

BYLAWS LMPWA

BYLAWS OF THE

Lakeview Midway Public Water Authority

ARTICLE I. GENERAL PURPOSES

SECTION 1.01 General Purposes

(1) The purpose for which this Public Water Authority (hereinafter “LMPWA”) is formed, and the powers which it may exercise are set forth in the articles of LMPWA.

SECTION 1.02 Name and Location

(1) The name of this LMPWA is Lakeview Midway Public Water Authority.

(2) The principal office of LMPWA shall be located at 29 Howard Creek Road, Lakeview, AR 72642, County of Baxter, and State of Arkansas.

SECTION 1.03 Seal

(1) The seal of the LMPWA shall have inscribed thereon, the name of the LMPWA, the year of its organization and the words, “Lakeview Midway Public Water Authority”.

(2) The Secretary of the LMPWA shall have custody of the seal.

SECTION 1.04 Fiscal Year

(1) The fiscal year of the LMPWA shall begin the 1st day of January in each year and end on the 31st day of December of each year.

ARTICLE II. Water User or “User”

SECTION 2.01 Eligibility for to become a Water User or “User”

(1) Every person (which word as used herein includes any legal entity) who is a record owner of a fee, or undivided fee interest, or having a substantial possessory interest in a property served by the water system, may become a Water User of the LMPWA upon signing such applications and agreements for the purchase of water as may be provided, and required, by the LMPWA and upon the payment of such connection fee as may be imposed by the Board of Directors provided that only one Water User may be held by anyone person.

- a. A substantial possessory interest is one where the person or persons have a legal right to control the occupancy of a property but do not have the legal or the

equitable ownership of the property. It may be under a lease or similar right to possession.

- b. Before becoming “User” is allowed to one or more persons claiming such an interest, the LMPWA will endeavor to obtain the application for Water Usage from the owner of such property.

(2) Where “User” is granted to any person having a substantial possessory interest, the LMPWA, as a condition to the, may require such applicant to post such collateral bond as the Directors determine necessary to fully protect the LMPWA from any additional risk that may be involved to the LMPWA by reason of the lack of legal ownership in the applicant.

(3) The Board of Directors shall cause to be issued an appropriate Water User Agreement, refer to **Section 2.06**, provided that becoming a Water User shall not be denied because of the applicant’s race, color, creed, sex, or national origin.

(4) Water Usage may be denied if the capacity of the LMPWA’s water system is exhausted by the need of its existing Water Users, or if the proposed use of the applicant is such that it would interfere with existing uses previously authorized by the Board of Directors.

SECTION 2.02 Requirements for Transfer of Water Usage

(1) Water Usage shall be transferable but the transfer will be effective only when noted on the books of the LMPWA. Such transfer will be made only to a person who obtains a qualifying interest in the property. A Water User will transfer his Water Usage in the LMPWA to his successor in interest as a part of the transaction whereby he disposes of his interest to said property. The Secretary, upon request, will make note of such transfer upon the records of the LMPWA, but need not issue a new agreement to the successor in interest of the previous existing Water User.

(2) Upon the transfer of a Water Usage, the LMPWA will not look to the successor in interest for the payment of any past due amounts. The LMPWA will seek collection only from the individual who incurred such charges or assessments or from the property itself if a judgment lien had been duly perfected against such a property.

SECTION 2.03 Water Users not Transferred

(1) When Water Usage in the LMPWA is not transferred, it shall terminate upon the disposition or other termination of the Water User’s interest in the property, regardless of whether or not the notice is surrendered to the LMPWA. Water Usage also may be terminated by action of the Board of Directors where the use of the property is changed so as to materially increase the amount of water consumed to the prejudice of other existing members or to the prejudice of the orderly operation of the system.

SECTION 2.04 Termination of Water Usage

(1) The termination of the Water Use of any Water User shall not disqualify for Water Usage any other person who has or obtains an interest in the property of the terminated Water User and who otherwise meets the requirements of these by-laws.

SECTION 2.05 Termination of Water Usage Involuntarily

(1) In the event a Water User's property interest is divested, other than by voluntary means, such Water User usage will pass to the trustee, receiver, executor, or the like, who will be entitled either in person, or through a designated representative, to exercise all of the rights incident to such Water User, but subject to such duties and liabilities also applicable to the Water User. The trustee, receiver, executor, or the like may terminate such Water Usage by written notice to such effect delivered or mailed to the Secretary of the LMPWA. Upon the final disposition of such property rights, the owner thereof shall be entitled to Water Usage in like manner as if the water usage had been transferred to him by the original Water User as set forth in Section 2.02, above.

SECTION 2.06 Water User Agreement

(1) This LMPWA shall not have capital stock. The Water User Agreement shall represent Water Usage in the LMPWA. Such Agreements shall represent the right to use and enjoy the benefits of the LMPWA's water supply system upon the payment of necessary assessments, if any, and of reasonable charges based upon such use, provided such use and enjoyment are consistent with the rules, regulations and contracts affecting the same as may from time to time be prescribed by the Board of Directors.

- a. A Water User Agreement shall be issued to each holder of fully paid Water User Agreement and bear on its face the following statement: **“This Water User Agreement of the LMPWA is issued and accepted in accordance with and subject to the conditions and restrictions stipulated in the article of LMPWA and by-laws and amendments to the same of the Lakeview Midway Public Water Authority”**.

ARTICLE III. MEETING OF MEMBERS

SECTION 3.01 Annual Meeting

(1) The annual meeting of the Water Users of the LM PWA shall be held at the place and time designated by the Board on the fourth Tuesday in November of each year, if not a legal holiday, or if it is a legal holiday, on the next business day following unless a different day is approved by the Board. The place, day, and time of the annual meeting may be changed to any other convenient place, day, and time in the county by the Board of Directors giving notice thereof to each Water User not less than ten (10) days in advance thereof.

SECTION 3.02. Special Meetings

(1) Special meetings of the Water Users may be called at any time by the action of the Board of Directors and such meeting must be called whenever a petition requesting such meeting is signed by at least ten percent of the Water Users and presented to the Secretary or to the Board of Directors. The purpose of every special meeting shall be stated in the notice thereof, and no business shall be transacted except such as is specified in this notice.

SECTION 3.03 Notice of Water User' Meetings and Special Meetings

(1) Notice of Water Users' meetings of Water Users of the LMPWA will be posted in the Baxter Bulletin not less than 10 days, or more than 40 days, at the beginning of each Fiscal Year. Such a notice shall state the nature, time, place and purpose of the meeting, but no failure or irregularity of notice of any annual meeting, regularly held, shall affect any proceedings taken thereat.

SECTION 3.04 Quorum for Meetings

(1) Ten percent (10) of the total number of Water Users (votes) at a meeting of the Water Users shall constitute a quorum.

(2) No proxies will be allowed.

(3) If less than a quorum is present at any meeting, a majority of those present in person may adjourn the meeting to another time and date, provided that the Secretary shall notify any absent Water Users of the time, date, and place of such adjourned meeting by delivering notice thereof as provided in Section 3.03.

(4) At all meetings of the Water Users, whether a quorum be present or not, the Secretary shall affix to the meeting minutes, or incorporate therein by reference, a list of those Water Users who were registered as present.

(5) In the event a meeting of the Water Users is noticed and convened, and a quorum as defined above shall not be present, the Board of Directors may, in its discretion, elect to reduce the amount of Water Users necessary for a quorum at that particular meeting. The Board of Directors may also reduce the number of Water Users necessary for a quorum on a particular item or items designated by the Board during the meeting for consideration by the Water Users.

SECTION 3.05 Election of Directors

(1) Directors of this LMPWA shall be elected at the annual meeting of the Water Users as provided in Article IV, Section 4.01. No cumulative voting shall be allowed.

SECTION 3.06 Water Users Voting at Meetings

(1) Each Water User shall have only one (1) Water Usage for each property serviced, regardless of the number of service connections he may obtain to serve his property.

(2) Each Water User notice shall represent one vote.

(3) When more than one person holds the interest in a property served, the vote shall be exercised by the person whose name the notice is registered, or by such person as the several persons may designate, but in no event shall more than one vote be cast with respect to any property.

SECTION 3.07 Order of Business

- (1) The order of business at the regular meetings and, so far as possible, at all other meetings shall be:
 - a. Calling to order and proof of quorum.
 - b. Proof of notice of meeting.
 - c. Reading and action on any unproved minutes
 - d. Reports of officers and committees
 - e. Election of directors
 - f. Unfinished business
 - g. New Business
 - h. Adjournment

ARTICLE IV. BOARD MEMBERS AND OFFICERS

SECTION 4.01 Number of Directors and Tenure of Office

- (1) The Board of Directors of this LMPWA shall consist of seven Water Users. All Directors shall be Water Users of the LMPWA.
- (2) The Directors, named in the articles of LMPWA, shall serve until the first annual meeting of the Water Users and until their successors are elected.
- (3) The Directors shall be elected for a term of three years.

SECTION 4.02 Election Process for Directors

(1) The Board of Directors shall meet within ten (10) days after the annual election of Directors and shall, if necessary, elect a President and/or Vice President from among themselves and a Secretary-Treasurer of the Board of Directors, each of whom shall hold office until the next annual meeting, and until the election of his/her successor unless sooner removed by death, resignation, or for cause.

SECTION 4.03 Vacancies and Resignations

1) If the office of any Director becomes vacant by reason of death, resignation, retirement, disqualification or otherwise, except by removal from office, a majority of the remaining Directors, though less than a quorum shall, by majority vote, choose a successor who shall hold office until the next regular meeting of the water Users of the LMPWA, at which time the Water Users shall elect a Director for the unexpired term or terms, provided that in the call of such a regular meeting, a notice of such election shall be given.

SECTION 4.04 Quorum at Board Meetings

(1) A majority of the Board of Directors shall constitute a quorum at any meeting of the Board. The affirmative vote of the majority of the Directors at a meeting at which a quorum is present shall be the act of the Board.

SECTION 4.05 Compensation of Officers and Directors

(1) Officers and Directors shall receive no compensation for their services as such. No Member of the Board of Directors shall occupy any position in the LMPWA on regular salary.

SECTION 4.06 Removal of Board Members

- (1) Officers and Directors may be removed from office in the following manner:
- a. Any Water User or Director may present charges against a Director by filing them in writing with the Secretary of the LMPWA.
 - b. If presented by a Water User, a petition must accompany the charges signed by ten percent of the Water Users of the LMPWA.
 - c. Such removal shall be voted on at the next regular or special meeting of the Water Users and shall be effective if approved by a vote of a majority of those voting, if a Quorum is present.
 - d. The Director, against whom such charges have been presented, shall be informed, in writing, of such charges at least twenty days prior to the meeting, and shall have the opportunity at such meeting to be heard in person or by counsel and to present witnesses. The person, or persons, presenting such charges against him/her shall have the same opportunity.
 - e. If the removal of a Director is approved, such action shall also vacate any other office held by the removed Director in the LMPWA. A vacancy in the Board thus created shall immediately be filled by a vote of a majority of the Water Users present and voting at such meeting.

- f. The Board of Directors from among their number so constituted, after the vacancy in the Board has been filled, shall fill a vacancy in any office thus created.

ARTICLE V. DUTIES OF THE BOARD MEMBERS

SECTION 5.01 General Powers of the Board

(1) The Board of Directors, subject to restrictions of law, the articles of LMPWA, and LMPWA By-Laws, shall exercise all of the powers of the LMPWA, without prejudice to or limitation upon their general powers, and it is hereby expressly provided that the Board of Directors shall have, and are hereby given, full power and authority, in respect to the matters as hereinafter set forth to be exercised by resolution, duly adopted by the Board.

SECTION 5.02 Water User Applications

- (1) The Board shall:
 - a. Approve Water User applications and cause to be issued appropriate Water User Notices.
 - b. The Board may make binding commitments to issue Water User Agreements.
 - c. To permit the connection of properties to the system in the future in cases involving proposed construction or may issue such notices prior to the commencement of proposed construction.

SECTION 5.03 Select Employees

(1) The Board of Directors shall select and hire all employees of the LMPWA, remove employees of the LMPWA, prescribe such duties, and designate such powers as may not be inconsistent with LMPWA By-Laws, fix their compensation, and pay for faithful services.

SECTION 5.04 Borrow and Pledge Indebtedness and Revenue

(1) The Board of Directors may borrow from any source, money, goods or services and to make and issue notes, other notes, and other negotiable or nonnegotiable instruments evidencing indebtedness of the LMPWA.

(2) The Board may make and issue mortgages, deeds of trust, pledges of revenue, trust agreements, security agreements, financing statements, and other instruments evidencing a security interest in the assets of the LMPWA.

SECTION 5.05 Prescribe, Adopt, and Amend Rules & Regulations

(1) The Board of Directors shall prescribe, adopt, and amend, from time to time, such equitable uniform rules and regulations and as, in its discretion, may be deemed essential or convenient for the conduct of the business and affairs of the LMPWA and the guidance and control of its officers and employees, and to prescribe adequate penalties for the breach thereof.

SECTION 5.06 Order Audits

(1) The Board shall order, at least once each year, an audit of the books and accounts of the LMPWA by a competent public auditor or accountant. The report prepared by such auditor or accountant shall be available to the Water Users of the LMPWA at their annual meeting, together with a proposed budget for the ensuing year. Copies of such audits and budgets shall be available to such parties as may be required by other agreements.

SECTION 5.07 Fix and Alter Charges in Rules and Regulations

(1) The Board of Directors shall fix and alter the charges to be paid by each Water User for services rendered by the LMPWA to the Water User, including connection fees where such are deemed to be necessary by the Directors, and to fix and alter the method of billing, time of payment, manner of connection, and penalties for late or nonpayment of the same. The Board may establish one or more classes of Water Users. All changes shall be uniform and non-discriminating within each class of Water Users.

SECTION 5.08 Required Bond

(1) The Board shall require all officers, agents and employees charged with responsibility for the custody of any of the funds of the LMPWA to give adequate bonds, the cost thereof to be paid by the LMPWA.

SECTION 5.09 Select Required Bank

(1) The Board will select one or more banks to act as depositories of the funds of the LMPWA and determine the manner of receiving, depositing, and distributing the funds of the LMPWA and the form of checks and the person or persons by whom the same shall be signed, with the power to change such banks and the person or persons signing such checks and the form thereof at will.

SECTION 5.10 Assure Operator-Manager has Required License

(1) The Board shall insure that the Operator-Manager of LMPWA is licensed by the Arkansas State Board of Health in the manner as provided in Act No.333 (1957) of the General Assembly of the State of Arkansas.

SECTION 5.11 Determine Rate Schedules and Rules for Non-Payment

(1) The Board of Directors shall, with the consent of the Farmers Home Administration, so long as it shall either hold any obligations or insure any financing of the system, prior to the

beginning of each calendar year, determine the flat minimum rate to be charged each Water User during the following calendar year for a specified quantity of water, such flat minimum monthly rate to be payable irrespective of whether any water is used by a Water User during any month, the amount of additional charges, if any, for additional water which may be supplied the Water Users, and the amount of penalty for late payments, and shall fix the date for the payment of such charges.

(2) A Water User, to be entitled to the delivery of water, shall pay such charges at the office designated by the LMPWA at or prior to the dates fixed by the Board of Directors. The failure to pay water charges duly imposed shall result in the automatic imposition of the following penalties:

- a. Nonpayment by the 15th of the month will be subject to a penalty of ten (10) Percent of the delinquent account, which percent may be changed at the discretion of the Board of Directors.
- b. If Bill is not paid by the 25th of the month, the water will be shut off at the Water User's property. Such Water User shall be entitled to resumption of the water supply after all bills and penalties have been paid. During the time of such suspension of water to a Water User, such Water User shall have no right to vote in the affairs of the LMPWA.

SECTION 5.12 Authorize Required Agreements

(1) The Board of Directors shall be authorized to require each Water User to enter into a Water Users Agreement that shall embody the principles set forth in the foregoing provisions of these by-laws.

ARTICLE VI. DUTIES OF THE OFFICERS

SECTION 6.01 Duties of President

- (1) The President shall:
- a. Be the principal executive officer of the LMPWA and, unless otherwise determined by the Board, shall preside at all meetings of the Water Users and the Board.
 - b. Sign any deeds, mortgages, deeds of trust, notes, bonds, contracts, or other instruments authorized by the Board to be executed, except in cases in which the signing and execution thereof shall be expressly delegated by the Board, or by these By-Laws to some other officer or agent of the LMPWA, or shall be required by law to be otherwise signed or executed; and
 - c. In general, perform all duties incident to the office of President and such other duties as may be prescribed by the Board from time to time.

SECTION 6.02 Duties of the Vice-President

(1) The Vice-President shall:

- a. In the absence of the President, or in the event of his, or her inability, or refusal to act, the Vice-President shall perform the duties of the President, and when so acting, shall have all the powers of, and be subject to, all the restrictions upon the President.
- b. The Vice-President shall also perform such other duties as from time to time the Board may assign to him or her. Provided, however, that in case of death, resignation or disability of the President, the Board of Directors may declare the office vacant and elect a successor.

SECTION 6.03 Duties of the Secretary-Treasurer

(1) The Secretary shall be responsible for:

- a. Keeping the minutes of the meetings of the Water Users and of the Board in books prepared for that purpose.
- b. Shall have general charge and supervision of the books and records of the LMPWA.
- c. Insure that all notices are duly given in accordance with these by-laws or as required by law.
- d. Keep a proper Water Users' notice record, showing the name and address of each Water User of the LMPWA and date of issuance, surrender, transfer, termination, cancellation or forfeiture.
- e. Make all reports required by law and shall perform such other duties as may be required by the LMPWA or the Board of Directors.
- f. Keep on file, at all times, a complete copy of the Articles of Incorporation and By-Laws of the LMPWA containing all amendments thereto.
- g. In general, performing all duties incident to the Office of Secretary and such other duties as from time to time may be assigned to him or her by the Board.

SECTION 6.04 Duties of the Treasurer

(1) The Treasurer shall be responsible for:

- a. Custody of all funds and securities for the LMPWA.
- b. The receipt of and the issuance of receipts for all moneys due and payable to the LMPWA and for the deposit of all such moneys in the name of the LMPWA in such financial institutions as shall be approved by the resolution of the Board of

Directors; provided, however, the Treasurer shall have authority, with the approval of the Board, to delegate to the General Manager the authority to appoint employees of the LMPWA to actually carry out the responsibilities set forth in this section; and

- c. The general performance of all duties incident to the Office of Treasurer and such other duties as from time to time may be assigned to him or her by the Board; provided, however, with respect to the duties and responsibilities of the Treasurer, the LMPWA shall indemnify and hold the Treasurer harmless against any and all losses, claims and/or damages which may be asserted against the Treasurer, in his or her official capacity, unless such claim is a result of an act personally committed by the Treasurer resulting in loss to the LMPWA.

SECTION 6.05 Manager

1. The Board shall appoint a Manager, who may be, but who shall not be required to be a Water User of the LMPWA. The Manager shall perform such duties as the Board may from time to time require and shall have such authority as the Board may from time to time vest in him or her.

SECTION 6.06 Bonds

(1) The Board shall require any officer, agent or employee of the LMPWA charged with responsibility for the custody of its funds or property to give bond in such sum and with such surety, as the Board shall determine.

(2) The Board, in its discretion, may also require any other officer, agent or employee of the LMPWA to obtain bonds in such amount and such surety, as it shall determine. The cost of all such bonds shall be borne by the LMPWA.

SECTION 6.07 Compensation

(1) The powers, duties, and compensation of agents and employees shall be fixed or approved by the Board.

ARTICLE VII. BENEFITS AND DUTIES OF THE MEMBERS

SECTION 7.01 Main Distribution, Installation, and Operation

(1) The LMPWA will install, maintain and operate a main distribution pipeline or lines from the source of the water supply and service lines from the main distribution pipeline or lines to the property line of each Water User of the LMPWA, at which points, designated as delivery points, meters are to be purchased, installed, owned, and maintained by the LMPWA shall be placed.

(2) The cost of the service line, or lines, from the main distribution pipeline or lines of the LMPWA to the property line of each Water User, shall be paid by the LMPWA.

(3) The LMPWA also may purchase and install a cutoff valve in each service line from its main distribution line or lines, such cut-off valve to be owned and maintained by the LMPWA, and to be installed on some portion of the service line owned by the LMPWA.

(4) The LMPWA shall have the sole and exclusive right to use such cut-off valve.

(5) However, the provision of this section shall not be construed to require the acquisition or installation of meters or cutoff valves, where the Directors determine under the circumstances of the system, and the nature of the Water Users, that the use of either or both of such devices is impractical, unnecessary to protect the system, and the rights of the Water Users, and/or economically not feasible.

SECTION 7.02 Responsibilities of Water User from Meter to Dwelling

(1) Each Water User will be required, at his own expense, to have dug a ditch for the connection of the service line, or lines, from meter to his dwelling or other portion of his premises, and to purchase and have installed the portion of the service line or lines from his property line to the place of use on his premises.

(2) The Water User will maintain such portion of such service line, or lines that shall be owned by the Water User, at his own expense.

(3) The LMPWA may, if the Board of Directors so determines, purchase the pipe for and install such portion of such service line, or lines, the costs of which will, however, be paid by the individual Water Users.

(4) In addition, each Water User shall pay such connection charge, if any, as may have been imposed by the Board of Directors before such Water User will be entitled to receive water from the system.

SECTION 7.03 Additional Service Lines

(1) Each Water User may be permitted to have additional service lines from the LMPWA's water system at the discretion of the Board of Directors upon proper application therefore, and the tender of payment not to exceed the then existing connection charge.

(2) The approval by the Board of Directors of additional service lines to an existing Water User may be made conditional upon such provisions as the Board of Directors determines necessary to protect the interests of other Water Users, and to allow for the orderly expansion and extension of the system to serve other property that may need service along the distribution lines of the system.

(3) Each service line shall connect with the LMPWA's water system at the nearest available place to the place of desired use by the Water User if the LMPWA's water system has sufficient capacity to permit the delivery of water through a service line at that point, without interfering with the delivery of water through a prior service line.

(4) If the LMPWA's water system is inadequate to permit the delivery of water through a service line installed at such place without interfering with the delivery of water through a prior service line, then such service line shall be installed at such place designated by the LMPWA.

SECTION 7.04 Purchase and Delivery of Water

(1) Each Water User may be permitted to purchase from the LMPWA, pursuant to such Water User Agreement as may from time to time be provided, and required by the LMPWA, such water as is needed by him for domestic, commercial, agricultural, industrial, or other purposes as a Water User may desire, subject, however, to the provisions of these by-laws and to such rules and regulations as may be prescribed by the Board of Directors.

(2) Each Water User shall be entitled to have delivered to him through his service only such water as may be necessary to supply the needs of each Water User, including his family, business, agricultural or industrial requirements.

(3) The water delivered through each service line may be metered separately and the charges for such water may be determined separately, irrespective of the number of service lines owned by a Water User.

SECTION 7.05 Insufficient Water Supply

(1) In the event the total water supply shall be insufficient to meet all of the needs of the Water Users or in the event there is a shortage of water, the LMPWA may prorate the water available among the various Water Users on such basis as is deemed equitable by the Board of Directors, and may also prescribe a schedule of hours covering use of water for commercial, agricultural, or industrial purposes by particular Water Users, and require adherence thereto, or prohibit the use of water for commercial, agricultural, or industrial purposes; provided, that if at any time the total water supply shall be insufficient to meet all of the needs of all of the Water Users for domestic, livestock, commercial, agricultural or industrial purposes.

(2) The LMPWA must first satisfy all of the reasonable needs of the Water Users for domestic purposes before supplying any water for livestock purposes, and must satisfy all of the needs of all of the Water Users for domestic and livestock purposes, before supplying any water for commercial or industrial purposes; and, provided further, that where a member has more than one service line, the LMPWA may cut off the flow of water to the non-domestic service lines until such time as the supply of water from the system is sufficient to meet the needs of all of the Water Users for domestic, livestock, and garden purposes.

(3) During such periods of shutoff of additional service lines there shall be no minimum fee charged to the Water User having such additional service lines and the cost, if any, of resuming the flow of water to such additional service lines shall be borne by the LMPWA.

SECTION 7.06 Disposal upon distribution

- (1) Upon dissolution unless otherwise provided by law, after;
 - a. All debts and liabilities of the LMPWA have been paid; and
 - b. All obligations have been satisfied.
 - c. The remaining property shall be distributed as required by law and in a lawful manner.

ARTICLE VIII. INDEMNIFICATION OF OFFICERS, BOARD MEMBERS, EMPLOYEES AND AGENTS

SECTION 8.01 Indemnification of Officers, Board Members, Employees, and Agents

(1) The LMPWA shall indemnify, to the extent allowed by Arkansas law, any person who was or is a party, or is threatened to be made a party to any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, or investigation (other than an action by, or in the right of the LMPWA) by reason of the fact that such person is, or was, a Board member, officer, employee, or agent of the LMPWA, or who is or was serving at the request of the LMPWA as a Board member, officer, employee, or agent of another cooperative PWA, partnership, joint venture, trust or other enterprise, against expenses (including attorney's fees); adjustments, fines and amounts paid in settlement actually, and reasonably incurred by such person action in good faith, and in a manner such person reasonably believed to be in, or not opposed to, the best interest of the LMPWA, and, with respect to any criminal action or proceeding, had no reasonable cause to believe the conduct of such person was unlawful.

(2) The termination of any action, suit, or proceeding by judgment, order, settlement, conviction, or upon plea or nolo contendere* or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which such person reasonably believed to be in, or not opposed to, the best interest of the LMPWA, and with respect to any criminal action or proceeding, had reasonable cause to believe the conduct of such person was unlawful.

* **Nolo con[ten[dere**

5L, lit., I do not wish to contest (it)6 *Law* a plea by which a defendant in a criminal case does not make a defense but does not admit guilt: it leaves the defendant open to conviction but does not prejudice his or her case in collateral proceedings.

SECTION 8.02 Insurance Coverage

(1) The LMPWA may purchase and maintain insurance on behalf of any person who is or was a Board member, officer, employee, or agent of the LMPWA, or who is or was serving at the

request of the LMPWA as a board member, officer, employee, or agent of another PWA, partnership, joint venture, trust or other enterprise, against any liability asserted against such person and incurred by such person in any such capacity, or arising out of the status of such person as such, whether or not the LMPWA would have the power to indemnify such person against such liability under the provision of this Article.

ARTICLE IX. DISPOSITION, PLEDGING OR PROPERTY AND DISTRIBUTION OF SURPLUS FUNDS AND ASSETS UPON DISSOLUTION

SECTION 9.01 Disposition and Pledging of Property

- (1) The LMPWA may not sell, mortgage, lease, or otherwise dispose of or encumber all or any substantial portion in excess of ten percent (10%) of its total assets unless such sale, mortgage, lease, or other disposition or encumbrance is:
 - a. Authorized at a meeting of the then-total Water Users by the affirmative vote cast in person, without proxies, of at least seventy-five (75%) of the total Water Users of the LMPWA.
 - b. Authorized by the holders of at least seventy-five percent (75%) of the outstanding indebtedness of the LMPWA.
 - c. Preceded by a notice of meeting at which such sale, mortgage, lease or disposition or encumbrance is to be voted on.
- (2) Notwithstanding the foregoing provision of this Section, and subject to any restrictions in the Arkansas law, the Board shall have the power and authority to:
 - a. Borrow monies and issue bonds from any source and in any such amounts as the Board may from time to time determine are needed in pursuit of the LMPWA business purposes.
 - b. Mortgage or otherwise pledge or encumber any and all of the LMPWA's property or assets as security therefore; and
 - c. With respect to other LMPWA organization only, to sell and lease back all of the LMPWA's property to assets.

SECTION 9.02 Distribution of Surplus Funds

- (1) It is not anticipated that there will be any surplus funds or net income to the LMPWA at the end of the fiscal year after provisions are made for the payment of the expenses of the operation and maintenance and the funding of the various reserves for depreciation, debt retirement, and other purposes, including those required by the terms of any borrowing transaction.
- (2) In the event that there should exist such surplus funds or net income, they may be placed in an existing or new reserve account to be used for the early retirement of any outstanding

indebtedness or be used for the improvement and/or extension of the corporate facilities as the Board of Directors may determine to be in the best interest of the LMPWA and to the extent not otherwise provided for by and any contractual arrangement.

(3) The occurrence in subsequent fiscal years of surplus funds or net income above the requirements of the LMPWA as above mentioned, including if any, a reserve for improvements and extension of the facilities shall be taken into consideration by the Board of Directors in determining the water rates to be charged the Water Users.

SECTION 9.03 Distribution of Surplus Assets upon Sale or Dissolution

(1) Any assets remaining after all debts and liabilities of the LMPWA have been paid shall be disposed of pursuant to the provisions of Section 7.06 above.

ARTICLE X. FINANCIAL TRANSACTIONS

SECTION 10.01 Contracts

(1) Except as otherwise provided in these by-laws, the Board may authorize any officer or officers, agent or agents, to enter into any contract or execute and deliver any instrument in the name and on behalf of the LMPWA, and such authority may be general or confined to specific instances.

SECTION 10.02 Checks, Drafts, Etc

(1) All checks, drafts, or other orders for the payment of money, and all notes, bonds, or other evidences of indebtedness issued in the name of the LMPWA's shall be signed by such officer(s), or employee(s) of the LMPWA and in such manner, as shall from time to time be determined by resolution of the Board.

SECTION 10.03 Deposits

(1) All the funds of the LMPWA shall be deposited from time to time to the credit of the LMPWA in such institutions as the Board may select.

ARTICLE XI. PROPOSALS TO SELL OR TRANSFER ASSETS OR TO MERGE WITH OTHER ENTITY

SECTION 11.01 Notices to Water Users

(1) Notwithstanding any other provision of these by-laws, no proposal pursuant to which the LMPWA is to merge with any other entity (except another PWA), or pursuant to which all or a substantial portion of the assets of the LMPWA, are to be sold, leased, or otherwise transferred or conveyed to any person or entity (except by way of mortgages or other security instruments executed upon authorization of the Board of Directors of the LMPWA in order to obtain financing for the continued or expanded operations of the LMPWA) is to be submitted to the

Water Users of the LMPWA unless, no less than 180 days prior to the presentation of the proposal to the Water Users, at a regular or special meeting, thereof, each Water User of the LMPWA has been provided, by one or more proponents of said proposal, with written notice stating:

- a. The identity (ies) of the person(s) or entity (ies) to whom such sales or transfer, or with whom such merger, is proposed.
- b. Details of any offer made by, or proposed to be made on behalf of the LMPWA to, such person(s) or entity (ies).
- c. A complete and accurate listing of each and every asset, the book value of same as appraised by a competent appraiser.
- d. The date, time, and place of the meeting at which such proposal is to be presented to the Water Users.

SECTION 11.02 Quorums

(1) Notwithstanding any other provision of these by-laws, no proposal such as is described in section 11.01, above, shall be voted upon by the Water Users of the LMPWA unless a quorum consisting of seventy-five percent (75%) of all Water Users of the LMPWA are present in person at the meeting at which such proposal is submitted to the Water Users.

SECTION 11.03 Required Declarations

(1) Before any Water User of the LMPWA shall be entitled to vote on any proposal such as is described in Section 11.01, above, he/she shall sign a declaration, in writing, that:

- a. He/she has at no time entered into any formal or informal agreement to in any way transfer or otherwise convey to any person or entity any rights or privileges appertaining to his/her Water Usage in the LMPWA to which he/she may be entitled by virtue of his/her Water Usage of the services of the LMPWA.
- b. He/she has neither received nor agreed to accept any sum of money or other consideration for casting his/her vote for or against the proposal in question. Failure to sign such a declaration, or signing such declaration when same is not in all respects true, shall disqualify said Water User from eligibility to vote on the proposal in question.

SECTION 11.04 Required Votes

(1) Notwithstanding any other provision of these by-laws, no proposal such as is described in Section 11.01, above, shall be approved by the Water Users of the LMPWA except by resolution for which not less than three-fourths (3/4) of all Water Users of the LMPWA shall vote, in person or by signed, written ballots, in favor of the proposal in question.

SECTION 11.05 Amendments to the Article

(1) These by-laws may be repealed or amended by a vote of a majority of a quorum present at any regular meeting of the LMPWA, or at any special meeting of the LMPWA called for that purpose, except that so long as any indebtedness is held by or guaranteed by the Farmers Home Administration, the Water Users shall not have the power to change the purposes of the LMPWA so as to decrease its rights and powers under the laws of the state, or to waive any requirement of bond or other provisions for the safety and security of the property and funds of the LMPWA or its Water Users, or so to amend the by-laws as to effect a fundamental change in the policies of the LMPWA without the prior approval of the Farmers Home Administration in writing.