

RESOLUTION 2020-03

ST. VRAIN WATER AUTHORITY

BOULDER, LARIMER, AND WELD COUNTIES, COLORADO

**A RESOLUTION REAFFIRMING THE ENTERPRISE STATUS OF THE
ST. VRAIN WATER AUTHORITY**

WHEREAS, the St. Vrain Water Authority (“Authority”) is a separate legal entity and political subdivision of the State of Colorado established by the St. Vrain Water Authority Establishing Contract effective as of April 24, 2019 (“Establishing Contract”) entered into by and between the Town of Firestone and the Little Thompson Water District (collectively, the “Members” and singularly, “Member”); and

WHEREAS, the Authority is authorized by the Establishing Contract to development treatment systems and facilities for purposes of furnishing a potable water supply for the benefit of the Members and their constituents and service users; and

WHEREAS, the Authority has heretofore determined and undertaken to acquire, develop, operate, maintain and replace certain properties and facilities for the treatment of raw water which properties and facilities are operated, maintained, repaired and replaced as a single government-owned business (hereinafter the “Water System”); and

WHEREAS, the Members intend that the Authority, and in particular the Authority’s Water System and all activities related thereto, be operated as an enterprise as that term is defined in Section 20 Article X of the Colorado Constitution, which was approved by the voters of the State of Colorado on November 3, 1992 (TABOR); and

WHEREAS, hence, the Authority and its Water System and all operations and related activities are intended to be excluded from the tax, tax revenue, debt and other limitations set forth in TABOR; and

WHEREAS, the Authority is authorized pursuant to Article 4.1.15 of the Establishing Contract to operate as an enterprise under TABOR and is directed to operate as an enterprise under Section 4.2.3 of the Establishing Contract; and

WHEREAS, the Authority is authorized pursuant to the Establishing Contract and Title 37, Article 45.1 C.R.S. (the “Water Enterprise Act”), and Section 29-1-204.2(7)(a) C.R.S. to issue revenue bonds without the approval of the Authority’s Members, and such bonds are to be issued nearly as may be practical, in accordance with the provisions of Title 1, Article 35, Part 4 C.R.S.; and

WHEREAS, it is the intent of the Authority's Board of Directors that the Water System once it becomes operational and that the Authority always operate as an enterprise within the meaning of TABOR and the Water Enterprise Act; and

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

WHEREAS, it is the desire of the Authority's Board to reaffirm the Authority's status as an enterprise and to adopt this resolution formally establishing the Authority's water activity enterprise pursuant to the Water Enterprise Act.

NOW THEREFORE, BE IT RESOLVED BY the Board of Directors of the St. Vrain Water Authority in the counties of Boulder, Larimer, and Weld, State of Colorado that:

1. **Establishment of Enterprise.** The Board of Directors of the Authority hereby finds and declares that its Water System and all the activities related thereto, have been and will continue to be operated and maintained as a government owned business in conformity with all applicable Colorado law. The Board further recognizes and confirms that the Authority and its Water System and all activities related thereto have been carried on and shall in the future be carried on as an enterprise within the meaning of TABOR and the Water Enterprise Act. To more fully recognize the status of the Authority's activities and in particular, its Water System operation as an enterprise within the meaning of TABOR and the Water Enterprise Act, the Board hereby creates the St. Vrain Water Authority Water Enterprise (hereinafter referred to as the "Enterprise").

2. **Instrumentality of the Authority.** The Enterprise is wholly-owned by the Authority and is a wholly-owned instrumentality of the Authority and shall be subject to all Authority orders, policies, directives, resolutions, rules and regulations. The Enterprise shall have all the authority, powers, rights, limitations, immunities, rights and obligations and duties as provided or permitted by the Colorado Constitution, the Water Enterprise Act, Title 29, Article 1, Part 2 C.R.S., or other applicable Colorado law, as the same now exists, or may hereafter be amended from time to time. Further, the Enterprise's authority, rights, powers, limitations and duties, may from time to time, be further prescribed by resolution of the Authority's Board of Directors.

3. **No Power to Tax.** Under no circumstances shall the Enterprise have the authority to levy or collect any tax subject to Section 20, Article X of the Colorado Constitution, nor shall the Enterprise have the power to direct the authority to exercise any taxing power on behalf of the Enterprise.

4. **Governing Body.** The members of the Board of Directors of the Authority shall act as the governing body of the Enterprise and shall be subject to all the applicable laws, bylaws, rules, regulations and policies pertaining to the Authority's Board of Directors. Whenever the Authority Board of Directors is in session, the governing body of the Enterprise 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 Authority Board of Directors, nor shall it be necessary for the governing body specifically to 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, subject to the same laws which apply to the Authority's Board of Directors for the same or similar matters. Except as specifically stated in or for any other particular act or determination, the act or determination of the Authority Board of Directors shall be deemed the act or determination of the governing body of the Enterprise; provided, that in accordance with C.R.S. 37-45.1-104(2), the governing body may authorize the issuance of revenue bonds by adoption a resolution.

5. **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 Activity Enterprise within the meaning the Water Enterprise Act and as an Enterprise within the meaning of Article X, Section 20 of the 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 and grants from all Colorado state and local governments combined.

6. **Issuance of Revenue Bonds.** The Enterprise is authorized to reissue or refund revenue bonds, notes or other obligations payable solely from the revenues derived or to be derived from its functions, services, or operations. Any and all such bonds shall be issued in the manner provided in the Water Enterprise Act and Part 4 of Article 35 of Title 31 C.R.S. for the issuance of revenue bonds by municipalities, except that the revenue bonds may be sold in one or more series at par or below par or above par, at public or private sale and such manner and such price as the governing body of the Enterprise, in its discretion, shall determine. The Authority may also authorize the issuance of such bonds, notes or other obligations as provided immediately above, and in so doing, shall be deemed to be acting as both the governing body of the Enterprise and the Authority's Board of Directors.

7. **Ratification and Approval of Prior Actions.** All actions heretofore taken by the officers of the Authority and Members of its Board of Directors, not inconsistent with this Resolution relating to the operation or creation of the Enterprise are hereby ratified, approved and confirmed.

8. **Repealer.** All resolutions, bylaws, and actions of the Authority's Board of Directors, or parts thereof, inconsistent with the provisions of this Resolution, are hereby repealed, to the extent only of such inconsistency or conflict.

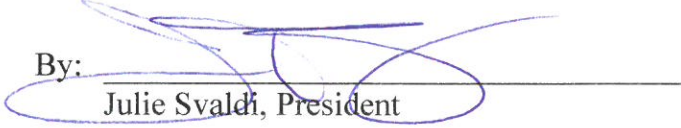
9. **Severability.** If any section, paragraph, clause or provision of this Resolution shall for any reason be held to be invalid or enforceable, the validity or enforceability of such section, paragraph, clause or provision, shall not affect any of the remaining provisions of this Resolution, the intent being that the same are severable.

10. **Enterprise Fund.** The Authority and the Enterprise shall continue to maintain an enterprise fund that accounts for the revenues and expenditures incurred by the Enterprise in carrying on its activities. The Authority's annual budget shall be deemed to be the annual budget of the Enterprise until such time as the Authority conducts or carries on activities that are in addition to or are outside the activities that are carried on by the Enterprise. If and when the Authority initiates activities that are in addition to or outside of the activities of the Enterprise, the Enterprise shall prepare an annual budget which may be included in the budget prepared by the Authority. All budget, reports, audits, and financial operations of the Enterprise shall conform to and be prepared in accordance with generally accepted principles applicable to governmental units and other requirements of the law. All assets, both real, personal and intangible, to be operated and maintained and utilized by the Enterprise, shall remain in the ownership of the Authority. The Authority hereby assigns the use and manage of such assets, whether real, personal or intangible to the Enterprise.

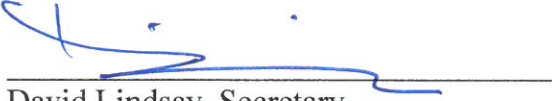
11. **Effective Date.** This Resolution shall be effective as of the date and year set forth below and shall remain in effect indefinitely thereafter until the same be amended or repealed by the Authority's Board of Directors.

APPROVED AND ADOPTED this 14TH day of SEPTEMBER, 2020, and executed on the 14TH of SEPTEMBER, 2020.

ST. VRAIN WATER AUTHORITY

By: 
Julie Svaldi, President

Attest:


David Lindsay, Secretary