

ORDINANCE # 2007-005

AN ORDINANCE CREATING A MUNICIPAL WATER ENTERPRISE OF THE TOWN
OF CRESTONE, COLORADO

WHEREAS, the Town of Crestone, Colorado ("Town") currently has no municipal water system and only has wells for fire protection; and

WHEREAS, the Town, as a statutory Town, is empowered by section 37-45.1-101 et. seq., C.R.S. to establish within the Town an enterprise within the meaning of Article X, Section 20 of the Colorado Constitution; and

WHEREAS, the residential and commercial areas of the town are currently served by an unrelated collection of private water wells, which are inadequate for the present needs and future growth of the town; and

WHEREAS, The Division Engineer for the Colorado Division of Water Resources, Division 3 has emphasized to the Board of Trustees of the Town the necessity of creating a domestic water system which would serve the needs for consumptive use by Town citizens and would involve augmenting the Town's water supply; and

WHEREAS, it is necessary to create an enterprise within the Town as an Enterprise to acquire, construct Water Activities and distribute water to Town residents; and

WHEREAS, the provisions of Sections 31-15-101, 31-15-707 and 31-15-708, C.R.S., empower statutory Towns to acquire, construct and operate Water Activities for the distribution of water to Town residents.

NOW THEREFORE, be it Ordained by the Board of Trustees of the Town of Crestone that an enterprise, as defined in Section 37-45.1-101 et. seq., C.R.S., and known as the Town of Crestone Water Enterprise, is hereby established in accordance with the following provisions:

SECTION 1. Definitions.

Unless the context specifically indicates otherwise, the following words and phrases shall have the following meanings as used in this Ordinance.

1. "Governing Body" shall be the Town Board of Trustees; provided that the Town Board of Trustees may delegate by resolution any or all of said functions to a committee which shall be known as and shall function as the Town of Crestone Water Enterprise.
2. "Grant" means any direct cash subsidy or other direct contribution of money from the State or any local government in the State which is not required to be repaid. "Grant" does not include:
 - a. Any indirect benefit conferred upon the utility enterprise from the State or any local government in the State;

- b. Any revenues resulting from rates, fees, assessments or other charges imposed by the Water Enterprise for the provision of goods or services by such enterprise; or
 - c. Any federal funds, regardless of whether such federal funds pass through the State or any local government of the State prior to receipt by the Water Enterprise.
3. "Water Activity" includes, but is not limited to, the diversion, storage, carriage, delivery, distribution, collection, treatment, use, reuse, augmentation, exchange or discharge of water services, and the acquisition of water or water rights in accordance with applicable provisions of State law, and this Ordinance.
 4. "Water Enterprise" means the Water Activity business owned by the Town, which business receives under ten percent (10%) of its annual revenues in grants from all state and local governments combined and which is authorized to issue its own revenue bonds pursuant to this Ordinance or other applicable law.
 5. "Water Activities" means any one (1) or more works and improvements used in and as a part of the collection, treatment or distribution of water for the beneficial uses and purposes for which the water has been or may be appropriated.

SECTION II. Water Enterprise.

The Water Enterprise shall be maintained and operated as an "enterprise" as defined and recognized in Section 20, Article X of the Colorado Constitution and as a "water activity enterprise", C.R.S. §37-45.1-101 et. seq., as hereafter amended and any other applicable law.

In addition to any of the powers it may have by virtue of C.R.S. §37-45.1-101 et. seq. and any of the applicable provisions of State law, and this Ordinance, the Water Enterprise shall have the power under this section:

1. To acquire by gift, purchase, lease or exercise of the right of eminent domain, to construct, reconstruct, improve, better and extend Water Activities, wholly within or wholly without the Town or partially within and partially without the Town and to acquire in the name of the Town, by gift, purchase or the exercise of the right to eminent domain, lands, easements and rights in land in connection therewith;
2. To operate and maintain Water Activities for its or the Town's own use and for the use of public and private consumers and users within and without the territorial boundaries of the Town;
3. To accept federal funds under any federal law in force to aid in financing the cost of engineering, architectural or economic investigations, or studies, surveys, designs, plans, working drawings, specifications, procedures or other actions preliminary to the construction of Water Activities;
4. To accept federal funds under any federal law in force for the construction of necessary Water Activities;

5. To enter into joint operating agreements, contracts or arrangements with consumers concerning Water Activities, whether acquired or constructed by the Water Enterprise or the consumer, and to accept any contributions from consumers for the construction of Water Activities.
6. To prescribe, revise and collect in advance or otherwise, from any consumer or any owner or occupant of any real property connected therewith or receiving service therefrom, rates, fees, tolls and charges or any combination thereof for the services furnished by, for the direct or indirect connection with, or the use of or any commodity from such Water Activities; in anticipation of the collection of revenues of such Water Activities, to issue revenue bonds to finance in whole or in part the cost of acquisition, construction, reconstruction, improvement, betterment or extension of the Water Activities; and to issue temporary bonds until permanent bonds and any coupons appertaining thereto have been printed and exchanged for the temporary bonds.
7. To pledge, to the punctual payment of said bonds and interest thereon, all or any part of the revenues of the Water Activities, including the revenues of improvements, or extensions thereto thereafter constructed or acquired, as well as the revenues from existing Water Activities;
8. To enter into and perform contracts and agreements with other governmental entities and utility activity enterprises for or concerning the planning, construction, lease or other acquisition and the financing of Water Activities and the maintenance and operation thereof;
9. To make all contracts, execute all instruments and do all things necessary or convenient in the exercise of the powers granted in this Section or elsewhere in State law, or this Ordinance, in the performance of its covenants or duties, or in order to secure the payment of its bonds if no encumbrance, mortgage or other pledge of property, excluding any pledged revenues, of the Water Enterprise or Town is recreated thereby, and if no property, other than money, of the Water Enterprise or Town is liable to be forfeited or taken in payment of said bonds, and if no debt on the credit of the Water Enterprise or Town is thereby incurred in any manner for any purpose; and
10. To issue water refunding bonds pursuant to this Ordinance or other applicable law to refund, pay or discharge all or any part of its outstanding water revenue bonds issued under this Section or under any other law, including any interest thereon in arrears or about to become due, or for the purpose of reducing interest costs, effecting a change in any particular year in the principal and interest payable thereon or in the related utility rates to be charged, affecting other economies or modifying or eliminating restrictive contractual limitations appertaining to the issuance of additional bonds, or to any municipal Water Activities.
11. To engage in any lawful Water Activity.

SECTION III. Revenue Bonds.

1. In accordance with and through the provisions of this Section and C.R. S. Section 37-45.1-104, the Water Enterprise, through the Board of Trustees, is authorized to issue bonds or other obligations payable solely from the revenues derived or to be derived from the functions, services, benefits or Activities of such enterprise or from any other available funds of such enterprise. Such bonds or other obligations shall be authorized by ordinance, adopted by the Governing Body of the Water Enterprise in the same manner as other ordinances of the Town. Such bonds or other obligations may be issued without voter approval, provided that, during the fiscal year of the Town preceding the year in which the bonds or other obligations are authorized, the Water Enterprise received under ten percent (10%) of its annual revenue in grants or, during the current fiscal year of the Town, it is reasonably anticipated that such enterprise will receive under ten percent (10%) of its revenue in grants. Nothing in this Section shall be construed so as to require voter approval where such approval is not otherwise required by the constitution and laws of the State.

2. The terms, conditions and details of said bonds or other obligations, and the procedures related thereto, shall be set forth in the ordinance authorizing said bonds or other obligations and shall, as nearly as may be practicable, be substantially the same as those provided in Part 4 of Article 35 of Title 31, C.R.S., relating to water revenue bonds; except that the purposes for which the same are issued shall not be so limited and except that said bonds or other obligations may be sold at public or private sale in accordance with Town Ordinances. Each bond, note, or other obligation issued under this section shall recite in substance that said bond, note or other obligation, including the interest thereon, is payable from the revenues and other available funds of the Water Enterprise pledged for the payment thereof. Notwithstanding any other provision of law to the contrary, such bonds or other obligations may be issued to mature at such times as are authorized by Town Ordinance, shall bear interest at such rates, and shall be sold at, above or below the principal amount thereof, all as shall be determined by the Governing Body of the Water Enterprise. Notwithstanding anything in this Section to the contrary, in the case of short-term notes or other obligations maturing not later than one (1) year after the date of issuance thereof, the Governing Body of the Water Enterprise may authorize enterprise officials to fix principal amounts, maturity dates, interest rates and purchase prices of any particular issue of such short-term notes or obligations, subject to such limitations as to maximum term, maximum principal amount outstanding and maximum net effective interest rates as the Board of Trustees of the Water Enterprise shall prescribe. Refunding bonds of the utility enterprise shall be issued as provided in Part 1 of Article 56 of Title 11, C.R.S. The powers provided in this Section to issue bonds or other obligations are in addition and supplemental to, and not in substitution for, the powers conferred by any other law, and the powers provided in this Section shall not modify, limit or affect the powers conferred by any other law, either directly or indirectly. Bonds, notes or other obligations may be issued pursuant to this Section without regard to the provisions of any other law. Insofar as the provisions of this Section are inconsistent with and not preempted by the provisions of any other law, the provisions of this Section shall control with regard to any bonds lawfully issued pursuant to this Section.

3. Any pledge of revenue or other funds of the utility enterprise shall be subject to any limitation on future pledges thereof contained in any ordinance of the Governing Body of the Water Enterprise or of the Town authorizing the issuance of any outstanding bonds or other obligations separately issued by the town and the Water Enterprise but secured by the same revenues or other funds and which shall be treated as having the same obligor and as being payable in whole or in part from the same source or sources.

SECTION IV. Exemption from Article X, Section 20 of the Colorado Constitution.

1. It is the intent of the Town that the Water Enterprise be operated and maintained so as to exclude its activities from the application of Article X, Section 20 of the Colorado Constitution, to the fullest extent possible.
2. All funds of the Water Activity Enterprise shall be segregated and separately accounted from other Town funds in a fund known as the Water Activity Enterprise Fund.
3. Any tax, fee or charge imposed by the provisions of this Ordinance shall be so imposed as an exception and exemption from the provisions of Article X, Section 20 of the Colorado Constitution.

Health and Safety Clause

DUE TO THE IMMEDIATE NECESSITY TO CREATE AN ENTERPRISE FOR THE PROVISION OF WATER TO TOWN OF CRESTONE RESIDENTS, DUE TO PENDING LAND USE PROPOSALS INVOLVING THE CREATION OF A WATER SYSTEM, AND DUE TO THE NECESSITY TO PROVIDE FOR FIRE SAFETY FOR TOWN RESIDENTS, THIS ORDINANCE IS DEEMED NECESSARY TO THE PUBLIC PEACE, HEALTH, AND SAFETY AND SHALL TAKE EFFECT AND BE ENFORCED UPON PASSAGE OF THE SAME.

INTRODUCED, and READ IN FULL this 8TH day of October, 2007.

DONE and SIGNED this 8TH day of October, 2007.

APPROVED:

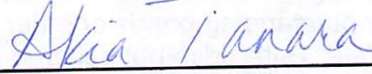

Kizzen Laki, Mayor

ATTEST:


Akia Tanara, Town Clerk

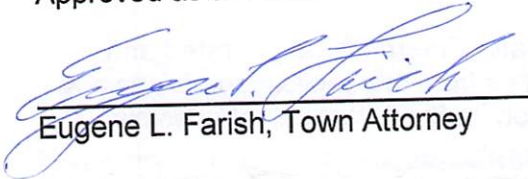
CERTIFICATION

I **HEREBY CERTIFY** that the within Ordinance was introduced, and read in full at a regular meeting of the Board of Trustees of Crestone, Colorado on October 8, 2007, and was thereafter published by title in the Crestone Eagle, a legal newspaper in the Town of Crestone on November 1, 2007.



Akia Tanara, Town Clerk

Approved as to Form:



Eugene L. Farish, Town Attorney

