

East Pecos Mutual Domestic Water and Sewer Consumer's Association

An Association Formed Under the Sanitary Projects Act ("SPA"), NMSA 1978 §3-29-1 through 3-29-20 NMSA.

BY-LAWS

Revised September 2021

ARTICLE I – NAME AND LOCATION

The name of the Association shall be the East Pecos Mutual Domestic Water & Sewer Consumer's Association (EPMDWSCA), hereinafter referred to as the "Association".

The principal location of the Association is East Pecos, San Miguel County, State of New Mexico 87552.

ARTICLE II – PURPOSE

The Association is organized for the purpose of delivering safe drinking water and the collection of wastewaters for disposal to Association Members.

Section 1.

To associate its Members together for their mutual interest and benefit and to that end acquire, construct, install, maintain, and operate a drinking water and sewer collection system for the supply and distribution of water for domestic uses for its Membership; for the collection of wastewater for disposal at the Village of Pecos Wastewater treatment plant and to engage in any activity related thereto, including, but not limited to, the acquisition of water by purchase, appropriation, lease or otherwise; and the diversion and storage of; the drilling, pumping and purchase; laying installation; operation, maintenance and repair of wells, pumping equipment, structures, pipelines, valves, meters, and all other material and equipment necessary for the construction, repair, maintenance and operation of a complete domestic water supply distribution system and sewer collection system.

Section 2.

To seek/acquire fiduciary resources through grants or loans and borrow from any source, money, goods, or services and to pledge or mortgage any of its property as security therefore, in any manner permitted by law.

Section 3.

To acquire and hold, own and exercise all rights of ownership in and to sell Memberships for water delivery and sewer collection to the Association.

Section 4.

To make assessments and charges for water services in such a manner and in such amount as may be provided in the rules and regulations of this Association.

Section 5.

To have and exercise all power, privileges and rights conferred to the Association by the Laws of the State of New Mexico, all of which are hereby expressly claimed, including all powers which may be necessary, contingent or expedient for the accomplishment of the purposes of this Association, except such powers as are inconsistent with the provision of the Act under which this Association is incorporated.

Section 6.

The principal activities and business of this Association will be carried on in East Pecos, San Miguel County, State of New Mexico, but its entire business and activities will not necessarily be limited to said location.

ARTICLE III – PRINCIPAL ADDRESS

The mailing address of the Association shall be Post Office Box 1171, Pecos, New Mexico 87552

ARTICLE IV – FISCAL YEAR

The fiscal year of the Association shall begin on the first day of **January** of each year.

ARTICLE V – MEMBERSHIP

Section 1.

Membership shall be residential or commercial.

Section 2.

Any person who owns residential or commercial property or resides within the boundaries of the Association shall be eligible to become an Association Member.

Section 3.

The Association Board of Directors shall discuss and approve or disapprove all applications for Membership. Applications for Membership in this Association will be on the form approved and provided by the Board of Directors. Members shall meet the requirements established by these bylaws and the Association's Articles of Incorporation and the provision of the Act under which this Association is incorporated. Membership will not be denied based on applicant's race, color, creed, national origin, or sex.

No application for Membership shall be approved under this Section if the capacity of the Association's water and/or sewer system is exhausted by the needs of its existing Members. In the event of a shortage of water, the Association shall take appropriate measures to provide additional water to meet the needs of the Association.

Section 4

These items are required prior to scheduling any construction for new connections.

- A. Membership eligibility is dependent on Member's property being in full compliance of San Miguel County ordinances and State regulations relating to utilities.
- B. Membership fees must be paid in full. New Membership fees include the installation of the meter, however the Association resumes ownership of the physical meter
- C. Signed and notarized easement by the legal owner of any property on which the water/sewer-line to be constructed begins, crosses, or terminates must be provided to the Association. All right of way easements shall be acquired by the consumer requesting Membership or extension.
- D. Arrangements and coordination of trenching and other construction to install the meter must be made with the Association prior to scheduling of work.
- E. All construction, including but not limited to trenching and backfill, as well as any materials from the metering point to the dwelling are the full responsibility of the Member. The Member shall be responsible for maintaining all water/sewer lines from the metering point to his/her property and shall promptly repair all water/sewer leaks or damaged pipes, as well as paying any overages associated with the break.
- F. Association personnel will perform all construction of work up to the metering point. The metering point will be determined on a case by case basis and shall be as close to the main water line as possible.
- G. All metering points shall be approved by the Association Board of Directors prior to construction.

Section 5.

The rights, privileges, and obligations of Members of this Association will be equal, provided on the basis of a Member's right to delivery of water and sewer collection and the amount thereof will be based upon the number of service connections.

Section 6.

- A. Each Member shall be entitled to one vote on each matter submitted to vote at a meeting of the Members, regardless of how many connections and/or hookups they own. In the event of dual ownerships (spouse/parent/child/sibling, etc.) only one vote is permissible.

- B. No Member shall be permitted to vote in any election unless the Membership has been approved by the Association Board of Directors for at least thirty (30) days prior to any election.
- C. Voting by proxy will be permitted provided that there is a written signed notification from the member of record. Voting by mail will not be permitted.

Section 7.

As a part of the records of the Association, there shall be kept an official Membership Book/Record.

Section 8.

- A. Membership may be transferred to another property owner but not another property location provided that any required transfer fee has been paid to the Association and that the transferee shall be eligible for Membership and shall be approved by the Board of Directors. Any indebtedness to the Association shall be paid in full before the transfer is processed and noted on the books of the Association.
- B. A transfer of Membership or alternate designation of Member for a property with more than one owner, shall only be approved upon receipt of a written request and/or a demonstration of property conveyance by appropriate instrument filed in the San Miguel County Clerk's office. Upon approval of such transfer, a new Membership Certificate shall be issued, and the prior Membership Certificate shall be terminated and void for all future uses and purposes of the Association.
- C. The Directors may purchase a Membership on behalf of the Association in accordance with the Rules and Regulations of the Association. In the event of the purchase of the Membership by the Association, the proceeds shall first be applied to the payment of any indebtedness due to the Association by the Member.

Section 9.

The Association Board of Directors shall have the authority to terminate the delivery of water services to a delinquent member or any member violating any water provisions set in these by-laws or deemed unethical or illegal. The Board shall act, following the Association's rules and regulations.

Section 10. (Terminating Membership & Voluntary Relinquishing)

- A. In addition to terminating the water supply and/or sewerage, the Board of Directors shall have the authority to terminate the Membership of any Member in the event of non-payment of any charges or assessments owing by such Member or for violating the Association's bylaws, rules and regulations, or policies.
- B. The Association must collect any amount due to the Association from a terminated Membership. In accordance with the Sanitary Projects Act, the Association through its Board of Directors may place a lien on the property in the manner provided by the laws of the state.

- C. Any property owner whose Membership has been terminated may be eligible to apply for a new Membership upon payment of all previously owed monies and compliance with Membership application set in these bylaws and all Rules and Regulations of the Association.
- D. Any Member may voluntarily relinquish their Membership. The Association shall issue a written verification/notification of the termination or voluntary relinquishment of any Membership. Termination of Membership in any manner shall not release the Member or the Member's estate or successors from any debts due to the Association, which must be paid in full.

Section 11.

Members of the Association have the obligation to keep the Membership in good standing so that the Association operates in the best manner to provide safe drinking water and sewerage to all users.

Section 12.

Provided that there is sufficient infrastructure capacity after the domestic and safety needs of its Members have been met, the Association may provide water/sewerage service to non-Members but only after specific written approval and authorization has been obtained from the Board of Directors.

Domestic usage shall have priority over other uses.

ARTICLE VI – MEETINGS OF THE MEMBERSHIP

Section 1.

The general purpose of the annual meeting is to provide an opportunity for the Members to hear from the Board of Directors regarding the Association management during the previous year such as reports regarding revenue and expenditures, changes to and the condition of the water and sewer system, and to transact such other matters as may properly come before the Members such as elections of directors. Failure to hold the annual meeting at the designated time shall not work as forfeiture or dissolution of the Association.

Section 2.

The order of business at the annual meeting, and as far as possible, at other meetings, shall be:

1. Determination of existing or non-existing quorum
2. Call to order
3. Proof of notice of meeting
4. Approval of Agenda
5. Reading and approval of previous Membership meeting minutes
6. Report and Approval of officers and committees,
 - a. President's report
 - b. Treasurer's report including financial statement report.
 - c. Other reports

7. Election of directors
8. Unfinished business
9. New business
10. Adjournment

Section 3.

The annual meeting of the Members of this Association shall be held every year in the community of Pecos, New Mexico sometime between January 1 and March 30. The Board of Directors will set the specific date, time and location and will inform the Members in advance of the date, time and location of the meeting.

Section 4.

- A. Special meetings of the Members of the Association may be called at any time by:
 - a) the President upon a resolution of the Board of Directors,
 - b) upon a written request signed by any two Directors, or
 - c) upon a written petition to the President of the Board, signed by ten (10%) percent of the Members.
- B. The purpose of every special meeting shall be stated in the notice thereof, and no business shall be transacted thereat, except such as is specified in the notice.

Section 5.

- A. Notice of all meetings shall follow the NM Open Meeting Act (OMA).
- B. Unless otherwise specified in the OMA resolution adopted annually by the Board, notice will be given as follows, at least ten (10) days prior to the annual meeting; three (3) days prior to a special meeting; one (1) day prior to an emergency meeting.
- C. Such a notice will state the nature, time, place, and purpose of the meeting.
- D. The failure of any Member to receive notice of an annual or special meeting of the Members shall not invalidate any action that may be taken by the Members at such meeting.

Section 6.

- A. Quorum for the Annual meeting.
Five percent (5%) of the total Membership of the Association shall constitute a quorum at any meeting of the Association for the transaction of business.
- B. Quorum for other than the annual meeting.
Five percent (5%) percent of Members, present in person, of the Association shall constitute a quorum at special meetings of the Membership.
- C. If a quorum is present, unless otherwise provided by law, the affirmative vote of a majority of the Members at the meeting entitled to vote on the subject matter shall be the act of the Members.
- D. After a quorum has been established at a Member's meeting, the subsequent withdrawal of Members, so as to reduce the number of Members entitled to vote at the meeting below the number required for a quorum, shall not affect the validity of any action taken at the meeting or any adjournment thereof.

- E. If no quorum is reached at the meeting, the Board shall call another meeting and any members present at the meeting will constitute a quorum to conduct business.

Section 7. Membership Concurrence Needed

The following actions shall require the affirmative majority vote or concurrence of the Members of the Association:

- A. Adopting an amendment or amendments to the Articles of Incorporation and/or Bylaws,
- B. Authorizing the sale, lease, exchange, or other disposition of all or substantially all of the property and assets of the Association, not in the usual and regular course of business,
- C. Approving a plan of merger, consolidation, or exchange
- D. Adopting a resolution to dissolve the Association,

ARTICLE VII – BOARD OF DIRECTORS

The Board of Directors shall manage all affairs of the Association.

Section 1.

The Board of Directors shall consist of five (5) members that shall serve staggered terms of four (4) years so that consistency on the Board exists in order to sufficiently serve the duties of the Association.

Section 2.

- A. Board Members are required to be in good standing with payments due to the Association.
- B. No two or more family members who live in the same residence may serve on the Board at the same time.
- C. Board members are required to be a member of the Association.

Section 3.

The Board has the following responsibilities:

- A. Comply with Federal and State laws that govern the provisions of drinking water and sewerage collection systems,
- B. Select staff and contractors, as appropriate, delegate of authority to them necessary for the management of the Association's business. The Association Board of Directors shall determine the compensation and approve it by majority vote. The Association shall abide by state and federal guidelines in procuring such services.
- C. Control of expenditures by authorizing budgets,
- D. Establishing water sewerage charges/rates, penalties, fees and assessments and the enforcement and collection thereof, in accordance with the provisions of these

bylaws, the Association's rules and regulations and the Laws of the State of New Mexico.

- E. Make and adopt Rules and Regulations/ operating policies not inconsistent with law, the Articles of Incorporation or these Bylaws,
- F. Keeping Members fully informed of business of the Association,
- G. Causing of audits to be made from time to time as is necessary or required by Federal and State Laws,
- H. Studying the requirements of Members and promoting good Membership,
- I. Have the general power to act for the Association in any manner not prohibited by Statue or the Articles of Incorporation
- J. Pursue sustainable management and financial methods, including accounting, audits, and/or conservation practices

Section 4.

Directors must avoid actual or apparent conflict of interest and must disclose to the full Board any such conflict. No Member, Board of Director shall receive directly or indirectly, any pecuniary compensation, benefit, or kickback, except that the Association may reimburse him or her for expenses. The Association may, however, pay reasonable compensation for services rendered even if the recipient is a member, director, or officer of the Association, provided that those services are pursuant to Article 10 Section 1 of these bylaws, and separate and apart from Board duties.

Section 5.

- A. Board Members are required to attend training as stipulated in state statue. The purpose of the training is to help clarify, understand, and/or expand knowledge of their duties and responsibilities as Board Members.
- B. Travel and related expenses must be reimbursed by the Association.

Section 6.

Vacancies on the Board shall be filled by a majority vote of the existing Board of Directors and shall terminate in the year scheduled for such vacancy.

Section 7.

Board of Directors shall consist of a President, Vice President, Secretary, Treasurer and one Board Member. Positions shall be appointed by the Association Board of Directors.

Section 8.

Removal of Member of the Board of Directors

- A. Any Director or officer of the Board may be removed from office for cause shown by a vote of not less than two-thirds (2/3) of the Members of the Association present at any annual meeting, or at any special meeting called for that purpose, provided that a quorum is present. The Director or officer shall be informed in writing of the charges against him/her at least ten (10) days before such meeting.

The Director/officer may appear in person or by counsel, and present witnesses in his/her behalf.

- B. Self-Removal of Members of the Board of Directors - Any Member of the Board of Directors who fails to attend as many as three consecutive meetings (regularly scheduled or special) of the Board of Directors in a one year period and without prior notification and cause shall be deemed to have resigned from the Board.

Section 9.

Each Board Member shall have authority to make motions for the Board of Director's discussion and consideration; and each Board Member shall have one (1) vote either in favor or opposed to such motion.

ARTICLE VIII – DUTIES OF BOARD MEMBERS AND OFFICERS

The duties of the Board of Directors shall include but not be limited to the following:

Section 1.

- A. The Board shall hold meetings at regular intervals throughout the year as specified in the Open Meetings Act Resolution or by a resolution of the Board. Meeting of the Association Board of Director shall be held monthly on the 2nd Tuesday of the month at 5:00 p.m., unless otherwise posted.
- B. Each year, the Board shall adopt an Open Meetings Act Resolution.
- C. A majority of the Board at any meeting shall constitute a quorum for the conduct of business thereat.
- D. All meetings of the Association shall be noticed and held in open forum, as required by the Open Meetings Act, with the exception of the executive session which shall be limited to the Association Board of Directors. All meetings including executive sessions are subject to the Open Meetings Act requirements.
- E. Special or emergency meetings of the Board of Directors may be called by the President or by any two (2) Directors, who shall fix the time and place for the holding of the meeting.

Section 2.

- A. The President shall preside over all meetings of the Association and the Board of Directors, shall call special meetings of the Board of Directors and perform all acts and duties usually performed by an executive and presiding officer. He or She shall sign all Membership applications, notes, bonds, mortgages, contracts and other instruments on behalf of the Association. He or she shall be an ex-officio member of all standing committees and shall have such powers and shall perform such other duties as may be properly required of him or her by the Board of Directors.

Section 3.

- A. The Vice President shall assist the President and when necessary perform the duties of the President.
- B. The Vice President shall succeed to the presidency in the event of death, disability, removal from office, or resignation of the President until such a time a successor to the President shall be appointed by the Board of Directors.
- C. The Vice President shall also perform other operational or administrative duties as may be required by the Association Board of Directors.

Section 4.

- A. If the Association has either a full time or part-time staff, some or all duties of the Secretary may be delegated to the staff person, but the responsibility for their proper execution remains with the elected Secretary acting in behalf of the Board and the Association.
- B. The Secretary, unless otherwise directed by the Board of Directors, shall:
 - a. The Secretary shall keep minutes of all meetings of the Board of Directors and meetings of the Association Membership.
 - b. The Secretary shall also maintain accurate records of the Association and provide notice of all Association meetings as directed.
 - c. The Secretary shall perform all other operational or administrative duties incident to the office of the Secretary or as may be required by the Association Board of Directors.
 - d. Attest the President's signature on all papers pertaining to the Association;
 - e. Keep a proper Membership record, showing the name of each Member of the Association and date of issuance, surrender, transfer, termination, cancellation or forfeiture;
- C. Upon the election of his or her successor, the Secretary shall turn over to him or her all books and other property belonging to the Association that he or she may have in his or her possession

Section 5.

- A. If the Association has either a full time or part-time staff, some or all duties of the Treasurer may be delegated to the staff person, but the responsibility for their proper execution remains with the elected Treasurer acting in behalf of the Board and the Association.
- B. The Treasurer and paid staff shall be covered in the performance of his or her duties by a surety bond in an amount to be determined by the Board of Directors. The premium for such bond shall be paid by the Association.
- C. Unless otherwise directed by the Board of Directors, the treasurer shall:
 - a. Have general charge and supervision of the financial books and records of the Association,
 - b. The Treasurer shall collect all monies due the Association and shall have custody and accountability of all funds of the Association.
 - c. The Treasurer shall pay all Association bills approved by the Board of Directors.
 - d. The Treasurer shall maintain accurate documentation of all receipts and expenditures, bank statements, reconciliations, and other financial affairs of the Association.

- e. The Treasurer shall present a financial statement along with bank statements to the Board of Directors at each monthly and annual meeting.
- f. The Treasurer shall have authority to process bank transactions such as deposits, money transfers and payments from Association bank accounts.
- g. All transactions of the Treasurer shall be overseen by an independent accountant and the Board of Directors on a monthly basis, as well as an independent annual audit review by an independent auditing agency.
- h. The Treasurer shall practice legal and best financial practices when conducting Association business.
- i. The Treasurer shall also perform other operational or administrative duties as may be required by the Association Board of Directors.

Section 6.

- A. The Board Member shall participate in meetings of the Board of Directors and provide input and discussion regarding Association business and affairs.
- B. The Board Member shall also perform other operational or administrative duties as may be required by the Association Board of Directors.

ARTICLE IX – WATER AND SEWER SERVICE, RATES, ASSESSMENTS, AND RESERVE FUNDS

Section 1.

- A. Water and Sewer service shall not be delivered by the systems of the Association, except to eligible Members at one metered connection per dwelling. If any Member needs and desires service connections with the system in excess of one, such excess connections shall be made only upon application to and approval of, the Board of Directors and upon payment of a fee specified in the Association's Rules and Regulations. No service connections in excess of one shall be approved for any Member or made pursuant to this section when the full capacity of the Association's system(s) is needed to serve the existing connections. Exclusions may be made when water is sold at temporary hydrants to contractors, county road dept., etc.
- B. A Member may request the Association to submit billing direct to tenant or may pay the billing directly. The Member is ultimately responsible for payment of water and sewer services rendered and provided by the Association.
- C. Monthly base fees will incur regardless of whether or not the Member makes use of the water and sewer, and charges shall be made for service beginning on date of installation in accordance with rates listed in the Association rules and regulations.
- D. In compliance with Federal and/or State laws, all service connections shall be metered, and a certified operator shall make all connections.
- E. A representative of the Association will have the right at all reasonable hours and after prior notification to enter upon Member's premises for the purpose of

inspection and enforcement of state and federal laws including inspection related to unauthorized connections, cross connection, leak detection, line integrity.

Section 2.

- A. The Board of Directors shall establish a rate schedule for water and sewer services.
- B. The established rate schedules shall apply to each Member of the Association.
- C. The Board of Directors shall review the established rate schedule of charges at least annually, to assure that sufficient income shall be generated for the upcoming year to cover anticipated expenses. This determination shall be based on the previous year's actual expenses and the estimated budget for the coming year.
- D. A separated and dis-aggregated budget should be prepared by the Board for water and sewer services

Section 4.

Water service is for the sole use of the Member. The Member shall not permit the transfer of water by any means to another dwelling. The sharing or reselling of water are grounds for disconnection of water services by the Association or their duly appointed agent.

Section 5. Assessments.

If at any time prior to the end of any fiscal year, it appears in the judgment of the Board of Directors that the amount derived, or which shall be derived, from the collection of water and sewer charges during any fiscal year shall be insufficient to pay, when due, all costs incident to the operation of the Association's systems and the payment of all debts of the Association, the Board shall make an assessment against each service connection in the Association to cover such cost.

Section 6. Reserve Funds

Although this Association is a non-profit Association for the mutual benefit of its Members, the Board shall establish rates at a level which provides for a percentage of annual operating revenues to be placed in a fund (s) to be used for the purpose of reserve funds for replacement/repair, contingency, emergency, and sustainability of Association assets. If necessary, the Board of Directors shall follow federal and/or state guidelines to determine the total amount of such reserve funds and at which amount it shall be maintained.

Section 7. Water Conservation & Usage

Members are required to safeguard the integrity and quality of the ground water aquifer or surface water that supplies the Association's water source. The Member is held responsible to use the supplied domestic water in a prudent manner.

Section 8. Shortages

In times of water shortage or drought as determined by the Board of Directors, the Board shall determine how water rationing rules shall be applied. The following sequence shall govern the delivery of water:

- A. Water shall first be delivered for in-door domestic uses and volumes delivered to each household shall be set at a maximum quantity to protect the health and safety of the Members according to the Rules and Regulations of the Association.
- B. If sufficient supplies exist, then water shall next be delivered to commercial Members at quantities sufficient to meet efficient uses, and subject to implementation of any mandatory conservation measures set out in the Rules and Regulations of the Association.
- C. Other uses will be considered after satisfying A. and B. above.

ARTICLE X – OTHER GENERAL ASSOCIATION MATTERS

Section 1. Other Employees or Agents

- A. The Board of Directors may hire a manager, certified operator, meter reader, bookkeeper, and other agents/contractors or employees, which may be necessary to superintend the water system of the Association and its construction, maintenance, and repair.
- B. Such agents/contractors or employees may be authorized by the Board of Directors under its direction and pursuant to its rules and regulations to provide for the delivery of water and sewer service to the Members of the Association.
- C. Such agents or employees shall be paid a compensation for the performance of their duties in an amount determined by the Board of Directors.
- D. Employees and agents may be removed from office or employment at any time by action of the Board of Directors.

Section 2. Paid Training by the Association

- A. If the Association agrees to pay for training for a Member of the Board and/or the community, such training must be necessary for the operation of the water Association.
- B. The person receiving the benefit must agree to perform the duties for which they were trained for during a period specified in a written agreement between the Association and the person receiving the training. If they resign or are relieved for cause before the agreed period of the time, that person must reimburse the Association for all training related costs.

Section 3. Water and Sewer in exchange for Service

- A. No Services, contract or through employment, for the Association may be compensated by reduced water sewerage rates, free water service, free or reduced hook ups, etc.

- B. Compensation must be in U.S. currency and recorded in the books of the Association.

ARTICLE XI – DISSOLUTION

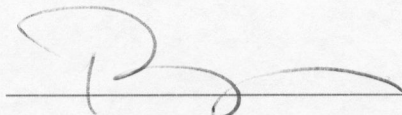
In the event of dissolution of the Association, the Board of Directors shall, after payments of all liabilities of the Association, dispose of the remaining assets of the Association exclusively pursuant on to all applicable laws.

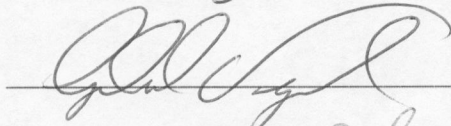
ARTICLE XII – AMENDMENTS

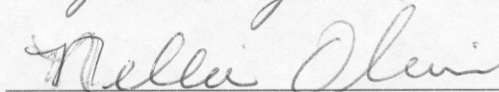
- A. These bylaws may be repealed or amended by a vote of the majority Members present at any annual meeting of the Association, or at any special meeting of the Association called for that purpose, provided that at the special meeting a quorum of the Membership is present.
- B. The Members shall not have the power to change the purposes of the Association so as to decrease its rights and powers under the laws of the state, or to waive any requirement of any provision for the safety and security of the property and funds of the Association or its Members, or so to amend the bylaws as to effect a fundamental change in the policies of the corporation or any indebtedness with or guaranteed by the USDA/Rural Development.

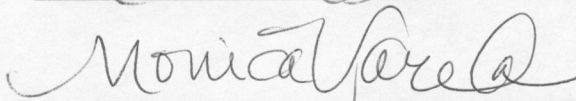
ARTICLE XIII – BY-LAWS ADOPTED

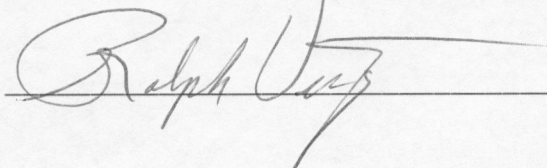
I certify that the foregoing by-laws were adopted and ratified by the East Pecos Mutual Domestic Water Consumer's Association on the 28th day of September, 2021 and was adopted and ratified by the Association Members at the meeting held on the 11th day of January, 2022.

 _____, President:

 _____, Vice President:

 _____, Secretary:

 _____, Treasurer:

 _____, Board Member: