

STATE OF COLORADO)

COUNTY OF LINCOLN)

TOWN OF ARRIBA)

The Board of Trustees of the Town of Arriba, Colorado, met in regular session in full conformity with law and the ordinances and rules of the Town, at 711 Front St., in Arriba, Colorado, on Monday, the 27th day of April, 2009, at 7:30 P.M.

Upon roll call the following were present, constituting a quorum:

Mayor:

Ted Grundmeier

Mayor Pro Tem:

~ Troy McCue

Trustees:

~ Alexander Flores

~ Karen Kovar

~ Susan Mills

Bob Schoonover - *absent*

~ Jody Rogers-Schiffers

Also present:

Town Clerk:

Josie Hart

Absent: *Bob Schoonover*

Thereupon Trustee *Troy McCue* introduced, and there was read in full, the following Ordinance:

**TOWN OF ARRIBA
ORDINANCE NO. 132**

AN EMERGENCY ORDINANCE OF THE TOWN OF ARRIBA, COLORADO, ESTABLISHING THE "TOWN OF ARRIBA WATER ENTERPRISE" UNDER THE PROVISIONS OF TITLE 37, ARTICLE 45.1, COLORADO REVISED STATUTES; REPEALING ALL ORDINANCES OR OTHER ACTS IN CONFLICT HEREWITH AND DECLARING AN EMERGENCY.

WHEREAS, the Town of Arriba, Colorado (the "Town"), is a statutory town and political subdivision of the State of Colorado, duly organized and operating under the constitution and laws of the State of Colorado; and

WHEREAS, pursuant to the provisions of Title 37, Article 45.1, Colorado Revised Statutes (the "Water Activity Law"), state and local governmental entities which have their own bonding capacity under applicable law are authorized: (i) to establish or continue to maintain Water Enterprises for the purpose of pursuing or continuing water activities, which includes the construction, operation, repair and replacement of Water facilities; and (ii) to issue or reissue bonds, notes, or other obligations payable from the revenues derived or to be derived from the function, service, benefits, or facility or from any other available funds of the enterprise, the terms and conditions of such bonds or other obligations to be as set forth in the resolution authorizing the same; and

WHEREAS, in order to qualify as a water enterprise under the Water Activity Law, the enterprise must consist of a government business owned by a governmental entity such as the Town, which enterprise receives under 10% of its annual revenues in grants from all Colorado state and local governments combined, and which is authorized to issue its own revenue bonds; and

WHEREAS, the Town has heretofore determined and undertaken to acquire and develop certain properties and facilities for the collection, treatment, transmission, and disposition of water, which facilities are operated and maintained as a single public utility and income-producing project (the "System"); and

WHEREAS, the System has been and continues to be operated as a "water activity enterprise" within the meaning of the Water Activity Law; and

WHEREAS, it is the intent of the Town to continue the operation of the System as a water activity enterprise, and to formally establish the "Town of Arriba Water Enterprise" under the Water Activity Law;

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF TRUSTEES OF THE TOWN OF ARRIBA, COLORADO:

Section 1. Establishment of Enterprise. There is hereby established, pursuant to the terms and provisions of the Water Activity Law, Title 37, Article 45.1, Colorado Revised Statutes, the "Town of Arriba Water Enterprise" (the "Enterprise"). The Enterprise shall consist of the System which is the business represented by all of the Town's Water facilities and properties, now owned or hereafter acquired, whether situated within or without the Town boundaries, including all present or future improvements, extensions, enlargements, betterments, replacements, or additions thereof or thereto. The Enterprise shall have all of the authority, powers, rights, obligations, and duties as may be provided or permitted by the Water Activity Law and the Colorado Constitution, and as may be further prescribed by ordinance or resolution of the Town.

Section 2. Governing Body. The governing body of the Enterprise (the "Governing Body") shall be the Board of Trustees of the Town, and shall be subject to all of the applicable laws, rules, and regulations pertaining to the Board of Trustees. Whenever the Board of Trustees is in session, the Governing Body shall also be deemed to be in session. It shall not be necessary for the Governing Body to meet separately from the regular and special meetings of the Board of Trustees, nor shall it be necessary for the Governing Body to specifically announce or acknowledge that actions taken thereby are taken by the governing body of the Enterprise. The Governing Body may conduct its affairs in the same manner and subject to the same laws which apply to the Board of Trustees for the same or similar matters; provided that in accordance with §37-45.1-104(2), C.R.S., the Governing Body may authorize the issuance of bonds by adoption of a resolution.

Section 3. Maintenance of Enterprise Status. The Enterprise shall at all times and in all ways conduct its affairs so as to continue to qualify as a "water enterprise" within the meaning of §37-45.1-102, C.R.S., and as an "enterprise" within the meaning of Article X, Section 20, Colorado Constitution. Specifically, but not by way of limitation, the Enterprise is not authorized, and shall not, receive 10% or more of its annual revenue in grants from all Colorado state and local governments combined.

Section 4. Issuance of Bonds. The Enterprise is authorized to issue bonds, notes, or other obligations payable from the revenues derived or to be derived from the System, in accordance with the Water Activity Law. The Board of Trustees may also authorize the issuance of such bonds, notes, or other obligations in accordance with the laws of the State of Colorado, and in so doing shall be deemed to be acting as both the Governing Body and the Board of Trustees.

Section 5. Enterprise Fees and Charges. The Board of Trustees shall adopt by resolution for and on behalf of the Enterprise the following rates, fees, and charges:

- a. minimum and sufficient Water rates;
- b. plant investment fees; and
- c. other fees and charges as the Board of Trustees deems necessary to cover the cost of inspection, testing fees for engineering design review, operations, maintenance, and extensions of the System.

Section 6. Water Enterprise Annual Budget. The Board shall adopt an annual budget for the Enterprise, separate from the Town's general fund budget.

Section 7. Water Revenue Fund Established. There is hereby established an enterprise fund, to be known as the "Water Revenue Fund", in which shall be deposited all revenues from water billing and other revenues related to the System. All funds received from the water rates shall be used only for the operation, maintenance, debt service, replacement of and additions to the system. All amounts on hand in such fund shall be invested by the Board of Trustees in investments proper for public funds.

The Enterprise may pledge all or any portion of the Water Revenue Fund, including revenues anticipated to be collected, to the payment of principal, interest, premium, if any, and reserves for revenue bonds or any other obligations lawfully issued or otherwise contracted for by the Enterprise for the payment or other financing of costs of the System, or for the purpose of refunding any obligations issued or otherwise contracted for such purpose.

Section 8. Ratification and Approval of Prior Actions. All actions heretofore taken by the officers of the Town and the members of the Board of Trustees, not inconsistent with the provisions of this Ordinance, relating to the operation or creation of the Enterprise, are hereby ratified, approved, and confirmed.

Section 9. Repealer. All orders, bylaws, ordinances, and resolutions of the Town, or parts thereof, inconsistent or in conflict with this Ordinance, are hereby repealed to the extent only of such inconsistency or conflict.

Section 10. Severability. If any section, paragraph, clause, or provision of this Ordinance shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause, or provision shall not affect any of the remaining provisions of this Ordinance, the intent being that the same are severable.

Section 11. Recording and Authentication. Upon adoption hereof, this Ordinance shall be recorded in a book kept for that purpose and shall be authenticated by the signatures of the Mayor and the Town Clerk.

Section 12. Emergency Declaration. By reason of the fact that the Town must immediately provide for improvement to the existing Water system of the Town and must provide for the funding of the cost of said improvements, it is hereby declared that an emergency exists and that this ordinance is necessary for the preservation of the public peace, health and safety and that it shall become effective upon adoption.

INTRODUCED, READ AND PASSED AS AN EMERGENCY ORDINANCE at a meeting of the Board of Trustees on the 27th day of April, 2009, and ordered published in accordance with the provisions of Section 31-16-105, C.R.S.

(SEAL)

ATTESTED:

Mayor

Town Clerk

It was thereupon moved by Trustee Karen Kovar and seconded by Trustee Jody Rogers-Schiffers that the foregoing Ordinance, introduced at this meeting as aforesaid, be passed and adopted as an ordinance.

The question being upon the adoption of the motion, the roll was called with the following result:

Those voting YES: All trustees present

Mayor:

Mayor Pro Tem:

Trustees:

Ted Grundmeier

-Troy McCue

-Alexander Flores

-Karen Kovar

-Susan Mills

Bob Schoonover - Absent

- Jody Rogers-Schiffers

Those voting NO:

Five (5) members of the Board of Trustees having voted in favor of said motion, such number being at least three-fourths of the members of the Board of Trustees, the presiding officer thereupon declared the motion carried and that the Ordinance was passed and adopted as an emergency ordinance.

Thereupon, after consideration of other business to come before the Board, the meeting was adjourned.

(S E A L)

Ted Grundmeier
Mayor

ATTESTED:

Jill Carr
Town Clerk

STATE OF COLORADO

COUNTY OF LINCOLN


TOWN OF ARRIBA

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I, Josie Hart, Town Clerk of the Town of Arriba, Colorado, do hereby certify that the foregoing pages numbered 2 to 6, inclusive, constitute a full and correct copy of the record of the proceedings of the Board of Trustees of the Town, taken at a regular meeting thereof, held on Monday, the 27th day of April, 2009, at 711 Front St., in Arriba, Colorado, so far as said minutes relate to an Emergency Ordinance of the Town of Arriba, Colorado, Establishing the "Town of Arriba Water Enterprise" under the Provisions of Title 37, Article 45.1, Colorado Revised Statutes; Repealing All Ordinances or Other Acts in Conflict Herewith; that said Ordinance has been duly authenticated by the signatures of the presiding officer of the Board of Trustees and myself, as Town Clerk of the Town, sealed with the corporate seal of the Town and the Resolution recorded in the Book kept for that purpose in my office.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the seal of the Town, this 27 day of April, 2009.

(SEAL)


Josie Hart

Town Clerk