

Resolution MCFML-2018-03

A RESOLUTION AMENDING THE BYLAWS OF THE MESA COUNTY FEDERAL MINERAL LEASE DISTRICT BOARD

The Mesa County Federal Mineral Lease District (the "District") was established on June 20, 2011 by the Mesa County Board of County Commissioners (the "BOCC") through Resolution MCM 2011-050, and was subsequently reformed through Resolution MCM-2012-057 on June 25, 2012.

The Bylaws of the District ("Bylaws") were originally adopted by the District Board pursuant to the Federal Mineral Lease District Act, § 30-20-1301 *et seq* C.R.S. (the "Act").

From time to time the Board reviews its governing documents for the purposes of updating them to conform to the needs of the District.

The District Board, having met on ~~September 12, August 15, 2018~~ and ~~October 4~~ September 12, 2018, hereby amends its Bylaws as follows. votes to change the regular meeting times to quarterly meetings on the second Wednesday of each month at 2:00 P.M. and hereby approves the attached revision to the District Bylaws.

Adopted and approved by the District Board this 12th day of September, 2018.

**MESA COUNTY
FEDERAL MINERAL LEASE DISTRICT**

By: _____
David Ludlam, President
Mesa County FML District
Board of Directors

BYLAWS OF THE MESA COUNTY FEDERAL MINERAL LEASE DISTRICT BOARD

AMENDED September 12, 2018

**ARTICLE I
NAME**

1.1 The name of this Board shall be the Mesa County Federal Mineral Lease District Board, hereinafter referred to as the “District Board” or “Board”. References herein to the “District” are to the Mesa County Federal Mineral Lease District.

**ARTICLE II
AUTHORITY**

2.1 The District, authorized by § 30-20-1301 *et seq* C.R.S., was created by the Mesa County Board of County Commissioners (“BOCC”) on June 20, 2011 and was subsequently reformed on June 25, 2012. The District Board has been appointed by the BOCC. The boundaries of the District are all of Mesa County including all municipalities within Mesa County.

2.2 The District is an independent public body politic and corporate. The District is a public instrumentality, not an agency of county or state government and is not subject to administrative direction by any department, commission, board, or agency of Mesa County, or any county, or the State of Colorado. § 30-20-1305.5(1), C.R.S.

2.3 The District Board has authority under statute to distribute-all of the funding that the District receives from the Colorado Department of Local Affairs (“DOLA”), except such funds as expended or reserved for administrative expenses as permitted by C.R.S. § 30-20-1307 (1)(b), to areas that are socially or economically impacted by the development, processing, or energy conversion of fuels and minerals leased under the Federal “Mineral Lands Leasing Act” of February 1920, as amended.

2.4 The District is designed to be a funding and service delivery mechanism, which will, consistent with sound financial practices, result in the greatest use of financial resources for the greatest number of citizens of this state, with priority given to those communities designated as impacted by the development of natural resources covered in the federal act.

**ARTICLE III
INTEREST OF OFFICERS AND MEMBERS**

3.1 No officer or member of the District Board shall have any right, title or interest in or to any real or personal property or other assets of the District or the District Board either during its existence or upon its dissolution.

**ARTICLE IV
GENERAL BUSINESS AND STRUCTURE**

4.1 Membership of the District Board

a. Members of the District Board may be county commissioners from the county that created the district, representatives of the governing body of municipalities included in the district, or other officials representing the interests of areas impacted by mineral lease activities. C.R.S. 30-20-1306(1)(b). Under MCM 2012-057, Directors are appointed by the BOCC: one director will be a sitting county commissioner, one director will be an energy industry representative, and one director will be an at-large member of the public.

b. Members of the District Board shall serve staggered terms so that not more than one Director's term expires in any one year, and thereafter terms shall be for three years each, and each term shall commence on January 15. C.R.S. 30-20-1306(1)(e)(I).

c. Each Director shall hold office until the expiration of the term to which such director is appointed or elected or until a successor has been duly appointed or elected. C.R.S. 30-20-1306(2)(a).

d. Vacancies on the District Board shall be filled by a majority vote of the BOCC. C.R.S. 30-20-1306(2)(b).

e. The BOCC may remove any Director for official misconduct, incompetence, neglect of duty, or other good cause shown, so long as the removal occurs after the director in question is given notice and an opportunity to be heard before the BOCC at a public hearing. C.R.S. 30-20-1306(2)(c).

f. All members of the District Board shall serve without compensation except for such amounts determined appropriate by the District Board to offset expenses incurred by District Board members in the performance of their duties in such capacity. All compensation allowed to District Board members shall be subject to the limit on administrative costs provided in C.R.S. § 30-20-1307 (1)(b).

g. The officers of the District Board shall be the president and a secretary who shall be elected annually by the District Board from its own members.

4.2 Duties of the District Board Pursuant to C.R.S. 30-20-1307

(1) (a) Except as otherwise provided in paragraph (b) of this subsection (1), the District Board shall distribute all of the funding the District receives from DOLA to areas that are socially or economically impacted, either directly or indirectly, by the development, processing, or energy conversion of fuels and minerals leased under the federal act.

(b) The District Board may use up to ten percent of the annual funding for any administrative costs of the District.

(c) Notwithstanding any other provision of C.R.S. 30-20-1301 *et seq*, the District Board may reserve all or a portion of the funding for use in subsequent years.

(d) The District Board may invest up to fifty percent (50%) of annual District funding in the Permanent Fund, as established by the Board by resolution.

(2) The District Board may review any reports or studies made and may seek any additional reports or studies it deems necessary regarding the distribution of funding in the district.

(3) The District Board may cooperate or contract with any other district to provide any function or service lawfully authorized to each of the cooperating or contracting districts, including the sharing of costs, only if the cooperation or contracts are authorized by each district with the approval of each district's board of directors. Any contract providing for the sharing of costs may be entered into for any period, not to exceed the existence of the district and notwithstanding any provision of law limiting the length of any financial contracts or obligations of governments. Any such contract shall set forth fully the purposes, powers, rights, obligations, and responsibilities, financial and otherwise, of the contracting parties. Where other provisions of law provide requirements for special types of intergovernmental contracting or cooperation, those special provisions shall control.

(4) The District Board may exercise any of the powers set forth in C.R.S. 30-20-1305.5.

4.3 Powers of the District Pursuant to C.R.S. 30-20-1305.5

(1) The District is an independent public body politic and corporate. The District is a public instrumentality, and its exercise of the powers specified pursuant to statute are deemed and held to be the performance of an essential public function. The District is not an agency of county or state government and is not subject to administrative direction by any department, commission, board, or agency of a county or the state.

(2) In addition to any other powers granted to a district by C.R.S. 30-20-1301 *et seq*, a district has the following powers:

(a) To sue and be sued;

(b) To enter into contracts and agreements including those described in C.R.S. 29-1-201, C.R.S.;

(c) To acquire real or personal property or an interest in real or personal property;

(d) To sell, convey, lease, exchange, transfer, or otherwise dispose of all or any part of the district's property or assets;

(e) To enter into grant or loan agreements;

(f) In order to carry out the purposes of C.R.S. 30-20-1301 *et seq.*, to borrow money as evidenced by revenue bonds, certificates, warrants, notes, and debentures in accordance with the provisions of C.R.S. 30-20-1301 *et seq.*;

(g) To adopt an official seal;

(h) To distribute funding to an area outside the district boundaries consistent with C.R.S. 30-20-1301 *et seq.*; and

(i) To provide services consistent with the federal act and C.R.S. 30-20-1301 *et seq.*

(j) To adopt and review, at least annually, its Investment Policy, as provided by C.R.S. § 30-20-1307(6).

(3) The District does not have the power to levy and collect taxes or to use the power of eminent domain.

(4) The District is subject to the “Local Government Budget Law of Colorado”, part 1 of article 1 of title 29, C.R.S., and the “Colorado Local Government Audit Law”, part 6 of article 1 of title 29, C.R.S.

ARTICLE V ADMINISTRATION

5.1 The District Board may use up to ten percent of the annual funding received from DOLA for any administrative costs of the District.

5.2 The District Board may hire or contract for an Executive Director, administrative staff, legal services, financial or accounting services, as needed.

5.3 The District Board may adopt policies and procedures necessary for the execution of its business.

5.4 The District may be dissolved by the District Board after not less than fifteen days' notice to the public is given and a hearing is held. The notice shall be published in at least one newspaper of general circulation in the county in which the district is located. After hearing any protests against or objections to dissolution, if a majority of the District Board determines that it is in the best interests of all concerned to dissolve the District, the District Board shall so provide by resolution, and verified copies of the resolution shall be filed within three business days with the office of the county clerk and recorder in the county in which the district is located and with the executive director of DOLA. Upon such filings, the dissolution shall be complete, except that the District ~~no district~~ shall not be dissolved until all funding is distributed consistent

with this part ~~43~~ and the District has satisfied or paid in full all of its outstanding indebtedness, obligations, and liabilities. C.R.S. 30-20-1304(5).

5.5 From within the membership of the Board shall be elected two officers, the President and the Secretary. The President shall chair the meetings of the Board, and is the designated signatory for the District on all contracts, resolutions, instruments, communications, or obligations of the District. In the absence of the President, the Secretary shall be authorized to perform all functions of the President. In the absence of the President and Secretary, the remaining Director shall be authorized to perform the functions of the President.

ARTICLE VI FINANCE, BUDGET, AND AUDIT

6.1 The District Board shall distribute the funding that the District receives from DOLA, exclusive of allowable administrative costs, to areas that are socially or economically impacted by the development, processing, or energy conversion of fuels and minerals leased under the Federal “Mineral Lands Leasing Act” of February 1920, as amended.

6.2 The District Board may review any reports or studies made or may seek any additional reports or studies it deems necessary regarding the distribution of funding in the District.

6.3 The District Board may cooperate or contract with any other district created under the Act to provide any function or service lawfully authorized to each of the cooperating or contracting districts, including the sharing of costs, only if the cooperation or contracts are authorized by each district with the approval of each district’s board of directors.

6.4 Any contract providing for the sharing of costs may be entered into for any period, not to exceed the existence of the ~~d~~District and notwithstanding any provision of law limiting the length of any financial contracts or obligations of governments. Any such contract shall set forth fully the purposes, powers, rights, obligations, and responsibilities, financial and otherwise, of the contracting parties. Where other provisions of law provide requirements for special types of intergovernmental contracting or cooperation, those special provisions shall control.

6.5 The District is subject to the “Local Government Budget Law of Colorado”, part 1 of article 1 of title 29, C.R.S., and the “Colorado Local Government Audit Law”, part 6 of article 1 of title 29, C.R.S. These laws include requirements that the District approve its budget annually and have an annual independent audit of its finances.

ARTICLE VII QUORUM

7.1 A quorum for the transaction of business at any Regular or Special Meeting of the District Board is a simple majority of the Directors.

7.2 In the absence of a quorum the President shall terminate any scheduled meeting. Business scheduled at a meeting terminated for lack of a quorum is automatically continued to the next scheduled meeting.

7.3 Any meetings rescheduled for lack of a quorum or other inability to hold meetings, including but not limited to inclement weather, shall comply with the Open Meetings Law pursuant to Article XII below.

ARTICLE VIII MEETINGS

8.1 Annual Meeting. The first Regular Meeting of the District Board after July 1 of every year shall be the Annual Meeting, and the Directors shall elect Officers at this meeting. The Directors shall act promptly at other times of the year to fill Officer vacancies.

8.2 Regular Meetings. Regular Meetings of the District Board ~~shall be are-held at least quarterly.~~ Regular meetings may be held on the second Wednesday of the month, at 2:00 p.m., but may be called at such other times as the Board may elect, in its discretion. ~~January, April, July, and October commencing at 2:00p.m., and as needed.~~

8.3 Special Meetings. Special Meetings may be called by the President provided that notice of such meeting is given to each Director no less than two business days prior to the meeting. Notice shall include the date, time and place of the meeting/hearing and the subject matter to be considered.

8.4 Pursuant to § 30-20-1306 (3) C.R.S., as amended by SB 12-31, all special and regular meetings of the Directors shall be held pursuant to the Open Meetings Law, § 24-6-401, *et seq.*, C.R.S., as amended. Notice of all meetings shall comply with the Open Meetings Law.

8.5 Meetings shall be conducted in an orderly manner and decorum, due process, and an opportunity to be heard shall be preserved.

8.6 All meetings shall be conducted in person. Voting by telephonic or other electronic means shall be allowed by majority vote of the Directors present in person, but appearance by telephonic or other electronic means shall not be used to establish a quorum. Proxy voting shall not be allowed.

8.7 The Board may convene a Regular or Special Meeting as a closed executive session for the purposes of: i) obtaining attorney legal advice; ii) discussing matters required to be kept confidential under applicable federal law; iii) developing strategy for negotiations or

giving instructions to negotiators; iv) discussing personnel matters; or v) as otherwise provided by C.R.S. § 24-6-402(4) or other provisions of the Colorado Open Meetings Law.

(a) The decision to enter a closed executive session shall be preceded by a vote of the Board in which at least two-thirds of the quorum present vote in the affirmative.

ARTICLE IX ETHICS

9.1 The holding of the office of Director is a public trust, and Directors shall carry out their duties for the benefit of the people of the District. Directors shall promote public confidence by avoiding conflict of interest, impropriety, and the appearance of impropriety.

9.2 Directors are local government officials for purposes of Colo. Const. Art. XXIX and §24-18-101 *et seq* C.R.S.

9.3 A Director shall not:

- A. Disclose or use confidential information acquired in the course of his official duties in order to further substantially his personal financial interests; or
- B. Accept a gift of substantial value or a substantial economic benefit tantamount to a gift of substantial value:
 - i. Which would tend improperly to influence a reasonable person in his position to depart from the faithful and impartial discharge of his public duties; or
 - ii. Which he knows or which a reasonable person in his position should know under the circumstances is primarily for the purpose of rewarding him for official action he has taken.
- C. An economic benefit tantamount to a gift of substantial value includes without limitation a loan at a rate of interest substantially lower than the commercial rate then currently prevalent for similar loans and compensation received for private services rendered at a rate substantially exceeding the fair market value of such services.
- D. The following shall not be considered gifts of substantial value or gifts of substantial economic benefit tantamount to gifts of substantial value for purposes of this section:
 - i. Campaign contributions and contributions in kind reported as required by §1-45-108 C.R.S.

- ii. An occasional nonpecuniary gift, insignificant in value;
- iii. A nonpecuniary award publicly presented by a nonprofit organization in recognition of public service;
- iv. Payment of or reimbursement for actual and necessary expenditures for travel and subsistence for attendance at a convention or other meeting at which a Director is scheduled to participate;
- v. Reimbursement for or acceptance of an opportunity to participate in a social function or meeting which is offered to such Director which is not extraordinary when viewed in light of the position held by such Director;
- vi. Items of perishable or nonpermanent value, including, but not limited to, meals, lodging, travel expenses, or tickets to sporting, recreational, educational, or cultural events;
- vii. Payment for speeches, appearances, or publications reported pursuant to §24-6-203 C.R.S.;
- viii. Payment of salary from employment, including other government employment, in addition to that earned from being a member of the general assembly or by reason of service in other public office.

E. The provisions of Section 3.D. above are distinct from and in addition to the reporting requirements of §1-45-108 C.R.S. and section §24-6-203 C.R.S., and do not relieve an incumbent in or elected candidate to public office from reporting an item described in subsection (3) of this section, if such reporting provisions apply.

9.4 A Director should not acquire or hold an interest in any business or undertaking which he has reason to believe may be directly and substantially affected to its economic benefit by official action to be taken by the District Board.

9.5 A Director should not, within six months following the termination of his office, obtain employment in which he will take direct advantage, unavailable to others, of matters with which he was directly involved during his term as a Director.

9.6 A Director should not perform an official act directly and substantially affecting a business or other undertaking to its economic detriment when he has a substantial financial interest in a competing firm or undertaking.

9.7 A Director shall not:

- A. Engage in a substantial financial transaction for his private business purposes with a person whom he supervises in the course of his official duties; or
- B. Perform an official act directly and substantially affecting to its economic benefit a business or other undertaking in which he either has a substantial financial interest or is engaged as counsel, consultant, representative, or agent.

9.8 A Director who has a personal or private interest in any matter proposed or pending before the District Board shall disclose such interest to the District Board and shall not vote thereon and shall refrain from attempting to influence the decisions of the other Directors voting on the matter. A Director may vote notwithstanding this Section 9.8 if his participation is necessary to obtain a quorum or otherwise enable the District Board to act and if he complies with the voluntary disclosure procedures under Section 9.9 below.

9.9 A Director may, prior to acting in a manner which may impinge on his fiduciary duty and the public trust, disclose the nature of his private interest. The Director shall make the disclosure in writing to the secretary of state, listing the amount of his financial interest, if any, the purpose and duration of his services rendered, if any, and the compensation received for the services or such other information as is necessary to describe his interest. If he then performs the official act involved, he shall state for the record the fact and summary nature of the interest disclosed at the time of performing the act. Such disclosure shall constitute an affirmative defense to any civil or criminal action or any other sanction.

9.10 Directors shall observe the gift ban provisions of Colo. Const. art. XXIX, § 3.

**ARTICLE X
RULES OF ORDER**

10.1 ~~Generally, Simple~~ parliamentary procedure ~~shall govern will be used in the~~ by the District Board's proceedings in its meetings, although strict adherence is not required so long as the meetings are conducted so as to allow fundamental fairness to all participants.

a) Action of the Board shall be by motion, duly seconded. Unless otherwise provided by law, a simple majority vote in the affirmative shall be sufficient to approve or authorize any action.

b) The Board may act informally or by consensus in giving direction to staff, or in the discussion of routine administrative matters.

c) In its discretion, the Board may elect to receive public input or comment on matters before the Board for decision.

**ARTICLE XI
AMENDMENT OF BYLAWS**

11.1 These Bylaws may be amended by simple majority vote of the Directors provided all amendments are consistent with the Act as both may from time to time be amended. All proposed amendments shall first be presented in writing at a Regular Meeting of the District Board. A vote on amendments so proposed shall be taken no sooner than the next Regular Meeting following the meeting at which the amendments were proposed.

**ARTICLE XII
OPEN MEETINGS LAW**

12.1 Pursuant to the Open Meetings Law, §24-6-401 *et seq.* C.R.S., the District Board shall at the first Regular Meeting of each calendar year designate the posting location(s) of its meeting notices and the official custodian of its records and minutes.

12.2 Unless otherwise designated, Meetings shall be held at the Home Loan Building's Basement Level Community Room, located at 205 N. 4th Street, Grand Junction, Colorado, and the posting locations of all meetings of the District Board shall be in 544 Rood Avenue, Grand Junction, Colorado, as well as Grand Junction City Hall, 250 N. 5th Street, Grand Junction, Colorado, on the bulletin boards for legal notices in each facility. The custodian of all District records, and minutes shall be District staff.

**ARTICLE XIII
SEVERABILITY**

13.1 If any section, subsection, sentence, clause, or phrase of these Bylaws is for any reason held by a court of competent jurisdiction to be invalid, such a decision shall not affect the validity of the remaining portions of these Bylaws.

ARTICLE XIV
PERMANENT FUND DECISIONS

14.1 The District has elected to hold and invest part of its funding for the purpose of providing a source of funds for future grants, as authorized by Colorado law. On October 11, 2017 the District enacted a resolution authorizing the creation of a Permanent Fund. The Permanent Fund is intended to be held in trust, with the intention that funding for future community needs in Mesa County will made from the interest or returns on the investment of that trust corpus. Consistent with the Permanent Fund Resolution, it is the Policy of the District that: i) the principal of the Permanent Fund shall not be expended, except in the case of emergency or compelling public need; and ii) if principal of the Permanent Fund is expended, the District shall endeavor to replace that principal as soon as practicable.

a) The Permanent Fund Corpus means the cash value of contributions made by the District at the time they are invested in the Permanent Fund. The District shall not expend all or part of the Permanent Fund Corpus, except upon making a written finding that the expenditure is justified by an emergency or compelling public need. A resolution to authorize the expenditure of all or any part of the Permanent Fund Corpus shall first be published, in the

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manner provided for all other District agenda items, and available for inspection by the public at least thirty (30) days prior to any action by the Board.

b) Prior to taking action on any resolution authorizing the expenditure of all or any part of the Permanent Fund Corpus, the Board shall hold a public hearing and receive the comments or testimony from interested persons and public entities. Following the conclusion of that public hearing the Board may approve the resolution, deny the resolution, or table it for further consideration.

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