

RESOLUTION #02-1-2025

**A RESOLUTION OF LOWER SOUTH PLATTE WATER
CONSERVANCY DISTRICT APPROVING A PLAN TO
REFUND REVENUES COLLECTED PURSUANT TO AN
UNAUTHORIZED MILL LEVY ABOVE 0.5 MILL
IMPOSED IN EACH YEAR FROM 2019-2023**

WHEREAS, the Lower South Platte Water Conservancy District (the “District”) is a duly organized and existing water conservancy district pursuant to Section 37-45-101 et seq. C.R.S. (the “Water Conservancy Act”); and

WHEREAS, pursuant to the Water Conservancy Act, the Board of Directors of the District (the “Board”) shall determine the amount of money necessary to be raised by taxation, taking into consideration other sources of revenue of the District, and shall fix a rate of levy which, when levied on every dollar of valuation for assessment of property within the District and with other revenues, will raise the amount required by the District to supply funds for paying expenses of organization, for surveys and plans, and for paying the costs of construction of and operating and maintaining the works of the District; except said rate shall not exceed one mill; and

WHEREAS, in 1996 the Board fixed the rate of levy for the District at 0.5 mill; and

WHEREAS, in 1996, the District’s voters approved the following ballot question, Referred Measure 4D:

Shall the Lower South Platte Water Conservancy District be authorized and permitted to retain and expend an additional sum of \$13,025, resulting from property tax revenues of \$5,982 and other revenues of \$7,043 collected in 1995; and to retain, appropriate, and utilize, by retention or reserve, carryover fund balance, or expenditure, the full proceeds and revenues received from every source whatever, without limitation, in 1996 and all subsequent years, notwithstanding any limitation of article X, section 20 of the Colorado Constitution, provided, however, that no local tax rate or property mill levy shall be increased at any time without the prior approval of the voters of the Lower South Platte Water Conservancy District?

WHEREAS, in each year from 1996 through 2018, the Board fixed the rate of levy for the District at 0.5 mill; and

WHEREAS, in each year from 2019 through 2023, the Board fixed the rate of levy for the District at 1.0 mill, as authorized by the Water Conservancy Act; and

WHEREAS, the District is subject to Article X, Section 20 of the Colorado Constitution, commonly referred to as the Taxpayer’s Bill of Rights or TABOR (“TABOR”); and

WHEREAS, TABOR requires, among other things, voter approval in advance for “any new tax, tax rate increase, mill levy above that for the prior year, valuation for assessment ratio increase for a property class, or extension of an expiring tax, or a tax policy change directly causing a net tax revenue gain to any district;” and

WHEREAS, in 2021, James Aranci, Jack Darnell, Charles Miller, William Lauck, and Curtis Werner (collectively, the “Plaintiffs”) filed a lawsuit (“Case No. 21CV30049”) against the District challenging the District’s increase of its mill levy from 0.5 mill in 2018 to 1.0 mill in each year from 2019-2022; and

WHEREAS, in 2022, the District Court issued an order in Case No. 2021CV30049 finding that the District’s mill levy of 1.0 mill imposed in each year from 2019-2022 did not violate the TABOR (the “District Court’s Order”); and

WHEREAS, based on the District Court’s Order affirming the District’s ability to levy a mill levy of up to 1.0 mill, the Board fixed the rate of levy for the District at 1.0 mill for 2023 (for collection in 2024); and

WHEREAS, the Plaintiffs appealed the District Court’s Order and on March 21, 2024, the Colorado Court of Appeals held in Case No. 23CA0138 (opinion number 2024COA28) that the District’s increase of its mill levy from 0.5 mill to a mill levy of 1.0 mill in each year from 2019-2022 violated TABOR’s prohibition on increasing its mill levy above that in the prior year without voter approval and reversed the District Court’s Order (the “Court of Appeals Decision”); and

WHEREAS, the District petitioned for a writ of certiorari for the Colorado Supreme Court to review the Court of Appeals Decision, which was denied on September 30, 2024, rendering the Court of Appeals Decision final; and

WHEREAS, TABOR provides that “[r]evenue collected, kept, or spent illegally since four full fiscal years before a suit is filed shall be refunded with 10% annual simple interest from the initial conduct;” and

WHEREAS, in light of the Court of Appeals Decision becoming final, the Board desires to express its acceptance of that decision to its taxpayers and to take responsibility for its obligation to effect a refund under TABOR, and to establish a reasonable methodology to refund the revenues collected in violation from TABOR from the levy that it imposed above 0.5 mill in each year from 2019-2023 (for collection in 2020-2024) to its taxpayers as soon as practicable while balancing the competing interest of its taxpayers to have a speedy refund against the interest of its taxpayers to continue to enjoy a reasonable level of District Services (defined below); and

WHEREAS, the Board has determined and hereby determines that the general property tax mill levy imposed by the District in excess of 0.5 mill during fiscal years 2019-2023, totaled \$1,661,445 in principal (the “Principal Refund Amount”) plus \$450,810 in accrued simple interest through January 1, 2025 (the “Current Interest Amount”) for a total of \$2,112,255 (the “Current Refund Amount”); and

WHEREAS, the Board has determined and hereby determines that it is impracticable and not fiscally responsible to refund the full Current Refund Amount in one year due to the fact that the Current Refund Amount is more than six times the amount that the District can currently collect in any one year through the imposition of a mill levy of 0.5 mill and the fact that the District has limited other financial resources available to it; and

WHEREAS, the Board has determined and hereby determined that it is in the best interest of the District, its taxpayers, residents and constituents that the District continue to provide for the conservation of the water resources of the State of Colorado (the “State”) and for the greatest beneficial use of water within the State by continuing to retain enough revenue from its mill levy annually to provide its essential services such as (i) diverting and storing waters of the South Platte River and its tributaries for beneficial use; (ii) working with others to provide water for beneficial use to property owners within the District’s boundaries from the construction of “works” that conserve, develop and stabilize supplies of water; (iii) defending and protecting existing water supplies through participate in water court; (iv) its membership and participation in the Water Rights Association of the South Platte and the Colorado Water Congress; (v) engagement with the Department of Natural Resources; (vi) its monitoring and involvement in affairs under the Platte River Recovery Implementation Program, interstate compacts and federal affairs; (vii) engaging in education and outreach activities, including the Lower South Platte Children’s Water Festival, presentations and seminars, radio interviews, public tours, and website materials; and (viii) District services such as water measurement, water accounting, flow monitoring, and assistance with administration and financial coordination to the South Platte Water Related Activities Program and other local water user entities such as District 64 Reservoir Company and Lower Logan Well Users (collectively, the “District’s Services”); and

WHEREAS, due to the impracticability of refunding the Current Refund Amount in one year based on the District’s limited tax revenue and its need to continue to provide the District Services to its taxpayers, residents and constituents, the Board has determined and hereby determines that it must effect the TABOR refund over the course of years, not to exceed a ten-year period; and

WHEREAS, the Board recognizes that the Principal Refund Amount, as paid and reduced over time, will continue to accrue 10% annual simple interest on the outstanding Principal Refund Amount until paid in full, and that as such, the total refund amount is currently unknown (the “Total Refund Amount”); and

WHEREAS, the Board desires to implement a refund methodology that balances the need to provide its taxpayers with a refund of the Total Refund Amount as soon as possible with the need to continue to provide its taxpayers, residents and constituents with a reasonable level of District’s Services while the Total Refund Amount is being paid; and

WHEREAS, TABOR provides that “[s]ubject to judicial review, districts may use any reasonable method for refunds under this section [(1)], including temporary tax credits or rate reductions,” therefore, the District has the authority to determine the reasonable method for the refund, subject to judicial review; and

WHEREAS, Colorado courts have interpreted this provision of TABOR to recognize a refund to current property owners as sufficient and a “reasonable method.” *See Bolt v. Arapahoe County School District Number Six*, 898 P.2d 525 (Colo. 1995) (holding by District Court, not addressed on appeal); and

WHEREAS, TABOR provides further that “[r]efunds need not be proportional when prior payments are impractical to identify or return;” and

WHEREAS, the Colorado Supreme Court has “consistently rejected readings of [TABOR] that would hinder basic government functions or cripple the government’s ability to provide services.” *Barber v. Ritter*, 196 P.3d 238, 248 (Colo. 2008); and

WHEREAS, the Board has discussed the practicality of identifying, locating and refunding a proportional amount to each taxpayer who paid the District’s mill levy in each year from 2019-2023 (for payment in 2020-2024) with Morgan County, and has determined and hereby determines that it would be impractical to identify, locate and refund a proportional amount to each taxpayer who paid the District’s mill levy in each year from 2019-2023 (for payment in 2020-2024) in order to refund the Total Refund Amount and that such an effort would cause the District to incur excessive costs and spend an excessive amount of taxpayer dollars that could otherwise be spent to provide District Services to the District’s taxpayers, residents and constituents; and

WHEREAS, accordingly, the Board wishes to refund the Total Refund Amount over a course of years, not to exceed ten years, by granting a temporary tax credit or adopting a temporary mill rate reduction starting in tax year 2025 (for collection in 2026) and continuing thereafter until the Total Refund Amount has been paid; and

WHEREAS, the Board has determined that the amounts refunded in tax year 2025 and thereafter through the granting of temporary tax credits or the adoption of temporary mill rate reductions shall be applied first to the Principal Refund Amount so that taxpayers are refunded the revenues collected in violation of TABOR first, followed by accrued simple interest; and

WHEREAS, the Board finds that applying the refund amount towards the Principal Refund Amount first is in the spirit of TABOR because it (i) ensures that taxpayers are made whole with refunds of the revenues collected in violation of TABOR as soon as possible, (ii) results in less accrued simple interest overall, which reduces the amount of tax dollars that the District will need to collect and spend to pay interest, (iii) provides taxpayers with the amount of accrued simple interest on the outstanding Principal Refund Amount that they are owed while focusing on the primary purpose of section (1) of TABOR, which is to refund the revenues collected in violation of TABOR to taxpayers rather than slowing the return of those dollars, increasing accrued simple interest, and, as a result, increasing District spending, and (iv) results in a quicker refund for taxpayers; and

WHEREAS, in the interest of refunding the Total Refund Amount as soon as possible, the Board also wishes to reserve the right to determine the remaining Principal Refund Amount, plus accrued simple interest, as of any date, and to make checks available to the owners of property in the District’s jurisdictional limits, as of the date determined for a refund of all or a portion of the

remaining Principal Refund Amount, plus accrued simple interest, in an equal amount to each taxable parcel owner, provided that multiple owners of one property will only be able to claim one refund check; and

WHEREAS, the Board has determined and hereby determines that it is in the best interests of the District, its taxpayers, residents and constituents to take the actions set forth herein.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE LOWER SOUTH PLATTE WATER CONSERVANCY DISTRICT, COLORADO, AS FOLLOWS:

Section 1. Recitals; Ratification and Approval of Prior Actions. The foregoing recitals are incorporated herein as findings of Board. All actions heretofore taken, not inconsistent with the provisions of this Resolution, by the Board or the officers, agents, or employees of the District relating to the subject matter of this Resolution, are hereby ratified, approved, and confirmed.

Section 2. Refund Methodology. The Board hereby makes the following findings and approves the following methodology to effect the refund of the Total Refund Amount to the District's taxpayers:

(a) Reasonable Refund Methodology. The Board hereby finds and determines pursuant to section (1) of TABOR that it is entitled to use any reasonable method for refunds under section (1) of TABOR, subject to judicial review. After due consideration of the options available to the Board to effect a refund under section (1) of TABOR, the Board has determined and hereby determines that the methodology set forth in this Section 2 is reasonable and in the best interest of the District and its taxpayers.

(b) Principal Refund Amount. The Board hereby determines that the principal amount of general property taxes collected by the District from the mill levy imposed by the District in excess of 0.5 mill during fiscal years 2019-2023 (for collection in 2020-2024), totaled the \$1,661,445 (as previously defined, the "Principal Refund Amount"). The Principal Refund Amount determined by the Board shall be conclusive absent manifest error.

(c) Accrued Simple Interest and Interest Rate. The Board hereby determines that it owes \$450,810 in accrued simple interest on the Principal Refund Amount from the initial conduct through January 1, 2025, and that the outstanding Principal Refund Amount, as reduced over time as principal refunds occur, will continue to accrue 10% annual simple interest on the outstanding Principal Refund Amount until paid in full, so that the total refund amount is currently unknown (as previously defined, the "Total Refund Amount"). The Total Refund Amount determined by the Board shall be conclusive absent manifest error.

(d) Refunds Through Temporary Tax Credits or Temporary Mill Levy Reductions. The Board hereby determines that it will adopt a temporary tax credit or a temporary mill levy reduction in each year, starting in property tax year 2025 (for collection in 2026) and ending no later than 2035 (for collection in 2036), in an amount to be determined by the Board each year after taking

into account the amount needed to be refunded in order to refund the entire Total Refund Amount within ten years and the amount of tax revenue that is needed to provide the District Services at a reasonable level to the District's taxpayers, residents and constituents for the applicable year. The Board hereby determines that the amount of the refund effected in each year shall be determined by the amount set forth on the certification of tax levies provided by the District to the county commissioners of each county in such year, and that such amount shall be conclusive absent manifest error. The Board further determines that the amount refunded each year, as set forth on the certification of tax levies provided by the District to the county commissioners of each county, shall be applied first to the repayment of the Principal Refund Amount and then to accrued simple interest after the Principal Refund Amount is paid in full. The Board finds that application of the amount refunded to the Principal Refund Amount first is in the interest of the District and its taxpayers, because it (i) ensures that taxpayers are made whole with refunds of the revenues collected in violation of TABOR as soon as possible, (ii) results in less accrued simple interest overall, which reduces the amount of tax dollars that the District will need to collect and spend to pay interest, (iii) provides taxpayers with the amount of accrued simple interest on the outstanding Principal Refund Amount that they are owed while focusing on the primary purpose of section (1) of TABOR, which is to refund the revenues collected in violation of TABOR to taxpayers rather than slowing the return of those dollars, increasing accrued simple interest, and, as a result, increasing District spending, and (iv) results in a quicker refund for taxpayers.

(e) Future TABOR Elections. Notwithstanding anything to the contrary contained herein, the District may seek voter approval at any time in accordance with TABOR and the Water Conservancy Act to increase its mill levy above 0.5 mill, and shall be entitled to provide a temporary tax credit or temporary mill levy reduction against any increased mill levy authorized by voters in addition to or in lieu of granting a temporary tax credit or temporary mill levy reduction against its currently authorized mill levy of 0.5 mill.

(f) Refunds Through Checks. The Board hereby determines that it is in the best interest of the District and its taxpayers to reserve the right: (i) to determine the remaining Principal Refund Amount, plus accrued simple interest, as of any date (the "Refund Date") and to decide whether to refund all or a portion of such amount on the Refund Date (the "Cash Refund Amount"); (ii) to make checks available to the owners of taxable parcels in the District's jurisdictional boundaries (as identified by the Logan County Assessor, the Morgan County Assessor, the Sedgwick County Assessor, and the Washington County Assessor 30 days prior to the Refund Date) to refund the Cash Refund Amount in an equal amount to each taxable parcel owner, provided that multiple owners of one taxable parcel will only be able to claim one refund check; and (iii) to provide notice to the owners of taxable parcels in the District's jurisdictional boundaries on the District's website and in a newspaper of general circulation within the District that refund checks in equal amounts will be available to taxable parcel owners in the District's jurisdictional boundaries for 90 days after the Refund Date in order to refund the Cash Refund Amount, that such checks can be claimed in-person, via phone call request, or by completing an online form on the District's website, and that if any checks are not claimed within such 90-day period the amounts remaining unclaimed will be deemed to be donations to the District and no longer subject to refund regardless of the receipt of actual notice or the transfer of title of any property. The Board determines that it is in the best interest of the District and its taxpayers to reserve the right to effect a refund of the Cash Refund Amount through direct payment, and that it is reasonable to effect such a refund by making

checks available for claim by the taxable parcel owners in the District's jurisdictional boundaries because it (i) saves taxpayer dollars by not requiring the District to pay for the costs associated with mailing checks, including the cost of envelopes and postage, (ii) is in the spirit of TABOR by empowering taxable parcel owners to decide whether they want to claim a refund or whether they want to donate their refund check to the District to be used for the provision of District Services, and (iii) provides finality for the District and taxpayers by setting a date certain to claim a refund.

Section 3. Severability. If any part, section, subsection, sentence, clause, or phrase of this Resolution is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this Resolution and the Board hereby declares it would have passed this Resolution and each part, section, subsection, sentence, clause, or phrase thereof regardless of the fact that any one or more parts, sections, subsections, sentences, clauses, or phrases be declared invalid.

Section 4. Effective Date. This Resolution shall be effective immediately upon approval of the Board.

INTRODUCED, READ AND APPROVED FOR PUBLICATION this 14th day of January, 2025.

LOWER SOUTH PLATTE WATER
CONSERVANCY DISTRICT

Ken Fritzler
President

ATTEST:

Secretary

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ADOPTED this 11th day of February, 2025.

LOWER SOUTH PLATTE WATER
CONSERVANCY DISTRICT

Ken Fritzer
President

ATTEST:

Secretary

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