

AMENDED AND RESTATED BYLAWS  
OF  
THE NATIONAL COAL TRANSPORTATION ASSOCIATION,  
A Non-Profit Corporation

THE AMENDED AND RESTATED BYLAWS previously adopted by the Western Coal Transportation Association (the "Association"), are hereby amended, restated and renamed the Bylaws of the National Coal Transportation Association to conform with provisions of the Colorado Revised Non Profit Corporation Act effective July 1, 1998.

ARTICLE I  
NAME:

This Association shall be known as the National Coal Transportation Association (the "Association" or "N C T A ")

ARTICLE II  
PURPOSES AND OBJECTIVES:

The purposes and objectives of the Association include the transaction of all lawful business for which the Association was incorporated and all activities and businesses not in conflict with the laws of the United States of America, including the following:

- (a) To maintain and promote through lawful cooperation, assistance and exchange of ideas, the orderly and effective transportation of coal originating in North America so that the corporation may serve the needs of its members, the general public, and industry, regarding all modes of coal transportation.
- (b) To lawfully assist, to facilitate, and through mutual cooperation and exchange of ideas, and knowledge, to ensure that adequate transportation services, facilities, and equipment will be available for all modes of transportation of coal.
- (c) To lawfully assist, and to facilitate problem resolution and development of scientific and technological advances through mutual cooperation in the exchange of ideas, knowledge, and technology, to enhance coal transportation services, facilities, and equipment.
- (d) To conduct meetings, seminars and industry conferences to educate and inform members and the general public on issues related to use and transportation of coal, as well as to provide scholarships, stipends, awards, and similar financial support for students or researchers with regard to such issues, within the scope of activities described in §501(c) of the Internal Revenue Code of the United States of America.

(e) To inform members of legislation pending before or enacted by the U.S. Congress and appropriate state legislatures and the proceedings before the regulatory bodies relating to the transportation of coal.

(f) To participate, through its duly constituted representatives, in conferences or proceedings before regulatory or legislative bodies as such matters relate to the transportation of coal.

(g) Notwithstanding the foregoing, no part of the net income of the Association shall inure to the benefit of any Member or individual. No substantial part of the activities of the Association shall include carrying on propaganda or otherwise attempting to influence legislation, and the corporation shall not participate in, or intervene in any political campaign on behalf of, or in opposition to, any candidate for public office.

The enumeration of objects, purposes, and powers herein shall not be deemed to exclude or in any way limit by inference any powers, objects, or purposes which this corporation is empowered to exercise, whether expressly or by force of the laws of the State of Colorado, now or hereafter in effect, or implied by any reasonable construction of said laws.

### ARTICLE III

#### MEMBERSHIP:

(a) Members and Membership:

Membership in the Association shall be open to producers or consumers of coal produced in North America and other entities which are interested in its transportation and related issues, provided, however, that entities or their affiliates whose primary business is providing transportation of coal by rail, barge, truck, pipeline slurry, or any other mode shall not be eligible for membership.

(b) Classes of Membership: There shall be three classes of membership:

(1) Voting Members: Actual or potential producers or consumers of coal shall be entitled to make application to become voting members of the Association in accordance with provisions in these Bylaws and the Policies adopted by the Board of Directors.

(2) Non Voting (Associate) Members: Individuals or entities who are interested in the transportation of coal or related issues, but who do not otherwise qualify for admission as voting members, may seek admission as a non voting member in accordance with the provisions in these Bylaws and the Policies adopted by the Board of Directors. Such member may serve and be empowered by the committee chair to vote on

committees, but shall not have the right to vote in general or special meetings of the NCTA.

(3) **Honorary Individual Membership:** For good cause shown including but not limited to exemplary and outstanding service to the National Coal Transportation Association, a former Designated Representative of a Voting Member may be appointed an Honorary Individual Member of the National Coal Transportation Association. Such member may serve and be empowered to vote by the committee chair on committees, but Honorary Members shall not have the right to vote in general or special meetings of the NCTA. Membership dues and Registration fees and other assessments of the NCTA may be waived for Honorary Individual Members. Appointment of Honorary Individual Members and the waiver of dues and fees shall be as determined by the Board of Directors.

(c) **Application for Membership**

All entities or persons desiring membership in the Association shall make application on a form authorized by the Board of Directors. Such application shall state the name, principal business activity and business address of the applicant and the name of such applicant's proposed Designated Representative, his or her title and business address, telephone and facsimile numbers. Application forms shall be furnished by, and upon completion, returned to the Executive Director of the Association. The Board of Directors shall approve or disapprove all applications for membership and shall make a determination as to the class of membership into which the applicant shall be admitted. The Executive Director shall communicate that determination to the applicant.

(d) **Designated Representatives:**

Each member shall designate, in writing, furnished to the Executive Director the name of its Designated Representative. In the case of voting members, the Designated Representative shall be entitled to cast the vote of the member on issues presented to the voting membership for determination.

(e) **Rights and Obligations of Members:**

The rights and obligations of members shall be as set forth in the Articles of Incorporation, these Bylaws or as stated in the Colorado Revised Non Profit Corporation Act. As stated therein, the directors, officers, employees, and members of the Association, as such, are not personally liable for acts of the Association.

(f) **Termination of Membership:**

Procedures for termination of membership shall be as stated in Policies adopted by the Board of Directors in conformity with the provisions of the Colorado Revised Non Profit Corporation Act.

ARTICLE IV  
MEETINGS:

(a) Annual Meetings:

The Association shall hold an annual meeting of the members for the election of the Board of Directors and for the transaction of such other business as may properly come before the meeting. Such meeting shall be held at such time and place as may be fixed by the Board of Directors. Written notice of the time and place of holding such meeting shall be given to each member not less than 30 days before the date of holding such meeting. (b) Special Meetings:

Special meetings of the members of the Association may be held at any place upon call by the President, by a majority of the Board of Directors or by a majority of the members of the Association. At least ten (10) days written notice of the time, place and purpose of each special meeting shall be given to each member.

(c) Attendance:

Any member of this Association in good standing may have as many of its employees/representatives as it so chooses to attend the annual and any special meetings.

(d) Voting:

In all Annual and Special meetings of the Association, each Voting Member in good standing shall be entitled to one vote which shall be cast by such Member's Designated Representative or by its proxy. Such proxy shall designate either another employee of the Voting Member, a Director or the Board of Directors or another Voting Member as entitled to cast the vote on behalf of the absent member.

(e) Quorum:

At any meeting of the members of this Association, Designated Representatives or proxies representing 25 percent of the votes entitled to be cast on a matter shall constitute the quorum for the transaction of business. A majority vote of those in attendance at any such meeting at which a quorum is present shall govern the action of the Association, except as to changes or amendments to the Bylaws which shall be governed by Article XIV hereof.

ARTICLE V  
BOARD OF DIRECTORS

(a) Functions and Membership:

The membership of the Board of Directors shall consist of nine (9) members, who shall each serve a three-year term. The property and business of the Association shall be managed by the Board of Directors.

(b) Meetings of the Board of Directors:

(1) The Board of Directors shall hold its Annual Meeting immediately following the Annual Meeting of the Association. In addition, special meetings of the

Board may be called by the President or at the request of a majority of the members of the Board. The Board normally conducts three additional meetings throughout the year. Notice of any Annual or Special Meeting shall be given at least 10 days prior to the scheduled date for the meeting by written or electronic notice, delivered personally, mailed, or electronically mailed. If mailed at least 10 days prior to the date of meeting, such notice shall be deemed to be delivered when deposited in the United States mail so addressed, with postage thereon prepaid. Any Director may waive notice of any meeting. The attendance of a Director at a meeting shall constitute a waiver of notice of such meeting, except where a Director attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened.

(c) Presiding Officer:

The President of the Association shall serve as Chairman of the Board of Directors and shall preside over all meetings. In the absence of the President, the Vice-President or other officer designated by the Board shall preside.

(d) Attendance and Quorum:

(1) Meetings may be conducted either with Directors physically present or by any means of communication which permits participating Directors to hear each other, even though not all Directors are present at the same location.

(2) The majority of the number of Directors in office shall constitute a quorum. At any properly called meeting at which a quorum is not present, a majority of the Directors present may adjourn the meeting from time to time without further notice. Except as otherwise provided in these Bylaws, the act of the majority of the Directors present at a meeting at which a quorum is present shall be the act of the Board of Directors.

(e) Written Consent to Action Without a Meeting:

The Board of Directors may take action without a meeting, provided that every Board member in writing must either vote for the action, vote against the action or abstain from voting and affirmatively waive the right to demand that a meeting be held. Action by written consent without a meeting may be approved if a majority of the Directors consent in writing to taking such action.

(f) Term:

Members of the nine member Board of Directors shall each serve for a term of three years. The nine Board members shall be divided into three groups of three Directors each, with a particular group to be elected once every three years on a rotating basis.

(g) Vacancies:

The Board of Directors may fill any vacancy on the Board by a vote of the majority of the members of the Board present at a properly called meeting thereof, with the appointee to serve the remaining term of the replaced Director.

(h) Rights and Obligations of Directors

(1) Standards of Conduct: Directors and officers will discharge their duties in good faith, exercising prudent care in a manner reasonably believed to be in the best interest of the Association, as provided in the Colorado law. The Board may authorize a conflicting interest transaction with a Director, after full disclosure and in accordance with Colorado law. Loans by the Association are prohibited.

(2) Indemnification: The Corporation shall indemnify officers and Directors for their reasonable expenses incurred because such person was made a party to a proceeding based upon his or her service as a Director or Officer, provided the Officer or Director acted in good faith and that the action taken in connection with his or her official capacity was in the Association's best interest, as provided by Colorado law.

(i) Authorization to adopt Policies for the Association.

The Board of Directors may, from time to time, adopt such Policies to serve as guidelines or administrative procedures for the Association as may be necessary to serve the needs of the Association. A set of Policies currently in effect shall be maintained by the Board in such manner as to facilitate their access and use by Directors, Officers and members.

ARTICLE VI  
OFFICERS AND DUTIES

(a) Officers:

The Officers of the Association shall consist of a President, Vice-President, and Secretary, each of whom shall be elected from the Board of Directors and a Treasurer who shall be appointed or contracted for by the Board. In addition, there shall be an Executive Director, who shall be appointed or contracted for by the Board. The Board may also appoint Legal Counsel to assist the Board and Executive Director on matters of legal and administrative concern. Legal Counsel shall generally report to the Executive Director, except as directed by the Board.

The Board of Directors may appoint such other officers as it shall deem necessary, who shall have such authority and perform such duties as from time to time may be prescribed by the Board.

(b) President:

The President shall preside over all meetings of the Association and shall serve as Chairman of the Board of Directors. It shall be his or her duty to see that the provisions of the Articles of Incorporation, Bylaws and Policies are observed, and to exercise general supervision over the affairs of the Association. The President shall,

subject to confirmation by the Board of Directors, appoint all standing committees, committee chairs and vice-chairs, and shall be an ex-officio member of all committees.

(c) Vice-President:

The Vice-President shall perform the duties of the President in case of the absence or disability of the President. The Vice-President shall undertake special assignments at the request of the President.

(d) Secretary:

The Secretary shall keep and preserve a record of the proceedings of the Association and of its Board of Directors, and shall keep and maintain all minutes, the original Manual of Board Policies, and records which shall be deemed necessary by the Board of Directors.

(e) Treasurer:

The Treasurer shall, under direction of the Board of Directors, supervise the Association's accounts, including the collection and custody of all dues of the members and disbursement of all Association funds. The Treasurer shall, at such time as directed by the Board, prepare statements of the monies received and expended, the amounts due to and by the Association. In addition, the Treasurer shall submit to the President a detailed statement of receipts and expenditures, within 60 days following the end of the fiscal year, and an estimate of the income and expenditures for the ensuing year. The Treasurer's books and accounts shall be at all times subject to the examination and audit of the Board of Directors and by any committee appointed for that purpose. He or she shall invest or disburse such funds according to instructions and directions by the Board of Directors, and shall furnish such other information relative to the affairs of the Association as the Board of Directors may require.

Before entering upon the duties of his or her office, the Treasurer shall be bonded for a sum to be determined by the Board of Directors but not less than ten thousand dollars (\$10,000.00) conditioned for the faithful performance of his or her duties and for the faithful accounting of all funds of the Association that may come into his or her hands. The premium fee for such bond shall be paid for by the Association.

(f) Executive Director:

The Executive Director shall manage the day-to-day activities of the Association in a professional and respectable manner, and shall have the power to enter into agreements or contracts on behalf of the Association. In entering into agreements or contracts on behalf of the Association, the Executive Director shall advise the President of any agreements or contracts for sums in excess of Fifteen Thousand dollars (\$15,000.00).

(1) In conjunction with the Treasurer, the Executive Director shall supervise and administer the expenditures of the Association in a prudent manner consistent with generally accepted business practices.

(2) The Executive Director shall also maintain a current list of membership in the Association, recruit new members as appropriate, and maintain regular communications with the membership of the Association via the Internet web site, the quarterly newsletter, and other means as required, as well as publicize the Association's events and accomplishments through various industry-related media.

(3) The Executive Director shall schedule, coordinate, and give proper notice of the Spring and Fall conferences, annual Association meetings, Board of Directors' meetings, Operations and Maintenance Committee meetings, Logistics and Planning Committee meetings, special seminars and all other such meetings as directed by the Board. In that connection, he or she shall be authorized to make inquiries and negotiate agreements or contracts related to such events.

(4) The Executive Director shall manage, coordinate and publicize the Association's scholarship programs.

(5) The Executive Director shall participate in and represent the Association in legislative and regulatory matters in accordance with the applicable laws and regulations, at the direction of the Board. He or she shall notify the Association members of proposed legislation relative to the industry and shall maintain a liaison with the transportation companies (railroads, barge lines, etc.) involved in the transportation of coal.

(6) The Executive Director shall work with Legal Counsel, if one is appointed by the Board, to address various procedures and legal issues of concern to the Association.

(7) The Executive Director shall perform such other reasonable duties as directed by the President or the Board of Directors.

## ARTICLE VII STANDING AND SPECIAL COMMITTEES

The Association shall have the following standing committees:

(a) Budget Committee:

The Budget Committee shall consist of the Executive Director as the Chair, the current Treasurer, the current Vice President, immediate Past President, and such additional persons as may be appointed by the President. Unless the persons fulfilling the appointed positions of Treasurer and Executive Director are full-time employees of a Member, they shall have no vote within the Budget Committee, but shall fulfill an advisory role.

(b) Education Committee:

The Education Committee shall consist of such persons who shall be appointed by the President. The Education Committee shall pursue educational programs and shall, in conjunction with the Executive Director, coordinate and publicize the Association's scholarship programs. The Association shall award scholarships to eligible students who meet the requirements for the NCTA Intern Program, the At-Large Category and the University Program Category, as approved by the Board of Directors.

(c) Logistics and Planning Committees:

There may be two Logistics and Planning Committees consisting of such representatives of Members who are nominated by the Member's Designated Representative. In addition, non members may be invited to participate in committee activities by the respective Committee Chairs, in accordance with Board policy One Logistics and Planning Committee shall address various transportation issues related to coal transported in the West, while the other shall address issues related to coal transported in the East. Members and interested parties may participate in both L & P Committees, as appropriate. It is anticipated that the Chair and selected representatives from each of the L & P Committees may participate in a Joint L & P Coordination Meeting, as appropriate. The Chairs will strive to attend all Meetings of the Board of Directors, as non voting participants, unless they are also serving as duly elected Board Members.

(d) Nominating Committee:

The Nominating Committee shall consist of such representatives of Members as shall be appointed by the President. The Nominating Committee shall strive to nominate for election to the Board a balance of representatives from both the utility/coal consumers members and coal producer members, with added recognition that a geographic balance of interests is desired. The Nominating Committee shall adopt procedures for timely solicitation of candidates and shall propose candidates for election to the Board to the Membership at the Annual Meeting, as provided in Article VIII – Nominations and Elections, paragraph (b) below.

e) Operations and Maintenance Committee:

The Operations and Maintenance Committee shall consist of such representatives of Members who are nominated by the Member's Designated Representative. In addition, non members may be invited to participate in committee activities by the Committee Chair, in accordance with Board policy The Committee Chair will strive to attend all Meetings of the Board of Director, as a non voting participant, unless he or she is also serving as a duly elected Board Member.

(f) Non Voting (Associate) Member Committee:

The Non Voting (Associate) Member Committee shall consist of such representatives of Non-Voting Members as shall be appointed by the President. The Non-Voting (Associate) Member Committee may provide input to the Board on issues of interest to Associate Members. The Chair or Co-Chairs of the Committee will strive to attend all Meetings of the Board of Directors, as non-voting participants.

In addition, such Special Committees shall be established as may be required to serve the interests of the Association, and its Members appointed by the President.

ARTICLE VIII  
NOMINATIONS AND ELECTIONS

(a) Election of Directors:

Election of the members of the Board of Directors whose terms shall expire in a given calendar year shall take place during the annual meeting of the membership of the Association. Election of Directors to fulfill industry sector or geographic diversity quotas specified in these Bylaws should be in accordance with Policies adopted by the Board of Directors. Election shall be by a majority of those Voting Members present at the meeting at which a quorum is present. The Directors so elected shall serve a term of three years or until their successors are elected and qualified. At a meeting of the Board of Directors, to be held immediately following the meeting of the membership of the Association, the Board shall elect a President, Vice-President and Secretary.

(b) Role of Nominating Committee:

At least three months prior to the Annual Meeting of the Association, the President shall appoint a Nominating Committee consisting of three or more members in good standing. The Nominating Committee shall timely solicit candidates for office and shall submit to the President at least one week prior to the annual meeting a list of nominees for the Board of Directors which shall be presented to the Membership for consideration at the Annual Meeting. In preparing the list of nominees, the Nominating Committee shall endeavor to select nominees representing a cross-section and reasonable balance of the general membership of the Association.

ARTICLE IX  
DUES

(a) Annual Dues:

The annual dues of the members shall be fixed and determined by the Board of Directors prior to the annual meeting and prior to the mailing of notices of dues payable. Notice of said dues shall be mailed to each member by the Treasurer and all dues shall be payable to him or her. Dues shall be payable on the first day of each fiscal year, and shall be delinquent after the first day of the third month of each fiscal year.

(b) Delinquent Dues:

Any member whose dues are delinquent shall not be permitted to attend meetings or other functions of the Association and shall not be nominated for office or permitted to vote during such delinquency. Any member who remains delinquent for 60 days at the option of the Board of Directors may be suspended from membership. After such suspension, a member may be reinstated only upon reapplication in accordance with these articles.

ARTICLE X  
SUSPENSION OF A MEMBER

(a) Suspension of a Member for Cause:

Suspension of a member for cause may be made by the Board of Directors by a three-quarter vote of the Board Members present at a regularly called meeting at which a quorum is present. Such suspension shall always be reviewable by the Association at any meeting of the Association and unless revoked by a majority of the members present at such meeting, the suspension shall stand and the suspended person shall cease to be a member provided that the proposed suspension and reasons therefore shall be furnished to the member, and he shall have been given the opportunity to be heard by the Board of Directors before suspension and by the Association at its meeting.

ARTICLE XI  
RESIGNATION OF A MEMBER

Any member of this Association may resign from the Association by giving written notice of such resignation to the President. Such resignation shall be accepted and the membership terminated in good standing subject to the member making full payment of any and all dues, fees or assessments which remain unpaid to the Association at the time of such resignation.

ARTICLE XII  
FISCAL YEAR

The fiscal year of the Association shall end on the 31st day of December.

ARTICLE XIII  
RULES

Robert's Rules of Order shall govern the conduct and deliberations of all the meetings of members and the Board of Directors.

ARTICLE XIV  
INDEPENDENT ACTION

The right of each member of the Association to act independently and individually concerning any matter within the scope of the Association shall not be impaired or restricted by any provision of the Article of Incorporation or by the action of the majority of the members of the Association or its Board of Directors. Each member shall have the right individually to take such action as it deems advisable, whether or not such action conflicts with the action of the Association.

ARTICLE XV  
AMENDMENTS

The Articles of Incorporation and these Bylaws may be changed or amended by the Board of Directors or the membership upon the same terms and conditions as are stated in the Articles and these Bylaws with respect to approval of any action by the Association. Notice of all proposed changes or amendments shall be given to all members at least 15 days before a vote is taken. Any member desiring a change to the Articles or Bylaws shall submit a proposed change or amendment to the Secretary. The Secretary shall submit it to the Board of Directors which will make its recommendation for or against the proposed change or amendment. In the case of proposed amendments to the Articles, the Board shall thereafter either make its recommendation for or against the proposed amendment and shall refer the proposed change or amendment, with the Board's recommendation, to the Membership of the Association for a vote. In the case of a proposed change or amendment to the Bylaws, the Board, after receiving the proposed change or amendment, shall either adopt or reject said proposed change or amendment or refer the proposed change or amendment for submission to the membership of the Association for a vote.

The provisions of the Colorado Revised Nonprofit Corporation Act shall be applicable to the corporation upon the effective date of the Act, July 1, 1998.

Adopted effective the 10<sup>th</sup> day of September, 2002.

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President and Chairman of the Board  
of Directors of the National Coal  
Transportation Association, on  
behalf of and as authorized by the  
Membership of the Association