

Eastern Irrigation District

BYLAW 937 (2020)

Being a Bylaw of the Eastern Irrigation District to establish the rules and procedures governing an application for an increase or decrease in Irrigation Acres and to an application to transfer Irrigation Acres

WHEREAS Bylaw 840 (2003) recognized that the water users by their plebiscite supported an increase in the Irrigation Acres within the Eastern Irrigation District from 286,000 to 311,000 acres. The increased number of acres will now and going forward be known as the "Expansion Limit";

AND WHEREAS the Board has directed its administration to complete a form of audit known as a "General Assessment Audit" within the District. This audit, when complete, may result in an increase or decrease in the number of Irrigation Acres listed on the Assessment Roll;

AND WHEREAS there has now been allocated approximately 307,300 Irrigation Acres within the District and the Board wishes to make provision for Irrigators to increase the number of Irrigation Acres:

- which may effectively be irrigated utilizing water conserved by a more efficient irrigation system with such irrigation water being provided by the existing infrastructure of the District, such acres are referred to as "Efficiency Acres",
- by irrigating lands, using existing infrastructure, which are defined and are referred to as "Infill Acres" or,
- by converting acres subject to a Terminable Agreement to Irrigation Acres, such acres are referred to as "Conversion Acres".

AND WHEREAS the Board has determined that the Irrigation Acres remaining within the Expansion Limit be allocated first to accommodate any increase in Irrigation Acres resulting from the General Assessment Audit with the balance to be allocated to Conversion Acres, Efficiency Acres and Infill Acres until the Expansion Limit is reached or until such time as an increase in the Expansion Limit is approved by the water users of the District, whichever event first occurs.

NOW THEREFOR, the Board of Directors of the Eastern Irrigation District hereby enacts as follows:

1.0 Except for the provisions of paragraph 1 and paragraph 3, Bylaw 840 (2003) remains suspended and the policy titled "Increase in Irrigation Acres Policy (2018)", dated October 30, 2018, is hereby rescinded and the provisions of which are replaced with this Bylaw 937 (2020).

1.1 This bylaw may be cited as the "**Irrigation Acres Bylaw (2020)**".

Assessing Applications

2.0 The Manager, subject always to the provisions of section 8 of this Bylaw, when assessing whether to recommend to the Board that it approve:

2.0.1 the addition to the Assessment Roll of Irrigation Acres described in any application, will consider or take into account, in addition to those criteria or factors set out in Section 95(2) of the *Irrigation Districts Act* (Alberta) (the "Act"), the following factors;

2.0.1.1 Whether the applicant is a *bona fide* purchaser for value of the Titled Unit in which exists the parcel or area of land which he seeks to have added to the Assessment Roll;

2.0.1.2 Whether the applicant acquired the Certificate of Title to the Titled Unit by circumstances whereby he participated or colluded in fraud as contemplated by Section 60(1) of the *Land Titles Act* (Alberta);

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- 2.0.1.3 Whether the applicant is an Affiliated Owner whose lands or the lands of those with whom the applicant is affiliated are located downstream from either the Lake Newell Reservoir or the Crawling Valley Reservoir and who, since June 1, 2003, has himself or through an affiliated person been granted or has had approved 600 "New Irrigation Acres" on his lands or on those of others with whom the applicant is affiliated;
- 2.0.1.4 Whether the applicant is an Affiliated Owner whose lands or lands of those with whom the applicant is affiliated are located elsewhere in the District and are not downstream of either the Lake Newell Reservoir or the Crawling Valley Reservoir and who, since June 1, 2003, has himself or through an affiliated person been granted or has had approved 150 "New Irrigation Acres" on his lands or on those of others with whom the applicant is affiliated;
- 2.0.1.5 Whether Irrigation Acres were recorded on the Assessment Roll for the Titled Unit as of December 31, 2019.
- 2.0.1.6 Whether records or other information available to the District evidence Unused Irrigation Acres on any of the applicant's lands or on any lands of those with whom the applicant is affiliated.
- 2.0.1.7 Whether the acres in the parcel of the Titled Unit which the applicant seeks to have added to the Assessment Roll qualify as Conversion Acres, Efficiency Acres or Infill Acres;
- 2.0.1.8 Whether the application includes any portion of a Road that is under the direction, control and management of the County of Newell and, if so, whether the application includes written consent of the County of Newell for such portion of the Road to be included in the application;
- 2.0.1.9 Whether approval of the application will result in more than 2,500 Irrigation Acres being approved by the Board for addition to the Assessment Roll during the current calendar year; and,
- 2.0.1.10 Whether approval of the application will result in more than 1,000 Irrigation Acres being approved by the Board for addition to the Assessment Roll during the current calendar year on lands which are not located downstream of either the Lake Newell Reservoir or the Crawling Valley Reservoir.
- 2.0.2 the transfer of Irrigation Acres described in any application will consider or take into account, in addition to those criteria or factors set out in Sections 26 and 95(2) of the Act, the following factors:
 - 2.0.2.1 Whether the Titled Unit from which the Irrigation Acres are to be removed is located downstream from either Lake Newell Reservoir or Crawling Valley Reservoir, or whether such Titled Unit is located elsewhere in the District,

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- 2.0.2.2 Whether the Titled Unit to which the Irrigation Acres are to be added is located downstream from either Lake Newell Reservoir or Crawling Valley Reservoir, or whether such Titled Unit is located elsewhere in the District;
 - 2.0.2.3 Whether the method of irrigating the acres on the Titled Unit to which the Irrigation Acres are to be added is less efficient than the method of irrigating the acres on the Titled Unit from which the Irrigation Acres are to be removed; and
 - 2.0.2.4 Whether the application to transfer Irrigation Acres includes any portion of a Road that is under the direction, control and management of the County of Newell and, if so, whether the application includes written consent of the County of Newell for such portion of the Road to be included in the application.
- 2.0.3 an application of an Owner for the addition, removal or transfer of Irrigation Acres, will consider whether the application to add, remove or transfer Irrigation Acres, or the application for Conversion Acres, will, if approved, result in more than zero (0) but fewer than forty (40) Irrigation Acres being recorded on the Assessment Roll for each Titled Unit involved in the application or applications.
- 2.1 Irrigation Acres added to the Titled Unit of an Owner or Affiliated Owner by means of the General Assessment Audit or as a result of a successful application to add Conversion Acres or Efficiency Acres to a Titled Unit as defined herein will not be calculated or added to the "New Irrigation Acres" granted or approved as described in subparagraphs 2.0.1.3 or 2.0.1.4 above.
- 2.2 Irrigation Acres added to the Titled Unit of an Owner or Affiliated Owner as a result of a successful application to add Infill Acres to the Titled Unit as defined herein will be calculated or added to the "New Irrigation Acres" granted or approved as described in subparagraphs 2.0.1.3 or 2.0.1.4 above.

Reassessment or Transfer of Irrigation Acres

- 3.0 For greater certainty, the Manager must conclude that it is not reasonable or acceptable having regard to the provisions of *the Irrigation Districts Act*, the *Land Titles Act* and this Bylaw to recommend to the Board a parcel be reassessed and Irrigation Acres be added to the Assessment Roll or Irrigation Acres be transferred from one parcel to another if;
- 3.0.1 The applicant is not a *bona fide* purchaser for value of the Titled Unit in which exists the parcel or area of land the applicant seeks to have added to the Assessment Roll;
 - 3.0.2 The applicant acquired the Certificate of Title to the Titled Unit by circumstances whereby the applicant participated or colluded in fraud as contemplated by Section 60(1) of the *Lands Titles Act* (Alberta);
 - 3.0.3 The applicant is an Affiliated Owner, who, since June 1, 2003, has personally or through an affiliated person or persons already been granted or has had approved,

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- 3.0.3.1 600 New Irrigation Acres, where the applicant's lands or those of others with whom the applicant is affiliated lie downstream of the Lake Newell Reservoir or the Crawling Valley Reservoir; or;
- 3.0.3.2 150 New Irrigation Acres, where the applicant's lands or those of others with whom the applicant is affiliated are located elsewhere in the District.
- 3.0.4 The number of Infill Acres which the applicant seeks to have added to the Assessment Roll for a Titled Unit exceeds:
 - 3.0.4.1 the number of Irrigation Acres existing on the Assessment Roll for the Titled Unit immediately prior to considering the application for such Infill Acres, or
 - 3.0.4.2 50 Infill Acres for the Titled Unit.
- 3.0.5 The acres in the parcel of the Titled Unit which the applicant seeks to transfer will be transferred from a Titled Unit located downstream from either Lake Newell Reservoir or Crawling Valley Reservoir to a Titled Unit that is not located downstream from either Lake Newell Reservoir or Crawling Valley Reservoir.
- 3.0.6 The method of irrigating the acres on the Titled Unit to which the Irrigation Acres are to be added is less efficient than the method of irrigating the acres on the Titled Unit from which the Irrigation Acres are to be removed.
- 3.0.7 As of December 31, 2019, there were no Irrigation Acres recorded on the Assessment Roll for the Titled Unit that is the subject of the application of an Irrigator for Infill Acres.
- 3.0.8 The application of the Irrigator is for General Assessment Acres or Infill Acres and there are Unused Irrigation Acres on any of the applicant's lands or on any lands of those with whom the applicant is affiliated and the application does not include the transfer of all such Unused Irrigation Acres, or at least the number of Unused Irrigation Acres required to complete the proposed irrigation development project, to the Titled Unit that is the subject of the application.
- 3.0.9 The acres which the applicant seeks to have added to the Assessment Roll do not qualify as Conversion Acres, Efficiency Acres or Infill Acres.
- 3.0.10 The application, whether for the addition, removal or transfer of Irrigation Acres, for Conversion Acres or for any combination thereof will, if approved, result in more than zero (0) but fewer than forty (40) Irrigation Acres being recorded on the Assessment Roll for any Titled Unit involved in the application.
- 3.0.11 The application includes any portion of a Road that is under the direction, control and management of the County of Newell and the application does not include written consent of the County of Newell for such portion of the Road to be included in the application.

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3.0.11.1 Notwithstanding the provisions of subparagraph 3.0.11, where the lack of written consent of the County of Newell is the only factor preventing the Manager from recommending approval of the application, the Manager may, at his discretion, recommend approval of the application subject to the applicable provisions of Section 4 of this Bylaw.

3.0.12 The application will, if approved, result in more than 2,500 Irrigation Acres being approved by the Board for addition to the Assessment Roll during the current calendar year; and,

3.0.13 The application will, if approved, result in more than 1,000 Irrigation Acres being approved by the Board for addition to the Assessment Roll during the current calendar year on lands which are not located downstream of either the Lake Newell Reservoir or the Crawling Valley Reservoir.

3.1 Efficiency Acres may, if approved on application, be transferred from One Titled Unit of the Owner to another Titled Unit of the same or Affiliated Owner.

3.2 Irrigation Acres transferred from a Titled Unit of one Owner to the Titled Unit of an unaffiliated Owner are not eligible to earn Efficiency Acres pursuant to section 7.0 and shall not be included in any calculation regarding Efficiency Acres.

3.3 Where an Owner applies for Efficiency Acres on multiple Titled Units which the Owner owns, all such applications may be assessed by the Manager as one application and, if recommended, may be considered by the Board as one application of the Owner.

3.4 Where the District sells:

3.4.1 all or any portion of a canal or pipeline right-of-way;

3.4.2 all or any portion of a parcel of land that has been subdivided or otherwise severed from a quarter section; or

3.4.3 any combination of the foregoing;

to an Irrigator and;

3.4.4 the land sold by the District is, after the sale, consolidated with the Irrigator's Titled Unit located immediately adjacent to and abutting the land sold by the District to the Irrigator;

3.4.5 the Titled Unit of the Irrigator was, prior to the consolidation, assessed for Irrigation Acres on the Assessment Roll of the District; and

3.4.6 the Irrigator makes application for Irrigation Acres to be added to the Assessment Roll for some or all of the land sold to him by the District;

then, if the Manager determines that such application is for Infill Acres and having satisfied himself that the criteria set out in this paragraph 3.4 has been met, shall assess the acres as Infill Acres and apply the provisions

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of this Bylaw applicable to Infill Acres without regard to the fact that, prior to the consolidation, the land sold by the District to the Irrigator was not part of the Titled Unit that is the subject of the application.

Conditional Approvals

- 4.0 Whenever the installation or modification of irrigation infrastructure is required to irrigate Irrigation Acres that are the subject of an application, such application, if approved, shall be subject to the condition that the required installation or modification of the irrigation infrastructure must be completed within one year from the date on which the application was conditionally approved by the Board.
- 4.1 Whenever written consent of the County of Newell is required with respect to a portion of a Road that is included in an application and the written consent is not included as part of the application, such application, if approved, shall be subject to the condition that the required written consent must be provided to the District within one year from the date on which the application was conditionally approved by the Board.
- 4.2 In the event an application is conditionally approved by the Board:
 - 4.2.1 The Manager shall notify the Owner of the conditional approval of the application, including the date by which the applicable condition or conditions must be satisfied.
 - 4.2.2 The Manager shall not transfer or add Irrigation Acres or acres subject to an Annual Agreement to the Assessment Roll until the Owner has satisfied the applicable condition or conditions.
 - 4.2.3 In the event the Owner fails to satisfy the applicable condition or conditions within one year from the date on which the application was conditionally approved by the Board, the conditional approval so granted shall automatically be revoked and cancelled and the Manager shall provide written notice of such cancellation to the Owner.

Review of Previously Approved Application

- 5.0 In the event the Board approved an increase or transfer of Irrigation Acres for a Titled Unit and subsequently discovers or has reason to believe that the Owner of the Titled Unit was not an Owner as defined herein or was not eligible to have such application approved, then, should the Owner not agree that the Assessment Roll be changed to reflect that the Irrigation Acres were improperly increased or transferred, an application may be made by the District to a court of competent jurisdiction to set aside the decision of the Board that erroneously approved the addition or transfer of such Irrigation Acres, correct the Assessment Roll and require the Owner to pay the costs of the District, on a solicitor and his client basis with no limiting rule to apply, of such application.

General Assessment Audit

- 6.0 The Board may, from time to time, receive the recommendation of the Manager for General Assessment Acres to be added to or removed from the Assessment Roll. On receipt of such recommendation of the Manager, the Board shall determine, by its motion, if such Irrigation Acres or any number thereof which by the General Assessment Audit it is recommended, should be added to or removed from the Assessment Roll.

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Calculating Efficiency Acres

7.0 If an Owner converts from a less efficient method to a more efficient method of irrigation that results in less water being used for each existing irrigated acre, he will earn the privilege to place additional acres, known as Efficiency Acres, under irrigation. The number of Efficiency Acres earned by such conversion is stated in the matrix provided below:

Conversion in Irrigation Acres from One Method to a More Efficient Method					
From/To	Class B Surface Irrigation	Class A Surface Irrigation	Side-Roll Wheel Moves	High Pressure Pivot	Low Pressure Pivot
Undeveloped rough surface irrigation	1.20	1.35	1.35	1.40	1.50
Class B Surface Irrigation		1.20	1.20	1.30	1.40
Class A Surface Irrigation				1.05	1.15
Side-Roll Wheel Move				1.05	1.15

Example: An irrigation assessment of 93 acres of Class B Surface Irrigation could increase to 130 acres of Irrigation Acres under a low-pressure pivot, but it would need the approval of the Board as provided herein.

Definitions for the purposes of this paragraph:

- Undeveloped Surface Irrigation:
 - this is generally described as "wild flood", irrigation acres are not levelled, irrigation takes place primarily by a contour ditch with minimal on-farm irrigation works,
- Class B Surface Irrigation:
 - this method of surface irrigation refers to lands that are not well levelled, have steep side or down field slopes and/or light soils,
- Class A Surface Irrigation:
 - this method of surface irrigation refers to lands that are well levelled, with minimal side and down field slopes and heavier soils.

Application Requirements

8.0 In satisfaction of the provisions of Section 96(1.1) of the Act, the Board requires all applications by Owners to have lands within their Titled Units reassessed as Irrigation Acres to be received by the District on or before the 15th day of October in each year this Bylaw is in effect and to be made on the prescribed form. All such applications received by the date stated shall be assessed by the Manager as required by the Act and this Bylaw. If the Expansion Limit is increased before the expiry of the 2-year holding period, as described below, the Manager will again assess the applications having regard to the bylaw and any amendments to the Act, then in effect, and make his recommendation to the Board to approve or disapprove of an application. The

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application date above stated does not apply to applications dealing with Conversion Acres, Efficiency Acres, General Assessment Acres, Infill Acres, or a transfer of Irrigation Acres.

- 8.1 Under the Expansion Limit cited in Bylaw 840 (2003), every application to reassess land as New Irrigation Acres, except for an application for Conversion Acres, Efficiency Acres, General Assessment Acres, Infill Acres, or a transfer of Irrigation Acres, will be held by the Manager for a period of 2 years calculated from the 31st day of December in the year of receipt after which the applications will be deemed dated and destroyed.
- 8.2 An Owner, wishing to add Conversion Acres, Efficiency Acres, Infill Acres, any combination of Conversion Acres, Efficiency Acres and Infill Acres to his Titled Unit, or to transfer Irrigation Acres must apply by completing the application in the prescribed form and delivering same, by mail or person, to the office of the District on or before the date established by the Board on Notice to the Irrigators or if no date is established then at any time during a calendar year. An application for Conversion Acres, Efficiency Acres, Infill Acres, any combination of Conversion Acres, Efficiency Acres and Infill Acres, or to transfer Irrigation Acres which has been assessed by the Manager, as required by this Bylaw and the Act and which the Manager has recommended to the Board for approval, shall be reviewed by the Board and the Board shall determine, by its motion, if such Irrigation Acres should be added to the Assessment Roll.
- 8.3 In order for an application to be considered by the Board, it must be complete in all detail.
- 8.4 An application will not be deemed to be complete if the application is made by a person who is not an Owner as defined by this Bylaw.

Board may Vary, Waive or Refuse

- 9.0 The Board reserves the right, by its motion, to vary, alter or waive the criteria, guidelines and rules established by this Bylaw when, in the opinion of the Board, a variance or waiver of any criteria, guideline or rule of this Bylaw is considered to be in the best interest of the District.
- 9.1 Notwithstanding the provisions of the Act and this Bylaw, the Board reserves the right, by its motion, to refuse an application when, in the opinion of the Board, approval of the application is considered not to be in the best interest of the District.

General

- 10.0 The Manager shall maintain current all records relating to:
 - 10.0.1 Irrigation Acres that have been added or removed during the reporting period together with the number of Irrigation Acres assessed to each Titled Unit and any Capital Assets Charges levied with respect to same.
 - 10.0.2 Acres subject to annual agreements that have been added or removed during the reporting period together with the number of acres subject to annual agreements within each Titled Unit.

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- 10.0.3 Acres subject to Terminable Agreements that have been added or removed during the reporting period together with the number of acres subject to Terminable Agreements within each Titled Unit.
- 10.0.4 Irrigation Acres that have been added or removed in areas without reservoir support together with the number of Irrigation Acres within the Titled Unit geographically located in an area that does not have reservoir support.
- 10.0.5 A total for each of the following described Acres as of the beginning and end of each reporting period:
 - (i) Efficiency Acres,
 - (ii) Infill Acres
 - (iii) Irrigation Acres,
 - (iv) Acres subject to annual agreements;
 - (v) Acres subject to Terminable Agreements.
- 10.0.6 Other reports and information as the Board may, from time to time and at any time, request or the Manager may determine useful to the Board.
- 10.0.7 The Manager shall report to the Board under this section on a quarter year basis.

Capital Assets Charges

- 11.0 The Capital Asset Charge for each Irrigation Acre added to the Assessment Roll pursuant to this Bylaw shall be determined in accordance with the prevailing Capital Assets Charges Bylaw then in effect. Any Capital Asset Charge levied is a debt owing by the Irrigator to the District and will form a lien on the Titled Unit until paid.

Definitions

- 12.0 For purposes of this Bylaw, the words following when used in this Bylaw shall have the meaning given:
 - 12.0.1 "Act" means the *Irrigation Districts Act*, R.S.A. 2000, c. I-11.
 - 12.0.2 "Affiliate or Affiliated Owner" means:
 - (i) people who are affiliated with each other through marriage or who live in a common law relationship,
 - (ii) people who are affiliated as children or dependent adults,
 - (iii) a company that is affiliated by reason of an Owner holding a share or shares, legally or beneficially or both, in such company or the person is married to or living in a common law relationship with an Owner who holds a share or shares, legally or beneficially or both in a company, or is a shareholder of a company which holds shares, legally or beneficially or both, in another company,

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- (iv) any company known to be affiliated by reason of the provisions of the *Business Corporations Act* (Alberta), or
- (v) a person holding a beneficial interest in any trust which owns land in a Titled Unit by its trustee or owns land in a Titled Unit by a company in which the trust has an interest or is a shareholder

12.0.3 "Annual Agreement" has the same meaning as set out in the Act.

12.0.4 "Board" and "Board of Directors" means the Board of Directors of the District.

12.0.5 "Conversion Acres" means those acres subject to a Terminable Agreement that, on application, are approved to be converted to Irrigation Acres.

12.0.6 "District" means the Eastern Irrigation District or the geographic area contained within the boundary of the Eastern Irrigation District, as the case may require.

12.0.7 "Efficiency Acres" means those dry land acres now existing within a Titled Unit which, if approved pursuant to this Bylaw, may be sustainably and successfully irrigated using the irrigation water conserved or saved on other lands within the Titled Unit because of the conversion of the existing method of irrigation to a more efficient method of irrigation.

12.0.8 "General Assessment Acres" means the type of Irrigation Acres added to or proposed to be added to the assessment roll as a result of the General Assessment Audit.

12.0.9 "General Assessment Audit" means the investigation and review of the existing Irrigation Acres on Titled Units currently being undertaken by the Administration of the District for purposes of updating and making current the Assessment Roll of the District.

12.0.10 "Infill Acres" means those dry land acres now existing within a Titled Unit which, if approved pursuant to this Bylaw, may be sustainably and successfully irrigated where the Titled Unit, the proposed irrigation development project and the Infill Acres meet the following criteria:

- (i) the Titled Unit, prior to considering the application presently under review, is already assessed as Irrigation Acres on the Assessment Roll of the District,
- (ii) the proposed irrigation development project is acceptable to the District, and,
- (iii) more Irrigation Acres are required to complete the proposed irrigation development project than the number of Efficiency Acres, if any, that will be generated by the proposed irrigation development project.

12.0.11 "Irrigation Acres" has the same meaning as set out in the Act.

12.0.12 "Irrigator" means an Owner or Affiliated Owner of a Titled Unit on which there exists land assessed on the District's Assessment Roll as Irrigation Acres for all purposes under this Bylaw.

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12.0.13 "Owner" means a *bona fide* purchaser for value whose name is described as the owner of the fee simple estate of land described by Certificate of Title, registered at a Land Titles Office of the Province, which lands form the subject matter of any application under this Bylaw and is a person who can rely on a Certificate as evidence of ownership because the Owner did not participate or collude in fraud as described by the *Land Titles Act* (Alberta).

12.0.14 "Road" has the same meaning as set out in the *Municipal Government Act*, R.S.A. 2000, c. M-26

12.0.15 "Terminable Agreement" has the same meaning as set out in the Act.

12.0.16 "Titled Unit" means a parcel of land for which a Certificate of Title has issued by a Land Titles Office in the Province of Alberta pursuant to the provisions of the *Land Titles Act* (Alberta).

12.0.17 "Unused Irrigation Acres" means those Irrigation Acres described on the Assessment Roll which, in the opinion of the Manager, have not been and are not now subject to the application of irrigation water. Unused Irrigation Acres will typically be located outside of the wetted area of an irrigation pivot or other irrigation equipment or system.

Gender

13.0 Words used herein importing the masculine gender shall include the feminine and neuter genders, and vice versa.

Effective Date

14.0 This Bylaw shall come into force and take effect on the date it is finally passed.



Chairman



General Manager

Introduced and read the first time on the **18th** day of **February, 2020**.

Read the second time on the **18th** day of **February, 2020**.

Read the third time and finally passed on the **9th** day of **March, 2020**.