

ARTICLES OF INCORPORATION
of

South Platte Water Related Activities Program, Inc.
A Colorado Non-Profit Corporation

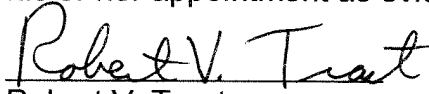
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SECRETARY OF STATE
STATE OF COLORADO



- I. **Name and Address.** The name of the Corporation is South Platte Water Related Activities Program, Inc.
- II. **Registered Agent and Office.** The name of the initial registered agent is: Robert V. Trout. The address of the initial registered office is 1120 Lincoln Street, Suite 1600, Denver, Colorado, 80203.
 - A. **Consent of Registered Agent.** The initial registered agent consents to his or her appointment as evidenced by his or her signature below:


Robert V. Trout

- III. **Incorporators.** The name and address of each incorporator is as follows:
 - A. David Little, on behalf of:
The Board of Water Commissioners of the City and County of Denver
1600 West 12th Avenue
Denver, Colorado 80204-3412
 - B. Eric Wilkinson, on behalf of:
The Northern Colorado Water Conservancy District
220 Water Avenue
Berthoud, Colorado 80513
- IV. **Purposes.** The Corporation is organized and shall be operated exclusively for charitable, scientific, and educational purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code. Subject to the foregoing, the general purposes of the Corporation, acting principally within the State of Colorado, are:
 - To assist in the recovery of species listed as threatened or endangered under the Endangered Species Act ("ESA") through the development and operation of the Colorado Program component of the Platte River Recovery Implementation Program (PRRIP) in a manner that ensures the State of Colorado's compliance with PRRIP,

- To negotiate with federal resource agencies, other states, and other stakeholders on behalf of or in coordination with the State of Colorado in connection with the implementation of the first increment of PRRIP and the formulation and implementation of future increments thereof,
- In the event the efforts to create the PRRIP are not successful, to assist in development and operation of a Colorado-Only Program or other programmatic ESA compliance approach in Colorado, approved by the appropriate federal agencies, that assists in the recovery of designated Platte River species, and
- To conduct such other business as is reasonably necessary to accomplish the above purposes.

V. **Powers.** In furtherance of the foregoing purposes (but not otherwise) and subject to the restrictions set forth below, the Corporation shall have and may exercise all of the powers now or hereafter conferred upon nonprofit corporations organized under the laws of Colorado and may do everything necessary or convenient for the accomplishment of any of the corporate purposes, either alone or in connection with other organizations, entities or individuals, and either as principal or agent, subject to such limitations as are or may be prescribed by law. Specifically, but not by way of limitation, the Corporation shall have the power to contract with the Federal government and the State of Colorado and any agencies or subdivisions thereof, to incur indebtedness, and to buy and sell real property both within and without the State of Colorado.

- A. No part of the net earnings of the Corporation shall inure to the benefit of or be distributable to any member, director or officer of the Corporation or any other individual (except that reasonable compensation may be paid for direct expenses incurred by a member, or agent of a member, acting as a director, officer, or agent of, and at the direction of, the Corporation, and except to the extent the Corporation contracts with such member for services benefiting the Corporation), and no director, officer or other agent of the Corporation shall be entitled to share in any distribution of any of the corporate assets on dissolution of the Corporation except as a member of the Corporation as provided in Article X below.
- B. The Corporation shall not have the power to pledge the credit of any of its members, nor to create any financial obligation between any creditor of the Corporation and any member.
- C. The Corporation shall not participate or intervene (including the publishing or distribution of statements) in any political campaign on behalf of or in opposition to any candidate for public office. However, if the Corporation is an organization to which Section 501(h) of the Internal

Revenue Code applies and the Corporation has effectively elected to have such section apply, the Corporation shall have power to carry on the activities permitted by such section, but only to the extent such activities shall not result in the denial of exemption under such section.

- D. Notwithstanding any other provision of these articles of incorporation, the Corporation shall not carry on any activities not permitted to be carried on by a corporation exempt from federal income tax as an organization described in Section 501(c)(3) of the Internal Revenue Code.
- E. All references in these articles of incorporation to provisions of the Internal Revenue Code are to the provisions of the Internal Revenue Code of 1986, as amended, and to the corresponding provisions of any subsequent federal tax laws.

VI. **Membership** The Corporation shall have members and not shareholders, and shall maintain a list, updated at least annually, of such members. The Corporation shall issue to every member of the Corporation a certificate of membership that will evidence that member's coverage by PRRIP; provided, however, that membership in the Corporation shall not guarantee future ESA compliance for the member. Such certificates shall not represent any title, ownership or other equity interest in the Corporation. Membership shall be open to any person, natural or corporate, upon payment of appropriate fees and assessments except that the Board of Directors shall have the discretion to deny membership to any person when such membership would require the Corporation to provide coverage for any New Water Related Activities the depletions from which would jeopardize the ability of the Corporation or the Colorado Program component of PRRIP to meet its obligations.

- A. **Classes of Membership.** Members in the Corporation will be issued a Certificate of Membership based on the member's classification as determined by the Board. No member may hold more than one certificate. Each certificate shall be for only one of the following classes, and the Board shall determine each member's classification based on the following definitions and, where appropriate, the uses of water delivered by, and used within the area served by, each member:
 - 1. Class A (Agricultural): Farming, ranching, stock watering and related uses, including agricultural wells.
 - 2. Class I (Industrial): Self-supplied water users diverting for power generation, manufacturing, and the production of processed products for sale.

3. Class M (Municipal): Domestic water supply for groups of people, including water for residential, commercial, industrial, hydropower generation by a municipal water supplier, park, golf course and lawn irrigation, firefighting or any other uses related to operation of a municipal water supply.
4. Class W (Water Conservancy and Water Conservation Districts): This class is based on the type of entity rather than on the use of the water provided, and may include subdistricts of water conservancy districts.
5. Class X (Miscellaneous) Water users that desire to participate in the Colorado Program but for which none of the above classes of membership would be appropriate, as determined by the Board.

B. Units. The “Unit” is the mechanism for defining the relationship between the amount and type of a member’s water use, the amount of that member’s assessments, and the number of votes that member is entitled to cast. Because of the design, structure and obligations of the Colorado Program component of PRRIP, participation based strictly on the depletions caused by each water user is neither practical nor desirable. Membership in the Corporation and coverage by PRRIP is therefore related more generally to the nature of each member’s water use and stated in terms of “Units”. For the same reasons, all members must fully participate by having coverage for and being assessed for all of their water use on the basis described in Article VI.E. Memberships for coverage of New Water Related Activities shall not be issued if the depletions caused by all of that member’s Existing Water Related Activities are not covered by a membership in the Corporation. The number of “Units” for each class of membership is as defined below:

1. Class A members will be issued one Unit for each ten acres irrigated by that member’s ditch system in the previous year. This irrigated area shall exclude acres irrigated with water removed from that member’s ditch system for non-agricultural purposes by a shareholder of that member.
2. Class I members will be issued six Units per acre foot of diversion.
3. Class M members will be issued six Units per single family equivalent tap (SFE). The formula to be used in the determination of Class M members’ SFEs will be established by the Board of Directors.

4. Class W members' number of Units will depend on whether that member operates facilities causing depletions as determined by PRRIP.
 - a. Class W members with depletions will initially be issued one Unit per 100 irrigated acres within the district.
 - b. Class W members without depletions will initially be issued one Unit per 200 irrigated acres within the district.
5. Class X members will be issued a number of Units determined by the Board on a case-by-case basis to be appropriate and equitable.

C. **Voting by Members.** Members shall be entitled to vote as follows:

1. In all voting, and whenever the term "vote of the members" is used in these Articles, each member shall be entitled to cast one vote for each Unit that member has been issued as described in Article VI.B. Class X members shall be allowed to vote on all matters except election of directors.
2. Election of Directors: Directors representing each class of membership shall be at large, without further subdivision by geographic area. With regard to election of Class M directors, when several directors may be elected at the same time, the candidates receiving the most votes will be elected, without a requirement for a majority of votes.
 - a. Class A members shall be entitled to elect one Director.
 - b. Class I members shall be entitled to elect one Director.
 - c. Class M members shall be entitled to elect six Directors.
 - d. Class W members shall be entitled to elect one Director.
 - e. The holders of Class X certificates shall not be entitled to elect any Directors.
3. Matters requiring a vote of the members.
 - a. Amendments of these articles that alter the benefits or

burdens of or as between classes of members must be put to a vote of the members, as more specifically set forth in Article XI, below.

- b. The Directors must seek ratification by a vote of the members of any board decision if requested to do so by at least four directors or at least 40% of the vote of the members.
- c. Prior to dissolution, the transfer of any or all of the Corporation's obligations in connection with administration or operation of the Colorado Program must be approved by at least 67% of the vote of the members.
- d. If a majority of the Directors vote to dissolve the Corporation, the issue must be put to a vote of the members. The Corporation will be dissolved if 67% of the vote of the members is in favor of dissolution.

D. **Membership fee.** There shall also be a membership fee charged to new members at the time of their joining. The amount of such membership fee for the first year of operation of the Corporation will be set by the board in its discretion. After the first year of operation of the Corporation, the membership fee will be equivalent in value to the amount that would have been paid cumulatively by such new member if it had been a member since the Corporation was first incorporated.

E. **Assessments.** Members will be assessed annually based on the number of Units owned. Assessments will be levied in amounts sufficient in total to meet the operating costs and debt service requirements of the Corporation.

- 1. Definitions of Units: The PRRIP defines "Water Related Activities" as activities and aspects of activities which: 1] occur in the Platte River Basin upstream of the confluence of the Loup River and the Platte River, and; 2] may affect Platte River flow quantity or timing, including but not limited to, water diversion, storage and use activities. PRRIP draws a distinction between "Existing Water Related Activities" and "New Water Related Activities," and the cost of meeting PRRIP obligations related to uses not now in existence may be different than the costs associated with existing uses. Units will therefore be issued either as "Original Units" or "New Units."

- a. "Original Units" will be issued for water taps, irrigated acres and diversions (as appropriate for the Class of membership) that were issued, irrigated or were occurring, respectively, on or before December 31, 2005.
 - b. "New Units" will be issued for water taps, irrigated acres and diversions (as appropriate for the Class of membership) that were issued, irrigated or began occurring, respectively, after December 31, 2005.
2. Assessments for Original Units: The assessment rate will be expressed in dollars per Unit and will be the same for all Original Units, regardless of the class of membership. By the Board's adjustment of the assessment rate in dollars per Unit, the charges imposed pursuant to assessments may vary from year to year, but the determination of the number of Units a member must own will be based only on the criteria set forth in Article VI.B.
3. Assessments for New Units: New Units may be assessed at a different annual rate (dollars per Unit) than Original Units, however, the assessments levied on New Units shall be irrespective of the class of member to which the Units were issued. The Board may establish separate sub-categories of New Units, each of which is assessed at a different annual rate reflecting the incremental cost to the Corporation of assuring PRRIP compliance for the Water Related Activities for which such New Units were issued. Such incremental costs will depend on factors that include, but may not be limited to, the extent to which additional property rights and infrastructure for the regulation of water will be required, and the extent to which historical depletions are incorporated into the Water Related Activity for which the New Units are issued.
4. Special Assessments: In the event necessary to meet obligations of the Corporation, the Board has the authority to levy special assessments, provided the amount levied is the same for all Units, regardless of the class of membership.
5. Non-Payment: The Board of Directors shall have the authority to terminate members from the Corporation for non-payment of assessments using such procedures as may be specified in the bylaws.

VII. **Board of Directors.** Except as otherwise provided in the Colorado Revised Nonprofit Corporations Act, the management of the affairs of the Corporation shall be vested in a board of directors. There shall be nine directors, elected as described in Article VI.C.2.

A. **Term.** The term for all directors will be three years, except that in the initial election of board members only, the terms served shall be as follows:

1. The Class M members shall elect two directors to a three year term, two directors to a two year term, and two directors to a one year term. The number of votes received by each of the top six director candidates shall determine the length of their initial term; with the directors receiving the most votes serving the longest terms.
2. The term of the director elected by the Class W members will be one year.
3. The term of the director elected by Class I members will be two years.

B. **Class Representation** No director may be elected to represent more than one class of members at the same time.

C. **Compensation.** Directors shall not receive compensation for serving as a director. However, a director may be reimbursed for his/her actual expenses incurred in the performance of his/her duties.

D. **Interim Directors** The names and addresses of the initial directors of the Corporation, who shall serve until the first members meeting to be held as soon as practical, but in any event, within 18 months of the date of incorporation, are as follows:

1 Eric Wilkinson (Class W)
[NCWCD]

2 David Little (Class M)
[Denver Water]

3 Lisa Darling (Class M)
[City of Aurora]

4 Dennis Bode (Class M)
[City of Fort Collins]

5 John Kolanz (Class M)
[City of Greeley]

6 Greg Dewey (Class M)
[City of Loveland]

7 Josh Nims (Class M)
[City of Westminster]

9 Dennis Harmon (Class A)
[Water Supply & Storage Co.]

8 Randy Rhodes (Class I)
[Xcel Energy]

VIII. **No Personal Liability.** A director or officer shall have no personal liability to the Corporation for monetary damages for any breach of fiduciary duty occurring after the effective date of these articles, except as otherwise required by the Colorado Revised Nonprofit Corporations Act, section 7-128-402, C.R.S. The Corporation's Bylaws may indemnify its directors and officers to the fullest extent permitted under the Colorado Revised Nonprofit Corporations Act.

IX. **Receipt of Gifts, Bequests, Etc.** In furtherance and not in limitation of the powers conferred by law, the Corporation may take, receive, and hold real and personal property, including the principal and interest of any money or other fund that is given, conveyed, bequeathed, devised to, or otherwise vested in the Corporation in trust for use consistent with the purposes set forth in these articles of incorporation. Except where a trust instrument prescribes otherwise, the Corporation may invest trust property or its proceeds in accordance with the laws of the State of Colorado.

X. **Distribution of Assets Upon Dissolution.** Upon dissolution or final liquidation of the Corporation, all of its assets remaining after payment or provision for all of its liabilities, shall be paid over or transferred to a corporation or governmental entity established to fulfill the same purposes (in whole or in part) for which this Corporation was established. If no such entity is created for that purpose, the assets may be distributed or conveyed to one or more governmental units within the meaning of Section 170(b)(1)(A)(v) of the Internal Revenue Code or to the Colorado Division of Wildlife for the benefit of wildlife habitat within or without the State of Colorado, or if such a transfer is not possible or practical, the assets may be distributed to and among one or more exempt organizations described in Section 501(c)(3) of the Internal Revenue Code for exclusively public purposes. The organizations or governmental units to receive such property, and their respective shares and interests, shall be determined by the board of directors. Any such assets not disposed of shall be disposed of by the appropriate court of the county in which the principal office of the Corporation is then located exclusively for such purposes or to such organization or organizations as said court shall determine are organized and operated exclusively for exempt purposes.

XI. **Amendments.** The following limitations shall apply to the amendment of these articles:

- A. Amendments Requiring Member Approval: An affirmative vote of at least 67.0% of all Units within each class of membership shall be required to change the provisions hereof pertaining to classes of membership, the number of directors, the number of directors elected by any class of members, or the relative allocation of costs by assessments on the various classes of members. No vote on such amendments to these Articles of Incorporation shall be taken unless at least thirty days prior to such a vote, written notice is given to all members that such an amendment to these Articles of Incorporation is to be voted upon; the date and place of the meeting at which such amendment will be considered; and the specific changes requested to be made to the existing Articles.


- B. Amendments Approved by the Board of Directors: Except for the amendments described in Article XI.A., or an amendment of Article XI.A., any number of amendments of the Articles of Incorporation may be submitted and voted on at a single meeting of the Board of Directors and be adopted at such meeting, a quorum being present, on receiving the affirmative vote of at least 70% of the directors then in office. No vote on any amendment to these Articles of Incorporation shall be taken unless at least ten days prior written notice is first given to all members of the Board of Directors that an amendment to these Articles of Incorporation is to be considered, the date and place of the meeting at which such amendment will be considered, and at least the general nature of the amendment involved.

XII. **Term of Existence.** Unless dissolved as provided herein, the existence of the Corporation shall be perpetual.

XIII. **Return of Form.** The Secretary of State may send a copy of these articles of incorporation once completed for filing to the address of the Registered Agent, stated in Article II above.

Dated: April 1, 2005.

Signature of Incorporators:



 David Little



 Eric Wilkinson