

## ORDINANCE NO. 437

### **AN ORDINANCE OF THE TOWN OF HOLLY, COLORADO APPROVING THE ISSUANCE BY THE ARKANSAS RIVER POWER AUTHORITY OF COMPLETION BONDS FOR THE REPOWERING PROJECT AND PROVIDING OTHER DETAILS IN CONNECTION THEREWITH.**

WHEREAS, the Town of Holly, Colorado (the "Town") is a member of the Arkansas River Power Authority, a separate governmental entity and political subdivision of the State of Colorado (the "Authority" or "ARPA"), having herefore executed and delivered the "Organic Contract Creating and Establishing the Arkansas River Power Authority as a Separate Governmental Entity" and amendments thereto (collectively, the "Organic Contract"); and

WHEREAS, the Authority was established by the Town, the City of Las Animas, Colorado; the City of La Junta, Colorado; the City of Lamar, Colorado; the City of Trinidad, Colorado; the Town of Springfield, Colorado; and the City of Raton, New Mexico (collectively the "Member Municipalities" or individually each a "Member Municipality") to plan, develop and acquire the electric power resources needed by the Member Municipalities to reliably serve their respective electricity customers; and

WHEREAS, the Town has, pursuant to due notice from ARPA and by Town ordinance, previously approved the development by ARPA of a project to repower the existing 25 megawatt steam generating unit owned by the Lamar Utilities Board from a natural gas-fired operation to a coal-fired operation with a resulting increase in net output rating to approximately 38.5 megawatts (the "Repowering Project") and further authorized and approved, together with the governing body of each of the Member Municipalities (collectively, the "Members' Authorization"), the Authority's issuance of bonds to finance the Repowering Project (the "Bonds"); and

WHEREAS, pursuant to the current Members' Authorization, the Authority issued its Power Revenue Improvement Bonds, Series 2006 that generated Repowering Project revenues (exclusive of bond issuance costs, a bond reserve fund and capitalized interest) of approximately \$83 million (which amount includes estimated interest earnings on such funds until spent): and

WHEREAS, the Authority has presented to the Town a Third Supplemental Notice of Intent To Commit Funds To Acquire, Construct, and Install The Lamar Repowering Project, dated March 12, 2007 (the "Third Supplemental Notice") which states in part that, due to substantial upward market growth, demand beyond initial estimates for labor and construction of the Repowering Project will require the issuance of completion bonds generating up to \$18 million exclusive of bond issuance costs, a bond reserve fund and capitalized interest (the "Second Supplemental Authorization"); and

WHEREAS, as set forth in its resolution dated March 5, 2007, the Board of Directors of the Authority has determined that the Repowering Project continues to be (a) economically feasible, (b) necessary for the Authority to meet its commitment to supply the wholesale power needs of the Member Municipalities and (c) the best power supply alternative available to meet the long-term power needs of the Member Municipalities given operational, financial, technological and transmission considerations; and

WHEREAS, the Board of Trustees of the Town (the “Board of Trustees”), having reviewed the Third Supplemental Notice and such additional information as it deemed necessary and appropriate, now takes the following action;

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

**Section 1. Approval of Second Supplemental Authorization.** The Second Supplemental Authorization is in all respects approved and authorized by the Town and such approval and authorization by the Town shall equal the Town’s percentage share of all Member Municipality energy purchases from the Authority in calendar year 2004 (the “Town’s Supplemental Participation). The Town’s approval shall be conditioned upon approval of the Second Supplemental Authorization by Member Municipalities representing not less than sixty-five percent of the energy purchased from the Authority in calendar year 2004 (the “Minimum Member Participation”).

**Section 2. Findings and Determinations.** The Board of Trustees hereby finds and determines that:

- (a) The Member Municipality percentage energy purchases from the Authority in calendar year 2004 were the Town of Holly, two percent (2%); the City of Lamar, twenty-nine percent (29%); the City of La Junta, twenty-two percent (22%); the City of Las Animas, nine percent (9%); the City of Raton, eighteen percent (18%); the Town of Springfield, four percent (4%); and the City of Trinidad, sixteen percent (16%); therefore, the Town’s Supplemental Participation shall be two percent (2%).
- (b) The completion of the Repowering Project necessitates the approval of the Second Supplemental Authorization.
- (c) Upon receiving the Minimum Member Participation, the Board of Directors of the Authority is to issue completion bonds to generate up to \$18 million (exclusive of bond issuance costs, a bond reserve fund and capitalized interest) and the failure of any Member Municipality to approve the Second Supplemental Authorization does not proportionately reduce the Second Supplemental Authorization or the obligation of each Member Municipality under the Organic Contract to purchase all energy and power requirements from the Authority. Further, in the event that any Member Municipality does not approve the Second Supplemental Authorization and, for whatever reason, such Member Municipality is not required to share in the costs or benefits of the Second Supplemental Authorization, the Town understands and agrees that those Member Municipalities representing the Minimum Member Participation will share such costs or benefits.
- (d) This Ordinance shall constitute valid and binding approval and action by the Town pursuant to the terms of the organic Contract and, following the issuance of completion bonds by the Authority, this Ordinance shall be irrevocable. The Town shall, prior to the date of the issuance of the completion bonds, provide written notice to the Authority of any repeal, revocation, amendment or rescission, by implication or otherwise, of this Ordinance.

**Section 3. Headings.** The headings to the various sections and paragraphs to this Ordinance have been inserted solely for the convenience of the reader, are not a part of this Ordinance, and shall not be used in any manner to interpret this Ordinance.

**Section 4. Severability.** If any section, paragraph, clause or provision of this Ordinance shall be held invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or provision shall not affect any other provision of this Ordinance.

**Section 5. Effective Date.** This Ordinance shall be in full force and effect 30 days after adoption.

ADOPTED, APPROVED, AND SIGNED THIS 2<sup>ND</sup> DAY OF MAY, 2007.

TOWN OF HOLLY, COLORADO

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Albert C. Crum, Mayor

ATTEST:

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Teresa Neugebauer, Town Clerk