vote to establish the precedent.

12.04 If there is a conflict between any provisions of these Bylaws and state or federal statutes or the Constitution of New Mexico or the Constitution of the United States then the superseding law or regulation shall control.

12.05 In the event that any provision of these Bylaws is determined to be invalid, such determination shall not affect the remaining provisions of these Bylaws and they shall continue in full force and effect.

ARTICLE 13 Addendums

13.01 Organizational Chart

13.02 Purchasing Process Decision Flow Chart

13.02 Bylaws Declaration of Approval Resolution

13.04 73-21-1 thru 73-21-55, NMSA 1978

13.05 NMAC 2.42.2 Regulations Governing the Per Diem & Mileage Act

13.06 Open Meetings Act, NMSA 1978, Article 10, and Chapter 15

13.07 NMSA 1978 Chapter 13 Public Purchases and Property, Article 1 Procurement. (Procurement Code)

13.08 New Mexico Laws, Chapter 6, Article 6 of the Statutes Annotated NMSA 1978

13.09 Local Government Division, Division of Finance and Administration Budget Guidelines