

DISTRICT COURT, LOGAN COUNTY,
COLORADO

DATE FILED: November 10, 2021 10:22 AM
FILING ID: 1093174CF1123
CASE NUMBER: 2021CV30049

Court Address:

110 N Riverview Rd.
Sterling, CO 80751

Plaintiffs:

James Aranci;
Jack Darnell;
Charles Miller;
William Lauck;
Curtis Werner; and
others similarly situated

v.

Defendants:

Lower South Platte Water Conservancy
District;
Patricia Bartlett, Logan County Treasurer, in
her official capacity;
Robert A. Sagel, Morgan County Treasurer, in
his official capacity;
Wanda K. Trennepohl, Sedgwick County
Treasurer, in her official capacity; and
Debra A. Cooper; Washington County
Treasurer, in her official capacity

Attorney:

Name: Daniel E. Burrows
Address: Public Trust Institute
98 Wadsworth Blvd. #127-3071
Lakewood, CO 80226
Phone Number: (720) 588-2008
E-mail: dburrows@publictrustinstitute.org
Atty. Reg. #: 40284

▲ COURT USE ONLY ▲

Case Number:

Div.:

Ctrm.:

CLASS ACTION COMPLAINT

INTRODUCTION

The Lower South Platte Water Conservancy District (LSPWCD) violated The Taxpayer’s Bill of Rights, Colo. Const. art. X, § 20, when it increased its mill levy without prior approval from voters. Plaintiffs, James Aranci, Jack Darnell, Charles Miller, William Lauck, and Curtis Werner bring this suit, on behalf of themselves and others similarly situated, to vindicate the rights of LSPWCD taxpayers, force the District to comply with the Colorado Constitution, and restore public trust.

THE NAMED PARTIES

1. Defendant LSPWCD is a water conservancy district organized under the Water Conservancy Act, Colo. Rev. Stat. §§ 37-45-101–53 (2020).
2. The LSPWCD was formed in 1964.
3. It includes portions of Logan, Morgan, Sedgwick, and Washington Counties.
4. Under the Act, the LSPWCD has the power to levy and collect taxes upon all property within the district.
5. The actual collection of taxes levied by the LSPWCD is performed by Defendants Patricia Bartlett, Robert A. Sagel, Wanda K. Trennepohl, and Debra A. Cooper (hereinafter the Treasurer Defendants) in their respective counties.
6. Following such collection, the Treasurer Defendants transfer tax receipts to the LSPWCD.
7. Plaintiff Aranci is a resident of the LSPWCD and owns taxable real property within the LSPWCD in Logan County.
8. Plaintiffs Miller, Lauck, and Darnell are residents of the LSPWCD and own taxable real property within the LSPWCD in Morgan County.
9. Plaintiff Werner is a resident of the LSPWCD and owns taxable real property within the LSPWCD in Washington County.

OPERATIVE FACTS

10. The Colorado Constitution requires that local governments, such as the LSPWCD, must have “voter approval in advance for . . . any . . . mill levy above that for the prior year.” Colo. Const. art. X, § 20(4).
11. On November 12, 2019, the LSPWCD’s board of directors approved its 2020 budget.
12. That budget included an increase in the LSPWCD’s mill levy from 0.5 mill to one mill.
13. That mill levy increase did not receive advance voter approval.

14. Yet the Treasurer Defendants went on to collect LSPWCD taxes at the one-mill rate, beginning with the 2020 tax year.

15. When this discrepancy was brought to the attention of the LSPWCD and the affected county governments, the LSPWCD responded that the mill levy increase was approved by a 1996 ballot question.

16. In 1996, the relevant electorate approved LSPWCD Referred Measure 4D.

17. The text of that measure, as published in the Morgan County voter information booklet (commonly known as the “Blue Book”) is attached to this complaint.

18. On information and belief, the ballot language and explanation presented to the voters in other counties’ Blue Books regarding Referred Measure 4D was identical to the attached exhibit.

19. Referred Measure 4D allowed the LSPWCD to retain, in 1995 and every year afterward, excess revenue that the Colorado Constitution otherwise would have required be refunded to taxpayers.

20. That said, this retention of revenue was explicitly conditioned on the fact “that no local tax rate or property mill levy shall be increased at any time, nor shall any new tax be imposed, without the prior approval of the voters of the [LSPWCD].”

21. Consequently, Referred Measure 4D did not approve the 2020 mill levy increase.

22. The LSPWCD’s 2021 budget likewise included a one-mill levy and the Treasurer Defendants have continued to collect LSPWCD taxes at that rate.

23. On information and belief, the LSPWCD’s board has approved a 2022 budget that also includes a one-mill levy.

24. All Named Plaintiffs have been subject to and paid the increased mill levy.

CLASS ALLEGATIONS

25. This action is brought and may be properly maintained as a class action under The Taxpayer’s Bill of Rights and C.R.C.P. 23.

26. The class encompasses all persons who own or have owned taxable property within the LSPWCD and who have been subject to the increased mill levy in tax year 2020 and/or any subsequent tax year.

27. All members of this class are similarly situated insofar as their property has been subject to the disputed tax increase.

28. Named Plaintiffs are members of the class and possess the requisite standing to represent the class.

29. The members of the specified class are unambiguous and identifiable by public records and other records within Defendants’ possession.

30. Though a precise enumeration of the class is not presently available to Named Plaintiffs, the exact number of the proposed class is ascertainable through records within the possession of Defendants.

31. The class is so numerous that joinder of all members is impracticable: the LSPWCD encompasses around 406,000 acres in four counties, including the entire cities of Fort Morgan and Brush, both of which have populations in excess of 5000 people.

32. Questions of law or fact are common to the class, including but not necessarily limited to:

- a. Did the LSPWCD increase the mill levy from 0.5 mills in the 2019 tax year to 1 mill in the 2020 tax year?
- b. Did the LSPWCD have legal authority to increase the mill levy?
- c. Was such increase approved in advance by LSPWCD voters?

33. These questions of law or fact predominate over any questions affecting only individual members.

34. The claims of the named Plaintiffs are typical of the claims of the class because the named Plaintiffs, like all other class members, are and have been property owners within the LSPWCD subject to a uniform mill levy and now seek recovery, at a uniform rate, of the unlawful taxes collected by the Treasurer Defendants and paid to the LSPWCD.

35. The named Plaintiffs will fairly and adequately protect the interests of the class because their interests are aligned and are not antagonistic to those of other class members.

36. Plaintiffs' counsel, the Public Trust Institute, is sufficiently experienced in relevant litigation and will adequately protect the interests of the class.

37. Further, the Institute, as a non-profit public-interest law firm organized as a public charity under I.R.C. § 501(c)(3), is not motivated by pecuniary gain.

38. The Institute's mission—the protection of constitutional, civil, and human rights of Coloradans—reinforces legal counsel's capacity to adequately represent the interests of the class of property owners whose rights have been violated in this matter.

39. Because the Colorado Constitution generally requires uniform property tax levies "within the territorial limits of the authority levying the tax," Colo. Const. art. X, § 3(1)(a), the prosecution of separate actions by or against individual members of the class would create a risk of inconsistent or varying adjudications with respect to individual members of the class which would establish incompatible standards of conduct for Defendants; or would as a practical matter be dispositive of the interests of the other members not party to the adjudications or substantially impair or impede their ability to protect their interest.

40. One mill is equal to \$1 in property tax levied per \$1000 of a property's assessed value.

41. Given the mill levy discrepancy at issue (0.5 mills), the amount in controversy for each individual class member will, in many if not most cases, be too small to warrant that class member's hiring and payment of his or her own legal counsel to recover unlawfully collected funds.

42. To the best of Named Plaintiffs' knowledge, there is no other pending litigation involving any member of the proposed class under the same legal theories as those presented herein.

JURISDICTION AND VENUE

43. This Court has jurisdiction under article VI, section 9(1) and article X, section 20(1) of the Colorado Constitution.

44. Venue is proper in this county under C.R.C.P. 98(b).

PRAYER FOR RELIEF

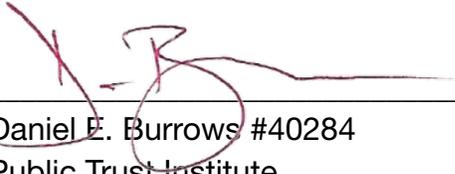
45. Wherefore, Plaintiffs ask for the following relief:

a. an injunction prohibiting the Treasurer Defendants from collecting, billing, assessing, taking enforcement action, or otherwise administering taxes for the LSPWCD at a rate greater than 0.5 mills unless and until an increase from such rate is approved in advance by the electors of the LSPWCD;

b. a refund to class members consistent with the remedy provisions of the Taxpayer's Bill of Rights (i.e., all illegally collected revenue plus 10% interest);

c. costs and reasonable attorney fees as allowed by The Taxpayer's Bill of Rights; and

d. such other relief as the Court finds just and proper.



Daniel E. Burrows #40284
Public Trust Institute
Attorney for Plaintiffs

Addresses of Named Plaintiffs:

James Aranci
31044 County Rd 75
Crook, CO 80726

William Lauck
21801 Hwy 34
Fort Morgan, CO 80701

Curtis Werner
59276 Rd Q
Merino, CO 80741

Jack Darnell
809 Cheyenne St
Fort Morgan, CO 80701

Charles Miller
26060 County Rd S
Brush, CO 80723

1994

NOTICE OF ELECTION

ON A CITIZEN PETITION AND/OR ON A REFERRED MEASURE

THIS BOOKLET CONTAINS SUMMARY STATEMENTS FOR BALLOT PROPOSITIONS AS REQUIRED BY THE STATE OF COLORADO CONSTITUTION, ARTICLE X, SECTION 20.

A "YES" VOTE ON ANY MEASURE IS A VOTE **IN FAVOR** OF CHANGING CONSTITUTIONAL OR STATUTORY LAW, AND A "NO" VOTE ON ANY MEASURE IS A VOTE **AGAINST** CHANGING CONSTITUTIONAL OR STATUTORY LAW.

THIS NOTICE IS MAILED TO EACH HOUSEHOLD WITH ONE OR MORE ACTIVE, REGISTERED ELECTORS.

***YOU MAY NOT BE ELIGIBLE TO VOTE
ON ALL ISSUES PRESENTED.***

MORGAN COUNTY CLERK AND RECORDER
PO BOX 1399
FORT MORGAN CO 80701-1399



BULK RATE
U.S. POSTAGE
PAID
DENVER, CO
PERMIT NO. 2358

GENERAL INFORMATION

This voter information pamphlet contains referenda and/or initiatives appearing on your 1996 General Election ballot.

The title and text of each referenda/initiative is printed in full, and may be accompanied by two summaries of up to 500 words each, for and against the measure. For some measures, current and recent fiscal year spending figures are included. For others, tax increase estimates or bonded debt repayment costs within a particular district have been submitted.

THE MAILING AND CONTENT OF THIS NOTICE IS MANDATED BY AN AMENDMENT TO ARTICLE X, SECTION 20 (THE TABOR AMENDMENT) OF THE COLORADO CONSTITUTION.

The political subdivision providing this voters' information notice does not warrant the accuracy or truth of any statement made in the summaries, nor is it responsible for errors in spelling, grammar, or punctuation of submitted statements.

COMPLETE VOTING INFORMATION LISTED BELOW

RECEIPT OF THIS VOTERS' INFORMATION PAMPHLET DOES NOT NECESSARILY MEAN THAT EVERY RESIDENT OF YOUR HOUSEHOLD IS ELIGIBLE TO VOTE.

IF YOU HAVE QUESTIONS CONCERNING VOTING PROCEDURES, POLLING LOCATIONS, OR YOUR ELIGIBILITY TO VOTE, REFER INITIALLY TO THE INFORMATION PROVIDED IN THIS NOTICE. FURTHER DETAILS MAY BE OBTAINED BY CONTACTING YOUR LOCAL ELECTION OFFICE LISTED BELOW.

Elections within Morgan County will be conducted by polling place on November 5, 1996. Polls are open from 7 AM - 7 PM. An early voter's polling place is also open during regular business hours through Friday, November 1, 1996.

Your Local Election Office is:
MORGAN COUNTY CLERK AND RECORDER
OFFICE HOURS 8:00 AM - 4:00 PM
P. O. Box 1399
231 Ensign Street
Fort Morgan, CO 80701-1399
Phone (970) 867-5616

**ATTEST: THE FOREGOING
BALLOT ISSUE NOTICES ARE
COMPLETE AS SUBMITTED
BY THE POLITICAL
SUBDIVISIONS.**

FAY JOHNSON

CLERK AND RECORDER

YEAR	FISCAL YEAR SPENDING	\$ CHANGE	% CHANGE
1991 (actual)	\$39,957	N/A	N/A
1992 (actual)	37,114	(2,843)	(1.12)
1993 (actual)	37,954	840	2.26
1994 (actual)	33,679	(4,275)	(11.26)
1995 (actual)	41,629	7,950	23.61
1996 (estimated)	43,545	1,916	4.60

SUMMARY OF WRITTEN COMMENTS FOR OR AGAINST THE MEASURE

No written comments were filed by the constitutional deadline.

NOTICE OF ELECTION ON A REFERRED MEASURE LOWER SOUTH PLATTE WATER CONSERVANCY DISTRICT

Election Date: Tuesday, November 5, 1996
Polling Hours: 7:00a.m. - 7:00p.m.

LOCAL ELECTION OFFICE:

Office of the Morgan County Clerk and Recorder
231 Ensign Street
Fort Morgan, CO 80701-1399
Phone (970) 867-5616

LOWER SOUTH PLATTE WATER CONSERVANCY DISTRICT REFERRED MEASURE 4D - BALLOT TITLE

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 WHATSOEVER, WITHOUT LIMITATION, IN 1996 AND ALL SUBSEQUENT YEARS, NOT WITHSTANDING 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, NOR SHALL ANY NEW TAX BE IMPOSED, WITHOUT THE PRIOR APPROVAL OF THE VOTERS OF THE LOWER SOUTH PLATTE WATER CONSERVANCY DISTRICT?

LOWER SOUTH PLATTE WATER CONSERVANCY DISTRICT BALLOT ISSUE PRO STATEMENT

This ballot issue does not allow for any mill levy increase or impose any new taxes. If you vote YES, it will allow the District to spend \$13,025.00 lawfully collected in 1995 but which the District is prohibited from spending under TABOR. If you vote No the District will have to refund the \$13,025.00 to the taxpayers. With the District composed of over 20,000 resident in a four county area, the refunding of these revenues may prove to be a costly and complex process and will result in a fraction of a dollar refund to any taxpayer. The Lower South Platte Water Conservancy District (the District) provides water conservation, augmentation, recharge, educational and other services to the residents of the District. The District must seek and generate available revenue sources in addition to the property tax levy to provide these services. However, Article X, Section 20 of the Colorado Constitution (TABOR) limits the revenue raising and spending abilities of the District. TABOR allows changes in these limits from one year to the next based on the District's growth factor which is the rate of inflation in the prior calendar year plus the net percentage change in actual value of all real property. However, this growth factor does not keep up with the demand for the level of services and the projects expected to be provided by the District. TABOR also does not allow for the District to receive and spend grants that may be received from time to time from the State of Colorado or other local districts to perform necessary water projects. TABOR does allow the District to ask the voters of the District for the authority to collect, retain and expend all revenues it collects in a given year, notwithstanding the spending limitation of TABOR. In 1995, the District received revenues in excess of its spending limitation in 1995 by \$13,025 resulting from property tax revenues of \$5,982 and other revenues of \$7,043. These revenues are necessary to continue to provide the services and projects to carry out the purpose of the District. It is also necessary for the District to be allowed to receive, retain and expend all revenues received in the current and future years to allow the District to continue to provide the necessary services and projects. **If you vote YES the District can do this. This ballot issue does not allow for any mill levy increase or impose any new taxes.**

STATEMENT AGAINST THE QUESTION.

No comments were filed by the constitutional deadline.