

BYLAWS OF THE
EASTSOUND WATER USERS ASSOCIATION

P.O. BOX 115
EASTSOUND, WASHINGTON 98245

A Non-Profit Membership Owned

Corporation

501(c)(12)

REVISED 2023

DEFINITIONS AND GLOSSARY OF TERMS

Association: Eastsound Water Users Association - A Non-Profit Membership Owned Corporation organized under 501(c)(12) of the Internal Revenue Service Code.

Board: The Association's Board of Directors, who have the authority to act on behalf of the Association.

Bylaws: Bylaws define the basic regulations of Associations and concentrate on meeting their legal requirements with respect to Members, regulators and lenders.

Department of Health (DOH): The Washington State agency and its associated laws, regulations, guidelines, and orders that substantially define the functions of the Association.

DOH Equivalent Residential Unit (ERU): The state of Washington (DOH) mandates periodic updates to the Association's water system plan. The result of the update documents the amount of water used by the average single-family residence in one year. This is the definition of an ERU from a regulatory standpoint. The DOH determines the total number of ERUs that the system is permitted to serve.

Impact Unit: Impact Units are measures of the anticipated impact of each service connection on the water system, with the purpose of equalizing members' different categories of water usage for billing, voting, and other purposes. Impact Units are used to determine each member's connection fees, water rates, and voting rights.

Membership Agreement in Good Standing: A Membership Agreement that is current with all financial obligations to the Association and is compliant with the provisions of the Bylaws and Operating Rules is in good standing.

Guest house: A separate living space that includes a bathroom and provisions for cooking and eating. A guest house may necessitate the purchase of an incremental Impact Unit. The term Guest House refers to any County permitted guest house or Accessory Dwelling Unit.

Hookup: The water line, valves, and all associated appurtenances used to carry water between the distribution main and the point of use. The portion of the hook up between the water main and the downstream side of the meter setter is EWUA property and is maintained by the Association.

Member - The term member refers to the individual or legal entity who has entered into a Membership Agreement.

Membership - The entirety of the Association members is collectively known as the Membership of the Association.

Membership Agreement: The contractual agreement between the Association and Water Users. When an individual or legal entity makes payment for a full/ fractional or multiple Impact Units they enter into a Membership Agreement with the Association. The Membership Agreement details the obligations and required actions of each individual or legal entity and the Association. Every individual tax parcel with one or more meters billed by the Association will have a separate and distinct Membership Agreement. Each

Member will be a party to at least one Membership Agreement. Members who own more than one tax parcel will have multiple Membership Agreements.

Notice: The action of giving NOTICE is a means of distributing or providing communication from the Association to members. NOTICE may be sent to Members via US Postal service, email, publication in local papers (e.g. The Sounder) and postings on the Association web site. The Association may use any one, any combination, or all methods, to communicate with Members. The Association will endeavor to communicate and provide notice via the Members preferred method.

Operating Rules: The Operating Rules are developed and approved by the Board of Directors. They are designed to guide the day-to-day operation of the Association and define the operating practices and procedures, the rights and responsibilities of members, and the relationship between the Association and its Members.

San Juan County Timely and Reasonable Service: The San Juan County ordinance controlling the timeliness of water service provisioning. See 8.06.130 in: <https://www.sanjuanco.com/DocumentCenter/View/809/Chapter-806-Drinking-Water-Rules-and-Regulations-PDF>

Service Line: A water pipe owned and maintained by the owner of the tax parcel, starting from the downstream joint of the meter setting and into the premises to be served.

Sub-Area fee: A charge that was assessed to an applicant in addition to the membership fee for the purpose of making improvements to the distribution system in a specific area. Sub Areas Fees applied to some memberships sold between 1997 and 2002. Sub Area fees could be deferred until hook up.

Water Meter / Setter: The demarcation point between the Association owned and Member owned equipment.

Water Service Bills: Invoices for water consumption or special services provided to a property.

Water Use: Any consumption of Association supplied water whether by service connection, hydrant, pipe or any other means with or without the benefit of a meter or with or without the knowledge of the Association.

Water User: Any individual or legal entity who obtains or consumes water provided by the Association.

ARTICLE I - THE ASSOCIATION

The Association shall be known as Eastsound Water Users Association (hereinafter referred to as the "Association"). The address of the Association is Post Office Box 115, Eastsound, Washington 98245. The Association is incorporated under the laws of the State of Washington as a private, non-profit corporation. The Association will not discriminate with respect to membership or employment because of race, color, religion, sex, national origin, sexual preference, or age.

The Association is a member cooperative. The cooperative is owned by the Members. The Board is elected by the owners of the cooperative to manage the Association.

ARTICLE II - AREA OF OPERATION

A. Service Area

- a. Eastsound Water's service area is defined by the latest version of the Association's Water System Plan.

B. Authority for Service Area Extensions

- a. The Board of Directors maintains the right to expand or alter the Association's Service Area with prior approval of the appropriate regulatory authorities. Any changes to the Service Area will be reflected in the Association's Water System Plan.

C. Approval of Extensions

- a. A request for service outside the Association's Service Area must be approved by a two-thirds vote of the Board and approved by the DOH.

D. Appeals

- a. The Association strives to treat all members in a fair, equitable and consistent manner. Any Member who believes they were not accorded fair treatment may request an appeal. Members may appeal to the Board actions or decisions of the Association or interpretations of its Bylaws or Operating Rules. Any complaint must first be made to the General Manager who will attempt to resolve any such complaint. If the General Manager is unable to resolve a Member complaint, a Member may, in writing, appeal to the Board of Directors, who will conduct a hearing at regular meeting according to rules provided in the Operating Rules. Any decision by the Board of Directors will be final. The Board may adopt Operating Rules regarding Member fair treatment.

ARTICLE III – PURPOSE AND OBJECTIVES OF THE ASSOCIATION

A. Purpose

- a. Primary use – The principal purpose of the Association is to provide an adequate supply of potable water to the members of the Association for ordinary commercial or residential use. This principle may be modified by the Board to conform the operation of the system to controlling law, State or County regulations, water availability, changes in consumption patterns, and to reasonable conservation goals as the Board may adopt.
- b. Secondary use – All other uses in accordance with their relative importance to the served community as determined by the Board. This may include bulk water sales on a case-by-case basis as determined by the Board.

B. Regulatory Authorities

- a. Jurisdiction – Much of the Association operations and facilities are under the jurisdiction of the State DOH and the San Juan County Public Health Department. The Board and Association will be governed by the regulations of the DOH and the San Juan County Public Health Department.
- b. Control of Water -The Board shall exercise sufficient control over supply, and quality in order to meet applicable Federal, State and County standards

ARTICLE IV – MEMBERSHIP IN THE ASSOCIATION

A. Application

- a. Forms – Anyone wishing to become a Member shall complete the necessary application forms which will be provided upon request. Each application is voted upon by the Board during regular or special Board meetings.
- b. Membership applications are to be processed in accordance with the San Juan County Timely and Reasonable Service policy.
- c. Costs, terms and other rules applicable to membership shall be set forth in the Operating Rules.

B. Name on the Membership Agreement

- a. All Membership Agreements shall be granted in the name of the recorded owner(s) of the property to which the Membership Agreement attaches.
- b. Membership Agreements held in any title other than that of an identifiable person shall have documentation on file with the Association, stating the name of the person(s) authorized to represent and act for that membership.
- c. The Association will identify a Membership Agreement by the name(s) on the deed to the property.
- d. Members are required to maintain current contact information including address, phone number, and email address, at the Association offices.

C. Membership Agreements and Impact Units

- a. Membership entitles a member to purchase the requisite number of Impact Unit's for the property and to take delivery of water provided by the Association.
- b. Every Member accessing water from the Association must have a Membership Agreement with the Association. Each Membership Agreement will have an identified number of Impact Units associated with it which entitles a Member to a portion of the water available to all members.
- c. Membership Agreements are specific to a tax parcel. Membership Agreements cannot be transferred from one tax parcel to another. If a tax parcel is subdivided, combined, or sold to another party, then the Membership Agreement associated with the parcel expires and new Membership Agreement(s) are drafted to reflect the new property description(s) or ownership(s).
- d. Impact Units are associated with a tax parcel and become appurtenant to the real property when a meter is installed on a legal parcel for which that Impact Unit has been designated.

Such an Impact Unit may not be sold or disposed of independently of the property to which it attaches without Board approval pursuant to Operating Rules then in effect. An Impact Unit associated with a tax parcel may be associated with one or more subdivided parcels as long as one of the new parcels was a part of the original parcel.

- e. Impact Units associated with a tax parcel may be sold back to the Association at the Board's discretion. The Board may, but is not required to, set a buy-back price for Impact Units in the Operating Rules or rate sheet. The Board shall require a letter from the County confirming how many Impact Units are required to be assigned to the property in question as a condition of the buy-back. The Board will honor all existing agreements including but not limited to those regarding Impact Units.
- f. Legal description - The legal description of the real property and/or the San Juan County Assessor's tax parcel number shall be attached to or written upon the Membership Agreement and all Impact Units.

ARTICLE V - ANNUAL AND SPECIAL MEETINGS OF THE MEMBERSHIP

A. Fiscal Year

- a. The fiscal year shall be a calendar year.

B. Annual Meeting and Special Meetings

- a. The annual meeting of the Association shall be held in the month of November at a place and time as determined by the Board and such annual meeting may be in addition to or in lieu of the regular Board meeting for that month.
- b. Special meetings of the Membership may be held upon a majority vote of the Board, or presentation of a petition with at least ten percent (10 %) of the eligible votes of the membership .
- c. Notice of annual meetings or special meetings shall be provided to the Members at least twenty (20) days prior to each meeting, specifying the starting time, place, and agenda for that meeting.
- d. A board -approved proxy form shall be included with the Notice of each special or annual meeting.
- e. Quorum of the Membership. Any action taken by the Membership at the Annual or Special meeting must be approved by the majority of at least ten percent (10%) of the Association Membership .

C. Voting.

- a. Each Membership Agreement in good standing shall be entitled to one vote..
- b. Proxies must be submitted on board-approved authorized forms at least five (5) business days prior to special or annual meetings.
- c. Robert's Revised Rules of Order shall prevail whenever applicable as determined by the President.

ARTICLE VI - THE BOARD OF DIRECTORS

A. Representation, Election, Tenure, Quorum

- a. The governing body of the Association shall be the Board of Directors, referred to herein as the Board.
- b. The Board shall consist of seven (7) directors who are members of the Association.
- c. Elections - At least two (2) and not more than three (3) Directors shall be elected at each annual meeting.
- d. Term of Office -Upon election, Directors shall serve a term of three (3) years and may be elected to consecutive terms.

- e. Quorum at Board and Special meetings - A majority of the total authorized Board members, Seven (7) constitutes a quorum at any meeting. A majority of the Board present in person or via phone at each meeting is necessary to take official actions unless otherwise specified in these Bylaws and Operating Rules.
- f. Quorum on email meetings - Decisions may be made by the Board via email, upon proper notice, when all Board members are in unanimous agreement, and any board decisions shall be reflected in the next regular Board meeting's minutes..
- g. Vacated seats - If a board member misses three (3) unexcused consecutive Board meetings or is unable to serve for any reason, the Board may declare the seat vacant and appoint a replacement to serve and complete the unexpired term.

B. Guiding Principles regarding Accountability of Directors

- a. Serving as a Director consumes time and energy of the person serving. Serving one's neighbors thus comes at a personal cost to the person serving. This fact shapes what accountability means in the context of holding a Director accountable for official acts or omissions. The Association believes that removal from further service generally strikes the appropriate balance between the interests of the person serving and of the persons being served.
- b. Honest effort that produces an outcome(s) which substantially differs from an outcome the Association Membership is committed to achieve may signal the need to change the composition of the Board so that, going forward, future Board decisions more closely correspond with the Association's priorities. Affording the Association Membership with the means to remove a Director(s) from the Board before the end of a term will therefore be the principal means by which a Director or Officer will be held accountable for official acts or omissions.
- c. The Association believes in the value of learning from mistakes and of moving forward from there. It is disinclined to waste its time and energy rehashing the past and laying blame on those who have been removed from the Board. To that end, a set of presumptions, limitations, and protections are established so that blame laying is reserved for those rare instances in which past actions have actually caused a substantial impact on the Association accounts and Members.

C. Presumptions, Required Showing, Limitation of Action.

- a. The act or omission of a director is presumptively made in good faith, it being intended that the benefit of the doubt be extended to the act or omission of a director. A person asserting a claim that a director has acted in bad faith has the burden of proving the facts upon which the claim is made.
- b. Except as otherwise provided, the Board's substantial compliance with a procedural requirement is deemed to have complied with the procedural requirement, so long as (i) the actions taken serve to give effect to the purpose(s) that the procedural requirement is intended to advance, and (ii) the person(s) challenging the action has not shown that the failure to strictly adhere to the applicable procedure has adversely impacted the exercise of a right(s) the procedure was intended to protect.
- c. A challenge to the validity of an action of the Board for failure to comply with a procedural requirement may not be brought more than ninety days after the minutes of the Board of the meeting at which the action was taken are approved.

- d. Standards of conduct for directors.
 - (1) Each director, when discharging the duties of a director, shall act:
 - (a) In good faith;
 - (b) With the care an ordinarily prudent person in a like position would exercise under similar circumstances; and
 - (c) In a manner the director reasonably believes to be in the best interests of the nonprofit corporation.
 - (2) In discharging board or committee duties a director shall disclose, or cause to be disclosed, to the other board or committee members information not already known by them but known by the director to be material to the discharge of their decision-making or oversight functions, except that disclosure is not required to the extent that the director reasonably believes that doing so would violate a duty imposed by law, a legally enforceable obligation of confidentiality, or a professional ethics rule.
 - (3) In discharging the duties of a director, a director may rely on information, opinions, reports, or statements, including financial statements or other financial data, if prepared or presented by:
 - (a) One or more officers, employees, or volunteers of the nonprofit corporation whom the director reasonably believes to be reliable and competent in the functions performed or the matters presented;
 - (b) Legal counsel, public accountants, or other persons retained by the corporation as to matters involving skills or expertise the director reasonably believes are matters:
 - (i) Within the particular person's professional or expert competence; or
 - (ii) As to which the particular person merits confidence; or
 - (c) A committee of the board of which the director is not a member, designated in accordance with provisions of the articles or bylaws, as to matters within its designated authority, if the director reasonably believes the committee merits confidence.

D. Removal of a Director. Directors may be removed through the following processes:

- a. The Members may seek to recall any Director by a process beginning with a petition to the Board signed by ten (10%) percent of the voting interests of the Membership Agreements in Good Standing. Upon receipt of the written petition, the Board shall, within 35 days, provide written notice of a Special Members Meeting to consider the recall action and naming the Director who is under threat of recall. The Secretary shall provide a copy of the petition to the director subject of the recall effort. The notice shall include provision for instructed proxy voting by Members. The Special Membership Meeting shall be held within thirty-five (35) calendar days from the initial date of notice. Removal from the Board requires majority approval of those Members voting, with a minimum participation of 10% of the eligible membership in accordance with the provisions of these Bylaws.
- b. The Board may also remove a Director by a an affirmative vote of at least 5 the remaining Board members. The Board shall develop an Operating Policy regarding the procedures used to remove a Director by the Board of Directors.

E. Duties of the Board

- a. The Board shall direct the business of the Association and exercise all power and authority of every kind and nature not herein specifically denied or restricted. It may borrow money on

the credit of the Association and may mortgage, pledge, and assign all or any Association property and assets as security for loans or advancements and execute or authorize the execution of all papers and instruments useful for those purposes.

- b. The Board shall meet monthly and at any other times as requested by a majority of the Board members or the President, at a time and place determined by the Board or President.
- c. At the first Board meeting following the annual meeting, the Board shall elect a President, Vice President and Secretary and Treasurer, from the Board membership, to serve for one (1) year commencing on January 1 of the next calendar year. Officers shall serve until their replacements have been elected.
- d. The Board shall employ a General Manager to serve at the direction of the board.
- e. The Board shall require that proper easements and rights-of-way over property necessary for the construction, maintenance and improvements of the Association's water sources, water mains and storage facilities, are obtained and properly recorded prior to the construction of infrastructure improvements.
- f. The Board shall determine all charges, rates and fees in connection with water service to all consumers or members.
- g. The Board shall approve all water Membership Agreement applications.
- h. The Board or the General Manager shall retain the services of a licensed engineer to prepare plans and specifications on all installations involving extensions of mains, water storage, water sources, and other infrastructure as determined by the Board and DOH regulations.
- i. The Board shall exercise control of water usage in times of emergencies or stress, according to the Operating Rules.
- j. The Board may amend all or any part of the Bylaws and Operating Rules subject to the voting rights of the membership.
- k. The Board shall follow all applicable Federal, State, and County regulations relating to purveying water.

F. Limitation of Liability

- a. A director of the Association shall not be personally liable to the Association or its members for monetary damages for conduct as a director, except for liability of the director (a) for acts or omissions which involve intentional misconduct by the director or a knowing violation of law by the director, or (b) for any transaction from which the director will personally receive a benefit in money, property or services to which the director is not legally entitled.

G. Indemnification of Directors.

- a. The Association shall, to the full extent and under all circumstances permitted by applicable law, indemnify any individual made a party to a proceeding because that individual is or was a director of the Association and shall, following the procedure outlined below, advance or reimburse the reasonable expenses incurred by such individual in advance of final disposition of the proceeding.
- b. A request for indemnification must be submitted to the Board and considered at a regular or special meeting of the Board. The Board must determine by majority vote of a quorum consisting of directors not at the time a party to the proceeding that the director has met the standard of conduct described in the next subsection. If such a quorum cannot be obtained, a majority of the directors not a party to the proceeding shall select special legal counsel to determine the request for indemnification. Approval of the indemnification and evaluation of the reasonableness of expenses shall be made in the same manner, except that if the

determination is made by special legal counsel, the evaluation of reasonableness of expenses shall be made by majority vote of those directors entitled to select the special counsel.

- c. Standard for indemnification. The Association may indemnify an individual made a party to a proceeding because the individual is or was a director against liability incurred in the proceeding if:
- i. The individual acted in good faith;
 - ii. The individual reasonably believed: (a) In the case of conduct in the individual's official capacity with the Association, that the individual's conduct was in its best interests; and (b) In all other cases, that the individual's conduct was at least not opposed to its best interests; and (c) In the case of any criminal proceeding, the individual had no reasonable cause to believe the individual's conduct was unlawful. The termination of a proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent is not, of itself, determinative that the director did not meet the standard of conduct described in this section.
 - iii. The Association may not indemnify a director: (a) in connection with a proceeding by in the right of the Association in which the director was adjudged liable to the Association; or (b) in connection with any other proceeding charging improper personal benefit to the director, whether or not involving action in the director's official capacity, in which the director was adjudged liable on the basis that personal benefit was improperly received by the director.

Any indemnification provided under this Article shall, unless limited by the terms of the undertaking to indemnify, continue as to a person who has ceased to be a director and shall inure to the benefit of his or her heirs, executors, and administrators.

- d. Payment of reasonable expenses - This Association shall pay reasonable expenses incurred in defending a suit or criminal action or proceeding for which a person shall be entitled to indemnification under this Article in advance of a final disposition of such action upon written request of such person to repay such amount if the person is entitled to indemnification as provided in this Article.
- e. Insurance – The Association shall purchase and maintain adequate insurance, including general liability, errors and omissions, and officers and directors insurance, to cover its officers, directors, employees, agents and assets. The adequacy of all Association insurance coverage shall be reviewed annually by the Board.

H. Elected Officers and Duties

- a. Duties of the President - The duties of the President are to:
- i. Preside at all Board, annual and special meetings.
 - ii. Appoint standing and special committees (e.g. budget, planning and nominating and others as deemed necessary).
 - iii. Together with the Board, set policy and make decisions related to the Association.
 - iv. Supervise the General Manager on behalf of the board.
 - v. Manage an annual review of the General Manager.
 - vi. The President shall serve for a period of one (1) year.
- b. Duties of the Vice-President - The duties of the Vice-President are to:
- i. Perform the duties of the President in his or her absence or when requested to do so by the President.
 - ii. Perform such other duties as designated by the Board and/or President.
 - iii. Keep the official copy of the Bylaws and Operating Rules up to date.

- c. Duties of the Treasurer - The duties of the Treasurer either by direct action or delegation to staff shall be to: oversee all financial obligations of the Association, including but not limited to the following:
 - i. Sign all checks for payments as directed by the Board.
 - ii. Supervise the General Manager's maintenance and safe custody of all funds, records, properties, and membership records of the Association.
 - iii. Keep an accurate accounting of the funds of the Association and make an annual financial report to the membership.
 - iv. Shall facilitate the financial statements of the Association and these will be reviewed by an independent accountant.
- d. Duties of the Secretary. The duties of the Secretary either by direct action or delegation to staff shall be to oversee all the administrative obligations of the Association, including but not limited to the following:
 - i. Certify a final version of Board-approved minutes for the record.
 - ii. Send out notice of the annual meetings and special meetings as directed by the board.
- e. The President or Vice-President or the Secretary or the Treasurer shall sign on behalf of the Association for any purchase or sale of Association property when approved by the Board.
- f. Governance. The Board shall create an Election and Governance Committee, made up of at least two (2) Board members and three (3) Members who shall recommend to the Board Operating Policies that will help to identify and recruit future Board members who will serve the Association and practice good stewardship of member resources. The Election and Governance Committee shall develop qualifications for Board members and a Code of Ethics for all Board members.

I. Employee Duties

- a. The Board is responsible for hiring the General Manager to perform duties as necessary to conduct the business of the Association. The General Manager is responsible for hiring, firing, and supervising the remainder of the staff. Each employee's duties shall be outlined in a job description approved by the Board.

ARTICLE VII - AMENDING THE BYLAWS AND OPERATING RULES

A. Adoption by the Board

- a. The process to amend the Bylaws may be commenced by a vote of at least four of Board members present at a regular or special meeting, after any necessary steps provided in Section B, below..
- b. Operating Rules may be amended by a vote of at least four Board members present at a regular or special meeting.
- c. Bylaws and Operating Rules shall become effective immediately upon adoption by the Board and may be amended or repealed by an affirmative vote of a majority of the membership present, including legal proxies, at an annual or special meeting.

B. Modification of the Bylaws and Operating Rules

- a. Any modification to the bylaws will be approved by the Board following a process as described below.
 - i. The Board will initially consider and make proposed recommendations for

modification to the Bylaws and will communicate those proposals via notice to the members.

- ii. The membership will be invited via notice to attend one or more engagement meeting with the Board that will occur within 30 days following notice of the proposed Bylaw changes.
 - iii. The engagement meeting is for the purpose of explaining proposed changes to members, soliciting questions, feedback and recommendations from the Members before a final draft of the proposed changes is distributed to all members.
 - iv. The Board will consider Member comments and recommendations and will then draft final proposed changes to the Bylaws.
 - v. The final proposed changes will be distributed to all Members at least 10 days before Board consideration.
 - vi. Formal adoption requires a vote of at least five Board members.
- b. Change in Operating Rules - The Board may adopt, change or amend any of the Operating Rules without providing advance notice to the membership but shall provide Notice to all members of the change or the amendments within 20 days of adopting the change or amendment. Formal adoption of a modification of the Operating Rules requires a vote of at least a majority of the seated Board members.

ARTICLE VIII - BUDGET

- A. The General Manager, in conjunction with the Board will prepare a proposed two year budget for the next two fiscal years by the December board meeting of each year. Revisions to the budget may be made at any time by a majority vote of the board members present at any regular or special meeting of the Board.
- B. The General Manager in conjunction with the Treasurer of the Board prepares a monthly financial report showing actual income, expenses, and encumbrances, as compared to the budget.

ARTICLE IX -

Upon dissolution of the Association, after paying off all debts and obligations, members shall receive their equitable share of the proceeds 'remaining to the extent practicable. Equitable is defined as being proportional to the quantity of Impact Units associated with each Member.

ARTICLE X. RCORDS

The Association shall provide Members access to its records consistent with state law RCW 24.03A.210 upon proper written request. Inspection of available records shall be consistent with RCW 24.03A.215.