

# **Heart Mountain Irrigation District**

## **RULES AND REGULATIONS**

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# 1 SECTION I: INTRODUCTION

## 1.1 Heart Mountain Irrigation District Description and History

The Heart Mountain Irrigation District is comprised of approximately 31,000 irrigable acres north of the Shoshone River from Cody, Wyoming to about seven miles north of Ralston, Wyoming. The Heart Mountain Canal provides water for the Heart Mountain division.

The canal begins at the inlet to the Shoshone River Siphon, which spans the river below the Shoshone Canyon conduit outlet; the canal has an initial capacity of 914 cubic feet per second and a length of about 28 miles. About 140 miles of distribution laterals and 145 miles of open and closed drains also serve the Heart Mountain division.

The facility was built by the Bureau of Reclamation in the late 1940's with water deliveries starting in the early 1950's. Around 1960 the operation and maintenance was turned over to the Heart Mountain Irrigation District. Along with that came an obligation for the construction of the water system. This was a long term non-interest bearing loan payable to the United States. The original amount was 8 million dollars, payments of \$56,000 per year, with a final payment in 2065. We currently have a balance of 3.8 million dollars. We also have a 1.8 million dollar loan to the USBR for a Rehabilitation and Betterment project which began in the early 1980's. As you can see the District still has considerable debt to service each year.

The earliest attempt to irrigate lands in the area now included in the Shoshone Project was made by Colonel William F. Cody and Mr. Nate Salisbury in 1899. They proposed to construct an irrigation system to extend over lands now included in the Garland, Frannie, Heart Mountain, and Willwood divisions. Their plan was developed to the extent of building the canal on the south side of the Shoshone River to irrigate lands in the vicinity of Cody, Wyoming, but the magnitude of the enterprise discouraged investors and the project was abandoned for lack of funds.

In 1903, at the request of officials and residents of Wyoming, the Reclamation Service initiated investigations of the region. On the basis of these studies, the Secretary of the Interior authorized construction of the project on February 10, 1904.

The irrigation project was named the Shoshone Project and is currently comprised of four divisions, which include the Garland, Frannie, Willwood, and Heart Mountain divisions. Buffalo Bill Dam and Reservoir currently provides storage water to the four divisions. The Heart Mountain division was the last division of the Shoshone Project to be provided water and opened to settlement. Reclamation operated the facilities in the project until irrigation was established and transferred operation and maintenance (O&M) to the district in 1958.

Construction of the Heart Mountain Division began in 1936 and was completed in 1948. Over 1700 acres of the division were cultivated during World War II by Japanese evacuees confined at the Heart Mountain Relocation Center. Settlement began with the opening of 83 farm units on October 3, 1946. Preference was given to veterans of World War II.

Two openings in 1949 completed the development of the Heart Mountain division. The Heart Mountain and Garland Irrigation Districts entered a joint operation and maintenance agreement in January 1960. From 1960 to 1997 the districts were jointly managed and operated. In 1997 Heart Mountain and Garland Irrigation Districts resumed separate operation with each of the two districts responsible for their own operation and maintenance.

1.2 District Authority

The powers and duties of District are enumerated in “By-laws of Heart Mountain Irrigation District.” The following table identifies the Articles contained in the By-laws:

<b>ARTICLE</b>	<b>TOPIC</b>
Article I	Name and Control
Article II	District Powers
Article III	Annual Meeting of Unit Holders
Article IV	District Commissioners
Article V	Organization as a Board & Officers
Article VI	Powers and Duties of Board of Commissioners
Article VII	Hiring of Manager and Other Employees
Article VIII	Assessments
Article IX	Advertising for Bids
Article X	Miscellaneous
Article XI	Amendments
Article XII	Severability
Article XIII	Dissolution
Article XIV	Enacting Clause

1.3 Extent of District's Responsibility

The District has the responsibility and authority to operate and maintain the Heart Mountain Division of the Shoshone Project. That system includes, but may not be limited to: main canals, main laterals and main pipelines. The District's responsibility extends to the measuring device associated with a farm unit from the District's canals. The District does not have the responsibility to operate and maintain water delivery systems downstream of the District's delivery point. Since the development of the District, private lateral users have always operated and maintained their own laterals. The District expects them to do so in the future. The District will offer assistance to members on private laterals when requested and the Board deems appropriate.

1.4 Water Rights Held by District

Permit No. 2111	9,731.80 Adjudicated Acres	CR 67, Pg 52
Permit No. 1189E	13,067.60 Adjudicated Acres	CR 67, Pg 54
Permit No. 6099E	5,478.7 Adjudicated Acres	CR 67, Pg 59
Permit No. 6425E	488.6 Adjudicated Acres	
Permit No. 7237E	1,719.8 Permitted Acres	

**2 SECTION II: RULES AND REGULATIONS**

2.1 Purpose of Rules and Regulations

District has adopted these Rules and Regulations to achieve the provisions and purposes of its Articles of Incorporation and the By-laws of Heart Mountain Irrigation District. District shall use these Rules and Regulations as guides in the exercise of the powers conferred by such documents and in the accomplishment of the purposes of District. They may not be construed so as to limit or restrict District's discretion, nor be construed to deprive District of the ability to exercise any powers, duties, or jurisdiction conferred by law.

2.2 Enforcement of Rules

District will enforce these Rules and Regulations pursuant to the authority granted by State law and by District By-laws. Enforcement measures include, but are not limited to: (1) the right to refuse to deliver water; and (2) an assessment of damages arising from any breach of these Rules and Regulations.

In appropriate cases, District may seek judicial enforcement of these Rules and Regulations requesting damages, injunctive relief, or both. If it is necessary to seek judicial relief in an action to enforce the Rules and Regulations, District shall be entitled to recover its costs of prosecution, including a reasonable sum for its attorneys' fees, expert witness fees, and costs.

### 2.3 Modification of Rules and Regulations

The Board of Commissioners may from time to time amend these Rules and Regulations or adopt new rules and regulations.

### 2.4 Severability

If any Rule or Regulation or any part of any Rule or Regulation herein shall be declared invalid or unconstitutional, such declaration shall not affect the validity or constitutionality of the remaining portions of these Rules and Regulations.

### 2.5 Definitions

2.5.1 Acre-foot: The amount of water needed to cover one acre of land one foot deep (about 326,000 gallons). One cfs of water running for twenty-four hours equals approximately two acre-feet.

2.5.2 Allotment: A quantity of water, measured in acre-feet, determined by the Board of Commissioners to be the proportionate share of irrigation water available to each assessed acre within District for a water year.

2.5.3 Beneficial Use: The basis, the measure and limit of the right to use water at all times.

2.5.4 Board: The elected Board of Commissioners of Heart Mountain Irrigation District, Inc.

2.5.5 Bridge: A structure installed over a watercourse that allows access from one side to the other side of said watercourse.

2.5.6 Cattle Guard: A device installed in a roadway in lieu of a gate, typically of metal construction, that impedes or prevents the movement of livestock.

2.5.7 Commissioner: The duly elected officials of District that comprise the Board of Commissioners who are charged with developing policies and rules under which District operates.

2.5.8 Cubic-foot-per-second: The rate of discharge representing a volume

of one cubic foot passing a given point during one second. This rate is equivalent to approximately 7.48 gallons per second, or 1.98 acre-feet per day (twenty-four hour period).

2.5.9 Culvert: A pipe, tube, or other device installed in a watercourse that allows access from one side to the other of said watercourse. A culvert is used to transport water under or through a crossing or roadway.

2.5.10 District: Heart Mountain Irrigation District, an entity organized under and by virtue of the laws of the State of Wyoming and its By-laws, inclusive of its Commissioners, officers, employees, agents or other legal representatives.

2.5.11 Ditchrider: A person employed by District whose duties include, but may not be limited to, the operation and management of the headgates, canals and laterals.

2.5.12 Diversion of Water: To remove water from a waterbody by changing the direction of the flow of the water, via a water delivery turnout, pump, siphon, etc.

2.5.13 Easement: District's right to use the land owned by another on, in, around, under or adjacent to the system managed by District.

2.5.14 Gate: A device installed across a roadway that excludes vehicular, pedestrian, or livestock movement, typically constructed of metal pipe, wood or wire.

2.5.15 Headgate: The gate that controls water flow into irrigation canals, laterals, farm units and ditches. A ditchrider regulates the headgates during water delivery.

2.5.16 Member: Any person, partnership, firm, corporation, municipal corporation, governmental or proprietary body, association of such persons, or agent of such entity that has the right by virtue of ownership of District shares and acreage to receive irrigation water through the system operated and maintained by District.

2.5.17 Pump: A device which mechanically moves water conveyed through a natural or artificial channel.

2.5.18 System: The headgates, canals and laterals along with associated easements operated and maintained by District.

2.5.19 Watercourse: A natural or manmade channel, canal, lateral, pipeline, ditch, drain, etc. that confines the flow of water to a certain direction.

2.5.20 Water Delivery Turnout: A device through which the flow of irrigation water from the system is regulated.

## 2.6 General Water Use Policies

### 2.6.1 Farm Turn Outs

The number of turnouts to a farm unit will be that number which existed as of March 10, 2009. This is normally one farm turnout. The Board of Commissioners may, at their discretion, give consideration to a turnout request.

### 2.6.2 Pump Permits

All water, other than that delivered by the ditchrider, which is taken from a canal, lateral, or drain (open or closed), by pumping or any other method of diversion, shall have a permit issued annually by the District. The Board of Commissioners shall set the rate charged for a pump permit annually. Such fee can be found in the attached Fee Schedule. Only one pump permit will be allowed.

A permit provides the District a record of pump installations being used each year. The District, in its sole discretion, shall determine when there is sufficient quantity of water available for pump use. The District guarantees neither the quantity nor quality of water to be pumped nor makes any representation whatsoever as to the performance of the water flows or water courses, as they exist. Where pumps are installed in laterals and canals, water may not be available at all times. If a canal or lateral is currently turned off, it may not be feasible to deliver enough water to run a pump. The operation of canals and laterals are based on water requirements for water righted land, and certain minimum amounts are required for efficient operation. Water pumping may be delayed until sufficient water is available in each canal or lateral.

All permits (tags) must be purchased and prominently displayed on the pump on or before May 1st of each year. Any pump not displaying a current years tag will be considered in trespass on the right-of-way and may be confiscated. The District shall have no liability for removal of pumps from its right-of-way. Confiscated pumps will be returned to the owners upon purchase of a current years permit. Reinstallation shall be at the expense of the pump permit holder.

The pump permit holder shall be responsible for installation, removal, maintenance, weed control, liability and damage to the District for any use of a pump. The District can review the installation for safety. Installations improperly constructed that could interfere with normal District operations will be removed at the owner's expense. The District shall not be responsible for damage to pumps, suction pipes, outlet pipes or any other pumping

appurtenances that result from normal District operation and maintenance, including weed burning. The permit holder is responsible for removing all pumps and equipment before the annual weed-burning season in order to avoid damage to pumps and equipment.

Where there is an existing water right, no water measurement is required, providing the pump does not have a suction line greater than 1 ½" inside diameter and pump size limited to 2 hp. Pump permits will also allow using a maximum of ¼ cfs. by other means, for example a 1" connection on a pressure line with 15 psi. Any pump having a suction line greater than 1 ½" inside diameter shall install a flow meter that measures the instantaneous flow rate in cubic feet per second or gallons per minute. The meters shall also provide the total used in acre-feet or gallons. The total water used will be accounted for in the water usage statement.

### 2.6.3 Unauthorized Discharge into the System

District prohibits unauthorized and unlawful discharges into any part of the District system. Any person who makes an unauthorized or unlawful discharge into District's system shall be liable to District for any and all damages caused thereby, including repair of any cuts made in the bank of any canals, ditches or laterals caused by such unauthorized or unlawful discharge.

### 2.6.4 Wading, Swimming, or Bathing

All wading, swimming and/or bathing, fishing or other recreation in any District canal or lateral is strictly prohibited at all times and under all circumstances.

### 2.6.5 Negligent Use of Water

The District may refuse to deliver water to a member who allows water to escape onto roads, vacant lands, or other lands served by District. At the District's discretion, the ditchriders will be instructed to turn off water whenever such occurs.

### 2.6.6 Payment of Accounts Receivable

Work done for water users shall be billed upon completion of the work. Larger projects will be billed on a monthly basis. Water users must pay the hourly equipment operating rate, set by the District, the wages for a District employee to operate the equipment and any materials used, unless another agreement between the user and the District was agreed upon in advance (such as a quote or bid price).

All billings are due within 30 days. All past due accounts shall be turned over to the District's attorney for collection, after 90 days. A 90-day-past-due notice shall state that the water user has ten (10) days in which to pay the account before legal action is taken. All collection or legal fees shall be added to the delinquent bill.

No water will be delivered to any land when payments are delinquent.

### 2.6.7 Control of the System

The maintenance and operation of the canals and laterals of the District shall be under the exclusive management and control of the manager, ditchrider, and employees, and no person except authorized employees of the District shall have any right to interfere with said canals or works in any manner.

### 2.6.8 Permits

#### 2.6.8.1 Residential Water Permit

Landowners with no water rights who have been given permission to use District facilities to obtain water will be charged an annual permit fee set annually by the Board plus a Temporary Water Service Contract or pump permit. Such applicable fees can be found in the attached Fee Schedule. Residential Water Permit charges will be billed on regular assessments following the initial setup period. In the first year of a Residential Water Permit, all permit fees, charges and assessments must be paid to the District during setup. Irrigation water will NOT be delivered to any land with no water rights without a signed Residential Water Permit on file at the District office by April 1<sup>st</sup>.

Residential Water Permits shall be for surplus water only and be dependent upon availability of water supply within the District. The determination of availability of surplus water shall be at the sole discretion of the Board. In no event shall any liability accrue against the District, its officers, or employees for any damage, direct or indirect, caused by non-delivery or for any other reason. Residential Water Permits will not be provided to any applicant who is in arrears for prior District assessments or billings.

This contract may be terminated at the option of the District or by declaration of the United States Bureau of Reclamation at any time. No refunds will be made to the contract holder.

#### 2.6.8.2 Commercial Water Permits for Non-Agricultural Use

2.6.8.2.1 **Flowing Through:** The fees charged for commercial water permits for water flowing through District facilities and waterways shall be set annually by the Board of Commissioners and can be found in the attached Fee Schedule.

2.6.8.2.2 **Pumped:** When water is pumped from District facilities and waterways for commercial use, the fees charge shall be set annually by the Board of

Commissioners and can be found in the attached Fee Schedule.

#### 2.6.9 Weir Pools

The District will normally accept the responsibility of keeping weir pools clean provided that the landowner does not allow livestock or other destructive farm operations to occur at the weir pool, which will accelerate the need or frequency of cleaning. The Board of Commissioners, acting through the manager, may assess charges to the landowner where the operations of the landowner or operator have contributed to the problem.

#### 2.6.10 Open Drains

All return flows must have pipe inlets provided by landowners and shall be installed and maintained to District specifications.

No raw sewage connections or drainage from corrals will be allowed to enter open drains. Landowners shall be liable for any unauthorized entry or discharge into an open or closed drain. Unlawful practices, such as described in the Federal "Clean Water Act" may result in damages being charged directly to the landowner and in some cases may result in legal prosecution. Without limiting the generality of the foregoing statement, discharge of any hazardous substance into any waterway is illegal.

The District will maintain all drains unless by special arrangements agreed upon by the Board of Commissioners and landowners.

Landowner shall not encroach upon any District right-of-way along the open drains. The District shall have authority to maintain the right-of-way.

All fence regulations stipulated in section III subsection C of this policy shall apply to all District drains.

The District will not perform any maintenance of private drains that were not constructed by the District. The Board of Commissioners may agree to assist on a mutual program of O&M on an annual basis, but only by prior written request of the landowner to the Board of Commissioners.

#### 2.6.11 Closed Drains

The District will perform maintenance on all closed drains constructed by the United States Bureau of Reclamation or the District.

Manholes must be maintained as installed, in particular those located on an angle point or junction of two drains. Manholes in fields may be lowered only upon approval of

the District and then only after the fourth irrigation season. The landowner is responsible for all costs associated with lowering, or modifications to any manholes.

No obstructions of any kind will be allowed in closed drains, manholes or any other District facility. Any landowner or operator placing obstructions within any District facility will be held responsible for any repairs or damage the obstruction may cause.

No sewage connections may be made into tile drains. Landowners shall be liable for any unauthorized entry or discharge into an open or closed drain. Unlawful practices, such as described in the Federal "Clean Water Act" may result in damages being charged directly to the landowner and in some cases may result in legal prosecution. Without limiting the generality of the foregoing statement, discharge of any hazardous substance into any waterway is illegal.

The right-of-way to maintain drains is a permanent right-of-way and maintenance of drains will be conducted to cause the least amount of interference or damage to the landowner.

Where the water flow in closed drains is affected by root growth from trees, shrubs or other plants, it shall be the policy of the District to remove the root growth the first time. A letter will then be sent to the landowner having trees or shrubs over the drains, stating that the District will assist the owners in removing those growths. Otherwise, if a return trip is required to again remove the roots, the cost will be allocated to the landowner.

Any necessary repairs to closed drains caused by erosion of topsoil, or removal of topsoil by farming or land leveling operations shall be at the expense of the landowner.

The District will not perform any maintenance of private drains that were not constructed by the District. The Board of Commissioners may agree to assist on a mutual program of O&M on an annual basis, but only by prior written request of the landowner to the Board of Commissioners.

#### 2.6.12 Return Flow Ditch

A return flow ditch shall be defined as a shallow surface drain whose primary purpose is to remove surface water from a farm or farms. The landowner shall have the responsibility for maintenance of a return flow ditch from his or her farm unit to the point where it enters a main drain. This responsibility is the same whether it is a single or multiple farm return flow ditch. On a multiple farm return flow ditch, it is the responsibility of all landowners to maintain the entire length of the return flow ditch to the point where it enters a main drain maintained by the District.

If the District cleans a multiple farm return flow ditch, or natural drain the bill will be allocated to each landowner who is responsible according to the pro rata share of acreage he or she owns. The District will send a bill to each landowner involved. The person

requesting the ditch be cleaned must notify all landowners involved that the District is going to clean the ditch and that all landowners will be billed for their proportionate share.

If the landowner no longer uses the return flow ditch due to installation of sprinklers, or any other reason, they will still be responsible for their proportionate share of the billing.

The landowner must maintain structures where surface return flows are directed into a drain maintained by the District.

State statute clearly states, "The owner or owners of any ditch of irrigation or other purposes shall carefully maintain the embankments thereof so that the water of such ditch may not flood or damage the premises of others. Failure of landowners to maintain the return flow ditch or structures shall be basis for the District to withhold delivery of water until the return flow ditch is properly maintained.

#### 2.6.13 Natural Drains

The District is not responsible for weed control along the natural drains. The landowners must take care of their own weeds along these drains.

#### 2.6.14 Weed Spraying

Weed control shall normally be the responsibility of the District. The District is only responsible for the control of noxious weeds on the Districts waterways, open drains, and right-of-way. The landowner may also perform weed control, and any claim for expenses by the landowner must have prior Board of Commissioners approval.

#### 2.6.15 Stock Water

Any damage done to drains by livestock will be the responsibility of the landowner. Damage will be repaired by the District at the landowner's expense.

Use of canals, laterals, distributaries or drains, as a source of stock water after the water is turned out of the system shall be permitted. This policy does not affect the normal running water in open drains but is set forth to prohibit diverting water into a lateral or canal system which would not normally run water during the off irrigation season.

#### 2.6.16 Cost Sharing with Landowners

In cases where the landowner proposes to share in the cost of rehabilitating or relocating a lateral, drain, canal or other facility of the District, a written proposal shall be set forth by the landowner. The Board of Commissioners shall review each proposal on a case-by-case basis. The Board of Commissioners shall consider the benefits to the District and the landowner. If the Board of Commissioners approves the proposal, they shall set the minimum contribution by the landowner, based on the proportion of benefits to the landowner and the District. If District funds are available, then the District portion or share

of the costs shall be charged to either operation and maintenance or rehabilitation and betterment programs. There shall be a written agreement executed by both parties before construction begins.

#### 2.6.17 Work Done for Others

Water users within the District may hire District machinery and personnel for water related work on their property.

Work done for water users shall be billed upon completion of the work. Larger projects will be billed on a monthly basis. Water users must pay the hourly equipment operating rate, set by the District, the wages for a District employee to operate the equipment and any materials used, unless another agreement between the user and the District was agreed upon in advance (such as a quote or bid price).

All billings are due within 30 days. All past due accounts shall be turned over to the District's attorney for collection, after 90 days. A 90-day-past-due notice shall state that the water user has ten (10) days in which to pay the account before legal action is taken. All collection or legal fees shall be added to the delinquent bill.

No water will be delivered to any land when payments are delinquent.

### 2.7 Water Delivery

#### 2.7.1 Access within District Boundaries

District shall have the power and authority to enter upon a Member's land for any and all reasons relative to the administration of water. Entry upon the land by District shall not be considered trespass.

#### 2.7.2 Assessments

Payment by members for the charges assessed by District for operation and maintenance shall be made payable to: Heart Mountain Irrigation District. Such applicable fees can be found in the attached Fee Schedule.

All assessments levied by the District for operation and maintenance (O&M), repayment of capital construction costs, debt retirement, rehabilitation and betterment (R&B), minimum charge, and tunnel repair shall follow state statutes set forth governing collection of county taxes. The Board of Commissioners shall set the amount of all assessments for O&M, capital construction costs, R&B, debt retirement, minimum charge, and tunnel repair annually. The annual charges for assessments may be paid in one of the following manners:

- a. The first half payment paid by November 10th of the current year with the remaining half due by May 10th of the following year.
- b. Payment in full due by December 31st of current year.

All delinquent accounts will be charged interest and penalties as set by the Board annually in the attached Fee Schedule from the first day any portion of the account became delinquent. No water shall be delivered to any land when payments are delinquent. All delinquent accounts will be turned over to the Park County Treasurer for collection as set forth in Wyoming State Statutes.

#### 2.7.2.1 Payment of Excess Water

Excess water is defined as that water used by any landowner, renter or Water Association in excess of the base allotment. The Board of Commissioners will set the base allotment per acre and excess water charges annually. Such fees can be found in the attached Fee Schedule. The landowner or Water Association on record at the time of billing is responsible for the payment of the excess water charges. The landowner or Water Association will be billed at the end of the irrigation season for all excess water used during the current season. If the Water Association delivers to the District a breakdown of excess water usage for each landowner in the Association by October 31st the District will bill each landowner in Water Association for their share of excess water usage, otherwise the Water Association as a whole will be billed for the excess water usage.

Payments for excess water charges are due in full by December 31st of the year in which the excess water is used.

No water shall be delivered if payments are delinquent.

#### 2.7.2.2 O&M Acreage Payoff

Any request to remove acreage from the annual assessment roll must be in writing. Any acreage removed from the assessment roll will be charged \$5,000 per acre. The District will maintain these funds in a separate certificate of deposit and the interest earned annually shall be used for the current year's operation and maintenance charge

#### 2.7.3 Control of Gates, Checks, etc.

Except as otherwise specified in these Rules and Regulations, only District employees are allowed to operate headgates, valves or other control devices. Any person who in any way interferes with the setting or adjustment of such headgates, turnouts, valves or checks shall be held strictly liable for any damage resulting therefrom, and may be prosecuted pursuant to Wyoming law. Specifically, the Board of Commissioners shall cause to be prosecuted any person or entity violating Wyo.Stat. §§ 41-3-614 and 41-5-110 which read in part as follows:

Wyo.Stat. § 41-3-614: It shall be unlawful for any person to willfully use or possess water which has been lawfully denied by the water commissioner or other competent authority or to open, close, change or interfere with any well, pump, reservoir outlet valve, dam, diversion, headgate or waterbox without authority. Any violation of this section shall be punishable pursuant to W.S. 41-3-616.

Wyo.Stat. § 41-5-110: It shall be unlawful for any person without authority, to willfully interfere with or damage any dam, diversion structure or means of conveyance whether jointly owned by the person, on the property or in the lawful possession of another, with the intent to injure any person, or for his own gain, to the injury of any other person lawfully entitled to the use of such water, diversion structure or means of conveyance. Any violation of this section shall be punishable pursuant to W.S. 41-3-616.

#### 2.7.4 Handling of Disputes

Whenever there is a dispute between landowners and/or water users involving water delivery, a return flow ditch, or any matter involving irrigation water deliveries, the following shall apply:

The Project Manager and the Ditchrider will inspect the situation and recommend that the water delivery be left as is, should be turned down, or should be turned off, depending on the particular situation.

It shall be the responsibility of the affected parties to repair or improve the system to handle the requested amount of water before water deliveries can be reinstated or the volume increased. The system repairs or improvement shall be inspected by the Manager and all affected parties before the water deliveries are reinstated.

Any conflicts that can not be solved between the affected parties so that water can safely be turned back on or the flow increased shall be resolved by a court of law.

The District will base its recommendations, as appropriate, on the guidelines that are provided in the booklet titled "Legal Aspects Relating to Irrigation Ditch Rights and Easements" published by the Wyoming State Board of Control.

#### 2.7.5 Measurement of Water/Measuring Devices

All turnouts must have an approved measuring device that is in proper working condition. All measuring devices, which are approved by the Board of Commissioners; acting through the management, will be maintained by the District. All weirs and flumes

must have weir blades and gauges unless, by special determination, the management recommends that the blade should be removed.

Flow meters may be used for measuring water. The flow meter is the landowner or water association's property and must be maintained and repaired by them. Flow meters must be able to read cfs or gpm with accumulated water use in acre feet. Flow meters must be in working order each season, if landowner or water association does not maintain and repair the flow meter the District can maintain and repair the meter at the owner's expense.

Cipolletti weirs, rectangular weirs, parshall flumes, ramp flumes, and flow meters are the standard measuring devices acceptable to the District, unless conditions otherwise determine, the above measuring devices shall be used to avoid supply and administrative problems.

Where abnormal or unusual conditions exist (normally on a temporary basis) the rate of charge for delivery of water (amount) shall be that determined by the ditch rider. Abnormal conditions may include pump unit, pipe installations, etc.

The bypassing, removal, or modification of a measuring device will not be allowed without written approval from the Board of Commissioners. Unauthorized modifications, bypasses, removals, or modifications to measuring devices will be replaced or repaired to District specifications, and charged to the landowner.

#### 2.7.6 Modification of Water Delivery Systems

Members shall not modify District's water delivery system without prior written permission from the Board of Commissioners.

Any application or proposal to make any physical change to any part of the District system, including but not limited to headgates, canals, laterals, or ditches, shall be in writing and must be accompanied by a written plan describing the proposed changes.

##### 2.7.6.1 Water Diversion on Irrigable Lands

Each farm unit or parcel of land shall share on a pro rata basis in delivery of water. The rate of delivery shall be computed on the following factors:

- a. District canal capacity
- b. Appropriated water rights
- c. Storage rights
- d. Distribution losses
- e. Relationship of total irrigable acres owned by landowner as it bears to the total irrigable acreage of the system
- f. Safe operating practices

Grouping of irrigation heads will be permitted by agreement among landowners or operators with the knowledge of the District.

Beneficial use shall be the basis, the measure and limit of the right to use water at all times and the Board of Commissioners shall maintain control of all appropriated and permit water, return flows, its use, distribution, priority and allied functions.

All return flow (i.e., sub-surface, closed drains and open drains) is claimed for use by the United States Bureau of Reclamation until it leaves the project boundary. The District by virtue of its repayment contract has assumed this same right and, therefore, must provide rules and regulations regarding its use.

#### 2.7.7 Ordering Water

Anyone ordering water must complete a water order card. All water orders must give 48 hours notice for turn on and 24 hours notice for turn offs or adjustments. Water order requests must include the turnout number, the amount in cubic feet per second (cfs) desired, date of requested action, the landowner's name and the name of the operator. The person placing the order must sign all water order cards. Changes of ½ cfs or less can only be made every third day. If a change of ½ cfs or less is needed more often than every third day, a fee will be charged to your account each time. Such fee is in the District's Fee Schedule, which is modified at the discretion of the Board.

All orders must be in the designated pickup places no later than 6:00am in order to count that day for notice. It is strongly recommended that the water user keep one copy of the water order card for their records. The District is not responsible for lost, incorrectly numbered, incorrectly dated or illegible water order cards.

The opening and closing of head gates is the sole responsibility of the ditchrider. It will be at the discretion of the ditchrider to allow any water user to turn on or adjust the head gate. Head gates may be locked at the discretion of the ditchrider. A landowner who is having problems with his head gate may request that the head gate be locked.

#### 2.7.8 Water Deliveries

District will make every effort to maintain an adequate flow of water in each lateral system to meet anticipated demands. However, changes in water use due to temperature variation, local runoff from precipitation, spill water from other lateral systems, canal breaks, and other emergencies may cause unavoidable fluctuations and interruptions in flow.

#### 2.7.9 Sale or Lease of District Water

No member is allowed to change the use of the water right delivered through District's system to a use other than irrigation on either a temporary or permanent basis.

### 2.7.10 Land Ownership and Transfers

The District shall show upon its assessment roll, the name of the owner of each lot, tract, parcel, and farm unit as it appears on record in the District office at the time the assessment roll was printed. In the event of the sale, conveyance, or transfer of any such lot, tract or parcel, the parties thereto, or one of them, shall provide to the District a copy or photocopy of the instrument of transfer signed by all parties involved, giving the name(s) of the transferor, the name(s) and address of the transferee and the legal description of the lot, tract or parcel being transferred. Unless such information is provided to the District, the District cannot be responsible for proper mailing of notices, assessment, excess water usage, and other matters relating to the operation of the District. No land transfers will be made without proper documentation.

When a landowner sells, transfers or conveys land which holds a water right, to a political subdivision, state or federal government, religious or charitable organization, all charges or liens, matured or un-matured, for the irrigation system shall be satisfied in full, prior to consummation of any sale, transfer, or conveyance. In addition to payment of the obligations mentioned above, the Board of Commissioners may require relinquishment of water rights by the landowner where change of use for irrigation, livestock or domestic use is anticipated. Each unit of land, as described by the Heart Mountain Irrigation District records shall be considered a separate sale and the District will charge a transfer fee. Such fee is in the District's Fee Schedule, which is attached and modified at the discretion of the Board.

All assessments, excess water charges, and accounts receivable of any type shall be paid in full before transferring land to another landowner. The landowner of record at the time the assessments are printed for the year shall have the responsibility for payment of all bills due to the District before any lands may be transferred from one landowner to another, whether the land is being subdivided or not.

### 2.7.11 Certification Forms

The Reclamation Reform Act of 1982 (RRA) requires landholding verification forms to be completed prior to receiving any reclamation irrigation water. Landholders and/or renters who meet the RRA requirements set annually by the Bureau of Reclamation must complete and return all required forms to the District office before water deliveries can be made. The certification forms are an annual requirement of the United States Bureau of Reclamation. The Act requires that water deliveries be withheld until the forms are on file in the District office.

Landowners and/or renters must notify the District within 30 calendar days if their landholdings change during the water year, and they must submit a new RRA form within 60 calendar days of the change. A new landholder and/or renter must submit the appropriate RRA forms prior to receiving Reclamation irrigation water.

Any RRA forms that are not complete, accurate or returned to the District office by the due date can be charged an administration fee equal to any fees charged to the District by the Bureau of Reclamation.

As of January 2008 the Bureau of Reclamation may require a written lease form to be submitted to them when requested.

#### 2.7.12 Crop Report Forms

The United States Bureau of Reclamation sends crop census report forms annually to the District. The District in turn sends forms to the landholders of record at the time of mailing. Landholders are required to complete and return the forms received on an annual basis so the District can fulfill its obligations. If the landowner does not have access to the crop information they can forward the form to the renter or operator, however this will not absolve the landowner from the responsibility of completing and returning the form to the District office by the date requested. It will be at the discretion of the Bureau of Reclamation if crop census reports are needed to be filed with the District.

#### 2.7.13 Drought Provisions

The following drought provisions shall be in affect whenever the Board of Commissioners determines that the amount of water available to each acre of land on the District will be limited by setting an annual per acre allotment. The following policy will override any conflicting policies contained elsewhere in the Heart Mountain Irrigation District Board Policies.

Water Deliveries - to show beneficial use of all water diverted into the Heart Mountain Canal and to eliminate water that is ultimately returned due to the lag time involved in moving water from the reservoir to the lower reaches of the canal, requests to turn water off or on will be at the discretion of the ditchrider.

Transfers of water allocations between members will be allowed under the following guidelines:

- a. Each member involved in a temporary transfer of an allocation shall be in good standing with District.
- b. The members desiring such a transfer must present a transfer request in writing to the secretary a minimum of forty-eight (48) hours prior to the commencement of deliveries under a transfer. The written submittal must specify the details of the member transfer; i.e. the number of shares, length of time that the transfer shall be in effect, and the location of the headgates involved and any other relevant information.

- c. The new transfer delivery point must have both an adequate canal turnout headgate and a measuring device of sufficient capacity to handle the transferred amount of water.
- d. Each member involved must notify the ditchrider of their transfer and provide a copy of the written submittal to the ditchrider. The ditchrider will administer the transfer and adjust the headgates involved to the revised proper delivery amounts.

#### 2.7.14 Water Records

It shall be the duty of the ditchrider to maintain standardized records and record accurate daily records of all water diversions. This will include canals, laterals, farm delivery, water rentals, and spills on laterals.

The minimum daily amount that will be charged to each account will be  $\frac{1}{4}$  cubic feet per second (1/2 acre foot). Stock stream or garden stream will be charged a minimum of  $\frac{1}{4}$  cfs.

The District office shall maintain daily records of all water diversions. A water usage statement shall be mailed to each landowner showing usage for the previous period. In addition, a renter will receive a water usage statement, provided that all lease information is current and complete in the District office. The frequency for mailings of water statements will be dictated by the Board of Commissioners, but shall not be less than once a month during the irrigation season.

#### 2.7.15 Temporary Water Service Contracts

The rates for water service contracts shall be set annually by the District Board of Commissioners. Such fees can be found in the attached Fee Schedule. There are no water allotments for Water Service Contract acres. Water service contract charges will be billed on regular assessments. Any class 6 lands being irrigated must have a water service contract. Irrigation water will NOT be delivered to any land containing class 6 lands without a signed contract for Temporary Water Service on file at the District office by April 1st.

Water service contracts shall be for surplus water only and be dependent upon availability of water within the District. The determination of availability of surplus water shall be at the discretion of the Board of Commissioners. In no event shall any liability accrue against the District, its officers, or employees for any damage, direct or indirect, caused by non-delivery or for any other reason. Temporary water service will not be provided to any applicant who owes for prior District assessments or billings.

This contract may be terminated at the option of the District or by declaration of the United States Bureau of Reclamation at any time. No refunds will be made to the contract holder.

## 2.8 Use of Easements and Rights-of-Way

### 2.8.1 Right-Of-Way

Federal and Wyoming law states that the right-of-way easement will be whatever is needed for the operation and maintenance of the canal, lateral, drain, and other facilities. All right-of-way for maintenance of canals, laterals, distributaries, and drains of all types shall be operative under conditions solely defined by the Board of Commissioners. Encroachment shall not be permitted and, if unauthorized encroachment occurs, the Board of Commissioners shall re-establish the right-of-way at the expense of the landowner. Roads and other structures constructed and maintained by the District for the express purpose of operating and maintaining its facilities shall not be used by any individuals except those specifically granted such right by the District.

The District has an easement along facilities for all purposes. These easements are located on private property and shall not be used by the public. The District shall not be liable for any public or private use of these easements. It is each landowner's responsibility to protect his own property from public access on District easements.

No encroachment on the easements shall be allowed by the planting of shrubs, trees, or permanent structures.

The District shall have no liability for any damage to the landowner as the result of the encroachment on the District's easement in any manner.

The necessary easement for the conveyance of water to any subdivision or split of a farm is the responsibility of the landowner, and not a responsibility of the District.

#### 2.8.1.1 Operation & Maintenance (O&M) Roads

Maintenance of O&M roads is the responsibility of the District.

O&M roads are for use by the District, the landowner and third parties who have the permission of the landowner. The District cannot give easements or permission for access on the O&M roads. O&M roads are not public roads and any unauthorized persons using the roads are traveling at their own risk. The District is the dominant tenant of the easement that includes the O&M road. As such, neither the landowner or other third parties can unreasonably interfere with the District's ability to use or access the O&M roads.

Landowners shall not encroach upon any District right-of-way. Rights-of-way for canals and drains provide reasonable access for operation and maintenance and shall not be obstructed by structures, fences, trees or other vegetation. Any person who damages a canal, buried pipe line or drain bank by plowing or removing dirt therefrom, shall be liable to the District for such damage. Canals, buried pipelines and drain banks shall not be used as levees for irrigation purposes, nor as a levee for a private ditch.

Dumping of trash, rubbish, garbage, etc., in District canals, laterals, drains, or on rights-of-way is strictly prohibited

### 2.8.2 Building Upon or Modifying Easements

Any modification that unreasonably interferes with the District's use of an easement is prohibited. The District recommends consultation between the Board and the landowner prior to any modification of a District easement, including O&M roads.

### 2.8.3 Fences on Easements

No fences shall be permitted on any District easement. If the landowner or operator places a fence on the right-of-way, it shall be the landowner's responsibility to remove the fence at their expense. If District personnel must remove the fence, the landowner will be charged for removal.

Anyone who seeks to construct a fence across a District canal, lateral or ditch must first obtain written permission from the Board of Commissioners. In no event, shall such fence be constructed where the lowest point of the fence is less than one (1) foot above the high water level of the ditch.

District assumes no liability or responsibility for the construction, maintenance or repair of any such fences.

### 2.8.4 Cattle Guards and Gates on Easements

No fences or closed gates will be permitted on District right-of-way during the irrigation season (approximately April 1st through October 15th). This includes all O&M roads, canals, lateral, distributaries, and drains. The District shall not be liable for fences or gates located on the right-of-way. By special request and approval, temporary gates may be permitted on District right-of-way by issuance of a special permit by the Board of Commissioners. No other gates or fence installation has any permitted rights.

'Johnson' or other drive thru gates will not be used in place of a cattle guard. All cattle guards will be placed on concrete footings and shall be heavy enough to permit a minimum load of 15 tons to pass. The minimum width shall be 14 feet. A gate, with a minimum width of 16 feet, shall be provided by each cattle guard to permit heavy equipment or other heavy loads to by-pass the cattle guard. Where possible, the gate should be adjacent to the canal. It will be the responsibility of the landowner to purchase, install and maintain the cattle guard in a safe manner.

### 2.8.5 Crossings (Bridges, CMP, Flumes)

All bridges, pipe crossings, etc. into farmsteads shall be the responsibility of the landowner to maintain. The landowner will be held responsible for any damage caused by

the structure and the safety of said structure. If this structure should fail it will be the responsibility of the landowner to immediately remove any part causing trouble to the free flow of water in the system. If the landowner fails to operate and maintain the structures in a safe manner, the District reserves the right to remove the structure at the landowner's expense.

Access crossings, when permitted by the Board of Commissioners, shall be constructed and maintained by the landowner according to specifications approved by the District. The District must approve all plans and designs and in some cases the District may deem it necessary for the landowner to obtain the services of a professional engineer to design the structure.

All structures shall have a minimum clearance of 2 feet above the normal high water mark. No bolts, wood, metal or any other part of the structure, that could cause weeds, or any kind of debris to hang up, can be any closer than 2 feet from the normal high water mark. The high water mark is to be determined by the District.

On approved drains and drain crossings, which initially were constructed by the District, where the drain did not exist on the original unit bisecting a farm, the District will provide the initial crossing and culvert. Thereafter, the landowner shall maintain the crossing.

The landowner shall be responsible for reimbursement to the District for the maintenance of private flumes used to convey water over ditches or drains which bisect the farm.

Any private crossing used by the District in performance of O&M work will be maintained in cooperation with the landowner. The percentage to be paid by the District will be set by the Board of Commissioners.

#### 2.8.6 Pump Installation on Easements

Anyone who seeks to install a pump that will be permanently placed on any District easement, canal or ditch must first obtain written permission from District. No pump may be constructed unless and until District's Board of Commissioners or its authorized agent have issued a written approval of the plans and designs for the proposed installation of a pump. Pumps shall be installed and maintained at the sole expense of the pump owner. The pump well, power pole, and any other associated fixtures shall be located off District's easement.

District prohibits the use of any portable pumps on any easement to the extent that such pumps either block or otherwise obstruct the easement.

#### 2.8.7 Third Party Use of Easements

No person shall allow third party use of easements that would, by the nature of such use, unreasonably interfere with or cause increased maintenance of the District system or said easement. The District recommends that such third party consult with and seek written permission from the District prior to any such use.

#### 2.8.8 Utility Crossings of Easements

District facilities within the county road dedication have prior right-of-way. Any utility constructed in District right-of-way without written approval by the Board of Commissioners or District must assume any and all costs involved when the District performs operation, maintenance or rehabilitation within the District right-of-way.

All utility crossings of District right-of-way must be approved in writing in advance by the District and will be charged a fee as established annually by the Board. Such fees can be found in the attached Fee Schedule. The District may require a performance bond from the contractor.

#### 2.9 Use of Contractors

Except in the case of emergency, the Board of Commissioners shall require written contracts whenever construction, maintenance or repair of any District facilities require the service of persons other than District employees and where the cost of such services exceeds Five Hundred Dollars (\$500.00).

Whenever a contract price exceeds Two Thousand Five Hundred Dollars (\$2,500.00), the Board of Commissioners may require the contractor to provide good and sufficient bond and surety for the faithful and workmanlike performance of such services and for completion of the contract to the satisfaction of the Board of Commissioners.

### **SECTION III: SUBDIVISION OF LAND**

#### 3.1 Statement of Purpose

The original District, controlled and administered by Heart Mountain Irrigation District was implemented, laid out and constructed based on historic uses and application. In order to deliver water to the members, District must have the ability and authority to use and manage the entire physical system that makes up District, including the structures, easements, rights-of-way, canals, ditches, laterals, diversions, and measuring devices.

The ownership of land within District has changed over time. Where there was previously only a single or only a few landowners, there are now an increasing number of farm units, and a multitude of landowners and water users. This subdivision activity has created many administrative, legal and practical problems for District and has resulted in greatly increased expenses.

### 3.2 Statement of Policy

District's Rules and Regulations related to subdivision activities shall be implemented, construed and interpreted based on the following declarations and policies of the Board of Commissioners:

- 3.2.1 The Board of Commissioners must control District's costs in owning, operating, maintaining, and administrating District's property and rights for the benefit of all its members.
- 3.2.2 The subdivision of lands located within and served by District has created increased demands and expenses to District.
- 3.2.3 The Board believes that it is appropriate to affix and assign those additional costs and expenses associated with the subdivision of farm units to those owning or subdividing these farm units.

### 3.3 Subdivisions

"Farm unit" means those units as described in the public notice for reclamation of homestead entry as issued by the United States Bureau of Reclamation. Each farm unit equals one "farm ownership". Further subdivision of an original farm unit with different landowners will create additional "farm ownerships". Therefore the term "farm ownership" is defined as the original subdivision of project lands into farm units and subsequent subdivisions thereof where one owner does not hold the subdivided parcels.

The District reserves the right to forward the charges for additional farm ownerships levied to the District by the United States Bureau of Reclamation as per the repayment of the rehabilitation and betterment program contract #2-07-60-W0884 to all new farm ownerships as the Board of Commissioners shall so choose.

The phrase "divided acreage" means the sale, conveyance, or transfer of less than all of a farm unit so that the resulting tracts are owned by more than one person.

The term "divider" or "subdivider" is defined as the owner/user who divides his, her or its land.

The term "subdivision" as used in this section means the sale, conveyance or transfer of less than all of a one-farm unit to two or more landowners.

The District will assist any person desiring to subdivide a farm unit. Upon request the District will furnish a copy of all board policies, requirements, and land class maps related to the property being subdivided. A reasonable fee may be charged for furnishing copies of land classification maps, assessments rolls, or other District papers.

The District will provide whatever assistance it can for such purposes as describing right-of-way for underground drains, laterals and canals and estimating costs to be levied by the District for the operation, maintenance, excess water, etc.

Any person or persons subdividing or selling off a parcel of a farm unit containing land with water rights shall provide the District with a licensed surveyor's plat containing right-of-way or easements for both irrigation water and return flows. This plat shall also list and define the irrigable land by land class, with the amount of irrigable acres for each class of land for each lot, tract or parcel. All costs shall be the responsibility of the landowner on record at the time of subdivision. In the event that a plat is not provided to the District, the District will solicit a plat from a licensed surveyor, with all costs being billed to the landowner. Water deliveries may be withheld until the costs of the plat have been paid in full. Additional charges by the District for the time involved in reconciling the acreages on the subdivided parcels may be charged to the landowner.

For all farm units, which have theretofore been or are hereafter subdivided, the total irrigable acreage of the farm unit must be apportioned among the lots, tract or parcels thereof, including the irrigable portions dedicated to streets and roads. Such lot, tract or parcel shall be assessed upon the basis of the number of irrigable acres as so determined. If there are areas where water rights are attached to roads, streets, buildings, and non-agricultural areas, those water rights will need to be transferred to the Heart Mountain Irrigation District or dealt with by the subdivider pursuant to Wyoming statute and county regulation.

### 3.3.1 Delivery of Water to Divided Acreage

#### 3.3.1.1 Historical Point of Diversion and Water Deliveries

Except as otherwise permitted by these Rules and Regulations, District will deliver water only to the historic points of diversion for the original farm unit on District's right-of-way. Such deliveries will not exceed the measured volume historically delivered to that point of diversion. Any proposed subdivision within the boundaries of District shall either (1) relinquish any appurtenant water rights to District; (2) construct a distribution system to provide water to each parcel located within the subdivision; or (3) file a Petition with the Board of Control seeking to change the Place of Use (transfer) of such water right.

### 3.3.2 Water Users Association

At District's discretion, any distribution of water beyond the original farm unit turnout shall be controlled by a "water users association" created for that particular subdivided area. This water users association shall adopt and implement the necessary bylaws, rules and regulations, and ditch users agreements to address delivery and use of District water. The association's by-laws shall be in writing and shall be filed with and approved by District before implementation. The members of this association shall appoint

a water master, who will be the authorized representative of the association for the purpose of conducting business with District.

Any headgate serving more than two landowners shall be required to form a water association before the start of the irrigation season. The Water Association Documents must be recorded with the Park County Clerk. Distribution of water within the sub divided area, beyond the original farm unit turnout, shall be implemented and controlled by a water users' association. The association water master or its designated representative shall be the sole entity to order water and keep record of usage. Issues affecting the subdivision after the measuring device should be dealt with internally. The District will notify the water master or designated representative of any landowners who are delinquent on payments to the District, it is the water association's responsibility to not deliver water to any delinquent landowners.

A Headgate with two landowners must have an agreement stating who will be the watermaster, the watermaster will order water and keep records of usage, excess usage will be their responsibility to divide.

For all associations required by District, the placement, construction and maintenance of all ditches, structures and roadways from the original farm turnout to and within the association will be the responsibility of the association. Any changes that are necessary to deliver water from District's original farm turnouts and ditches shall be the responsibility of the association.

District is not liable for any damage resulting from the association's actions or in its actions in operating, maintaining, or implementing the association beyond the original farm turnout used to deliver the water.

### 3.3.3 Costs of Delivering Water to Divided Lands

Any and all divided acres that have been isolated from District's delivery system and right-of way that are shown on District's "assessment roll" shall retain their assessment, and will be obligated to pay the same, regardless of whether delivery of water is or is not made.

### 3.3.4 Basis for Assessments.

Any expense incurred by the District for original farm unit acreage as a result of the Bureau of Reclamation contract will be charged to the appropriate landowners upon subdivision of that farm unit.

### 3.3.5 Administrative Fees

All sales including boundary line adjustments, family exemptions, subdividing or selling off a lot, tract or parcel of a farm unit containing land with water rights within the

Heart Mountain Irrigation District shall pay the District administrative fees in the amount set by the Board of Commissioners annually per parcel or subdivided parcel and are set out in the attached Fee Schedule.

3.4 Notification of District

Members are required to notify District before dividing their lands. Failure to comply with these Rules and Regulations is grounds for legal actions, the non-delivery of water, and charges for costs and legal fees incurred by District.

3.5 Lack of Water Delivery Facilities

If there are no means in place to provide a system for distribution of water to lots, tracts or parcels within a subdivided farm unit the District is not responsible for insuring a means of delivery to individual lots, tracts or parcels. The District will be responsible to deliver water only to the original point of diversion.

Board of Commissioners:

- \_\_\_\_\_ Pat Nelson, Commissioner, District #1
- \_\_\_\_\_ Brad Ferguson, Commissioner, District #2
- \_\_\_\_\_ Travis Jackson, Commissioner, District #3
- \_\_\_\_\_ Brian Duyck, Commissioner, District #4
- \_\_\_\_\_ Scott Hecht, Commissioner, District #5

Attest:

\_\_\_\_\_ Secretary/Treasurer