

RESOLUTION #06-1-2025

**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 above 0.5 mill but not exceeding 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 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 0.977 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

WHEREAS, in accordance with *Property Tax Adjustment Specialists, Inc. v. Mesa County Board of County Commissioners*, 956 P2d 1277, 1281 (Colo. App. 1998) “‘revenue collected, kept, or spent illegally’ necessarily must be construed narrowly to refer only to those revenues collected or spent by districts in violation of the procedures set forth in [TABOR];” and

WHEREAS, only the revenues received by the District from the imposition of the general property tax mill levy imposed by the District in excess of 0.5 mill during fiscal years 2019-2023 were collected in violation of the procedures set forth in TABOR because the District was only required to have voter approval in advance to collect those revenues; therefore, TABOR’s enforcement provisions only apply to those revenues; and

WHEREAS, based on information provided by Morgan, Washington, Logan, and Sedgwick Counties (which is set forth in Exhibit A hereto), 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, generated property tax revenue in the aggregate total principal amount of \$1,684,432.32 (the “Principal Refund Amount”); and

WHEREAS, pursuant to TABOR, the Principal Refund Amount, as collected by the District over time, has borne 10% annual simple interest from the initial conduct and had accrued in the amount of \$568,620.35 as of June 1, 2025, which when combined with the Principal Refund Amount equals a total of \$2,253,052.70 (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 (i) 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, (ii) the District has limited revenue streams available to it other than property taxes, (iii) the District has limited assets, as reflected in its publicly available budgets and audits, and (iv) the District needs to provide the District Services (defined below) to its taxpayers; 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 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, 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 Principal Refund Amount plus all accrued interest is referred to herein as the “Total Refund Amount”); and

WHEREAS, the Board desires to establish a reasonable methodology in order to refund the Total Refund Amount to its taxpayers that balances the competing interest of its taxpayers to have the District continue to exist and to provide a reasonable level of District Services against the interest of its taxpayers to receive a refund as soon as possible; and

WHEREAS, due to the impracticability of refunding the Current Refund Amount in one year based on the District's limited tax revenue and other revenue, limited assets, 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 10 years) by providing temporary property tax credits or temporary mill levy rate reductions in accordance with Section 39-1-111.5, C.R.S.; 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 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, pursuant to Section 39-1-111.5, C.R.S., a district may effectuate a refund through a temporary tax credit or temporary mill levy reduction, and the procedures set forth therein "are deemed to be a reasonable method for effecting a refund in accordance with [TABOR];" and

WHEREAS, accordingly, the Board wishes to refund the Total Refund Amount over a course of years (not to exceed 10 years) by granting a temporary tax credit or adopting a temporary mill rate reduction in each year, starting in tax year 2025 (for collection in 2026), in an amount that is at least sufficient to refund \$250,000 per year (except that in the final year of the refund the District will refund the remaining amount of principal and interest that is outstanding), until the Total Refund Amount has been paid; and

WHEREAS, the Board hereby determines that \$250,000 per year is the minimum that will be refunded annually (except that in the final year of the refund the District will refund the remaining amount of principal and interest that is outstanding), and that such amount sets the baseline of how it intends to refund the Total Refund Amount, but in the interest of refunding the Total Refund Amount as soon as possible, the Board also hereby declares that it reserves the right to accelerate the refund of the Total Refund Amount by granting temporary tax credits or adopting temporary mill rate reductions in amounts that generate refunds that exceed \$250,000 and by issuing refund checks; 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 and *Brue v. Pikes Peak Library District*, 155 P.3d 630, 633 (Colo. App. 2007) 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. Further, since the refund methodology set forth in this Section 2 is in accordance with Section 39-1-111.5, C.R.S., it is deemed to be a reasonable method of effecting a refund under TABOR.

(b) **Principal Refund Amount.** The Board hereby determines that the aggregate 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 \$1,684,432.32 (as previously defined, the "Principal Refund Amount"). In accordance with *Property Tax Adjustment Specialists, Inc. v. Mesa County Board of County Commissioners*, 956 P2d 1277, 1281 (Colo. App. 1998), the Principal Refund Amount includes only the revenues received by the District that were collected in violation of the procedures set forth in TABOR. The Principal Refund Amount determined by the Board is derived from information provided by the counties who are responsible for collecting property taxes for the District and shall be conclusive

absent manifest error.

(c) Accrued Simple Interest and Interest Rate. The Board hereby acknowledges that the Principal Refund Amount has accrued 10% simple interest from the initial conduct, 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”).

(d) Refunds Through Temporary Tax Credits or Temporary Mill Levy Reductions. In accordance with TABOR and Section 39-1-111.5, C.R.S., the Board hereby determines and declares that it will adopt and certify to the Board of County Commissioners for each of Morgan County, Washington County, Logan County, and Sedgwick County, a temporary tax credit or a temporary mill levy reduction in each year, starting in property tax year 2025 (for collection in 2026), in an amount sufficient to refund at least \$250,000 in each year; provided that in the final year of the refund the District will refund the remaining amount of principal and interest that is outstanding. The Board hereby determines and declares that the Total Refund Amount will be refunded by December 31, 2036 (with the final temporary tax credit or temporary mill levy reduction being adopted in December of 2035). The Board hereby determines that the amount of the refund effected in each year shall be finally 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. Pursuant to Section 39-1-111.5, C.R.S., this procedure for refunding the Total Refund Amount is deemed to be a reasonable method for effecting a refund under TABOR.

(e) Future TABOR Elections. Notwithstanding anything to the contrary contained herein—in accordance with TABOR and the Water Conservancy Act—the District may seek voter approval in the future 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) Accelerated Refunds. The Board hereby determines that it is in the best interest of the District and its taxpayers to reserve the right to accelerate the refund of the Total Refund Amount by granting temporary tax credits or adopting temporary mill rate reductions in amounts that generate refunds that exceed \$250,000 and by making 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) at any time. If the Board determines to accelerate the refund of the Total Refund Amount by making checks available to the owners of taxable parcels in the District’s jurisdictional boundaries, it agrees to provide notice of such determination by sending notice that will set forth when checks will be mailed or how they can be claimed with or in substantially the same method as property tax notices are sent out by the County Treasures (provided that the County Treasures shall not be responsible or liable for mailing such notice or the checks).

(g) Annual Public Disclosure of Outstanding Amount. The Board hereby determines and declares that the District will track, or will cause how much of the Principal Refund Amount and accrued interest was refunded in the prior year and what the then-current outstanding balance of the Principal Refund Amount and accrued interest is to be tracked, and will post public notice at least annually setting forth how much of the Principal Refund Amount and accrued interest was refunded in the prior year and what the then-current outstanding balance of Principal Refund Amount and accrued interest is until the Total Refund Amount is satisfied.

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. Repealer. Resolution #02-1-2025 and Resolution #04-1-2025 are hereby repealed.

Section 5. Resolution Irrepealable. Upon the district court deeming the refund methodology set forth herein to be reasonable under TABOR, this Resolution shall be irrepealable until the Total Refund Amount is refunded in full.

Section 6. Effective Date. This Resolution shall be effective immediately upon approval of the Board.


ADOPTED this 3rd day of June, 2025.

LOWER SOUTH PLATTE WATER
CONSERVANCY DISTRICT



Ken Fritzier
President

ATTEST:



Secretary

EXHIBIT A

(Attached the Treasurer's Certified Numbers)

LOGAN				
TAX YEAR	CURRENT TAXES	DELINQUENT TAXES		TOTAL DISTRIBUTION
2020	\$183,669.78	-\$13.65		\$183,656.13
2021	\$188,171.53	\$2.76		\$188,174.29
2022	\$202,769.37	\$429.81		\$203,199.18
2023	\$203,791.37	\$1,329.78		\$205,121.15
2024	\$203,692.21	\$120.53		\$203,812.74
TOTAL	\$982,094.26	\$1,869.23		\$983,963.49
MORGAN				
TAX YEAR	CURRENT TAXES	DELINQUENT TAXES	SR & VET EXEMPTIONS	TOTAL DISTRIBUTION
2020	\$413,640.58	\$627.17	\$6,790.35	\$421,058.10
2021	\$424,604.32	\$4,932.60	\$6,781.86	\$436,318.78
2022	\$454,933.21	\$8,728.03	\$7,031.49	\$470,692.73
2023	\$447,955.40	\$1,024.88	\$7,110.03	\$456,090.31
2024	\$461,426.92	\$929.63	\$6,934.43	\$469,290.98
TOTAL	\$2,202,560.43	\$16,242.31	\$34,648.16	\$2,253,450.90
SEDGWICK				
TAX YEAR	CURRENT TAXES	DELINQUENT TAXES		TOTAL DISTRIBUTION
2020	\$25,586.33			\$25,586.33
2021	\$26,393.07			\$26,393.07
2022	\$28,751.00			\$28,751.00
2023	\$29,113.99			\$29,113.99
2024	\$28,774.09			\$28,774.09
TOTAL	\$138,618.48			\$138,618.48
WASHINGTON				
TAX YEAR	CURRENT TAXES	DELINQUENT TAXES		TOTAL DISTRIBUTION
2020	\$2,874.63			\$2,874.63
2021	\$2,935.23			\$2,935.23
2022	\$3,475.72			\$3,475.72
2023	\$3,121.01			\$3,121.01
2024	\$3,497.06			\$3,497.06
TOTAL	\$15,903.65			\$15,903.65
GRAND TOTAL AD VALOREM TAXES ONLY COLLECTED				\$3,391,936.52
2020-2024				
.5 years 2020-2023		\$2,686,561.65		\$1,343,280.82
.5 year 2024 Logan		\$203,812.74		\$101,906.37
.477 year 2024 Morgan, Sedgwick & Washington		\$501,562.13		\$239,245.13
TOTAL COLLECTED		\$3,391,936.52		
& OVERCOLLECTED				\$1,684,432.32