

# Energy & Mineral Law Foundation

## BY-LAWS

Amended and Restated — Revised May 16, 2005

### Article I

#### Governing Members

**Section 1.** Organizations comprising the Governing Members of the Foundation shall include bar associations representing not less than a single state, accredited law schools with course offerings in natural resource subjects, accredited colleges and universities with petroleum land management programs, and industry associations concerned with natural resources law, provided that any such organization shall make application for membership and shall be elected as a Governing Member by the Board of Trustees after consideration of the following factors:

- A. Demonstrated interest of the organization and potential contribution the organization will make to the program of the Foundation;
- B. Provision for minimum geographical representation for each state within the service area;
- C. Affording a reasonable balance in mining industry representation with due regard for the extent of activity of the various industries;
- D. Affording a reasonable balance among bar associations, law schools and industry associations; and
- E. The maximum number of Governing Members which can effectively function.

Governing Membership of an organization shall continue until the voluntary withdrawal of a Governing Member or until the Executive Committee recommends the termination of a membership of a Governing Member (based upon the same factors as are considered in connection with the election of a Governing Member) and such termination is effected at a meeting of the Trustees at which two thirds of those Trustees present and voting in favor of such termination. The Executive Committee shall not recommend termination of the membership of a Governing Member at a meeting of the Trustees unless it has given notice to such Governing Member of the Executive Committee's intention to recommend termination not less than 90 days before the meeting of the Trustees and has afforded such Governing Member an opportunity to review the proposed recommendation of termination at a meeting of the Executive Committee not less than fifteen days prior to the date of the meeting of the Trustees at which the Executive Committee proposes to make such recommendation.

**Section 2.** Each Governing Member shall be represented on the Board of Trustees by a trustee who shall be the chief executive officer of the Governing Member or the person designated by such chief executive officer.

## **Article II**

### **Board of Trustees**

**Section 1.** Board of Trustees. The management, control and government of the Foundation shall be vested in a Board of Trustees which shall have all powers conferred by law and these By-Laws, including the power to regulate the internal affairs and business of the Foundation in such manner as the Board of Trustees may determine. The Trustees shall, in all cases, act as a Board, and they may adopt such rules and regulations for the conduct of their meetings and the management of the Foundation as they may deem proper to the extent such rules and regulations are not inconsistent with these By-Laws, and the laws of the Commonwealth of Pennsylvania.

**Section 2.** Regular Board Meetings. The Board of Trustees shall meet annually where the Annual Institute is held, at a time and place designated by the Executive Committee which will give Trustees not less than ten day's written notice by regular mail.

**Section 3.** Special Board Meetings. Special meetings of the Board of Trustees may be held upon the call of the President of the Foundation specifying the matters to be considered at such meeting upon the sending of not less than ten (10) days' notice to each Trustee at the address of the Trustee shown in the records of the Foundation. Any three or more Trustees may call such meeting upon at least thirty (30) days' notice in writing to all Trustees. Notice of any special meeting may be waived by any Trustee in writing before, during or at the meeting or by attendance thereat. Notwithstanding the call for any such special meeting, whether by the President or three or more Trustees, the call for such meeting shall be revoked and such meeting shall not be held unless the President or the Trustees making such call shall be assured by written notice from the Trustees at least five (5) days prior to the date set for such meeting that there will be present at such meeting a majority of the Trustees or such number in excess of the majority as shall be necessary to pass upon the matters for which such meeting shall be called.

**Section 4.** Composition. The Board of Trustees shall be composed of the following:

- A. Trustees representing Governing Members as described at Article I, Section 2.
- B. Trustees-at-Large who shall be elected for a one (1)-year term at each Annual Institute Meeting to serve until the adjournment of the next Annual Institute Meeting, with no limit on the number of successive one-year terms. In case of a vacancy on the Board of Trustees due to death, resignation or disqualification of an elected Trustee between Annual Institute Meetings, the vacancy may be filled by the Executive Committee.
- C. All current Officers and Past Presidents of the Foundation shall be Trustees.
- D. The Trustees may from time to time elect persons who have given substantial service to the Foundation as Honorary Trustees. Honorary Trustees shall not have the right to vote but shall have all other rights and privileges accorded to Trustees.

**Section 5.** A quorum of the Board of Trustees shall consist of at least twenty (20) Trustees present in person. Each Trustee, including the President, shall have one vote. A majority of those attending a meeting of the Board of Trustees when a quorum is present, may conduct the election of Trustees at Large, Officers, Executive Committee Members and Governing Member organizations, and take any action in the conduct of the business of the Foundation, except as otherwise provided in these By-Laws. The Trustees present at a duly organized meeting may continue to transact business until adjournment, notwithstanding the withdrawal of Trustees which may leave less than a quorum.

**Section 6.** There shall be an Executive Committee which shall be composed of the current Officers of the Foundation, the two immediate preceding Presidents, and six (6) members to be designated by the Board of Trustees from its number annually. Should any member of the Executive Committee decline or be unable to serve, the Board of Trustees shall appoint one of its number to be a member of the Executive Committee to serve in his or her stead. If such declination or inability should occur when the Board of Trustees is not in meeting, the President (or Vice President if he or she be then acting as President) shall appoint a substitute member from the Board of Trustees to the Executive Committee to serve until the Board of Trustees shall act in that respect. No person may serve more than three (3) consecutive full year terms on the Executive Committee, without at least one (1) full year's absence, except that membership by nature of being a current President, Vice President, Secretary, Treasurer or past President, or filling a vacancy, shall not be included in such number.

The Executive Committee shall have general power to carry on the work and discharge the duties of the Board of Trustees while the Board of Trustees is not in session, but it shall not have the power to contravene or change an established policy of the Board or the Foundation nor to repeal, alter, amend or enact any By-Law.

The President of the Foundation or, in his or her absence, the Vice President, shall be the Chairperson of the Executive Committee. The Executive Committee may adopt rules and regulations for the conduct of its business. The Executive Committee shall cause minutes of its meeting to be made and preserved and a copy thereof delivered to the Secretary of the Foundation for the Foundation files.

The Executive Committee shall have the Treasurer's accounts audited periodically, in accordance with generally accepted standards for non-profit organizations, or as directed by the Finance Committee, and report thereon to the Board of Trustees.

Meetings of the Executive Committee shall be called by its Chairperson. A majority of the members of the Executive Committee shall constitute a quorum for the transaction of business of the Executive Committee. One or more members of the Executive Committee may participate in a meeting of the Executive Committee by means of a conference telephone or other communications equipment.

At all meetings of the Executive Committee, a member of the Executive Committee may vote by proxy executed in writing by such member of his or her duly authorized attorney-in-fact. Such proxy shall be filed with the Chairperson of the Committee or at the time of such meeting.

**Section 7:** The Board of Trustees or the Executive Committee may establish a Standing or other Committees as appropriate to advise them in the work of the Foundation. Any member of the Foundation, or representative of a member, may serve on one or more Standing or other Committees at the appointment of the President or Vice President of the Foundation. The President of the Foundation shall appoint the Chairperson of each Standing or other Committee. The Vice President of the Foundation shall appoint a Vice Chairperson of each Standing or other Committee where a Vice Chairperson is to be appointed.

### **Article III**

#### **Officers**

The Officers of the Foundation shall be:

A President

A Vice President

A Secretary

A Treasurer

And such Assistants as the Board of Trustees or the Executive Committee may appoint.

These Officers shall be chosen by the Board of Trustees, except that the Vice President will automatically succeed to the Office of President upon the adjournment of the annual meeting of the Board of Trustees. The same person may hold the offices of Secretary and Treasurer. Vacancies occurring between meetings of the Board shall be filled by the Executive Committee.

### **Article IV**

#### **Duties of Officers**

**Section 1.** Duties of the President. The President shall preside at all meetings of the Board of Trustees, and shall be the general executive officer of the Foundation, and shall perform such other duties as may be necessary to the accomplishment of the purposes of the Foundation.

**Section 2.** Duties of the Vice President. The Vice President shall perform the duties of the President in the absence of the President or, in the event of his or her death or resignation, until a successor is appointed and qualified, and such other duties as the President or the Board may assign.

**Section 3.** Duties of the Secretary. The Secretary shall prepare and keep minutes of all meetings of the Board of Trustees, shall be custodian of the Foundation corporate seal, if any, and shall have such other duties as are usual to the office of Secretary of a corporation or which may be delegated to him or her by the Board of Trustees or the Executive Committee.

**Section 4.** Duties of the Treasurer. The Treasurer, subject to the direction of the Board of Trustees, shall be the custodian of all monies and properties of the Foundation not in the custody or control of the Executive Director. Disbursements shall be made only by checks drawn by the

Treasurer, Assistant Treasurer, or the Executive Director, or in his or her absence by such other person as the Board or Executive Committee may designate.

## **Article V**

### **Executive Director**

The Board of Trustees or the Executive Committee, may employ an Executive Director of the Foundation. Subject to the general control of the Board of Trustees of the Foundation, it shall be the responsibility of the Executive Director to administer the continuing business of the Foundation, to give administrative support to Foundation committees, to participate in the organization, and to conduct Foundation programs and activities.

## **Article VI**

### **Annual Membership**

The Board of Trustees shall make provisions for Annual Membership in the Foundation, which shall be open to all corporations, firms, attorneys, landmen, law and graduate students and other persons active in natural resources or associated with the energy and mineral resources industry. The Board of Trustees may provide for different classes of Annual Membership. Annual Members shall not have the power to vote unless otherwise determined by the Board of Trustees. Dues, special assessments and admission fees, if any, for regular, affiliate, and any other classes of membership which may be created shall be established, from time to time, by the Board of Trustees, and the prompt payment of same after notice shall be a condition of continued membership unless such delinquency is waived by the Board of Trustees.

## **Article VII**

### **Indemnification**

**Section 1.** The Foundation shall indemnify any person who was or is a party, or is threatened to be made a party, to any threatened pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative by reason of the fact that he is or was a representative of the Foundation, or is or was serving at the request of the Foundation as a representative of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorney's fees), judgments, fines and amounts paid in settlement actually reasonably incurred by him or her in connection with such action, suit or proceeding if he or she acted in good faith and in a manner reasonably believed to be in, or not opposed to, the best interest of the Foundation, and with respect to any criminal action or proceeding, had no reasonable cause to believe his or her conduct was unlawful. Their termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not of itself, create a presumption that the person did not act in good faith and in a manner which he or she reasonably believed to be in, or not opposed to, the best interests of the Foundation, and, with respect to any criminal action or proceeding, had reasonable cause to believe that his or her conduct was unlawful.

Any indemnity under this section (unless ordered by a Court) shall be made by the Foundation only as authorized in the specific case upon a determination that indemnification of the representative is proper in the circumstance because he or she has met the applicable standard of conduct set forth in this paragraph. Such determination shall be made:

1. By the Board of Trustees by a majority vote of a quorum consisting of Trustees who were not parties to such action, suit or proceeding, or
2. If such a quorum is not obtainable, or, even if obtainable, if a majority vote of a quorum of disinterested Trustees so directs, by independent legal counsel in a written opinion, or
3. By a majority of the Governing Members.

**Section 2.** To the extent that a representative of the Foundation has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in the above paragraph or in defense of any claim, issue or matter therein, he or she shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by him or her in connection therewith.

## **Article VIII**

### **Amendments**

These By-Laws may be amended by (a) the affirmative vote of a majority of the Board of Trustees whenever a quorum as defined in Article II Section 5 of these By-Laws is present, at either an Annual Meeting of the Board of Trustees, or at a special meeting called for that purpose; or (b) by affirmative mail vote of a majority of the Board of Trustees without a meeting, provided that, in such latter event, a copy of the proposed amendment shall be sent to each Trustee by facsimile, electronic mail, express mail or certified mail, return receipt requested, and the Trustee shall have thirty (30) days after such mailing or communication in which to return their vote on the proposed amendment addressed to the President of the Foundation at the office of the Foundation in Lexington, Kentucky.

All amendments to these By-Laws shall become effective immediately upon their adoption unless otherwise stated in the resolution adopting such amendments.